



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE

**REPLIES TO THE LIST OF ISSUES (CCPR/C/CRI/Q/5) TO BE TAKEN  
UP IN CONNECTION WITH THE CONSIDERATION OF THE FIFTH  
PERIODIC REPORT OF COSTA RICA (CCPR/C/CRI/5)\***

[28 September 2007]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

**REPLIES TO THE LIST OF ISSUES TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE FIFTH PERIODIC REPORT OF COSTA RICA ON THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

**Constitutional and legal framework within which the Covenant is implemented (art. 2)**

1. *In the light of the information supplied in paragraph 19 of the fifth periodic report of the State party (CCPR/C/CRI/5), please provide examples of legal rulings in which the Covenant has been invoked as part of domestic law.*

Various rulings by the Constitutional Chamber of the Supreme Court on applications for *amparo* are attached. The International Covenant on Civil and Political Rights was invoked in all cases that gave rise to these decisions.

**Non-discrimination and equal rights of men and women (arts. 3 and 26)**

2. *Please indicate whether Congress has adopted bill No. 13874, which criminalizes violence against women, and indicate the practical measures that have been taken to encourage victims to report acts of violence.*

Bill No. 13874 criminalizing violence against women became law as Act No. 8589 of 25 April 2007. This law was passed following a proposal made in 1998 and 1999 by the Monitoring Committee of the National System for the Treatment and Prevention of Violence against Women, coordinated by the National Institute for Women (INAMU), aimed at meeting the need to respond to situations and behaviour which were observed in practice but which fell outside the scope of existing criminal legislation. It fulfils the commitments made by Costa Rica when it signed the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, according to which it must undertake to include in its domestic legislation “penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary”.

The following practical measures have been taken to encourage victims to report acts of violence:

- (a) A committee has been set up to monitor the application of the Violence against Women Act, comprising the judiciary, the Ministry of Justice, the Ministry of Public Security and INAMU. A review is under way of requirements and institutional responsibilities for the purpose of implementing the Act effectively and efficiently;
- (b) INAMU has earmarked funds to devise and launch an awareness-raising campaign about the Violence against Women Act;
- (c) Dissemination and analysis of the Violence against Women Act has been included as part of training activities undertaken by INAMU at the national, regional and local levels with community organizations, women’s organizations and public institutions.

### **Right to life and prohibition of torture (arts. 6 and 7)**

3. *Please indicate: (a) the number of cases of torture recorded since article 123 bis of the Criminal Code entered into force; (b) the number of persons tried and sentenced for this offence; and (c) the number and total amount of compensation payments awarded to victims. Please supply similar information with respect to cruel or degrading treatment, which is not defined by article 123 bis, including abuses of authority. Please also provide information on cases of police misconduct reported to the Office of the Ombudsman, and on the follow-up to those complaints.*

There are two distinct authorities within the Ministry of Public Security that handle complaints of police misconduct.

The first is the Department of Legal Discipline, which, under article 51 of the Regulations governing the organization of the Ministry of Public Security, deals with administrative disciplinary proceedings initiated against ministry officials and issues recommendations. It is also responsible for ordering the appropriate inquiries into alleged breaches of discipline by ministry officials.

The Office of the Comptroller of Services, on the other hand, receives complaints from users of services supplied by the Ministry of Public Security and liaises with the Office of the Ombudsman to issue information and to monitor and implement the recommendations issued.

During the complaint procedure, if the Office of the Comptroller of Services should identify any circumstances that could justify initiating disciplinary proceedings against one or more officials, the complainants will be consulted as to whether they wish to make statements or call witnesses. Documents are then forwarded to the Department of Legal Discipline for the appropriate investigation.

#### **Complaints received by the Department of Legal Discipline**

##### **Complaints of abuse of authority<sup>1</sup>**

Year	Total number processed
2002	186
2003	205
2004	135
2005	175
2006	102

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<sup>1</sup> The data refer to administrative proceedings that have been processed. This does not necessarily mean that the alleged facts were verified in all cases.

**Complaints received by the Office of the Comptroller of Services****Allegations of abuse of authority**

Year	Total number processed
2002	4
2003	5
2004	1
2005	5
2006	3

**Allegations of arbitrary detentions**

Year	Total number processed
2002	4
2003	2
2004	5
2005	4
2006	3

**Allegations of irregularities**

Year	Total number processed
2002	12
2003	9
2004	34
2005	7
2006	15

**Allegations of assaults**

Year	Total number processed
2002	4
2003	3
2004	5
2005	4
2006	2

Since it was set up in 1997, the Office of the Comptroller of Services has kept files on all cases forwarded by the Office of the Ombudsman and monitors compliance with all recommendations issued.

The tables below show all files of the Office of the Ombudsman relating to allegations of assault, irregularities, abuse of authority and arbitrary detention processed by the Office of the Comptroller of Services.

**Alleged cases of abuse of authority processed**

Year	Total number processed
2002	9
2003	16
2004	3
2005	1
2006	4
Total	33

**Files of alleged cases of abuse of authority, by outcome of investigations by the Office of the Ombudsman, 2002-2006**

Status	Number
Closed	11
Final report without recommendations	10
Recommendations	8
Shelved	3
Recommendation to another institution	1
Total	33

**Files of alleged cases of assault processed, by year**

Year	Total number processed
2002	3
2003	1
2004	3
2005	-
2006	2
Total	9

**Files of alleged cases of assault processed, by outcome of investigations by the Office of the Ombudsman**

Status	Number
Closed	4
Recommendations	2
Pending	2
Final report without recommendations	1
Total	9

**Files of alleged cases of detentions processed, by year**

Year	Total number processed
2002	12
2003	13
2004	10
2005	5
2006	1
Total	41

**Files of alleged cases of detentions processed, by outcome of investigations by the Office of the Ombudsman**

Status	Number
Closed	29
Final report without recommendations	7
Recommendations	2
Suspended	1
Shelved	1
Recommendation to another institution	1
Total	41

**Files of alleged cases of irregularities processed, by year**

Year	Total number processed
2002	4
2003	3
2004	2
2005	2
2006	2
Total	13

**Files of alleged cases of irregularities processed, by outcome of investigations by the Office of the Ombudsman, 2002-2006**

Status	Number
Closed	8
Final report without recommendations	3
Recommendations	1
Pending	1
Total	13

The foregoing shows that most cases investigated by the Office of the Ombudsman are now closed or gave rise to a final report without recommendations, which implies either that some complaints were groundless, that the facts could not be verified and/or that the Ministry of Public Security took steps to investigate the alleged events or to prevent human rights violations.

According to its report, the Office of the Ombudsman received some 235 complaints of various forms of abuse of authority, such as assault, detention, degrading treatment, eviction and confiscation.

During the period 1999-2004, the most common complaints were submitted by young people, sex workers (women and transvestites), itinerant traders, occupiers of land (e.g. squatters, people evicted from the "El Bambusal" estate in Río Frío de Sarapiquí), migrants and demonstrators (ICE Combo, fishermen in the Gulf of Nicoya), who were treated as offenders. The Constitutional Chamber and the Office of the Ombudsman have repeatedly drawn the attention of the Ministry of Public Security to the fact that it is unconstitutional to detain people without substantiated evidence that they have committed an offence - in other words, purely on suspicion - whether on account of their appearance, to investigate their background, or because they were in a certain place at a certain time.

There has been, however, a significant fall in the number of complaints of abuse of authority since 2005. This can be attributed to:

- (1) Implementation of the recommendations issued to the police to prevent them committing, whether deliberately or by omission, human rights violations such as mass round-ups, arbitrary detentions, physical or psychological aggression and arbitrary evictions;
- (2) The growing professionalization of the police, with the incorporation of human rights, police procedures and special legislation in police training courses;
- (3) Efforts to promote and disseminate rights and duties undertaken by the Office of the Ombudsman in various communities and institutions.

With regard to persons held in detention, the Office of the Ombudsman recommended that the prison authorities order the appropriate bodies to observe the proper administrative procedure for investigating complaints submitted by detainees regarding irregular conduct or assault by correctional officers. It also stated that such procedures should provide for an impartial body to be in charge of supervising proceedings, the taking of evidence and mechanisms to ensure due process and the parties' defence rights, as required under the Public Administration Act and supplementary labour legislation.

To this end, the prison authorities issued a circular on 5 January 2006, in which they informed the directors, administrators and supervisors of the country's prisons of their duty to refer any complaints made by prison inmates of irregular conduct or assaults by prison staff to the Office of the Ombudsman for investigation.

4. ***Paragraph 302 of the report points out that “under no circumstances will our legislation permit abortion, as this would mean sacrificing a human life that has its own rights”. Please comment on how this position is compatible with the obligation to protect the life of the mother in the case of therapeutic abortions.***

The statement made by the Government of Costa Rica upon acceding to the Platform for Action of the Fourth World Conference on Women establishes, in matters relating to sexuality, that “women’s rights ... mean, as in the case of men, the capacity of women or men to achieve and maintain their sexual and reproductive health within a framework of relations of equality and mutual respect”.

In addition, paragraph 106 (k) of the Platform reasserts the position taken in the Programme of Action of the International Conference on Population and Development in 1995:

“In no case should abortion be promoted as a method of family planning. All Governments and relevant intergovernmental and non-governmental organizations are urged to strengthen their commitment to women’s health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family-planning services [...] Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process. In circumstances where abortion is not against the law, such abortion should be safe. In all cases, women should have access to quality services for the management of complications arising from abortion. Post-abortion counselling, education and family-planning services should be offered promptly, which will also help to avoid repeat abortions.”

Public measures taken by States to fulfil these commitments must accordingly be taken into account. Costa Rica has endeavoured for numerous years to ensure recognition of sexual and reproductive rights under the General Health Act and to implement the State’s responsibilities through the relevant public institutions.

In terms of the prior history of abortion legislation, therapeutic abortion was first permitted in Costa Rica under the 1924 Criminal Code if it was intended to save a woman’s life, subject to a medical and forensic certificate, which shows that in the past abortion was not expressly prohibited by law.

According to a comparative analysis of abortion legislation in the world, countries’ positions on abortion in terms of criminalization and/or decriminalization can be classified as follows:

- (a) Totally prohibited;
- (b) Permitted to save a woman’s life;
- (c) Permitted for health reasons and to save a woman’s life;
- (d) Permitted for mental health reasons as well as to save a woman’s life and preserve physical health;



(e) Permitted for economic or social reasons (as well as to save a woman's life and to preserve physical and mental health); and

(f) Unrestricted.

In accordance with its criminal legislation on abortion, Costa Rica falls into category (d) as a country that permits abortion solely in order to "prevent danger to the life or health of the pregnant woman when this danger cannot be averted by any other means". While the Criminal Code treats abortion in various forms as an offence, article 121 provides for this exception. In addition, article 93 provides for a judicial pardon by a judge annulling conviction in the following circumstances:

"(4) For any person undergoing abortion in order to save her own honour or for the same reason causing a female blood ascendant, descendant or sister to undergo an abortion;

(5) For any woman undergoing abortion in cases where the pregnancy was the consequence of rape."

In addition, Costa Rica guarantees the human rights recognized in the universal declarations, covenants, conventions and agreements to which it is a signatory. It also upholds the international legal instruments with a gender perspective that have changed the way in which women's rights are approached, including the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women drawn up by the Organization of American States. Costa Rica also supports legal instruments that reassert the principles of women's personal dignity and integrity and their right to life and comprehensive health care, and the special measures taken by States to ensure effective implementation, as well as the commitments made at international conferences.

As mentioned above, in order to safeguard the health and lives of women, the State assumes authority to establish derogations from the criminal law. Such derogations are not arbitrary since they apply to borderline where the mother's health or life is at risk. The abortion procedure is still subject to certain conditions:

(a) It must be performed with the pregnant woman's consent;

(b) It must be performed by a physician or, if a physician is not available, by an authorized midwife;

(c) It must serve to avert danger to the life or health of the pregnant woman when this danger cannot be averted by any other means.

**Right not to be subjected to arbitrary arrest or detention (art. 9)**

5. *Please indicate whether, following the Committee's recommendations, the State party has reduced the period of pretrial detention, in accordance with article 9, paragraph 3, of the Covenant. Please explain how holding a person incommunicado for up to 48 hours without a court order (article 44 of the Constitution of Costa Rica) is compatible with the obligation to bring the detainee before a judge within 24 hours (art. 37). Please provide information on detention incommunicado for 10 consecutive days (art. 44). Are there plans to reduce this period?*

Article 257 (c) of the Code of Criminal Procedure establishes that pretrial detention may not exceed 12 months, whereas article 258 of the Code sets forth the grounds on which this period may be extended. There are currently no bills to reduce the period of pretrial detention.

With regard to incommunicado detention, the Constitutional Chamber of the Supreme Court held in decision No. 789-91 that “the act of bringing a person before a judge entails initiating judicial proceedings to safeguard the detainee’s constitutional and legal rights and is not simply a form of routine notification. When incommunicado detention is requested by the Judicial Investigation Department, the judge must ask to see the police investigation report or the request to initiate proceedings, which are the sole means of beginning pretrial proceedings and, therefore, the sole means of bringing a detainee before an authority”.

In the same decision, the Constitutional Chamber added that “all detainees must be brought before a judge within 24 hours of their arrest (article 37 of the Constitution) and their statement must be taken down within 24 hours of appearing before the judge (article 274 of the Code of Criminal Procedure)”.

As to the accused’s access to counsel, the Constitutional Chamber held in decision No. 1849-99 that “when ordering that detainees be held incommunicado, the judge must clearly stipulate that the appointed counsel may consult with them and he must specify the circumstances in which such consultations may take place - pursuant to article 261 of the Code of Criminal Procedure - in order to notify the prison authorities. Failure to do so could lead to the decision as to the legitimacy or suitability of counsel’s visit resting with the prison authorities, rather than the judge, whose duty it is to ensure the accused’s fundamental rights while simultaneously assuring the conduct of the proceedings. The judge must, therefore, authorize the necessary measures in each case as swiftly as possible. The same holds true for provision of food, clothing, medication and other basic items that cannot be used by the accused to evade incommunicado detention or to make an attempt on his own or another’s life, as is set down in article 197 of the aforementioned Code. In addition, it is preferable not to issue unconditional authorizations for counsel to visit incommunicado detainees ... since this could defeat the purpose of incommunicado detention”.

On the same issue, the Constitutional Chamber held in decision No. 7693-02 that “the restrictions imposed on the accused’s access to his counsel should be the minimum required to achieve the purpose of preventing such communication from being used to hinder the ascertainment of the truth”.

### **Right to freedom of expression (art. 19)**

**6. *Please comment on the compatibility of the Press Act with article 19 of the Covenant.***

With regard to this issue, it must be stated that there is no specific law governing the press in Costa Rica. Journalistic activity is predicated on the Constitution and the specific and related laws pertaining to freedom of the press, such as the Criminal Code, the Printed Matter Act, the Radio and Television Act and the Code of Ethics of the Journalists' Association.

Article 19 of the Covenant is consonant with articles 28 and 29 of the Costa Rican Constitution insofar as these guarantee freedom of expression, but set forth a series of special duties and responsibilities. It is clear, however, that the current legislation, enacted in 1902, is obsolete and restrictive, since it creates obstacles to the conduct of this activity and corresponds to standards and criteria from a bygone period. In order to respond to these concerns, the Legislative Assembly is currently considering bill No. 15974, on "freedom of expression and the press", which will amend various articles of the Criminal Code, the Code of Criminal Procedure and the Radio and Television Act.

This legislation is intended to specify the limits within which freedom of information and expression can be exercised legitimately, while still safeguarding the right to privacy. The offence of intentional defamation (*calumnia*) now combines the wrongful accusation of having committed an offence with reckless disregard for the truth. This bill is the fifty-third item on the agenda (first reading) of the plenary session of the Legislative Assembly.

**7. *Please comment on information made available to the Committee by various sources claiming that death threats have been made against officials and journalists who examine or report cases of corruption, drug trafficking or murders related to these activities. Please also indicate whether measures have been taken to protect the victims of these threats, punish the perpetrators and prevent such acts.***

Freedom of thought and expression is guaranteed under articles 28 and 29 of the Constitution in the following terms:

Article 28. No one may be challenged or prosecuted for the expression of his opinions or for any act that does not infringe the law.

Private acts which are not detrimental to public morality or public order, or which do not cause injury to a third party lie outside the scope of the law.

However, clergymen and laymen are prohibited from making political propaganda in any form invoking religious motives or making use of religious beliefs.

Article 29. All persons may communicate their thoughts verbally or in writing and publish them without prior censorship; they shall be liable, however, for any abuses committed in the exercise of this right, in such cases and in the manner established by law.

There are no special programmes in Costa Rica to protect journalists at risk. There are also no special prosecutor's offices to investigate cases of murder, assaults and threats against persons conducting journalistic activities. These situations are covered by general law and cases are heard in the ordinary courts.

To date, no one has been convicted in a court of law of murdering, assaulting or threatening journalists in relation to the right to freedom of thought and expression. Various persons, however, are being tried in the criminal courts for the murder of the journalist Parmenio Medina Pérez. An appeal in cassation has been submitted with a view to acquitting various persons of the murder of the journalist Ivannia Mora.

### **Freedom of association and the right to join trade unions (art. 22)**

8. *Please comment on information made available to the Committee by various sources, including the Report by the Special Representative of the Secretary-General on human rights defenders, claiming that human rights organizations have been excluded from discussions and decisions on welfare and human rights policies.*

Numerous discussion forums on welfare and human rights policies enjoy the active participation of human rights organizations, such as the National Commission to Combat the Commercial Sexual Exploitation of Children and Adolescents (CONACOES), the National Coalition against Trafficking in Persons and the Smuggling of Migrants, and the Refugee and Migrant Population Forum.

By way of example, CONACOES comprises:

- (1) The Executive President of the National Child Welfare Agency, who acts as chair;
- (2) A representative of each of the following government ministries:
  - (a) Public Security;
  - (b) Interior and Police;
  - (c) Justice;
  - (d) Education;
  - (e) Health;
  - (f) Culture, Youth and Sport;
  - (g) Labour and Social Security;
  - (h) Foreign Affairs and Religion.
- (3) A member of the Technical Secretariat of the National Council on Children and Adolescents;

(4) The Judiciary, represented by at least one member of the following bodies:

- (a) The Special Prosecutor's Office for Sexual Offences and Domestic Violence;
- (b) The Judicial Department of Social Welfare;
- (c) Any other unit of the said authority with a particular interest in the matter.

(5) A representative of the following public institutions:

- (a) The Costa Rican Social Security Fund;
- (b) The Inter-Agency Institute for Social Assistance;
- (c) The National Training Institute;
- (d) The National Women's Institute;
- (e) State universities; and
- (f) Municipalities.

(6) Duly accredited representatives of international organizations working in this field, such as UNICEF (United Nations Children's Fund) and the International Programme on the Elimination of Child Labour of the International Labour Organization (IPEC/ILO), who participate as observers;

(7) Duly accredited representatives of non-governmental organizations, foundations, associations or any other similar organized group that undertakes activities or programmes related to the Commission's aims. Currently, the following organizations of this nature are part of the Commission:

- (a) Paniamor Foundation;
- (b) Defence for Children International;
- (c) AIDS Foundation;
- (d) Rahab Foundation;
- (e) World Vision;
- (f) Alliance for Your Rights;
- (g) Costa Rican Association of Tourism Professionals;
- (h) Costa Rican branch of the American Association of Jurists.

9. *Please comment on information made available to the Committee by various sources claiming that attacks and threats have been made against workers belonging to certain trade unions and their leaders. In particular, an attack on the headquarters of the International Confederation of Free Trade Unions (ICFTU) has been reported. Please also indicate the measures taken to identify and punish the perpetrators.*

It should first be clarified that on 31 October 2006, the International Confederation of Free Trade Unions was dissolved in order to form, in conjunction with the World Confederation of Labour, the International Trade Union Confederation (ITUC). In addition, it is worth pointing out that none of these associations has its headquarters in Costa Rica. The events referred to in the question concern the Rerum Novarum Confederation of Workers (CTRN), which is part of ITUC.

In May 2006, the CTRN headquarters were attacked and its officials were threatened. The Judicial Investigation Department, in response to complaint No. 000-06-10756, issued report No. 06-010572-042-PE, according to which on 24 May, the date the staff in the CTRN offices were attacked, officers of the Physical Investigation and Evidence Gathering Section went to the scene of the crime to proceed with the investigation and seek evidence, take photographs and search for fingerprints, on the basis of which they compiled their report on investigation, search and gathering of evidence.

In addition, the five officials who had been assaulted and robbed were interviewed, as well as the owners and staff of several shops in the vicinity, to determine any possible connection with other recent crimes. It was found that the two persons who had attacked the premises of the Rerum Novarum Confederation of Workers on that date may have carried out similar robberies in other buildings, in all cases stealing personal computers and the personal belongings of employees and officials, including mobile telephones, watches and cash.

However, despite the interviews and the photographic identification carried out with two CTRN officials, with a view to determining whether any of the suspects could be identified from the Department's records, no positive identification was obtained.

Since it was impossible to identify the perpetrators, the Office of the Attorney-General shelved the case.

These events gave rise to the complaint leading to case No. 2495, which is currently pending before the ILO Committee on Freedom of Association.

**Freedom of religion and the right to marry and found a family (arts. 18 and 23)**

10. *Paragraph 282 of the report points out that “the Constitutional Chamber has reaffirmed the value of the family and, in the context of the State religion, confirmed in decision No. 8763-04 that only Catholic marriage is valid for civil purposes”. Please comment on this in the light of articles 2, 18, 23 and 26 of the Covenant.*

Article 75 of the Constitution establishes that the Roman Catholic and Apostolic religion is the religion of the State. Articles 28 and 98 establish freedom of worship and freedom of association respectively.

In decision No. 8763-04, the Constitutional Chamber confirmed that only Catholic marriage performed by Catholic priests was valid also for civil purposes, pursuant to article 23 of the Family Code.

This provision does not run counter to the principle of equality guaranteed under the Constitution and the various international legal instruments pertaining to human rights, since “the fact that Catholic marriage has civil validity does not imply in any way that ministers of other religions may not conduct marriages in accordance with their religious rites. The absence of civil effects does not prevent them from acting in accordance with their own religious beliefs, because such effects are primarily legal in nature and do not legitimize marriage as a religious act within the religious community concerned”.<sup>2</sup>

It does not affect freedom of religion either, as understood in its external manifestation as freedom of worship, since it does not restrict or prevent religions other than the Catholic Church from conducting marriages in accordance with their own religious rites.

Protection of the family is unaffected, since “any couple may marry according to their religious beliefs, respecting the rites of their own religion, establish a family, have children, acquire patrimonial rights as a couple and as family members, and adopt children, without being required to formalize their marriage or to marry in a civil ceremony. Should a couple opt for a civil wedding, however, the service is free of charge if it is conducted before any of the Republic’s family courts”.

**11. Paragraph 249 of the report points out that: “Indigenous religions, Afro-Costa Rican religions and those introduced by new migrants are now more highly valued. The country enjoys full religious pluralism.” Please supply further information on this matter, particularly with regard to the rights established in articles 18 and 26 of the Covenant.**

Article 75 of the Constitution establishes that the Roman Catholic and Apostolic religion is the religion of the State but does not limit the exercise of other forms of worship that are not opposed to good morality or good customs.

In addition, article 28 of the Constitution establishes that “no one may be challenged or prosecuted for the expression of his opinions or for any act which does not infringe the law. Private acts which are not detrimental to public morality or public order, or which do not cause any injury to a third party lie outside the scope of the law. However, clergymen and laymen are prohibited from making political propaganda in any form invoking religious motives or making use of religious beliefs”.

The Constitution and international instruments to which Costa Rica is a party provide a broad framework of freedoms that lay the foundation for the existence and development of national, ethnic, cultural, religious and linguistic identities.

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<sup>2</sup> Decision No. 8763-04 of the Constitutional Chamber of the Supreme Court at 12.15 p.m. on 13 August 2004.

In terms of education, Act No. 7711 on the elimination of racial discrimination in educational programmes and the media, aims at achieving the full development of all members of society under equal conditions and opportunities, regardless of their ethnic or cultural origin.

The Act therefore establishes that any public discussion of issues relating to race, colour, religion, beliefs, descent or ethnic origin must observe the principles of respect, dignity and equality of all human beings.

The obligations arising from this Act have been incorporated in all aspects of the Costa Rican education system, by using opportunities offered by the curriculum to introduce significant integrating guidance through curricular design, development, evaluation and administration, with a view to improving the quality of life of individuals and society at large. The approach is holistic, axiological, interdisciplinary and contextualized.

In accordance with the guidelines issued by the Higher Council of Education (SE-339-2003), the only cross-cutting theme of the Costa Rican curriculum is that of values. Based on this common component and in the light of the obligations imposed by current legislation, the following subjects are taught: environmental culture for sustainable development, comprehensive sex education, education for health, and human rights experience for peace and democracy.

As part of the topic on human rights experience for peace and democracy, the following attitudes will be developed:

- Tolerance in terms of accepting and understanding cultural, religious and ethnic differences in order to encourage democratic coexistence and a culture of peace;
- Appreciation of cultural differences linked to other lifestyles;
- Respect for individual, cultural, ethnic, social and generational diversity.

During general basic education, children are taught about ecumenical receptiveness towards other religions, religious tolerance and non-discrimination with respect to creed.

The goal is to promote the teaching of values in day-to-day experience at the institutional, national and regional levels in order to attain a better quality of personal, family and community life, thereby making Costa Rica a democratic, pacifist, socially committed and civil society, in close harmony with the environment.

Action is being taken at the educational level to promote and support the global dialogue among teachers, students and parents for a culture of peace and tolerance.

Efforts are also being made to instil the fundamental values of solidarity, respect, fairness and equal opportunities in the classroom and elsewhere in the educational system.

The main legislative and other measures available in Costa Rica which enable minorities to participate in cultural, religious, social, economic, and public life are the Constitution and international human rights conventions. Respect for the human rights of all Costa Ricans is a cross-cutting principle for all State activities and initiatives.



One of the most effective instruments for the realization of the right to participate in cultural, religious, social, economic and public life is the freedom of association guaranteed under article 98 of the Political Constitution, the only restriction being that the activity concerned must have a lawful purpose.

Costa Rica has not identified any customs or religious practices that might violate domestic legislation or run counter to international norms. There is also full and effective respect for freedom of worship in Costa Rican society, which leaves individuals free to belong to any religious group, according to their beliefs.

**Right to recognition as a person before the law and protection  
of the child (arts. 16 and 24)**

**12. *Please comment on, and supply practical examples of, the outcome of the implementation of Act No. 8101, adopted on 27 March 2001, which enacted the Responsible Parenthood Act. In how many cases has paternity been assigned following the mother's unilateral statement to the registry office?***

The Responsible Paternity Act has played a significant role in advancing the rights of children, inasmuch as it guarantees certain rights to those who would be deprived of them failing legal recognition by the father. It has also changed the way that children are perceived in society, in the sense that they are now viewed as persons in their own right regardless of who their father and mother are and of the relationship between them.

In administrative terms, with reforms of the Supreme Electoral Tribunal, the Registry Office and the Family Code, the Responsible Paternity Act provides a flexible and predominantly oral legal procedure for establishing paternity, and introduces major changes in the economic effects of paternity, particularly with regard to maintenance.

While the mother normally registers the birth of her child and lodges a declaration of paternity with the Assistant Registrar of the Registry Office, the father often goes to the hospital, sometimes before submitting the birth certificate to the registration department, and with the mother's consent, formally acknowledges his paternity in writing.

Moreover, after the birth certificate has been filed with the registration department, the presumed father, again with the mother's consent, may go to the Registry Office and voluntarily recognize the child of which he is assumed to be the father.

However, if none of the above procedures has been followed, the presumed father, in accordance with Act No. 8101, is given 10 days in which to appear in person at the central or regional office closest to his home to make a statement concerning the paternity attributed to him. In such a case, the presumed father either consents and accepts paternity or he may request DNA or genetic marker tests to be sure that he really is the child's father.

If an appointment is made with the laboratory for paternity tests for the presumed father to submit a DNA genetic marker sample and he fails to appear, he is presumed to be the father and a decision is issued formally naming him as the father in the child's entry in the birth register.

Lastly, if the DNA genetic marker test has been made and if it is positive to the degree required by law, instructions are issued that an annotation establishing paternity should be attached to the relevant entry in the birth register.

It is clear from the above that there are different ways of determining a child's paternity following a unilateral statement made by the mother.

According to data supplied by the paternity unit of the Registration Department, at 30 June 2007, 27,274 paternity applications had been received, broken down as follows:

• Voluntary acknowledgements	12,090
• Requests for DNA test	7,399
• To be notified	1,531
• Returned by post	2,560
• Insufficient data	3,694
• Total	27,274

**13. *Please comment on the current status of the legal initiative to prohibit marriage by persons aged under 15.***

Act No. 8571, published in the official journal, *La Gaceta*, on 1 March 2007, amends several articles of the Family Code, the Criminal Code and the Civil Code with a view to preventing the marriage of persons under the age of 15.

The Act replaces the system of relative annulment (until recently accepted in Costa Rican law) with a system of absolute annulment, based on the fact that the legal system recognizes for persons over 15 but under 18 years of age a relative capacity to act, depending on their physical development and relative mental maturity, as opposed to children and adolescents under the age of 15, for whom the State is obliged to provide special protection.

**14. *Please indicate the current status of the judicial proceedings concerning the trafficking of children from Ecuador in 2004, in which immigration officials were allegedly complicit. Please indicate the number of persons who have been investigated, tried and sentenced for offences relating to the sexual exploitation of children in the last five years, in addition to the number and total amount of compensation payments awarded to victims.***

With regard to the current status of judicial proceedings concerning the trafficking of children originating in Ecuador, in which immigration officials were allegedly complicit, the Office of the Attorney-General of the Republic has forwarded the statement issued by the

Miscellaneous Offences Unit concerning the complicity of immigration officials (official letter No. 2390-UEDV-2007) that “the only case that corresponds to the information that you provide is *No. 04-007775-042-PE v. Claudio Cordero Santana and others*. This summary procedure was recorded initially as an offence of trafficking in minors, but following investigations and in view of the fact that, at the time of the offence, the Migration and Aliens Act No. 8487 was not in force, it was subsequently changed to an offence of falsification of documents”.

In the above-mentioned case, an application for dismissal of proceedings was proposed and then formally lodged by the Public Procurator’s Office on 4 November 2005. On 6 February 2006, the Public Procurator’s application was granted in a decision by the San José Criminal Court. There is no evidence that any public official, including officials of the Migration and Aliens Office, was involved in the acts investigated by the Office of the Attorney-General of the Republic.

With regard to cases of sexual exploitation, the specialized Sexual Offences Unit has transmitted the following information relating to San José (official letter No. 2495-UEDSVD-07):

#### Cases investigated

Case	Number
Procuring	1 057
Paid sexual relations	206
Dissemination of pornography	93
Manufacture of pornography	56
Trafficking in persons	35

#### Prosecutions

Case	Number
Procuring	43
Paid sexual relations	6
Dissemination of pornography	3
Manufacture of pornography	0
Trafficking in persons	0

#### Total number of persons convicted

- Convictions: 64
- Probation: 12

### **Criminal indemnification cases**

- Total criminal indemnification cases: 10
- Persons with criminal indemnification accepted: 4

### **Costs**

- Case No. 04-000490-609 PE
  - Indemnification: ¢ 3,000,000
  - Legal costs: ¢ 342,000
- Case No. 02-000055-609 PE
  - Indemnification: ¢ 55,000,000
  - Legal costs: ¢ 2,400,000
- Case No. 01-000055-609 PE
  - Indemnification: ¢ 15,000,000
  - Legal costs: ¢ 1,110,000
- Case No. 02-005887-042 PE
  - Indemnification: ¢ 4,500,000
  - Legal costs: ¢ 170,000
  - Personal costs: ¢ 687,000

### **Principle of non-discrimination (art. 26)**

**15. *Please clarify what is meant by a “selective approach to admission and residence of foreigners” in Costa Rica, as referred to in paragraph 193 of the report, in the light of article 26 of the Covenant.***

It should be noted that paragraph 193 of the report refers to articles of the previous law, Act No. 7033, which was repealed by the entry into force, on 12 August 2006, of Act No. 8487, the Migration and Aliens Act. The notion of an “assisted immigrant” therefore no longer exists.

With regard to the “selective approach to admission and residence of foreigners”, as far as refugees and asylum-seekers are concerned, article 35 of Act No. 8487 provides that “regulations on admission, departure and residence for foreigners seeking asylum or refugee status shall be governed in accordance with the Political Constitution, conventions ratified by and in force in Costa Rica, and other legislation in force”. The activities of the Migration and Aliens Office in such matters are therefore governed by the 1951 Convention and other guidelines issued by the United Nations High Commissioner for Refugees (UNHCR).

Moreover, article 41 of the current legislation provides that “The Office shall establish general guidelines on entry and residence visas for non-residents and foreigners from specific countries or geographical areas, on the basis of the international agreements and treaties in force and with due regard to the security, convenience and circumstances of the Costa Rican State.” Circular DG-1477-2007, available on the Office’s website ([www.migracion.go.cr](http://www.migracion.go.cr)), sets out the entry visa guidelines for non-residents, in which nationalities wishing to enter the country as non-residents are divided into four groups.

The “selective approach to admission and residence of foreigners” is also covered by the migration policy set out in the following articles of Act No. 8487:

“Article 5. The Executive shall, in observance of this Act and with full respect for human rights, international treaties and public agreements ratified by and in force in Costa Rica, determine national migration policy and regulate migratory flows in the interests of the country’s social, economic and cultural development, in line with public security and with due regard for the social integration and legal security of foreigners legally residing in the national territory.

“Article 6. The formulation of migration policy shall be primarily based on:

(a) Selecting migratory flows, with a view to increasing foreign capital investment and strengthening scientific, technological, cultural and professional knowledge in the areas determined by the State to be priorities.

“Article 7. Any migration policy shall take into account:

(b) Respect for the human rights and constitutional guarantees of any foreign person applying for permanent legal residence in Costa Rica.”

The Migration and Aliens Office therefore considers that the implementation of migration policies, especially with regard to the “selective approach to admission and residence of foreigners”, must guarantee full respect for human rights and especially for the obligations that the State of Costa Rica assumed with its ratification of international human rights treaties, including the International Covenant on Civil and Political Rights.

**16. *The Office of the Ombudsman and members of civil society asked the Legislative Assembly to review the new Migration Act as it contains provisions that are contrary to human rights. Please state how this request was followed up in the light of article 26 of the Covenant.***

In response to the request by the Office of the Ombudsman and members of civil society, the Government launched an all-out effort to obtain agreement on proposals and reforms relating to the new Migration Act (Act No. 8487) that various national and international organizations considered essential. Achieving this aim took months of work, which consisted of consulting bodies specialized in the defence of human and fundamental rights, such as the Office of the Ombudsman and the secretariat set up by that Office to convene and organize meetings of the Permanent Forum for the Migrant and Refugee Population, the Catholic Church and other religious bodies, state universities, chambers of commerce, the National Network of Civil Organizations and other organizations of civil society. This widespread support and participation produced a variety of proposals to respond to the country's economic and legal situation with a legislative framework equipped to deal with the migratory movements that the country experiences on a daily basis.

In its preface, the Migration Bill, amending the current Act No. 8487, explicitly aligns the legal text of the Act with the commitments undertaken by Costa Rica under international treaties and conventions, principally in the field of human rights. Specifically, it imposes controls and penalties for trafficking in persons and other forms of exploitation and provides protection for persons who are victims of forced mobilization and seek refuge in Costa Rica, while ensuring that the procedures of the migration authorities take account of the need to safeguard the best interests of children and for equality and equity between the sexes, for people of all ages and all ethnic or social backgrounds.

The Bill is currently before the Government and Administration Committee of the Legislative Assembly. The Migration and Aliens Office and other institutions involved with the migration issue have appeared before the Committee in order to clear up any doubtful points with the members and contribute to the entry into force of legislation guaranteeing real compliance with the principle of non-discrimination in relation to both nationals and foreigners.

**Rights of minorities (art. 27)**

**17. *Please comment on the progress made in adopting a law on the autonomous development of the indigenous peoples, as referred to in paragraph 27 of the report, and its compatibility with article 27 of the Covenant.***

The bill concerned started its passage through the Legislative Assembly on 16 May 2001. It was considered by the Standing Committee on Social Affairs, which decided to carry out consultations with some 15 institutions and organizations.

Under article 119 of the Assembly's rules of procedure, bills are subject to a four-year limitation period, which may be extended by one more four-year period, if the Legislative Assembly so decides. Thus, in June 2005, the Assembly approved such an extension in order to save the bill.

On 19 July 2005, an initial methodology was adopted for consulting indigenous peoples about the bill, as required under ILO Convention No. 169.

On 9 November 2005, a legislative subcommittee that had been considering the bill submitted a report suggesting an alternative text, whereupon the Committee decided to resume its consultations with institutions and organizations.

At a meeting on 22 November 2005, the Committee decided to undertake consultations on the text under consideration with the indigenous peoples. The dates planned were February and March 2006, but as no special meetings were held to consider the bill, the process was not completed.

In May 2006, consideration of the bill was resumed; several hearings were held and consultations with indigenous peoples, an appropriate methodology and a definite timetable were agreed. The meetings were held between 22 July and 26 August 2006.

In August 2006, the Committee decided to hold a meeting with various international organizations, including ILO, the International Institute of Human Rights and the United Nations Development Programme. Invitations were also issued to the Supreme Electoral Tribunal and the Office of the Ombudsman so that, as observers that had participated in the consultation process, they could also be involved in its assessment.

On 7 September, the Committee held a workshop with the various sectors concerned with a view to continuing dialogue to ensure approval of the bill. Representatives of the 24 Integral Development Associations of the Indigenous Territories participated in the workshop, together with members of parliament and guests and representatives of the Supreme Electoral Tribunal, the Office of the Ombudsman and international organizations. One outcome of this meeting was that, on 12 September, it was decided to hold special meetings to hear evidence from the 24 Integral Development Associations of the Indigenous Territories; these meetings took place on 24, 25 and 26 October.

On 18 October 2006, the Committee received a motion approving a new alternative draft of the bill, that included observations and recommendations arising from the consultation process and the National Indigenous Forum. It was also decided that the new text should be submitted to the Technical Services Department and the Committees Department for consideration of the legal and linguistic aspects.

The bill was not considered at extraordinary sessions (December to April) but in May it was finally accepted for consideration. On 23 May, a motion to amend the agenda was approved and the bill was placed third on the Committee's agenda.

The issue is currently the second item on the agenda of the Standing Committee on Social Affairs. It consists of six volumes, with over 2,000 pages.

**Dissemination of the Covenant**

***18. Please describe any steps taken to disseminate information on the submission of reports and their consideration by the Committee, and in particular on the Committee's concluding observations. Please indicate whether non-governmental organizations were informed that the report of Costa Rica is due for consideration.***

All the State institutions concerned will be informed of the concluding observations of the Human Rights Committee and will be requested to post them on their websites. The concluding observations will also be publicized on the website of the Ministry of Foreign Affairs and Religion of Costa Rica and in press releases issued by the Ministry.

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