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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Fifth periodic report**

**COSTA RICA\***

[30 May 2006]

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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.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Article 1 .....	3 - 7	4
Article 2 .....	8 - 96	5
Legislation on behalf of the indigenous peoples .....	22 - 27	7
Constitutional remedies .....	28 - 96	8
(a) Constitutional Chamber .....	28 - 30	8
(b) Constitutional remedies .....	31 - 35	9
(i) Habeas corpus .....	36 - 61	10
(ii) <i>Amparo</i> .....	62 - 93	14
(c) Legislative and operational framework of the Office of the Ombudsman .....	94 - 96	18
Article 3 .....	97	18
Article 4 .....	98	18
Article 5 .....	99 - 100	18
Article 6 .....	101 - 102	19
Article 7 .....	103 - 107	19
Article 8 .....	108 - 123	20
Article 9 .....	124 - 147	22
Deportations .....	130 - 147	23
Article 10 .....	148 - 163	27
Minors (juvenile offenders) .....	148 - 163	27
Article 11 .....	164 - 183	29
Article 12 .....	184 - 185	34

**CONTENTS (*continued*)**

	<i>Paragraphs</i>	<i>Page</i>
Article 13 .....	186 - 205	34
Migration and Aliens Act .....	198 - 205	36
Article 14 .....	206 - 222	37
Article 15 .....	223 - 225	40
Article 16 .....	226 - 230	40
Article 17 .....	231 - 234	41
Article 18 .....	235 - 249	42
Article 19 .....	250 - 251	44
Article 20 .....	252	44
Article 21 .....	253 - 254	45
Article 22 .....	255 - 278	45
Article 23 .....	279 - 351	48
Right to life .....	299 - 340	50
Domestic violence .....	341 - 351	54
Article 24 .....	352 - 381	55
Children of women deprived of their liberty .....	355 - 359	56
Child labour .....	360 - 381	56
Article 25 .....	382 - 403	60
Article 26 .....	404 - 426	63
Article 27 .....	427 - 437	67

**FIFTH PERIODIC REPORT OF THE GOVERNMENT  
OF COSTA RICA UNDER THE INTERNATIONAL  
COVENANT ON CIVIL AND POLITICAL RIGHTS**

1. Costa Rica, as a State party to the International Covenant on Civil and Political Rights, hereby presents for the consideration of the Human Rights Committee its fifth report on measures taken during the period 2000 to 2006 to give effect to the undertakings arising from the Covenant, as required by article 40 of the Covenant.
2. This report has been prepared in accordance with the Committee's guidelines on the form and content of periodic reports (HRI/GEN/2/Rev.2).

**Article 1**

3. Costa Rica is a democratic, free and independent Republic. This provision of the Constitution (art. 1) is interpreted in Costa Rica's constitutional case law as the cornerstone of its republican system and, "as the highest principle of a State based on the constitutional rule of law, should be directly applicable to all other sources of the subconstitutional legal order".<sup>1</sup>
4. Costa Rica is a country that observes the international legal order, attaches the greatest importance to the multilateral regional and United Nations systems and fully recognizes the right to self-determination of the peoples of the world. Regardless of political inclination, Costa Rica has recognized in the various international forums that every people may choose its own form of government, with every guarantee of full respect for all the human rights of all inhabitants.
5. With regard to the full enjoyment of natural wealth, under article 50, paragraph 2, of the Constitution, "everyone has the right to a healthy and ecologically balanced environment. Everyone is therefore entitled to report acts that impair that right and to claim reparation for the harm caused".
6. The Constitutional Chamber has given considerable thought to the issue of protection of the environment. In its decision No. 3341-96, for example, it ruled that "human life is possible only in cooperation with the natural world that gives us sustenance and support in the form not only of physical nourishment but also of mental well-being: it is the right of every citizen to live in an environment free of pollution, which is the basis of a just and productive society. Thus article 21 of the Constitution provides that 'human life is inviolable' ... It is from this constitutional principle that the right to health and to physical, mental and social well-being undeniably derives - a human right that is inextricably bound up with the right to health and the obligation of the State to protect human life".

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<sup>1</sup> Constitutional Chamber decision No. 990-92. *Constitución Política de la República de Costa Rica (anotada, concordada y con jurisprudencia constitucional)* (Constitution of the Republic of Costa Rica, annotated, concordanced and with constitutional case law), Investigaciones jurídicas, p. 21.

7. The Constitutional Chamber has become the champion of a healthy environment and has insisted in various judgements on the need for competent institutions of the State to act to safeguard decent living conditions. In its decision No. 17154-05, for example, the Chamber upheld an application for *amparo* in respect of a polluted stream. The appeal was based on a failure on the part of the relevant institution to take action to solve the problem. As the Chamber stated in its judgement, “The application is upheld. Consequently, the Mayor of the Municipality of Alajuela or their representative in that office is ordered, on pain of liability for non-compliance, to take, immediately and on notification of this judgement, the necessary steps to promptly and effectively solve the problem of pollution in the Sardinias stream bordering the residential area of Loma Linda del Roble, in Alajuela.”

## Article 2

8. The Constitution of Costa Rica, adopted on 7 November 1949, is the legal foundation that guarantees full respect of all human rights to all citizens.

9. Under article 33 of the Constitution, “all persons are equal before the law and no discrimination may be made that might violate human dignity”, and the Constitutional Chamber has stated clearly and repeatedly that “the principle of equality before the law is violated only if a law provides, without justification, for different treatment of persons in equal situations, that is to say, the rules must be the same for all persons in the same category”.<sup>2</sup>

10. In addition, article 7 of the Constitution establishes a hierarchy of laws and states that “public treaties, international agreements and concordats duly adopted by the Legislative Assembly shall have a higher authority than laws, upon their adoption or from the date stipulated ...”.

11. Under the Constitution international treaties require legislative approval to become part of the law of the land; however, in a consultative opinion contained in decision No. 6624-94, Costa Rica’s highest constitutional court established that the provisions of the Vienna Convention on the Law of Treaties - legislative approval of which had been vetoed by the executive - could be applied, “because [that Convention] constitutes the codification of the customary rules of international law, which are binding - *ius cogens* - and the subject of universal consensus”.<sup>3</sup>

12. In the field of human rights the country has ratified numerous international instruments.

13. At the universal level Costa Rica has signed the Universal Declaration of Human Rights, adopted and proclaimed by the United Nations General Assembly in its resolution 217 A (III) of 10 December 1948.

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<sup>2</sup> Constitutional Chamber decision No. 4675-03.

<sup>3</sup> *Constitución Política de la República de Costa Rica (anotada, concordada y con jurisprudencia constitucional)* (Constitution of the Republic of Costa Rica, annotated, concordanced and with constitutional case law), art. 7.

14. Other international instruments signed and ratified by Costa Rica are the international human rights covenants adopted by the United Nations General Assembly in resolution 2200 of 16 December 1966, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the International Covenant on Civil and Political Rights, which were ratified on 11 December 1968 and published in *La Gaceta* No. 288 of 17 December 1968. In addition, by Act No. 7041 of 8 July 1986, published in *La Gaceta* No. 148 of 7 July 1986, Costa Rica ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid, and by Act No. 7351 of 11 November 1993, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed in New York on 4 February 1985, while on 25 November 2005 the Optional Protocol to the Convention against Torture was approved by Act No. 8459.

15. The country has also ratified the following instruments that protect human dignity: the Convention on the Prevention and Punishment of the Crime of Genocide, ratified by Act No. 1205 of 4 December 1950, published in *La Gaceta* No. 226 of 7 October 1950; the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations on 18 December 1979, ratified by Act No. 6968 of 2 October 1984, published in *La Gaceta* No. 8 of 11 January 1985; and the Convention on the Rights of the Child, ratified by Act No. 7184 of 12 July 1990, published in *La Gaceta* No. 149 of 9 August 1990.

16. The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by Act No. 3844 of 5 January 1967, published in *La Gaceta* No. 5 of 7 January 1967; Act No. 3170 of 12 August 1963, published in *La Gaceta* No. 187 of 21 August 1963, approved accession to the Convention against Discrimination in Education, signed in Paris on 14 December 1960; Act No. 4463 of 10 November 1969, published in *La Gaceta* No. 259 of 14 November 1969, adopted the Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which might arise out of the Convention against Discrimination in Education.

17. Where regional instruments are concerned, Costa Rica signed the American Convention on Human Rights, known as the Pact of San José, Costa Rica, on the day of its opening for signature, 22 November 1969. That instrument was approved by the Legislative Assembly of the Republic by Act No. 4534 of 23 February 1970, published in *La Gaceta* No. 62 of 14 March 1970, ratified on 8 April 1970 and deposited on 8 April 1970.

18. Likewise, by Order No. 7060-RE, published in *La Gaceta* No. 114 of 16 June 1977 and submitted to the General Secretariat of the Organization of American States on 2 July 1980, Costa Rica declared its unconditional recognition of the competence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

19. The scope of international legal instruments on human rights within the legal order has been defined by judgements Nos. 3435-92, 5759-93 and 2323-95 of the Constitutional Chamber, which has decreed - in particular in this judgement - that "where international human rights instruments in force in the country are concerned, the provisions of article 7 of the Constitution do not apply, since article 48 of the Constitution contains a special provision relating to human rights giving them legal force at the same level as the Constitution. Indeed, as has been

recognized in the jurisprudence of the Constitutional Chamber, human rights instruments in force in Costa Rica are not only equal in status to the Constitution but also, insofar as they grant greater rights or guarantees to persons, prevail over the Constitution”.

20. What is striking about these legal rulings is that they admit features of the naturalistic conception of the law, insofar as even where obligations are established that are not yet binding within the State, they can be invoked as part of the Costa Rican legal order since they are norms belonging to the sphere of good faith and universal coexistence among States.

21. This legal hierarchy of treaties has three basic legal consequences:

(a) From the moment of entry into force of a Convention, any law or practice contravening it will be automatically repealed;

(b) Any rule or practical measure subsequently adopted that is contrary to the provisions of a convention will be null and void, even if adopted by the legislature and having the status of law;

(c) Any judicial or administrative remedies available in the national legal system may be invoked to redress any violation of the provisions of this international instrument. In this context it should be emphasized that one may bring an action challenging the constitutionality of any rule or measure that contravenes the provisions of the Convention. Furthermore, it is possible to file an application for *amparo* or habeas corpus in the Constitutional Chamber of the Supreme Court to halt and remedy any violation of the provisions of this international instrument.

### **Legislation on behalf of the indigenous peoples**

22. With regard to laws governing the rights of the indigenous peoples, Costa Rica has incorporated into its legislation the ILO Convention on Indigenous and Tribal Peoples in Independent Countries (No. 169), which it ratified by Act No. 7316 of 16 October 1992.

23. By decision No. 06229-99 of 11 August 1999, the Constitutional Chamber decreed that ILO Convention No. 169 had constitutional rank. That statement is important because the thrust of the particular provisions concerning indigenous affairs contained therein is to guarantee the indigenous peoples the right to define their own development independently and compel the State to respect their traditions and customs. Furthermore, since this is an international convention, any violation becomes a violation of the constitutional order, which is why it is the Constitutional Chamber that deals with such cases.<sup>4</sup>

24. By Act No. 7549 of 22 September 1995, published in *La Gaceta* No. 204 of 27 October 1995, Costa Rica also approved the Convention setting up the Indigenous Peoples' Development Fund for Latin America and the Caribbean.

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<sup>4</sup> Constitutional Chamber decision No. 06229-99 of 2.30 p.m., 11 August 1999.

25. The most important legal instrument in this field is the Indigenous Act, No. 6172 of 29 November 1977, published in *La Gaceta* No. 240 of 20 December 1977. This law covers such aspects as who count as indigenous people, the legal status of indigenous communities, ownership of reservations and their inclusion in the Public Register, the organizational structure of indigenous communities, expropriation and compensation procedures, means to prevent invasions of lands, expropriation funds, the internal administration of commercial premises, the exploitation of natural resources and the priority accorded to the Act.

26. The Indigenous Act is important because at that time it represented a milestone in the history of the Latin American indigenous movement inasmuch as it constituted an advanced set of rules protecting indigenous rights. The Act recognized not only the right of peoples to their lands (art. 5) but also their right to their identity (art. 1) and to their own organization (art. 4), as well as a series of other rights not expressly recognized elsewhere in domestic law.

27. Unfortunately this Act is now out of date and despite efforts to introduce new legislation (bill on the autonomous development of the indigenous peoples), technical legislative problems and a lack of political consensus in Congress have delayed its adoption.

### **Constitutional remedies<sup>5</sup>**

#### *(a) Constitutional Chamber*

28. For years it was the task of the Supreme Court, as the highest court of the judiciary, to ensure the constitutionality of the law. The adoption of Act No. 7128 of 15 June 1989, the Constitutional Jurisdiction Act, radically reformed the treatment of Costa Rican constitutional law by creating a special new chamber and a new approach to interpretation that concerned itself with values, principles and ethical content over and above the letter of the law.

29. In article 2 defining the chamber's competence, the Act states that it can apply not only the rights enshrined in the Constitution but also "those recognized under international law in force in Costa Rica".

30. The Constitutional Jurisdiction Act, by creating a special jurisdiction, modified the system of constitutional justice in force until then, thereby bringing about the greatest change in the law of the land in the past 20 years, a change that has been described as "the real revolution in the legal world".<sup>6</sup>

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<sup>5</sup> More detailed information on this point may be found in the 2006 core report.

<sup>6</sup> Gustavo Rivera Sibaja, *Ley de Jurisdicción Constitucional y Creación de la Sala Constitucional* (The Constitutional Jurisdiction Act and the creation of the Constitutional Chamber), Editec (Colección Leyes 29), San José, Costa Rica, 1997, p. 5.



*(b) Constitutional remedies*

31. The Constitutional Chamber has the primary function of ensuring the protection of the fundamental rights embodied in the Constitution and the effective application of its precepts. It is responsible for protecting and preserving the principle of the supremacy of the Constitution, which provides that no rule, treaty, regulation or law in Costa Rica's legal system may be more important than the Constitution itself. This principle is defended mainly through the remedies of *amparo* and habeas corpus.

32. To guarantee the implementation of their rights article 48 of the Constitution provides that "every person has the right to the remedy of habeas corpus and *amparo* to re-establish the enjoyment of rights conferred by this Constitution, as well as those of a fundamental nature established in international human rights instruments applicable in the Republic".

33. During 2004, the percentage breakdown of cases heard by the Constitutional Chamber was as follows: 11.9 per cent, habeas corpus; 2.5 per cent, actions for unconstitutionality; 85.2 per cent, remedies of *amparo*; and 0.4 per cent, other types of cases.

34. From 1988 to 2004, the monthly average number of rulings handed down by the Constitutional Chamber, including interlocutory orders, was as follows:

Year	Number of rulings handed down
1998	834
1999	843
2000	1 017
2001	1 105
2002	1 018
2003	1 286
2004	1 229

*Source:* Statistics Section, Planning Department, Constitutional Chamber.

35. For the period 2000-2004, the number of cases heard by the Constitutional Chamber each year was as follows:

Year	Constitutional Chamber
2000	10 808
2001	12 752
2002	13 431
2003	13 301
2004	13 420

*Source:* Statistics Section, Planning Department, Constitutional Chamber.

(i) *Habeas corpus*

36. The remedy of habeas corpus is based on article 48 of the Constitution, which guarantees personal freedom and integrity; this means that nobody may be deprived, without just cause, of their freedom of movement and residence or of the right to enter and leave the country. Any person may bring habeas corpus proceedings without any need for a legal adviser or representative. Any person may bring such proceedings on their own behalf or on behalf of another person.

37. The remedy of habeas corpus has a dual status. It constitutes a procedural guarantee, by providing a procedural means of protecting the right to physical freedom and the right of movement; and it is also a fundamental right inherent in the human person. This dual status is reinforced by the provisions of article 7, paragraph 6, of the American Convention on Human Rights which, in addition to establishing this procedural remedy, stipulates that it may not be restricted or abolished in States parties whose laws provide that anyone believing themselves to be threatened with deprivation of their liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat. In other words, a State in which the Convention is in force may not impair the conditions under which habeas corpus is regulated in its legislation and must constantly seek to expand the scope of the protection and never allow it to slip backwards.

38. Although this remedy was originally intended to protect the right of physical freedom and the right to freedom of movement, doctrine and comparative legislation have in fact expanded its scope by distinguishing between the following types of habeas corpus: (a) restorative: the purpose of this type of remedy is to restore the freedom of citizens who have been unlawfully deprived of their liberty owing to a failure to proceed in accordance with domestic legislation; (b) preventive: here the purpose is to prevent threats of deprivation of liberty, including arbitrary threats; (c) corrective: here the purpose is usually to change a prisoner's place of detention, either because it is not suited to the nature of the crime, or because the detainee is being subjected to improper treatment; (d) injunctive: here the purpose is to put an end to unwarranted interference with an individual by the judicial or administrative authorities, for example in restricting the person's access to public or private premises.

39. In Costa Rica's legislation, in addition to being expressly recognized in article 48 of the Constitution, habeas corpus is designed, according to article 15 of the Constitutional Jurisdiction Act, to guarantee personal freedom and integrity against acts or omissions of authorities of any kind, including the judicial authorities, that might constitute threats to personal freedom or unlawful disruption or restriction of the right to move around the country or of the right to freedom of residence, entry and exit.

40. Thus the breadth of the legislation gives the Constitutional Chamber full oversight of any act or omission which, currently or in the future, may restrict or threaten to restrict any protected rights. It has been argued in this connection that habeas corpus has evolved in Costa Rica from a means of protecting the freedom of movement (restorative habeas corpus) to a guarantee of the principle of criminal defence, which now also functions as a means of preventing possible violations of liberty (preventive habeas corpus).

41. The international human rights instruments have steadily gained ground in Costa Rica's legal order. In one case the courts admitted an application for corrective habeas corpus alleging a violation of provisions of international law applicable in the domestic jurisdiction. Decision No. 199-89 upheld an appeal alleging violation - inter alia - of article 8 (c) of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

42. It was found that "if the person was not being held as a convicted criminal or as a defendant in a criminal trial, but merely as the subject of a deportation order whose detention had been ordered by the Migration and Aliens Office in order to ensure compliance, ... then detention in a prison facility intended for charged offenders and in practice also used to house convicted criminals violates the rules invoked by the applicant; the lack of any special detention centres is not a valid excuse, and even less so the claim that special centres would be less appropriate for such detainees, for the case concerned fundamental rights that may not be violated for any reason and it is obvious that the detention of persons who are not even on trial must be effected under conditions that are at the very least better than the conditions of detention for those who are".

43. Current practice is in fact for persons awaiting deportation not to be detained in prisons except by court order pending extradition; by law, Social Rehabilitation Department prisons are only for persons who have been charged or convicted.

44. The Constitutional Chamber has recognized the principle that such instruments shall be self-executing where either the implementation rules contained therein do not require any further development in domestic law or, if such development is required, domestic law provides for the institutional and procedural arrangements (organs and procedures) necessary for the exercise of the right in question.

45. Act No. 7128 of 18 August 1989 amended article 48 of the Constitution to read: "Everyone shall have the right to bring habeas corpus proceedings to protect their personal freedom and integrity and to bring *amparo* proceedings to maintain or re-establish their enjoyment of the other rights embodied in this Constitution and of the fundamental rights recognized in the international human rights instruments in force in the Republic. Both these remedies shall be within the jurisdiction of the Chamber referred to in article 10."

46. As stated above, habeas corpus proceedings are heard by the Constitutional Chamber of the Supreme Court, which is made up of seven tenured judges (arts. 10 and 48 and its transitional provision). The system is a concentrated one, so the proceedings are heard by a single court. Decisions are not subject to appeal, except that they may be supplemented or clarified within three days on the application of a party, or at any time on the Court's own motion. An appeal for annulment is admissible in cases where it is necessary to correct serious errors in the assessment of the facts that might be detrimental to the parties involved.

47. These proceedings may be brought by any person by petition, telegram or any other means of written communication; they are free of charge and do not require authentication.

48. The proceedings are supervised by the president or by an examining magistrate designated by the president. The president's powers include the power established in article 21,

paragraphs 2 and 3, of the Constitutional Jurisdiction Act, which authorizes them to order the applicant to appear, or have an inspection made if the circumstances are thought to warrant one, either before ruling on the application or, if warranted, in order to execute the ruling, whether the application is found admissible or inadmissible. They may also order, at any time, any interim measures of protection they may deem necessary.

49. Under article 9, paragraph 3, of the Act, these proceedings may not be admitted on an interlocutory basis, i.e., without first hearing the arguments of the defendant. This is because the admission of an application of this kind has financial and legal consequences that might otherwise result in a violation of due process.

50. Once proceedings have been initiated they may not be discontinued. Case law holds that in respect of habeas corpus there is no rule authorizing withdrawal; this is a logical position for the law to take, since the mechanism is designed to protect the most important rights in our legal system - the rights of freedom of movement, physical and moral integrity, and personal dignity.

51. Since what is at stake here is the protection of rights that are highly prized by society or of great importance for social harmony, the legal system denies the injured party the option of deciding whether the offender shall be punished. Thus article 8 of the Constitutional Jurisdiction Act provides that, once an application has been made to the Constitutional Chamber, the Chamber must act automatically "and may not invoke inaction by the parties to delay the proceedings". It is in the public interest to ensure that, having been asked to intervene, the Chamber is not then beholden to those involved in the constitutional process and that even against their will it may proceed to a substantive decision, which is the whole purpose of actions of this kind (Constitutional Chamber decision No. 3867-91).

52. The Constitutional Jurisdiction Act does not allow habeas corpus proceedings to be brought against actions by subjects of private law, unlike *amparo* proceedings, which are also regulated in the Act (arts. 57-65). This is because the nature of the habeas corpus remedy is to protect personal freedom and integrity from acts and omissions by authorities of any kind, even judicial, which might violate or impair them: it is a recourse against abuse of the enforcement powers of the organs of State.

53. Regarding the scope of habeas corpus, according to Constitutional Chamber decision No. 0878-97, "the remedy of habeas corpus is not a prohibitive kind of measure aimed solely at restoring the applicant's freedom, but is a genuine constitutional process whose purpose is not only to safeguard the rights of personal freedom and integrity in the future, but also to establish violations in the past and to require the authority responsible for any such violation to compensate the victim for damages and pay the applicant's costs".

54. The examining magistrate requests a report from the authority stated to be in breach. The report must be submitted within the time limit set by the magistrate, which may not exceed three days. At the same time the magistrate may order the suspension of any action against the applicant that might result in non-compliance with the Chamber's ultimate decision.

55. In the case of persons who have been arrested and brought before the courts but who are not the subject of a detention order, the examining magistrate may suspend consideration of the application for up to 48 hours. At the same time the magistrate shall instruct the court to proceed with the relevant preliminary investigation and report on the outcome, stating whether it has issued a detention order.

56. Any restriction on physical liberty ordered by a competent authority that exceeds the time limits specified in articles 37 and 44 of the Constitution<sup>7</sup> must be imposed through a properly reasoned decision, except in the case of orders to appear or arrest warrants.

57. The examining magistrate may also order the applicant to appear, or have an inspection made if the circumstances are thought to warrant one, either before ruling on the application or, if warranted, in order to execute the ruling, whether the application is found admissible or inadmissible. Interim measures to protect the rights in question may also be ordered.

58. The report of the authority alleged to be in breach must contain a clear explanation of the reasons and legal principles on which its decision was based and of any evidence against the applicant. If the report is not submitted within the required time, the facts invoked to justify the application may be deemed to be established and, if appropriate in law, the Chamber shall declare the application admissible within five days, unless it is found necessary to gather evidence.

59. A judgement upholding an application for habeas corpus entails annulment of the measure challenged in the application and restitution of the claimant's full enjoyment of the right or freedom impaired or violated, and shall order the responsible authority to make reparation for the harm caused, damages being paid through an enforcement procedure in the administrative court, in accordance with the Constitutional Jurisdiction Act (arts. 25 and 26, para. 2).

60. Failure by the authorities in question to comply with the injunctions of the Chamber will incur criminal liability (arts. 71 and 72).

61. In stipulating that habeas corpus may not be invoked against actions by subjects of private law, the Constitution is not making any discrimination, since there exists also the remedy of *amparo*, which is broader in scope. Habeas corpus, within a system such as Costa Rica's, based on the rule of law, protects personal freedom and integrity when these are threatened by acts or omissions by any authority which might violate or impair them. If the Chamber determines that it is not an issue of habeas corpus but rather of *amparo*, it will say so and proceed under the rules of *amparo*.

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<sup>7</sup> Article 37 of the Constitution gives the authorities detaining a fugitive from justice or an offender caught in flagrante delicto 24 hours to bring them before the competent court. In addition, article 44 of the Constitution allows incommunicado detention for up to 48 hours or, exceptionally, 10 days by court order.

(ii) *Amparo*<sup>8</sup>

62. The remedy of *amparo* also has its origin in article 48 of the Constitution, which establishes the right of any person to use the remedy to maintain or re-establish their enjoyment of the fundamental rights embodied in the Constitution, other than the right to personal freedom and integrity, which is protected by habeas corpus.

63. As with habeas corpus, applications for *amparo* do not require the services of a lawyer. *Amparo* is part of what the Italian jurist Mauro Cappelletti calls the “constitutional jurisdiction of freedom”, being a procedural instrument designed specifically to protect such rights.

64. Under article 25 of the American Convention on Human Rights, the right to “effective recourse” has become a primary obligation for the States parties requiring them to establish legal remedies meeting those criteria within their domestic systems. Ordinary jurisdictions such as the administrative jurisdiction do not suffice nowadays. The injustices that may be done to an individual require other, speedier procedures, even parallel ones, to counter such violations, and the remedy of *amparo* is the most appropriate means by which to do so.

65. *Amparo* may be invoked against any provision or decision and, in general, against any action, omission or simple physical act not based on a valid administrative disposition, committed by public servants or public bodies, and which has violated, violates or threatens to violate any of those rights, as well as against arbitrary actions and acts or omissions based on wrongly interpreted or improperly applied regulations.

66. *Amparo* is also used to safeguard the human rights recognized in international law in force in Costa Rica. This is an important innovation, for there are fundamental rights enshrined in international treaties which are not expressly recognized in our Constitution, such as the right of correction or reply.

67. Under article 57 of the Constitutional Jurisdiction Act, an action for *amparo* may also be brought against “acts or omissions by subjects of private law when they are acting or should be acting in the exercise of public functions or powers or when they find themselves de jure or de facto in a position of power against which the ordinary legal remedies are clearly insufficient or too slow to guarantee the fundamental rights and freedoms referred to in article 2 (a) of the Act”.

68. These conditions are difficult to pin down, which means *amparo* is rarely used in this way. The Constitutional Chamber has tended to declare it inadmissible in respect of, inter alia, breaches of contract, requests to wind up a cooperative, where an injunction has been issued, claims in respect of labour rights, non-compliance with a joint custody order, or where other administrative remedies are available; on the other hand, it is admissible in respect of denial of membership of a cooperative, a landlord cutting off a tenant’s water supply, etc.

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<sup>8</sup> This section is included in response to the Committee’s comments on the fourth periodic report of Costa Rica (CCPR/C/79/Add.107, para. 10).

69. Unlike ordinary *amparo*, the remedy will not be pursued if the individual's action is correctly based on statute (Constitutional Jurisdiction Act, art. 57) even if the law in question is unconstitutional.

70. Where *amparo* is used against public authorities, article 30 of the Constitutional Jurisdiction Act states that the remedy will not apply in the following cases: (a) against laws and other normative provisions, except where these are challenged in connection with actions by which they are applied to individuals or where the provisions are self-executing, i.e., they are immediately binding solely by virtue of their promulgation, with no need for any other rules or acts to develop them or render them applicable to the complainant; (b) against decisions and jurisdictional rulings by the judiciary; (c) against acts by the administrative authorities pursuant to court rulings, provided such acts are carried out in accordance with the court's orders; (d) where the act or omission was legitimately accepted by the aggrieved person; (e) against acts or decisions of the Supreme Electoral Tribunal in electoral matters.

71. Given the broad scope of the legislation, it would be difficult to find cases in which *amparo* proceedings may not be brought, except for cases expressly excluded by law. However, its scope is being delimited by legal precedents. For example, case law has found that, while it is true that any misconduct could give rise to a problem of a constitutional nature since the Constitution is the supreme law from which the entire subconstitutional juridical system is derived, direct violation of the Constitution is in fact required for use of this remedy. Other violations, even indirect ones, should be dealt with by the courts of ordinary jurisdiction.

72. Under article 33 of the Constitutional Jurisdiction Act, an action for *amparo* may be brought by anybody either on their own behalf or on behalf of another person. However, not all violations of the Constitution, no matter how serious, justify *amparo* proceedings. There must be a violation of a fundamental right and not merely an interest in guaranteeing legality in the abstract. For example, violation of a statutory provision of the Constitution does not authorize an individual to seek to sanction administrative actions in the manner of a public prosecutor.

73. The right to bring an action is not subject to any condition, and even minors are entitled to do so. The jurisprudence of the Chamber does not allow *amparo* applications from any public bodies except municipalities.

74. The application should state the act or omission providing the grounds for the action, the right allegedly violated or threatened, the name of the public servant or body responsible for the threat or injury, and the evidence supporting the allegation. There is no need to cite the constitutional rule which has been infringed provided that the violated right is clearly specified, except where an international instrument is invoked. If the identity of the public servant is unknown, the proceedings are brought against the head of the authority.

75. Any third parties who derive subjective rights from the rule or act providing the grounds for the action will also be a party to the proceedings. In addition, any person having a legitimate interest in the outcome of the action may appear and be heard as an additional party.

76. This remedy is not subject to any other formalities and does not require authentication. The proceedings may be brought by petition, telegram or other written means of communication.

If the grounds for the application cannot be established, or if it does not meet the stipulated requirements, the applicant will be advised to correct it within three days. If they do not do so, the action is summarily dismissed.

77. *Amparo* proceedings are heard by the President of the Chamber or any judge they may designate - in strict rotation - and are handled on a priority basis, which means any other case of a different kind, except habeas corpus, may be postponed.

78. An *amparo* action does not require any prior recourse and certainly not the exhaustion of administrative remedies. In Costa Rica, *amparo* is a direct action not necessitating any previous pending case, either judicial or administrative.

79. The mere lodging of *amparo* proceedings suspends the effect on the applicant of the laws and other provisions challenged, as well as the effects of the specific acts which are challenged. Suspension is automatic and is notified immediately by the fastest possible means to the agency or official against which or whom the proceedings are brought.

80. However, in exceptionally serious cases the Chamber may order the application or the continued application of such legislation, at the request of the government department the defendant official or agency belongs to, or indeed *proprio motu*, if suspension might cause or risk specific and imminent harm to the public interest greater than the harm which continued application would cause to the injured party and subject to any conditions which the Chamber may deem appropriate to protect the injured party's rights and freedoms and prevent any impairment of the effects of an eventual finding in their favour.

81. The decision admitting the *amparo* proceedings accords the defendant authority a period of one to three days to submit its report, and may request the administrative file or documentation giving the background to the case. Such reports are considered sworn testimony; accordingly, any inaccuracy or falsehood will render the official concerned liable to punishment for perjury or false witness, depending on the nature of the facts contained in the report.

82. *Amparo* proceedings may serve as a prior pending case (Constitutional Jurisdiction Act, art. 75) for the purpose of seeking a declaration of unconstitutionality when the abolition of a particular rule is necessary for the *amparo* action to be either accepted or dismissed.

83. Apart from this, the Chamber must bar the action if intermediate norms are being challenged at the same time as measures of application or in any case where it considers that the act challenged may be based on a subconstitutional norm (Constitutional Jurisdiction Act, art. 48).

84. If the report shows that the challenge is sound, the application will be declared admissible. If not, the Chamber may immediately ask for specific information, which must be provided within three days, along with any necessary evidence; a hearing may be granted to the applicant and the complainant, if they are not the same person, and to the public servant or representative, and a complete written record shall be kept. Before handing down its decision, the Chamber may order any other steps to be followed.



85. “Any ruling in favour of the applicant shall in principle order compensation for the harm caused and payment of the costs of the proceedings; payment shall be made through an enforcement procedure in the administrative court. It should be noted that the verdict is given without full trial and without the possibility of appeal” (Constitutional Jurisdiction Act, art. 51).

86. A verdict against the applicant cannot award damages for the stay of effects, but may award costs if the application is deemed vexatious.

87. The Act does not set a time limit for making a decision in *amparo* cases. However, the general principles of automatic action and promptness apply (art. 8), in addition to the fact that these cases are to be handled on a fast-track basis, following habeas corpus cases in order of priority (art. 39).

88. Once the ruling becomes final, the responsible agency or official must comply forthwith. If this is not done within 48 hours, the Chamber addresses itself to the superiors of the responsible party and requests them to ensure compliance, at the same time instituting proceedings against the person or persons responsible. After a further 48 hours the Chamber will take proceedings against the superior who has failed to comply with its request, except in the case of officials with privileged status, in which case the Public Prosecutor is requested to take appropriate action.

89. There is no appeal against the Chamber’s decisions, except claims for liability where appropriate. The Chamber’s judgements may be elucidated or supplemented, either at the request of a party if the request is made by the third day, or of its own motion at any time, including in enforcement proceedings to the extent necessary to ensure full compliance with the sentence.

90. Under article 35 of the Act, “an *amparo* action may be brought at any time as long as the violation, threat, disruption or impairment persists and up to two months after its direct effects on the injured party have totally ceased. However, in the case of purely property rights or other rights that can be set aside by legitimate consent, the action must be brought within two months of the day on which the injured party was reliably informed of the violation and was legally able to bring the action”.

91. Thus as a general rule, there are no prescription or extinction limits for an *amparo* action, as long as the violation, threat, disruption or impairment of the fundamental right persists. This rule applies to whatever can be called, in the language of criminal law, “injurious acts with continuing effects”.

92. Concerning acts with immediate effect, the time limit for lodging an action is two months after its direct effects on the complainant have totally ceased. This covers cases of legitimate consent where the injured party might allow the two-month time limit from cessation of the direct effects to elapse without challenging the act or omission by way of *amparo*.

93. Prescription of the *amparo* remedy where it is not sought in time is no impediment to a challenge to the act or procedure by some other means, if permitted in law (Constitutional Jurisdiction Act, art. 36).

(c) *Legislature and operational framework of the Office of the Ombudsman*

94. The Office of the Ombudsman was established by Act No. 7319 of November 1992, supplemented by Decree No. 22,266, which establishes the Regulations governing the Office of the Ombudsman.<sup>9</sup>

95. The competence of the Office is governed by article 12 of the Ombudsman Act, which states: “Without prejudice to the constitutional and legal powers of the jurisdictional organs of the judiciary, the Office of the Ombudsman may, either of its own motion or at the request of a party, initiate any enquiry to elucidate matters arising in the public sector. However, it may not intervene in any way in respect of decisions of the Supreme Electoral Tribunal on electoral matters.”

96. Action by the Office of the Ombudsman may not be substituted for the acts, material proceedings or omissions of an administrative authority in the public sector, its powers being to effectively ensure their legality. The Office is competent to protect human and civil rights, to handle complaints from the general public about the public sector and to protect community interests in matters of concern to the community (Ombudsman Act, art. 14).

### **Article 3**

97. As described in the previous report (CCPR/C/103/Add.6), Costa Rica has a legal framework that establishes a wide range of rights. Where citizens cannot exercise their rights for some reason, the legal order provides a series of remedies and legal instances allowing them to demand full implementation of those rights and seek reparation or compensation where any harm has been caused.

### **Article 4**

98. As mentioned in the fourth periodic report (CCPR/C/103/Add.6, para. 174), the Constitution provides (art. 121, para. 7) for emergency situations in which Congress may suspend the rights and guarantees established in the Constitution. Such suspension may be enacted with respect to all or only some of the rights and guarantees, or to all or only part of the territory, and for a maximum of 30 days. This provision has never been applied in Costa Rica and no situation has ever arisen to cause the Constitutional Chamber to consider any kind of decision applying this provision.

### **Article 5**

99. As mentioned under article 2 above, where human rights are concerned the international treaties have supraconstitutional rank, such that no interpretation by domestic bodies which impairs the rights recognized in any international treaties duly signed and ratified by Costa Rica is admissible.

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<sup>9</sup> Ombudsman Act, published in *La Gaceta* No. 155 of 17 August 1994.

100. The Constitutional Chamber has repeatedly upheld the supraconstitutional status of international human rights instruments. In decision No. 1982-94, the Chamber stated that, “in accordance with the provisions of article 7 of the Constitution, as soon as Costa Rica ratified the Convention on the Rights of the Child any legal provisions at variance with the standards and principles set forth in that international instrument became unconstitutional. Thus in respect of article 17 of the Criminal Code, when the Convention entered into force the minimum age of 17 for trial as an adult in criminal proceedings became unconstitutional as a violation of articles 1 and 40, paragraph 3, which clearly establish that persons under the age of 18 must be tried as minors under the relevant legislation”.

#### Article 6

101. The death penalty was abolished in Costa Rica in 1878 by the then President, General Tomás Guardia, a career soldier, and on 26 April 1882 a provision upholding the inviolability of human life was given constitutional rank. This rule is now enshrined in the Constitution of 7 November 1949, which states in article 21: “Human life is inviolable”.

102. The Constitutional Chamber’s case law on the scope of this right is extensive. In decision No. 0315-98, the Chamber stated that “the constitutional principles informing the provisions of articles 21 and 33 of the Constitution include not only the State’s duty to respect human life and defend it from the actions of others but also the guarantee of a decent standard of living, the attainment of which depends on the procurement of the necessary resources, for this right cannot be limited to mere subsistence. Consequently, the State has no discretion to decide whether or not to provide a public service, particularly if it is linked to a fundamental right such as health, which in this case is impaired by the lack of access to a supply of drinking water”.

#### Article 7

103. Article 40 of the Constitution states: “No one may be subjected to cruel or degrading treatment or to life imprisonment or to the penalty of confiscation. Any statement obtained by force shall be null and void.”<sup>10</sup>

104. By Act No. 7351 of 11 November 1993, Costa Rica ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed in New York on 4 February 1985. On 27 February 2002 the United Nations was informed of Costa Rica’s recognition, under article 22 of the Convention, of the competence of the Committee to consider communications from individuals.<sup>11</sup>

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<sup>10</sup> Jorge Cordoba Ortega et al., *Constitucion Politica de la Republica de Costa Rica - anotada y concordada con resoluciones de la Sala Constitucional* (Political Constitution of the Republic of Costa Rica - annotated and concordanced with decisions of the Constitutional Chamber), Prodel, San José, Costa Rica, first edition, 1996.

<sup>11</sup> There is no record on the United Nations website of any complaint against the State party by any individual availing themselves of its recognition of the Committee’s competence.

105. Costa Rica had the honour of chairing the deliberations leading to the adoption by the Commission on Human Rights and the General Assembly of the Optional Protocol to the Convention against Torture, and it ratified the Optional Protocol on 25 November 2005 by Act No. 8459, deposited at United Nations Headquarters on 1 December 2005.

106. As to domestic law, by Act No. 8189 of 6 December 2001, the Legislative Assembly passed an amendment inserting a new article 123 bis in the Criminal Code (Act No. 4573 of 4 May 1970), which defined the offence of torture as follows:

“Torture.

Article 123 bis. Anyone who inflicts pain or physical or mental suffering on another person, or intimidates or coerces another person in connection with an act they have committed or are suspected of committing, in order to obtain information or a confession from them or from a third person, or on grounds of race, nationality, gender, age, political, religious or sexual preferences, social position, financial situation or civil status, shall be punished by three to ten years’ imprisonment.

If such acts are committed by a public official, the penalty shall be five to twelve years’ imprisonment and a two- to eight-year bar on holding office.”

107. The Constitutional Chamber has clearly stated in several opinions that, under article 40, no one may be subjected to torture. In decision No. 4784-93, for example, the Chamber stated that “torture as a means of obtaining a statement to suit the purposes of those investigating a crime is a blatant violation of due process, the right to a defence and the fundamental values of human decency. Acts of torture are expressly prohibited under article 40 of the Constitution ... Due account must also be taken of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed in New York on 4 February 1985 and adopted by the Legislative Assembly by Act No. 7351”.

### **Article 8**

108. As mentioned in the previous report, under article 20 of the Constitution, “Everyone in Costa Rica is free; anyone who is protected by the law of the land may not be a slave.”

109. The Criminal Code devotes one section to crimes against liberty, including offences against individual freedom (abduction, concealment of detainees, deprivation of liberty and aggravated offences) and offences against the right to freedom of action (coercion, threats and aggravated threats). Anyone who commits such offences must answer for their actions in court and will be met with the full force of the law.

110. Prison labour and migrant labour are also relevant in this regard.

111. Work within the prison system is duly regulated and is not compulsory. As explained at length in the second periodic report submitted to the Committee against Torture in 2006, the prison system has set up a number of production projects with the aim of generating work for the prison population, for which a financial consideration is offered. In this way, as well as being

kept busy, detainees are also helped to realize their potential and their personal development is encouraged. By working they can learn a trade which, for many of them, will become their chief means of supporting their family in the future.

112. In 2002 the Social Rehabilitation Department arranged placements for 1,693 people in the service sector, 1,380 in the self-employed and craft sector, 300 with projects in private companies and 391 in production projects in institutions. In addition, 50 detainees are undergoing training with the National Training Institute (model farm, inter alia), which gives a coverage of 600 people.

113. In 2003 69 per cent of the prison population were involved in work or training projects. In all 82.2 per cent of the prison population at the institutional level (closed prisons) were involved in some activity, either studying or working, and 100 per cent at the semi-institutional level (semi-open prisons).

114. Various kinds of agricultural, livestock and fowl farming projects are run in the closed and semi-open centres of La Reforma, Liberia, San Carlos, Pococí, Limón, Pérez Zeledón, San Luis and Nicoya, including egg farming, pig rearing, fattening and slaughter, beef rearing, fattening and slaughter, and coffee, vegetables, citrus, banana, cassava and other crops.

115. The prison system benefits from these projects inasmuch as they produce fruit and vegetables for consumption by inmates themselves in the various prisons.

116. A number of industrial projects are also under way to produce school furniture for the Ministry of Education, as well as items made of concrete, such as blocks, posts and sewage pipes, in La Reforma, San Carlos, Pococí and Limón prisons.

117. These projects offered 190 places to detainees in 2003, in employment or full-time training, thereby enabling them to serve their sentences by working and also to earn 33,110,000 colones as a financial consideration for their work.

118. Projects were organized with private enterprise for 290 detainees in 2003; 1,980 prisoners worked in general services and 1,540 in self-directed activities.

119. In 2004 370 detainees worked with private enterprise and 2,200 in general services; 1,800 were self-directed and 774 took part in training. As the figures show, out of a total prison population of more than 7,000 at the institutional level, 67 per cent were involved in production and training and 100 per cent at the semi-institutional level.

120. Production projects involving industrial and agricultural work and livestock farming were organized in 9 of the country's 15 penitentiaries in 2004, enabling 1,200 detainees to engage in productive activity.

121. Industrial activity included the production of furniture for schools, specifically desks, bookcases and computer tables. In 2005 36,300 desks were produced.

122. With regard to the characteristics of migrant labour - without going into the level of detail of Costa Rica's eighteenth periodic report to the Committee on the Elimination of Racial Discrimination - the main areas where Nicaraguan immigrants are to be found are agriculture,

construction, services and trade. The migrant population is vital to export agriculture such as pineapple growing, melon, cassava, palm hearts and ornamental plants, and in traditional areas such as sugar-cane cutting and cropping and banana growing.

123. Migrant women, who make up 51 per cent of the total migrant population, are mainly to be found working in the service sector, particularly domestic service. In order to ensure employers' full compliance with the labour obligations, the Ministry of Labour has been of enormous help in understanding migrants' situations through its study of migrant workers' share of seasonal agricultural work and particularly by monitoring and inspecting the conditions under which workers are hired, despite its limited human and financial resources.

### Article 9

124. Under article 22 of the Constitution, "all Costa Ricans may go or settle anywhere inside or outside the Republic, provided that they are free of liability, and may return when they wish. Costa Ricans shall not be subject to requirements that prevent them from entering the country".

125. The Constitutional Chamber has defined the scope of the term "free of liability" as follows: "It implies the possibility of curtailment of said generic liberty, but solely in the narrow sense that a person is not in a position of liberty where there is a compelling need for their physical presence at juridical acts that cannot be carried out if they do not attend in person."<sup>12</sup>

126. In applying this provision of the Constitution in specific cases, for example decision No. 5220-96 on an application for *amparo*, the Chamber has ruled that "Where a person is subject to criminal proceedings, having been accused of an offence and being therefore obliged to face trial, it is frequently necessary to set certain conditions so as to ensure that the course of justice is not perverted and the person does in fact undergo trial."

127. As indicated in the fourth report, under article 41 of the Constitution, "through recourse to the law, everyone should be able to obtain compensation for injury or damage to their person, property or moral interests. They shall receive prompt and full justice, without being denied and in strict conformity with the law".

128. The Constitutional Chamber's case law is clear on the question of prompt justice: "Unreasonably lengthy proceedings clearly violate the principle of promptness; claims and remedies brought before the judicial system must be adjudicated within a reasonably short time in the interests of legal security. That does not, however, imply a constitutional right to specific time limits but rather everyone's right to have their case decided within a reasonable time, as determined on a case-by-case basis having regard to the complexity of the matter, the behaviour of the parties and the authorities, the consequences of delay for the parties and the standards and constraints normally applicable in the particular procedure involved."<sup>13</sup>

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<sup>12</sup> Constitutional Chamber decision No. 888-97.

<sup>13</sup> Constitutional Chamber decisions Nos. 5873-98 and 5709-98. *Constitución Política de la República de Costa Rica (anotada, concordada y con jurisprudencia constitucional)* (Constitution of the Republic of Costa Rica, annotated, concordanced and with constitutional case law), p. 578.

129. Data on the average time taken by the Constitutional Chamber to rule on appeals are as follows:

Year	Habeas corpus	Amparo	Constitutional review
1999	17 days	2 months	17 months
2000	17 days	2 months/3 weeks	25 months/1 week
2001	17 days	2 months/3 weeks	20 months/1 week
2002	17 days	2 months/3 weeks	24 months/3 weeks
2003	17 days	5 months/1 week	24 months
2004	17 days	4 months/1 week	22 months/3 weeks

*Source:* Statistics Section, Planning Department, Constitutional Chamber.

### Deportations

130. The majority of the deportations carried out by the Migration and Aliens Office between 2002 and 2005 involved illegal Nicaraguan immigrants; there were also large numbers of Colombians, Ecuadorians and Peruvians. The following table gives a year-by-year summary:

Country	2002	2003	2004	2005
Argentina	4	3		1
Belgium		1		
Belize	1			
Bolivia	1			
Brazil	1			
Canada	3	1	2	1
China	7	28	11	
Colombia	258	142	109	103
Côte d'Ivoire	1			
Cuba			1	
Czech Republic			1	
Dominican Republic	68	3	9	5
Ecuador	18	37	50	6
El Salvador	8	1	3	44
France	7	1	2	
Germany	5	1	2	
Greece			1	
Guatemala	2		1	
Guyana			1	1
Haiti	4		8	1
Honduras	22	16	14	5
Hungary	2			
India				1
Indonesia	18	5		

Country	2002	2003	2004	2005
Iran (Islamic Republic of)				1
Israel			1	
Italy	4	1	4	2
Jamaica	2	4	1	3
Kenya		2		
Mali	2			
Mexico	1	4	8	3
Nicaragua	4 012	2 454	680	525
Panama	53	46	25	27
Peru	63	43	35	
Philippines	5			
Poland	1			
Romania	1			
Russian Federation			2	
Saint Vincent and the Grenadines	1			
South Africa	2			
Spain	2		2	
Sweden			1	
Switzerland	2		6	
Taiwan		1		
Turkey	1			
Ukraine		1		
United Kingdom	1			
United States	22	14	10	8
Uruguay				1
Venezuela (Bolivarian Republic of)	5	1	2	
Viet Nam			9	

*Source:* Compiled on the basis of information provided by the Migration and Aliens Office, 2006.

131. On the question of the right to personal safety and State protection from all acts of violence, the Government of Costa Rica has provided the special procedures of the United Nations with a detailed report on a series of operations in communities with large numbers of Nicaraguan migrants.<sup>14</sup>

<sup>14</sup> See note No. 190-2004 dated 29 July 2004, addressed to the Office of the United Nations High Commissioner for Human Rights.



132. On 3 June 2004 the Special Rapporteur on the human rights of migrants asked the Government of Costa Rica for detailed information on a police operation carried out on 30 January 2004 in the district of La Carpio, on the outskirts of the capital, in which some 600 people had been detained. She also expressed her concern at information received to the effect that the Costa Rican Social Security Fund was sharing personal information on undocumented immigrants being treated in public health centres with the Migration and Aliens Office. A third complaint being investigated was the alleged existence of a telephone hotline for reporting undocumented migrants.

133. In letters dated 29 July and 9 August 2004 the Government of Costa Rica provided the Special Rapporteur with a detailed response to the allegations, stating that the Ministry of Public Security, the Interior and the Police had devised a series of operations in the exercise of its powers under the Constitution and the law.

134. Accordingly, on 30 January 2004 an operation was launched to identify and correct illegal situations involving individuals or commercial establishments in a violent district of the capital where there were known to be unlicensed businesses, minors at risk, arrest warrants, complaints of domestic violence, reports of fugitives from justice and immigrant control, inter alia. An inter-agency team was formed for these operations comprising officials of the National Child Welfare Agency, the Judicial Investigation Department and the Immigration Police, as well as competent staff from the Planning and Operations Department and the Centre for Legal Information and Support of the Ministry of Public Security and from the San José Municipal Police and the Costa Rican Red Cross.

135. The operation resulted in a total of 580 investigations of individuals, 79 extradition proceedings, 25 deportations in accordance with due process, 107 summonses to people with links with Costa Ricans, identification of six false residence permits, confiscation of two firearms and two knives, placement of six minors in the care of the National Child Welfare Agency, 15 summonses to appear in court and 1 summons for fraud.

136. The operation was carried out in accordance with due process and with strict regard and respect for human rights, in a necessary attempt to combat the crime, gangs and family violence that trouble that part of the country. Neither this nor any other operation over the years has been intended as any kind of persecution of immigrants, which would be a violation of the international obligations of the Costa Rican State.

137. According to the National Child Welfare Agency, a total of 40 minors were brought in and inquiries made into their family situations. Each of them was duly taken home by an administrative official who checked their identity. All these measures were taken in the best interests of the child and bearing in mind the importance of not separating minors from their parents.

138. The State also informed the Special Rapporteur that the Costa Rican Social Security Fund had no power to enforce labour or migration law and that the information referred to had been shared under article 11 of the Public Administration Act.<sup>15</sup> The Government also explained clearly that there is no telephone hotline for reporting immigrants.

139. As in previous years, in its report for 2004-2005 the Office of the Ombudsman expressed its concern at “conditions in the 5th Precinct holding centre for foreigners in transit, notwithstanding the improvements made by the Migration and Aliens Office following recommendations by the Office of the Ombudsman and rulings by the Constitutional Chamber”.

140. The report states, “the centre is not properly equipped to hold foreigners awaiting the outcome of administrative procedures to determine their migrant status or what can be lengthy deportation procedures”.

141. It concludes that “the situation can only get worse as long as the current legislation does not set time limits for detention or make provision for premises suitable for housing families with young or teenage children, with adequate, hygienic amenities, etc.”.

142. In response to the Ombudsman’s concerns and as the present report was being prepared, the Migration and Aliens Office stated, through the Immigration Police, that “there is a procedure to follow when admitting a foreigner to the holding centre for foreigners in transit, and the regulations are strictly observed in order to avoid violating individual rights”.

143. The procedure referred to includes checking personal information to ensure that the individual is not a minor. If they are, they are transferred to the National Child Welfare Agency; if an adult, their details are noted on a holding centre form and they are given access to a telephone to contact their national consulate (right to consular assistance); moreover, there are public telephones for direct use by these foreign nationals at any time near their cells.

144. In accordance with due process, a departmental lawyer should interview the foreigner and take a sworn statement, apprising them at the same time of the offence of perjury and of their right to legal representation. The legal and migration status of each foreigner is then assessed in order to arrive at an administrative decision.

145. Foreigners’ length of stay in the centre varies depending on their migration status. The Constitutional Chamber of the Supreme Court, in decision No. 2005-09618 of 20 July 2005 in

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<sup>15</sup> According to article 11 of the Public Administration Act, “1. The public administration shall act in accordance with the legal order and may only take such actions or provide such public services as are authorized by law in accordance with the hierarchy of laws. 2. Any act expressly governed, even imprecisely, in written law, at least as to reason or substance, shall be deemed authorized.”

respect of an application by the Office of the Ombudsman for a constitutional review of what was then the Migration and Aliens Bill (legislative file No. 14269), stated that “the Chamber has repeatedly held that the immigration authorities may restrict the liberty of a foreigner who enters the country illegally for as long as is reasonably necessary to effect their expulsion and deportation; in such situations the 24-hour limit established in article 37 of the Constitution does not apply (see decision No. 05-7390, among others), and neither the use of preventive detention nor the absence of any time limit is unconstitutional, always provided the duration is indeed, as stated in the provisions in question, as long as is ‘strictly necessary’. Consequently, this Chamber rejects the applicants’ contention that these provisions are unconstitutional”.

146. When a deportation order is executed, the foreigner is transferred to the Juan Santamaría airport by official transport, in the charge of a government official; if the deportation is over land, they are accompanied by two or more guards and transported by agency bus. To meet basic needs, food is provided containing proteins and carbohydrates.

147. Two days a week have been set aside for detained foreigners to receive visitors; their families may supply them with clothing, food and money. In addition, detainees’ legal counsel, and translators when required, have full access 24 hours a day.

## Article 10

### Minors (juvenile offenders)

148. The Protection of Minors Act was passed in 1963 and reformed in 1996 by the Juvenile Criminal Justice Act (No. 7576). There were significant omissions in the 1963 Act, including in respect of the minimum age for detention of minors, whence the need for an amendment, introduced in 1994, setting a minimum age of 12.

149. It was therefore common to find in detention centres people with behavioural problems and the socially excluded side by side with adolescents who had committed offences of various kinds.

150. At the time, deprivation of liberty was the principal method of dealing with the socially disadvantaged. Costa Rica had two detention centres, one for men and one for women, with an average of 120 young people in each; health and education were always guaranteed as basic rights in these centres.

151. Starting in May 1996 the Juvenile Criminal Justice Act compelled the prison authorities to make organizational changes because by resorting to deprivation of liberty only in exceptional cases, it considerably reduced the number of young prisoners, making use of non-custodial sentences instead, particularly probation and alternative measures.

152. Since 1998 there have been support facilities for the juvenile prison population of both sexes, as well as offices which assist those serving alternative sentences in the greater metropolitan area; these also make follow-up visits to those in the rest of the country at least once a month.

153. Under the Juvenile Criminal Justice Act the juvenile detention system must also observe the following standards in its operations: the Children and Adolescents Code and international instruments such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Convention on the Rights of the Child.

154. Juvenile detention institutions take the following basic approach: implementation of a sentence execution and support plan for juveniles serving alternative or custodial sentences, or in pretrial detention, with due regard for human dignity; national and international standards and encouragement of cooperation between agencies, the community and State and private bodies that promote non-institutionalization and open regimes for juveniles.

155. Cooperation is also encouraged in the formulation of national policies on juvenile criminal justice, to ensure the orientation of the juvenile criminal justice system around fundamental rights and the maintenance of a uniform, integrated information system enabling the Social Rehabilitation Department to formulate policies and guidelines.

156. In order to maintain this specificity of approach in dealing with juvenile offenders, institutional practice guarantees full compliance with the provisions of the Convention on the Rights of the Child and the Juvenile Criminal Justice Act.

157. The prison system now makes strenuous efforts to safeguard the basic rights of the juvenile prison population, particularly in the areas of formal education, health, recreation and culture, and contact with their families and the outside world. There is no overcrowding in this programme and the population is grouped in accordance with the law, i.e., by age, legal status and sex.

158. With regard to the right to formal education, juveniles have a choice of any educational level. The detention centre has an education wing with spacious classrooms, a library, an audio-visual centre and a computer laboratory; research is also encouraged.

159. As to the right to health, care is provided from the time of admission to the centre and inmates are sent when necessary to Social Security centres for medical treatment. A balanced diet is offered, with three meals and two snacks a day.

160. As regards the right to recreation and culture, recreational and cultural events are encouraged and the help of other State and private institutions is enlisted in organizing activities of various kinds.

161. With regard to meetings and contacts with their families and the outside world, inmates have two visiting days and the right to make telephone calls and to receive special visits and conjugal visits. The centre is open to volunteers who, working with other partners, make up a social support network for all those on the programme.

162. Lastly, there is a centre for young adults who committed their offence as minors but must continue serving their sentence beyond the age of 18, and a new facility is now being built; at the same time, a new technical support project is being developed to reflect the particular characteristics and needs of this group and their legal situation.

163. The introduction of Act No. 7576 has meant that deprivation of liberty is now used as an exceptional measure; in more than 80 per cent of the cases in this group, socio-educational measures are imposed, mainly probation or community service.

### **Article 11**

164. The Constitution establishes as a fundamental right that “no one may be imprisoned for debt” (art. 38).

165. In domestic law, article 249 of the Code of Criminal Procedure provides as follows, in respect of maintenance payments:

“Where abandonment of the domicile is established, at the request of one of the parties, the court shall order the payment of a certain sum of money per month, to be set as appropriate. The accused must pay the money within eight days to cover board and lodging for those members of the family who are financially dependent on him.

This obligation shall be governed by special rules applying to maintenance and is therefore subject to enforcement by committal in case of non-compliance.

After having set the amount payable, the court shall send the certified file to the competent judicial authority to ensure that it remains seized of the case in accordance with the Maintenance Payments Act.”

166. Maintenance payments are governed by the Maintenance Payments Act, which came into force on 23 January 1997 and regulates all aspects of maintenance payments arising out of family relationships as well as the procedure for application and interpretation.

167. In this regard, the Constitutional Chamber has established the scope of civil debt, ruling in decision No. 2794-96 that, “in prohibiting imprisonment for debt, article 39 of the Constitution and article 7, paragraph 7, of the American Convention on Human Rights exclude cases of maintenance and consequently enforcement by committal where the debtor has defaulted on a maintenance payment cannot be said to violate the right to freedom of movement under the Constitution or the Convention”.

168. In other judgements the Constitutional Chamber has found that “a maintenance debt is not in itself a civil debt, for although it is a financial obligation it is in essence an obligation to support and therefore differs from ordinary, purely financial debt; ordinary debt ultimately derives from contracts or general sources of obligations, while the obligation of maintenance derives from the family ties created by marriage, parental authority or a blood relationship, i.e., it is an obligation that covers all that is necessary for the full development of children and the subsistence of those to whom support is due”.<sup>16</sup>

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<sup>16</sup> Constitutional Chamber decision No. 6093-94.

169. Moreover, the Constitutional Chamber has rejected a claim of unconstitutionality against articles 16 and 58 of the Maintenance Payments Act and article 2 of Act No. 7337 of 5 May 1993, which provide for rises in maintenance payments.<sup>17</sup>

170. As to the number of maintenance cases brought before the courts in 2003, the courts reported a total of 72,359 current cases at 31 December 2003, an increase of 6,948 from the start of the year. Those figures also represent a relative decline (by 2.2 per cent) in the number of current cases compared with 2002, which shows that the trend in the number of live files from year to year is not consistently upward; at the same time, however, there has been a relative increase of between 10 per cent and 13.1 per cent since 1999, in contrast to the relative decrease observed in 1998.

Year	Live cases at year end	Increase over previous year	
		Absolute	Relative (percentage)
1993	24 772		
1994	26 698	1 926	7.8
1995	28 617	1 919	7.2
1996	32 561	3 944	13.8
1997	40 156	7 595	23.3
1998	41 890	1 734	4.3
1999	46 602	4 712	11.2
2000	52 728	6 126	13.1
2001	57 981	5 253	10.0
2002	65 411	7 430	12.8
2003	72 359	6 948	10.6

*Source:* Judiciary Statistics Department.

171. The number of live cases in fact increased by 25,757 up to 2003, a rise of 55.3 per cent from 1999; this represented a steep climb in the number of claims made compared with the preceding five-year period (1994-1998), when the caseload increased by 15,192 from 1994.

172. This development can be seen even more clearly in quarterly trends in the caseload from 1998 onwards, which show a steady increase except for three periods, the second quarter of 1998, the first quarter of 2002 and the first quarter of 2003, when there were slight percentage decreases from the preceding quarter of 1.5 per cent, 0.5 per cent and 0.3 per cent respectively.

Date	Live cases					
	1998	1999	2000	2001	2002	2003
1 January	40 156	41 890	46 602	52 728	57 981	65 411
31 March	41 407	42 560	48 227	54 802	57 896	65 242
30 June	40 781	44 469	50 012	55 793	59 794	66 384
30 September	41 585	45 723	51 518	57 060	62 034	69 907
31 December	41 890	46 602	52 728	57 981	65 411	72 359

*Source:* Judiciary Statistics Department.

<sup>17</sup> Constitutional Chamber decision No. 15392-03.

173. A breakdown by province shows that most claims were submitted in San José, which as a result also had the biggest absolute increase in 2003, with 4,186 cases, although the biggest relative increase was in Alajuela (21.2 per cent). In Cartago, on the other hand, the caseload shrank noticeably in both absolute (-1,391) and relative (-19.1 per cent) terms.

Province	Live cases at		Increase	
	1 January 2003	31 December 2003	Absolute	Relative (percentage)
San José	23 603	27 789	4 186	17.7
Alajuela	11 778	14 271	2 493	21.2
Cartago	7 275	5 884	-1 391	-19.1
Heredia	6 541	7 591	1 050	16.1
Guanacaste	4 026	4 169	143	3.6
Puntarenas	5 395	5 855	460	8.5
Limón	6 793	6 800	7	0.1
Total	65 411	72 359	6 948	10.6

*Source:* Judiciary Statistics Department.

174. The table below shows the number of new cases from 1993 onwards; here there has been a steady increase from year to year, a development that shows up even more clearly on comparison by five-year period.

175. Between 1999 and 2003 the number of new cases increased by 5,988, a rise of 36.7 per cent from 1999; this figure is similar to the number of claims in the preceding five-year period (1994-1998), which increased by 6,250 from 1994.

Year	New cases	Increase from previous year	
		Absolute	Relative (percentage)
1994	9 133	477	5.5
1995	10 113	980	10.7
1996	12 113	2 000	19.8
1997	14 332	2 219	18.3
1998	15 383	1 051	7.3
1999	16 309	926	6.0
2000	17 509	1 200	7.4
2001	20 261	2 752	15.7
2002	21 712	1 451	7.2
2003	22 297	585	2.7

*Source:* Judiciary Statistics Department.

176. The growth in the number of new cases per quarter shows an arithmetical progression, i.e., it goes up by a similar amount each year, even though the quarterly figures fluctuate constantly. The lowest number of new cases in this period was reported in 1998 (3,392) and the highest in 2003 (6,069). The highest percentage increase was 28.2 per cent, between the fourth quarter of 1999 and the first quarter of 2000 (3,652 cases as against 4,683); conversely there was a drop in the number of cases in the last quarter of 2003 (6,069 as against 4,999).

Quarter	New cases					
	1998	1999	2000	2001	2002	2003
January-March	4 054	4 212	4 683	4 983	4 861	5 654
April-June	3 979	4 265	4 153	5 247	5 981	5 575
July-September	3 958	4 180	4 563	5 276	5 842	6 069
October-December	3 392	3 652	4 110	4 755	5 028	4 999

*Source:* Judiciary Statistics Department.

177. Guanacaste province has had the fewest new claims since 1998, reflecting the fact that it is the province with the smallest population (6.9 per cent)<sup>18</sup> and hence the smallest demand for judicial services. In addition, it is not only the province with the lowest number of new cases but also the one with the lowest number of active cases.

178. A breakdown of new cases by province shows that the highest relative increase between 1998 and 2003 was in Puntarenas (61.3 per cent) and the lowest in Limón (17.4 per cent). The number of new maintenance cases in Costa Rica as a whole between 1998 and 2003 increased by 6,914, which means that in five years there has been a relative increase of 44.9 per cent.

Province	1998	1999	2000	2001	2002	2003	Increase from 1998	
							Absolute	Relative (percentage)
San José	5 793	6 036	6 206	7 407	8 165	8 234	2 441	42.1
Alajuela	2 311	2 507	2 909	3 029	3 513	3 631	1 320	57.1
Cartago	1 581	1 791	1 976	2 165	2 332	2 271	690	43.6
Heredia	1 417	1 578	1 702	2 071	1 994	2 095	678	47.8
Guanacaste	899	981	1 092	1 282	1 331	1 398	499	55.5
Puntarenas	1 586	1 717	1 770	2 126	2 322	2 559	973	61.3
Limón	1 796	1 699	1 854	2 181	2 055	2 109	313	17.4
Total	15 383	16 309	17 509	20 261	21 712	22 297	6 914	44.9

*Source:* Judiciary Statistics Department.

179. The increase in live cases and new cases goes hand-in-hand with a similar trend in decisions reached. In 2003 20,863 decisions were handed down, 1,477 more than in the previous year and equivalent to a percentage increase of 7.6 per cent; this last is the result of increases in the number of cases concluded in principal proceedings (1,382) and of cases arising in incidental proceedings (208), and a decrease in the number of cases resolved by conciliation (-113).

<sup>18</sup> Population estimate 2003, National Institute of Statistics and Censuses.



Year	Total	Decisions					
		Absolute			Relative		
		Principal proceedings	Incidental proceedings	Conciliation	Principal proceedings	Incidental proceedings	Conciliation
1993	9 403	5 116	4 287		54.4	45.6	
1994	8 480	4 685	3 795		55.2	44.8	
1995	9 702	5 369	4 333		55.3	44.7	
1996	10 621	6 068	4 553		57.1	42.9	
1997	11 660	6 674	4 986		57.2	42.8	
1998	12 777	7 605	5 172		59.5	40.5	
1999	15 005	7 447	5 548	2 010	49.6	37.0	13.4
2000	16 099	7 856	6 146	2 097	48.8	38.2	13.0
2001	16 795	8 385	6 003	2 407	49.9	35.7	14.3
2002	19 386	10 081	6 307	2 998	52.0	32.5	15.5
2003	20 863	11 463	6 515	2 885	54.9	31.2	13.8

Source: Judiciary Statistics Department.

180. Lastly, the breakdown by province shows that only in Alajuela was the proportion of cases dealt with in principal proceedings less than 50 per cent, while Heredia had the highest proportion (64.4 per cent); Cartago had fewest conciliation decisions (9.8 per cent) and Puntarenas most (18.6 per cent); the percentage of incidental proceedings was lowest in Heredia (23.9 per cent) and highest in Alajuela (38.3 per cent).

Province	Total	Percentage	Decisions					
			Absolute			Relative		
			Principal proceedings	Conciliation	Incidental proceedings	Principal proceedings	Conciliation	Incidental proceedings
San José	7 391	35.4	3 822	946	2 623	51.7	12.8	35.5
Alajuela	3 313	15.9	1 535	508	1 270	46.3	15.3	38.3
Cartago	1 510	7.2	886	148	476	58.7	9.8	31.5
Heredia	2 820	13.5	1 815	332	673	64.4	11.8	23.9
Guanacaste	1 321	6.3	721	215	385	54.6	16.3	29.1
Puntarenas	2 403	11.5	1 374	448	581	57.2	18.6	24.2
Limón	2 105	10.1	1 310	288	507	62.2	13.7	24.1
Total	20 863	100.0	11 463	2 885	6 515			

Source: Judiciary Statistics Department.

181. Incidental cases show little change since 1997, the number ranging between 7,075 and 8,051.

182. As can be seen from the following breakdown by province, Alajuela saw the greatest percentage increase (68.8 per cent), reflecting an increase of 797 incidental cases from 2002; San José and Guanacaste remained nearly the same and the greatest decrease was in Cartago, with 165 fewer cases.

Province	Cases arising in incidental proceedings						Increase from 2002	
	1998	1999	2000	2001	2002	2003	Absolute	Relative
San José	2 582	2 562	2 398	2 949	2 682	2 852	170	6.3
Alajuela	1 139	1 276	1 264	1 319	1 158	1 955	797	68.8
Cartago	783	620	587	718	703	538	-165	-23.5
Heredia	710	712	746	742	694	674	-20	-2.9
Guanacaste	596	607	579	608	522	532	10	1.9
Puntarenas	753	857	826	938	1 019	907	-112	-11.0
Limón	656	672	867	691	735	593	-142	-19.3
Total	7 219	7 306	7 267	7 965	7 513	8 051	538	7.2

*Source:* Judiciary Statistics Department.

183. The statistical records for 2004 show that 72,359 maintenance applications were before the competent courts at the beginning of the year and 81,383 at the end of the year. The following table gives the overall picture.

Year	Current cases at 1 Jan. 2004	New cases	Concluded	Decision	Principal proceedings	Conciliation	Incidental proceedings	Not competent	Current cases at 31 Dec. 2004
2004	72 359	23 422	9 481	22 381	11 846	3 574	6 961	2 439	81 383

*Source:* Judiciary Statistics Department.

### Article 12

184. As mentioned above, article 22 of the Constitution guarantees Costa Ricans the right to enter the country and move freely within it.

185. In decision No. 4601-94, the Constitutional Chamber established that “article 22 of the Constitution declares the right of all Costa Ricans to leave Costa Rica, except in case of legal impediment, and to return when they see fit. Moreover, it expressly rules out any impediment preventing them returning to the country”.

### Article 13

186. Costa Rica has a long tradition of welcoming asylum-seekers and refugees. Costa Rican law does not differentiate between the rights of nationals and non-nationals, regardless of their migration status. The law applies equally to all in respect of both rights and duties. Even when an individual is not entitled to be in the country, their human rights can still be protected and safeguarded, including the rights to physical integrity, respect for human dignity and medical care.

187. The State guarantees the full protection of refugees, as demonstrated by the renewal of the Refugee Insurance Agreement between the Costa Rican Social Security Fund (CCSS) and the Office of the United Nations High Commissioner for Refugees (UNHCR) in March 2006. This agreement guarantees full medical care in Costa Rica for all persons with this legal status.

188. In order to ensure that migrants are treated with respect and their rights fully observed, the forces of law and order, and particularly the Immigration Police, receive ongoing training on specific subjects such as respect for the human rights of migrants, in order to raise awareness and ensure that they act within the framework of the law.

189. In addition, as part of an inter-agency cooperation arrangement between the Ministry of Labour and Social Security and United Nations agencies (International Organization for Migration (IOM), UNHCR, International Labour Organization (ILO)), workshops on migration issues are given for labour inspectors, CCSS and the Migration and Aliens Office. In 2005 six workshops took place around the country.

190. Costa Rican immigration policy has been strongly influenced by Constitutional Chamber case law. The court has ruled on such issues as the temporary detention of foreigners; the issuance of visas in cases of marriage by proxy; rejection; the deportation of foreigners with links to Costa Ricans; the issuance of residence permits, and the right of appeal in respect of residence permits, temporary permits or visas. This has somewhat hindered attempts to shape a comprehensive migration policy with provision for all possible scenarios, as these are as varied as the aspirations of the individuals concerned.

191. Recently, the Migration and Aliens Office approved, by executive decree, a series of actions to standardize national migration policy. Costa Rica receives among the highest number of immigrants in the world for a country of its size and capacity and it had become necessary to reorganize the migration management system in order to regulate the growth of the foreign population resident in the country and to address the persistent pressure of illegal immigration and the steady increase in new inflows.

192. The Government has acted sensitively and responsibly, making clear efforts to give Costa Rica a migration policy grounded in law, that will permit more effective responses to the problem of migration while fully respecting the human rights and dignity of individuals and recognizing and encouraging orderly international migration as an important factor in development, while at the same time establishing effective mechanisms to prevent and discourage disorganized illegal movements and punishing practices that encourage illegal immigration and non-compliance with social legislation.

193. The policies applied by the Migration and Aliens Office have inevitably resulted in a selective approach to admission and residence of foreigners, with restrictions in areas such as marriage by proxy, applications for refugee status, residence and temporary residence, the issuance of visas under the consultation procedure, deportations under articles 49, 50 and 118 of the Migration and Aliens Act, the narrow definition of assisted immigrant under article 35 (a) of the Act, and many other situations requiring administrative decisions.

194. To meet these new needs the Government submitted a new Migration Bill to Congress (Legal Affairs Commission file No. 14,269). The bill has now been passed and will enter into force on 12 August 2006.

195. The bill was subjected to a constitutional review and in its judgement No. 2005-09618 the Constitutional Chamber ruled that there was only one unconstitutional aspect, in article 67, which read as follows:

“Article 67. Where a foreigner requests entry or residence for proxy marriage to a Costa Rican national, evidence of conjugal cohabitation for a minimum of one year outside Costa Rica must be provided. Moreover, where residence is requested, the said marriage shall be duly inscribed in the Costa Rican Civil Register. Conjugal cohabitation shall be understood for the purposes of this Act to be a stable union of spouses who form a basic social unit and who openly live together in an exclusive relationship under the protection of the State.”

196. According to the Constitutional Chamber, “the only unconstitutional element in respect of the criteria for establishing marriage by proxy is the requirement for the Costa Rican spouse to have lived in a conjugal relationship for one year outside the country; this infringes the principle of free will and also, indirectly, the prohibition contained in article 32 of the Constitution, by requiring that the Costa Rican national should have had a conjugal relationship outside the country for not less than one year. It also violates the constitutional principles of reasonableness, rationality and proportionality”.

197. In September 2005 an executive decree was approved to reform the current regulations of the Migration and Aliens Act.

### **Migration and Aliens Act**

198. Among the most important aspects of the new law are the criminalization of migrant smuggling (“coyotaje”), the regulation of arranged marriages between foreigners and Costa Ricans to enable foreigners to obtain residence in Costa Rica, and the ban on foreigners entering the country if they have been convicted of sexual offences, exploitation of minors, homicide, genocide, tax evasion or trafficking in arms, persons, cultural, archaeological or ecological heritage, or drugs.

199. Also prohibited from entering the country are foreigners who in the last 10 years have been imprisoned for intentional harm to minors or violence against women or persons with disabilities. Furthermore, the legal representatives of any international transport service that brings into the country a foreigner who does not meet the legal conditions are liable to a fine of between 3 and 12 base salaries i.e., between 333,000 and 1,332,000 colones - US\$ 672-US\$ 2,690.

200. The bill came in for strong criticism from certain sectors of society, including the Catholic Church, the Office of the Ombudsman and State universities, which asked the Legislative Assembly to refer it back to a special joint commission to correct or clarify a number of aspects that, in their opinion, “were contrary to human rights”.<sup>19</sup>

201. These groups criticized what they saw as the use of inappropriate terminology (they wanted to replace the term “illegal” by “irregular”) and claimed that the principle of due process was violated inasmuch as there was no provision for appealing against rulings affecting migrants. For example, under the new law, the police can turn back illegal immigrants within 50 km of the border, and there is no administrative procedure for appealing this decision.

202. They also stressed that there was no provision for the illegal migrant’s family and no mention of setting up any centres to house them or of involving the National Child Welfare Agency (PANI) in the case of minors. The Catholic Church was also concerned at the provision to punish anyone sheltering illegal residents, particularly where it was a matter of humanitarian assistance.

203. In its annual report 2004-2005, the Office of the Ombudsman listed a further series of points or situations that in its opinion the bill failed to address, including the right to judicial review of Migration and Aliens Office rulings, the fundamental right to personal freedom, the need for maximum detention periods and effective judicial safeguards and the alignment of the law with international human rights protection standards.

204. The Office of the Ombudsman believed new legislation on migration was clearly necessary, but “underlined the need for this effort to be part of a comprehensive approach that incorporates the human rights perspective throughout the new legislation and migration policy: it is not enough to make passing reference to human rights in a few articles of the bill”.

205. Nevertheless, the Government has made it clear on several occasions that this Act has been subject to thorough legal analysis and constitutional review and meets all the requirements of a legal instrument reflecting the situation in a country like Costa Rica, which is a net receiver of migrants.

#### **Article 14**

206. As mentioned in the fourth periodic report, the Code of Criminal Procedure (Act No. 7594, in force since 1996), duly regulates the main elements of article 14 of the Convention, and each paragraph of this article has a counterpart in domestic law.

207. The Code of Criminal Procedure establishes various procedures: the regular procedure, the summary procedure (the Public Prosecutor’s Office and the complainant agree and the accused admits the charges and accepts this procedure), the procedure for complex cases and the procedure for minor offences.

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<sup>19</sup> Office of the Ombudsman, *Annual Report 2003-2004*.

208. The Code of Criminal Procedure provides for the remedies of review and appeal. The former applies to rulings and judgements that resolve procedural matters without a hearing. The right of appeal applies to proceedings for minor offences, the execution of sentences and rulings by preparatory and intermediate procedure courts, provided they have been declared appealable, cause irreparable harm, bring proceedings to an end or make it impossible for them to continue.

209. The Code also provides for applications for judicial review (cassation) when a ruling fails to apply or misapplies a statutory provision.

210. In November 2005 Constitutional Chamber decision No. 16776-05 rejected an action challenging the constitutionality of articles 410, 411, 443, 444, 447 and 450 of the Code of Criminal Procedure, on sentence review, on the grounds that they contained a series of limitations making it impossible to appeal sentences, thus violating the American Convention on Human Rights.

211. With regard to statements, domestic law establishes that the accused must always have freedom of movement when making a statement, and restraints shall not be used except when absolutely indispensable to prevent escape or injury to other persons. Statements must be made only in the presence of persons authorized to attend, or in public when the law so permits (Code of Criminal Procedure, art. 97).

212. With regard to the taking of evidence, in decision No. 8591-02 on a constitutional review, the Constitutional Chamber ruled that “articles 422 and 444 of the Code of Criminal Procedure are not unconstitutional to the extent that they are interpreted, in the light of article 41 of the Constitution and international human rights law, to mean that it is also admissible for a victim to appeal in cassation against a judgement ordering suspension of the proceedings to allow the accused a period of probation”.

213. With regard to interpretation, the Code of Criminal Procedure<sup>20</sup> contains a series of provisions guaranteeing the right to an interpreter during the hearing when the person does not speak the language in question.

214. In order to ensure specific treatment for indigenous matters, the Supreme Court has set aside a post for a special Attorney for indigenous affairs, who will have jurisdiction throughout the country. A corps of indigenous-language interpreters has also been established and may be called upon by trial courts, depending on the circumstances.

215. In order to guarantee equal access to courts and in particular to take account of the indigenous worldview in cases to be tried, the Supreme Court instructed judges, in circular No. 20-2001, to consult with indigenous peoples on all cases brought before them before handing down a ruling.

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<sup>20</sup> Code of Criminal Procedure, arts. 14, 130 and 131.

216. Circular No. 20-2001 reads as follows:

“Subject: Use of interpreters where necessary and duty to consult with the indigenous community regarding the scope of the dispute before the court.

The civil and criminal courts of Costa Rica are hereby notified that:

At its session No. 5-2001, held on 16 January 2001, article XXXI, the Higher Council of the Judiciary decided to inform you that, in cases where the use of an interpreter is necessary, one must be appointed to assist as required for effective implementation of article 339 of the Code of Criminal Procedure.

The Council also decided to inform you of the court’s duty to consult with the indigenous community concerning the scope of the dispute before it, particularly where internal matters are normally resolved by customary law courts, chieftaincies or development associations.

San José, 5 March 2001.”

217. With regard to the right to legal aid, article 39 of the Constitution and articles 12 and 13 of the Code of Criminal Procedure provide that all parties to the proceedings have an inviolable right to a defence and that, save where excepted, the accused shall have the right to intervene in procedures to introduce evidence and to make any requests or comments they see fit.

218. Moreover, from the moment criminal charges are laid<sup>21</sup> until the sentence has been served in full, it is imperative that the accused be entitled to qualified legal aid and counsel. To that end they may designate counsel of their own choosing but, if they do not do so, a public defender will be assigned. The Code establishes that the right to a defence cannot be waived.

219. The Constitutional Chamber has considered the right to legitimate defence. In decision No. 1003-06, the Chamber upheld a remedy of *amparo* to grant permission to a defence lawyer to visit his client in the prison where he was being detained; authorization had been withheld for lack of documentation, thereby violating the right to a defence.

220. The Chamber currently has before it a constitutional challenge (file No. 13684-05), against what the applicant describes as “the consistent case law of the Criminal Court of Appeal, rejecting appeals in cassation out of hand”.

221. In its 2004 report the Office of the Ombudsman referred to several cases in which its intervention ensured compliance with due process, particularly in the administrative sphere, and thus the full exercise of rights.

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<sup>21</sup> In accordance with article 13 of the Code of Criminal Procedure, the first step in any proceedings shall be understood to be any judicial or police action that identifies a person as the possible perpetrator of, or accessory to, an offence.

222. A case in point is described as follows: “A citizen informed the Office of the Ombudsman that his son required medical treatment abroad following an accident. In order to pay for part of the relevant medical costs, he submitted to the National Insurance Institute the documentation required to claim payment under the group travel insurance policy he had taken out with the Institute in case of such an accident. To his surprise, his claim was denied based, in his opinion, on facts that were not verified by the Institute. The Office of the Ombudsman asked the Executive President for a report on the insurance cover and the grounds for rejecting the claim. The Institute replied that the Ombudsman’s account showed that the case was covered, since it provided facts not included in the administrative file.”

### Article 15

223. Article 1 of the Criminal Code clearly re-establishes the principle of legality, i.e., the principle that “no-one may be punished for an act not regarded as punishable under criminal law or subjected to punishment or security measures not previously established by law”.

224. Articles 12 and 13 of the Criminal Code provide that if, after an offence has been committed, a new law is adopted that is more favourable to the prisoner, it will immediately be applied in their favour.

225. In its decision No. 6273-96, the Constitutional Chamber ruled that “article 39 of the Constitution establishes, inter alia, the requirement of law in respect of offences, negligence and misdemeanours, meaning that the law is the sole source of crime and punishment. This guarantee is incomplete if it is not accompanied by a definition of offences, i.e. the characterization of criminal conduct in provisions describing what constitutes each offence. For this law to be an effective guarantee for citizens it must also predate the offence: as the Latin adage puts it, ‘*nullum crimen, nulla poena sine praevia lege*’”.

### Article 16

226. With regard to recognition as a legal person, article 36 of the Civil Code provides that legal capacity is absolutely and generally inherent in everyone throughout life. With regard to natural persons it is modified or restricted in accordance with the law by their civil status, their capacity for discernment and understanding, and their legal incapacity; and with regard to legal persons by the legislation that governs them (amended by Act No. 7640 of 14 October 1996).

227. Chapter II of the Children and Adolescents Code<sup>22</sup> recognizes various rights of the person, such as the right to an identity, to integrity, to privacy, to honour and to one’s image.

228. As a complement to this Code the Responsible Paternity Act (Act No. 8101) was adopted on 27 March 2001. Its aim was to provide mothers with the possibility of assigning paternity through an administrative procedure that would be quicker and less costly than a judicial procedure, thereby complying with the constitutional requirement for prompt and full justice. Its

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<sup>22</sup> Defence for Children International, *The Children and Adolescents Code*, 1998.



adoption represented one of the most important legal advances in recent years and has already helped extend the rights of women and children and reduced the prevailing asymmetries between the experiences of motherhood and fatherhood.

229. In this administrative procedure the mother informs the registry office of the identity of the child's biological father and if the time limit expires without objection from the alleged father the child will automatically bear his surname. If the father does not report for a DNA test the mother may apply to the court on the child's behalf and will be granted all rights such as maintenance, education, recreation, medical care, clothing and, most important of all, the establishment of filiation.

230. In its 2004 report the Office of the Ombudsman stated that some administrative problems persist owing to unjustified delays in notification by the registry office. Notice is served through the Post Office but the Ombudsman had been told of one case in which the Post Office took several months to serve notice, seriously delaying the child's registration under the father's surname. The Supreme Electoral Tribunal was therefore recommended to revise the terms of the arrangement between the registry office and the Post Office in order to avoid undue delays.<sup>23</sup>

### **Article 17**

231. The principle of this article is reflected in article 23 of the Constitution, which establishes that "the domicile and all other private premises of the inhabitants of Costa Rica shall be inviolable. However, they may be searched under written warrant from a competent judge, either to prevent an offence being committed or going unpunished or to prevent serious harm to persons or property, as provided by law".

232. Constitutional Chamber case law holds that "article 23 of the Constitution establishes that the private premises of citizens are inviolable except in cases expressly authorized by law and under a written warrant issued by a competent court. Entry to a person's home must only be effected in exceptional cases, with the intervention of the administrative police as requested by the court, and in the presence of the judge. When the judge cannot attend or take part in a house search the task can be delegated to the judicial police, but only in cases where there is proper justification for such absence, since the court is responsible for the conduct of such operations".<sup>24</sup>

233. In terms of specific cases, the Constitutional Chamber has handed down many rulings on the application of this article. One example is decision No. 13417-05, in which the Chamber upheld an appeal against inclusion on a criminal record of a sentence the person had served over 10 years previously, and which had apparently not been expunged because the full sentence had not been served. The judgement ordered the Head of the Archive and Judicial Register "to take immediate steps to remove the entry containing the judgement against the applicant, handed

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<sup>23</sup> File No. 17752-21-2004.

<sup>24</sup> See Constitutional Chamber decisions No. 2929-96 and No. 5903-94.

down by the third Higher Criminal Court of San José, Section II, in respect of which the sentence was declared extinguished by ruling of the visiting magistrate of the first San José district circuit court at 10.40 a.m. on 21 June 2004”.

234. According to judiciary statistics, one appeal in cassation for unlawful entry was made to the Third Division of the Supreme Court in 2004.

### Article 18

235. The Constitution duly guarantees the right to freedom of thought, conscience and religion, as stated in the previous report.

236. Regarding paragraph 16 of the Committee’s comments,<sup>25</sup> the Government would like to repeat that everyone in Costa Rica may fully exercise their right to freedom of conscience. Costa Rica has an established religion under article 75 of the Constitution, but this does not limit the free practice of other religions if they do not run counter to general morality or decency.

237. In the last 30 years some 20 per cent of the population has turned to religions other than Catholicism, particularly Pentecostal denominations, yet no sector of the population has found its religious practices restricted by the State.

238. The Constitutional Chamber has rejected a number of constitutional challenges to article 75 of the Constitution based on its recognition of Catholicism as the State religion.<sup>26</sup> In particular, decision No. 3173-93 stated that “article 75 must be interpreted not as an indication that the Constitution is biased in favour of a particular religious faith, but as reflecting a social reality by making explicit reference to what is undoubtedly the most deep-rooted and widespread faith in Costa Rica; this in no way implies any discrimination by the authorities against those who profess other faiths or no faith ... The constitutional obligation is to facilitate religious education in public schools”.

239. A clear example of full freedom of religion is decision No. 8557-02, in which the Constitutional Chamber upheld an application for *amparo* alleging that a school did not allow children to move on to the third year because they had not studied Christian ethics in the second year owing to their religious convictions.

240. Furthermore, special legislation such as the Income Tax Act (art. 3 (b)) states that bodies exempt from tax include “religious institutions of any faith, in respect of income acquired in order to maintain the faith and for any non-profit social services they may provide”.

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<sup>25</sup> See CCPR/C/79/Add.107.

<sup>26</sup> See decisions Nos. 7455-05 and 3173-93.

241. With regard to the teaching of religion, it must be stressed that the education system comprises State schools, private schools, both secular and religious, and semi-State schools, i.e. private but with State subsidies. In the last category, both Catholic and Protestant schools have benefited from State aid for their running costs and to pay staff salaries.<sup>27</sup>

242. Protestant semi-State schools are allowed to choose suitable people to teach religious education. All teachers of religion in these schools are Protestants.

243. The traditional Protestant churches founded during the Reformation in the sixteenth century developed very slowly in Costa Rica and most of their members were emigrants. The institutional, theological and hierarchical structures of the Anglican, Baptist and Methodist churches in Costa Rica are fully recognized. In 1967 the traditional churches had 14,200 members (1.8 per cent of the total population at the time). Nowadays, the Protestant Church accounts for around 20 per cent, but this increase has come not from the traditional churches but from Pentecostalism, which originated in the United States of America.

244. According to recent research there were 230 Pentecostal church associations in Costa Rica in 2001, with 2,779 local congregations.<sup>28</sup> The principal characteristic of these churches is their fragmentation, and their absence of hierarchical structure or recognized authorities, combined with full powers of negotiation.

245. In practical terms, this means that it is impossible for the State, if requested, to provide funding to such a large number of religious associations, which have few pupils per classroom, for whom it would have to hire a disproportionate number of teachers. Moreover, in practice it would be impossible to monitor the multitude of religious studies programmes such a large number of denominations would produce.

246. On 2 February 2005 a framework cooperation agreement for an initial period of five years was signed by the Ministry of Education and the Episcopal Conference, by which both institutions undertook to intensify their efforts to improve the quality of Costa Rican education, with an emphasis on “formative values and aspects and the need to implement actions targeting the population living in rural areas, marginal urban areas and in general, the poorest and neediest sectors”.<sup>29</sup>

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<sup>27</sup> The Methodist and Monterrey schools, both Protestant, receive State subsidies.

<sup>28</sup> See the report by the Latin American Socio-religious Studies Programme (PROLADES), San Pedro de Montes de Oca, September 2003.

<sup>29</sup> Ministry of Education - Episcopal Conference of Costa Rica, *Convenio Marco de Cooperación entre el Ministerio de Educación Pública y la Conferencia Episcopal de Costa Rica* (Framework cooperation agreement between the Ministry of Education and the Episcopal Conference), 2005, p. 2.

247. The agreement will allow the Ministry of Education to subsidize schools and educational projects in the national Catholic education system that provide services to, or target, rural or marginal urban areas, as part of its programmes aimed at ensuring quality education.

248. As has been said before, the Catholic Church, in its role as administrator of the religious education system, has always been a determining factor in Costa Rican national identity and culture and in strengthening the political system. Its basic premise and message in the education system have been essential to “people’s intellectual development and ethical, aesthetic and religious values and to the promotion of dignified family life, in accordance with Christian traditions and the civic values proper to a democracy”.<sup>30</sup>

249. Costa Rica does not discriminate against any religious denomination and treats all citizens with the utmost equality in religious matters. Costa Rica considers religion, including Catholicism, Protestantism, Judaism and Islam, to be a cornerstone of the nation. Indigenous religions, Afro-Costa Rican religions and those introduced by new migrants are now more highly valued. The country enjoys full religious pluralism.

### Article 19

250. With regard to freedom of expression, article 29 of the Constitution states that “everyone may communicate their thoughts verbally or in writing and publish them without prior censorship; they shall, however, be responsible for any abuses committed in the exercise of this right, as provided by law”.

251. There is abundant Constitutional Chamber case law on this right. In decision No. 429-06 on the right of correction and reply, the Chamber upheld an application for *amparo* asserting that the *Al Día* newspaper had published an article on page 3 of its Monday 12 December edition, entitled “Majority reject Rafael Angel Calderón”, which analysed the complainant’s intention to join the Unidad Social Cristiana (Social Christian Unity Party) election campaign and reviewed data from an opinion poll. Within five days of the date of publication he requested the right of reply, but this was not granted. In its judgement the Chamber ordered the newspaper to publish, within three days of notification of the ruling, the correction sent by the applicant to the newspaper on 14 December 2005 (p.7 of the file), with the exception of the question, “Would you accept an alcoholic who crawls in the gutter as editor of *Al Día*?”. The correction was to be published under the same conditions as the original article, i.e., the one published on Monday 12 December 2005, on page 3. The newspaper was ordered to pay costs and damages, to be settled through an enforcement procedure in the civil courts.

### Article 20

252. As indicated in reports to the Committee on the Elimination of Racial Discrimination,<sup>31</sup> article 276 of the Costa Rican Criminal Code provides that “anyone who publicly speaks in support of a crime or a person convicted of a crime shall be liable to one month to one year’s imprisonment or 10 to 60 days’ fine”.

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<sup>30</sup> Ibid., p. 6.

<sup>31</sup> See the eighteenth periodic report submitted in 2006.

## Article 21

253. Article 26 of the Constitution states that “everyone has the right of peaceful and unarmed assembly, whether for private business or to discuss political affairs and examine the public conduct of officials”. This right may be suspended only by Congress, by a majority of two thirds of all its members in the event of manifest public need.

254. Constitutional Chamber case law states that the right of assembly “and, in general, the right of participation in political and electoral processes are also subject to limitations imposed by the legislature, which is empowered under the Constitution to regulate the exercise of these rights, particularly when, as in the case under examination, the issue involves the essential defining characteristics of the judicial function of the State and the duties of the public servants who work for the judiciary”.<sup>32</sup>

## Article 22

255. Article 60 of the Constitution states that “both employers and workers may organize freely, for the exclusive purpose of obtaining and preserving economic, social or occupational benefits. Foreigners are prohibited from taking positions of leadership or authority in unions”.

256. The Criminal Code also provides for the offence of unlawful association (Title X, Offences against law and order). Article 274 states that “anyone who takes part in an association of two or more persons for the purpose of committing offences shall be punished by one to six years’ imprisonment solely on the ground of being a member of the association”.

257. The 2005 periodic report submitted to the International Labour Organization (ILO) by the Ministry of Labour and Social Security provided detailed information on the measures taken to implement the ILO Right to Organize and Collective Bargaining Convention, 1949 (No. 98), ratified on 2 June 1960.

258. One of the most important developments during the reporting period is the establishment of a round-table dialogue as part of the cooperation received by the Government from ILO, and as requested by ILO experts in 2004.

259. One important new legislative initiative is the bill on labour law reform, developed with the economic support of the Canadian Government through the project to strengthen governance in Costa Rican labour administration (FOALCO I), and implemented by the ILO subregional office for Central America with headquarters in Costa Rica.

260. The project aims to restructure judicial procedures, repeatedly highlighted as one of the causes of the delays so characteristic of the justice administration system. It is clear from the elements of current procedure (document-based, with a plethora of remedies and courts, and ignorant of the principles of immediacy and concentration), that reform of the judicial system is needed.

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<sup>32</sup> Constitutional Chamber decisions Nos. 6482-96 and 2883-96.

261. As well as an overhaul of the section of the Code dealing with the special labour jurisdiction, the reform will also involve changes in various areas of collective labour law: arbitrated settlement of legal labour disputes; simplification of direct settlement, conciliation and arbitration procedures applicable to social and economic conflicts within the labour sphere; introduction of a strike classification procedure and social and economic dispute settlement in the public sector.

262. The reform will also look at the problem of delays and the important Constitutional Chamber rulings on issues of collective labour law: strikes in essential services, limitation of labour rights and the constitutionality of collective awards and agreements in the public sector.

263. The proposed reforms are listed below.

264. It is proposed to reduce the percentage of workers required to call and support a strike. The Code requires 60 per cent, which has been found excessive and restrictive of the right to strike granted to workers in the Constitution. Based on the opinion of the ILO Committee on Freedom of Association, a percentage of this magnitude - and indeed the mere requirement of a majority of workers to call a strike - is unacceptable. The bill therefore proposes 40 per cent, which is felt to be appropriate in order to avoid restricting this labour right. Although there is as yet no consensus on this figure among the various actors, the Second Chamber of the Court has given its opinion that the proposal of 40 per cent best meets the relevant requirements and it will thus be maintained.

265. The proposal reaffirms workers' right to strike and establishes that they shall exercise it through trade unions or, where no one belongs to a trade union, or there are insufficient workers to form a union, through temporary associations. This is important as it gives the union the proper legitimacy to exercise collective rights, not only through concrete action but also by seeking solutions through direct settlement, conciliation and arbitration.

266. It is established as a matter of principle that in case of a strike basic services may not be halted or disrupted. These are defined by constitutional case law as services whose disruption would threaten the rights to life, health and public safety; transport, if journeys cannot be completed; and loading and unloading operations in ports if these involve perishable goods or goods on which people's lives or health depend. The proposal states that any strikes that may affect the continuity of such services must be called by a trade union at least, or by an association of workers with known representatives, and that proper arrangements must be made in advance, with the intervention of the courts if necessary.

267. The system whereby in order to call a strike the conciliation process must first be exhausted will be maintained. However, prior classification is no longer required as it is a contradiction in terms, since it is impossible to classify an event that has not yet taken place, and amounts in effect to an authorization.

268. The concept of exhaustion of a legal strike is introduced, which is important because it permits forced arbitration: in effect all conflicts must have a civilized solution.

269. Regulations are established governing negotiated solutions such as arbitration, in economic and social disputes in the public sector, in a way that endeavours to reconcile the need for workers in that sector to have a peaceful disputes-settlement procedure with the need for respect for the principle of legality.

270. Arbitration is introduced as a right for workers in essential services, which is considered necessary to compensate for the restriction of their right to strike.

271. The bill puts forward many other innovative proposals for the special labour jurisdiction, some of the most important of which are described below.

272. A special procedure is proposed to guarantee due process and protect persons with special rights. These include pregnant or breastfeeding women, workers covered by trade union rights, victims of discrimination and, in general, any worker in the public or private sector who has special rights under the law or a collective agreement.

273. Collective procedures are simplified and a special strike-classification procedure is established.

274. The introduction of the principle of orality is one of the most important innovations, as it applies to all procedures and in turn makes it possible to apply other principles such as immediacy, concentration and publicity. It should be noted that article 422 of the bill expresses the principle as one of “mainly oral proceedings”, since the proposed system is not exclusively oral.

275. The Legislative Assembly is considering a number of bills to amend articles relating to the right to organize. These include bill No. 13475, amending various articles of the Labour Code (Act No. 2 of 26 August 1943) and articles 10, 15, 16, 17 and 18 of Decree Law No. 832 of 4 November 1949, as amended.

276. The Legislative Assembly is also considering bill No. 14542 on the adoption of the ILO Labour Relations (Public Service) Convention (No. 151), bill No. 14543 on the adoption of the ILO Promotion of Collective Bargaining Convention (No. 154), and bill No. 14730, amending article 192 of the Constitution to guarantee collective bargaining in the public sector.

277. With regard to restrictions on the right to strike, in decision No. 1998-01317 of 27 February 1998, the Constitutional Chamber declared paragraphs (a), (b) and (e) of article 376 of the Labour Code, and paragraph 2 of article 389, unconstitutional. All related to the ban on strikes in public services contained in paragraph 375 of the Code.

278. In this way the Government demonstrates its willingness to resolve pending issues concerning the implementation of ILO conventions ratified by Costa Rica. As can be seen, in Costa Rican legislation, the only area where the right to strike does not apply is essential services, in the strict sense of the term, i.e. those whose interruption could endanger the lives, the safety or the health of the population.

### Article 23

279. The family is one of the cornerstones of Costa Rican society and the 1949 Constitution made this clear by establishing that “the family is entitled, as a natural and fundamental element of society, to special protection from the State. That right shall be equally enjoyed by mothers, children, the elderly and the sick and the destitute”.

280. To strengthen this protection Costa Rica possesses wide-ranging legislation and the State, through its institutions, is promoting a raft of public policies designed to protect the institution of the family and the values of society.

281. The Constitutional Chamber has indicated in its rulings “its interest in maintaining the family unit as far as possible, since it is the foundation of Costa Rican society”.<sup>33</sup>

282. 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. It rejected an action challenging the constitutionality of articles 23 and 24 of the Family Code on the grounds that they did not allow ministers of other religions to perform marriages having civil effect.

283. An important point to be considered is the situation of prisoners’ families. Within the Ministry of Justice there is a special section responsible for strengthening the ties between prisoners, their families and the social environment. The basic aim of this Community Service is to ensure that the needs of the prison population with regard to family and other external sources of support are met, enabling them to maintain their family ties during their stay in prison.

284. When a prisoner is first admitted, the Service is required to ascertain which close family members they will need to keep in touch with through general visits, children’s visits (in accordance with the Regulations on Visits to Prisons in the Costa Rican Prison System) or conjugal visits, in accordance with the Regulations on the Rights and Duties of Prisoners.

285. The Service must also identify personal and family resources, for referral to welfare institutions when required, in respect of accommodation, food, health, education, assistance in cases of domestic violence, and possibly also social studies for technical cooperation with embassies providing consular assistance and “social” visits to prisoners from that country.

286. Individual support focuses on prisoners’ social needs, which are understood not merely as deficits but as human and collective potential.

287. Family support takes as its starting point the central role played by the family in building identity and self-awareness and in providing space for primary socialization, all of which are fundamental to human growth.

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<sup>33</sup> Decision No. 2159-91 of the Constitutional Chamber.



288. The evaluation therefore seeks to identify patterns in the relationships between family members such as expressiveness, forms of behaviour and feelings towards others; networks of formal and informal communication in the family; who provokes conflict; how actions are performed; how and by whom domestic chores are done; where the power lies; who takes the lead; and how conflict situations can be defused or solved.

289. Social studies of families and referral or support resources are vital in determining whether a prisoner can be placed on a less restrictive regime.

290. For such a regime to be granted, it is necessary to be aware of the social structure of the family, their power relations and patterns of interaction and communication, their interests and wishes, the positions of the family members, their resources, their limits, and their strengths and weaknesses; as well as the family's relations with the outside world - the community, organizations and institutions, and its place in the course of everyday life.

291. This is established through home visits, which make it possible to conduct the social study needed to determine or obtain the regime sought by the prisoner, most commonly release on parole or a change of security rating.

292. At the institutional level (i.e. in closed prisons), the following steps are taken to maintain family ties:

(a) Social evaluation with a view to allowing general visits from minors. The priority is to identify security risks and ensure the protection of children and adolescents;

(b) Social evaluation with a view to allowing conjugal visits. The priority is to identify risks to personal or institutional safety;

(c) Evaluation with a view to allowing release in emergency situations arising from sickness or death of a family member related by blood in the first degree;

(d) Evaluation with a view to allowing special visits to the prison owing to family emergencies.

293. At the semi-institutional and community levels (i.e. semi-open and open prisons), the family approach is implemented through community and workplace support in coordination with governmental and non-governmental bodies. This work has been designed as a community networks project, the main outcome of which has been a labour exchange for prisoners in semi-open prisons.

294. As to juvenile detention, under the Juvenile Criminal Justice Act minors and young people are placed in family groups in an attempt to integrate them in an appropriate way into the family and the community. Alternative punishments include group treatment by problem: thus there are groups dealing with sexual violence and others with violence in general.

295. As part of this group approach socio-educational and therapeutic groups are formed, depending on the type of violence, in order to modify abusive conduct within families. Priority is given to cases involving violence within couples. Victims may also be referred to other external sources of institutional or non-governmental support.

296. In the assessment of the victim's situation, specific techniques are used to obtain information on their day-to-day environment. Contact is made with primary and secondary victims in order to understand what the person has to say through words, gestures and silence. For this it is necessary to listen, understand, analyse and interpret.

297. The aim of this assessment is to identify protective measures for victims once the prisoner is released, and it will also indicate the conditions the latter must meet to qualify for a more open regime.

298. The Community Service strengthens the development of prisoners' human potential - individual, family and collective - into life projects that give meaning and importance to social relationships and encourage social integration without falling back into crime.

### **Right to life**

299. With regard to the subjects of concern and the recommendations made by Committee members on the previous report, particularly in paragraph 11, the Government of Costa Rica would like to repeat that human life is inviolable, as guaranteed by article 21 of the Constitution.

300. In Costa Rican legislation human life exists from conception; article 31 of the Civil Code states "the physical person begins their existence when born alive and shall to all intents and purposes be deemed to have been born from 300 days before birth".

301. The Children and Adolescents Code establishes in article 12 that "minors have the right to life from the moment of conception. The State shall safeguard and protect this right by adopting economic and social policies that guarantee decent conditions for pregnancy, birth and the child's all-round development".

302. This point is essential to understand the legal and philosophical position of Costa Rica. Under no circumstances will our legislation permit abortion, as this would mean sacrificing a human life that has its own rights. This has been the position of the Government of Costa Rica in all international forums.

303. Nevertheless, Costa Rica is aware of the problem of illegal abortions and has taken a series of institutional measures to prohibit this practice and provide proper care for teenagers and women who find themselves in this situation.

304. The CCSS provides support in sexual and reproductive matters for anyone on request.

305. In 2003 the Ministry of Education issued a sex education policy that established an ideological and methodological framework for sex education, which is to be taught in primary and secondary schools from the preschool stage onwards.

306. This policy also governs activities planned in the area of sex education by State and private bodies.

307. In 2004 a proposal was made to reinforce sex education by including aspects such as interpersonal relations, aware and responsible fatherhood, planned pregnancy and other elements that help build a culture of peace.

308. In 2004 a strategic plan for the Inter-Agency Board on Adolescent Motherhood was devised in conjunction with the United Nations Population Fund (UNFPA), in order to coordinate preventive action and support for pregnant teenagers.
309. Another of the concerns expressed in the Committee's conclusions and recommendations is the question of official action to deal with commercial sexual exploitation of children (CCPR/C/79/Add.107, para. 18).
310. In very general terms, an inter-agency, intersectoral body was set up in 1996, which also included international and non-governmental organizations, in order to coordinate the response to this problem.
311. Subsequently, in 1998, the Children and Adolescents Code was adopted, establishing the National Council on Children and Adolescents as the body with overall responsibility for the national child protection system. The Council bestows political legitimacy on the National Commission to Combat the Commercial Sexual Exploitation of Children and Adolescents (CONACOES) established in 1996, which became one of the Council's special thematic commissions. Consequently, there is a permanent forum and political support for debate and coordination in this area.
312. In order to further strengthen CONACOES, in 2002 the National Council on Children and Adolescents arranged for it to have a secretariat within the National Child Welfare Agency (PANI), the lead agency in the area of children's rights.
313. CONACOES is composed of government institutions and non-governmental organizations, including: the San José municipal authority; the Paniamor Foundation; Defence for Children International; Alliance for Your Rights; the AIDS Foundation; the Rahab Foundation; the Costa Rican Association of Tourism Professionals; the American Association of Jurists; cooperation mechanisms such as the International Labour Office (ILO) and the United Nations Children's Fund (UNICEF); and all public institutions whose work is related in some way to children and which are members of the National Council on Children and Adolescents. These last are listed below for ease of reference.
314. The National Child Welfare Agency, whose work focuses on the protection and comprehensive, full and ongoing development of children and adolescents. It is the lead agency and guarantor of their rights, and lays down guidelines and develops special programmes to protect particularly vulnerable youngsters.
315. The Ministry of National Planning and Economic Policy guides, administers and coordinates the planning process in Costa Rica, which is based mainly on the national development plan and a global and strategic vision of society in the short, medium and long term.
316. The Ministry of Labour and Social Security ensures that labour regulations for 15 to 17-year-olds comply with the Children and Adolescents Code.
317. The Ministry of Public Security corrects situations where minors are exposed to great physical danger.

318. The Ministry of Education devises strategies to prevent expulsion from school and ensure access to formal education for all minors.

319. The Ministry of Health safeguards and guarantees access to public health services for all children and young people.

320. The Ministry of Justice is responsible for measures relating to the prevention of violence and crime and the administration of juvenile justice.

321. The Inter-Agency Institute for Social Assistance provides assistance to poor and extremely poor Costa Rican families.

322. The National Institute for Women (INAMU) works to prevent domestic violence and sexual abuse in general.

323. The Costa Rican Social Security Fund (CCSS) is entrusted with ensuring the physical and psychological welfare of minors.

324. The National Training Institute (INA) offers training and vocational courses for young people to facilitate their entry into the labour market, and provides hand tools to encourage private enterprise.

325. Other participating bodies are: the Association of Private Institutions for Children and Adolescents (UNIPRIM); the Costa Rican Federation of Non-Governmental Organizations for the Defence of Children's Rights (COSECODENI); the National Council of Public University Rectors (CONARE); and employers' and union representatives.

326. Guest members include: the president of the Council of Young Persons; the prosecution service's young offenders unit; and members of political parties represented in the Costa Rican parliament.

327. As regards the economic exploitation of children, including child labour, detailed information was provided during the Government's presentation of Costa Rica's third periodic report to the Committee on the Rights of the Child in March 2003 and in the subsequent reports submitted in recent years. In Costa Rica, such activities are considered offences, not work.

328. The following measures have been taken recently to supplement these policies and initiatives.

329. Adoption of the second National Plan of Action for the prevention and eradication of child labour and the special protection of juvenile workers (2005-2010) which was a priority of the National Steering Committee for the Prevention and Progressive Elimination of Child Labour and the Protection of Juvenile Workers.

330. The National Child Welfare Agency, through its local offices, monitors and provides assistance in cases involving child labour; the offices take protective measures designed to put a stop to this kind of work and request the Inter-Agency Institute for Social Assistance to provide financial assistance. Furthermore, the Ministry of Education and the National Training Institute conduct educational and training programmes for both minors and adults.

331. In 2005 a plan was drawn up to give staff from regional and local offices training in the concept of child labour and on the institutional protocol (developed by the National Child Welfare Agency) and the inter-institutional protocol (developed jointly by the Inter-Agency Institute for Social Assistance, the National Training Institute, the Ministry of Education, the Ministry of Labour and Social Security and the National Child Welfare Agency). The inter-institutional protocol aims at expediting coordination in the processing of cases. It is further planned to launch prevention campaigns and projects in priority cantons, as well as national campaigns.

332. The work carried out by the Ministry of Labour and Social Security is particularly noteworthy: the Ministry currently runs a programme to train its labour inspectors in the elimination of child labour and the protection of young workers. Representatives of the National Child Welfare Agency, the National Training Institute, the Ministry of Education and the Inter-Agency Institute for Social Assistance have addressed participants to inform them of the contribution made by each institution in this area.

333. In Costa Rica, commercial sexual exploitation is defined as any type of sexual act performed with a minor in exchange for money or gifts. Full details can be found in the initial report of Costa Rica on its implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.<sup>34</sup>

334. The definition of the term “sexual act” in the pertinent legislation also covers pornography, both the use of minors in the production of pornographic material and the act of exposing children and adolescents to pornography. The possession of pornographic material is not currently a criminal offence, but a bill to criminalize possession is currently before the Legislative Assembly.

335. The National Commission to Combat the Commercial Sexual Exploitation of Children and Adolescents and the National Child Welfare Agency have launched large-scale campaigns to raise public awareness of the consequences of commercial sexual exploitation and to publicize the pertinent legislation. Measures have been taken to give parents greater control over their children’s access to the Internet and the authorities have taken steps to regulate the presence of children in public places with Internet access, such as Internet cafes and video game arcades.

336. Strict controls have been introduced in the tourist sector and partnerships have been formed with hotel owners, networks of taxi drivers and other stakeholders.

337. However, there are still regular complaints of adults engaging in the commercial sexual exploitation of minors. The practice of purchasing sexual services from minors is widespread and enjoys tacit social acceptance, as shown in a recent study on adult men’s views of sexuality and their relations with minors.

338. The study revealed that men think it normal to engage in paid sexual relations with individuals who have reached physical sexual maturity.

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<sup>34</sup> CRC/C/OPSC/CRI/1.

339. Given the above, the authorities have decided to change their approach to ensure that awareness campaigns stress that engaging in such acts constitutes an offence and is liable to severe punishment. There is also a need to use more explicit language. The study revealed that the general public does not have a clear understanding of the term “commercial sexual exploitation”, which is associated with the failure to pay for sexual services. The study found that adults consider that they are not exploiting the minor if they pay for the services rendered.

340. While much has been done in this area, more significant changes will only be seen in the medium and long term once a new model of sex education being introduced in schools has begun to have an effect. This model is based on a holistic approach to sexuality, which is quite unlike the approach known to the generations that now provide the ill-named “clients”.

### **Domestic violence**

341. Violence against women in Costa Rica has claimed the lives of an average of two women a month in the last 10 years - women killed either by someone they know or by a stranger.

342. Statistics show that the number of complaints of domestic violence has increased considerably in the last five years: 32,643 cases came before the competent courts in 2000 and 43,929 in 2001.

343. In 2002 the 911 and 800-300-3000 (“Break the Silence”) telephone lines received over 70,000 calls and the Women’s Delegation and the INAMU gender violence section dealt with 5,404 women; 26 women died from domestic violence in 2002 and 28 in 2003.

344. In a study of domestic violence carried out in 2004, 58 per cent of Costa Rican women stated that they had been subjected to violence of some kind.<sup>35</sup> The survey showed that the worst affected age group is women aged between 25 and 49. Only 10 per cent of victims had reported the violence; among the reasons given for not reporting it were fear, lack of confidence in institutions and procedures and the fact of being dependent on the perpetrator.

345. Domestic violence is a significant cause of disability and death among women of child-bearing age. In addition to physical sequelae such as cuts, bruises, fractures, hearing loss, detached retinas, sexually transmitted diseases, miscarriages or even foeticide, conditions such as hypertension, diabetes, asthma and obesity can arise as a result of chronic stress. Physical abuse often goes hand-in-hand with emotional abuse, which gives rise to frequent headaches, sexual dysfunction, depression, phobias and long-lasting fears.

346. In order to deal comprehensively with this problem, the Government has built up a system to monitor violence and sexual violence within the family thanks to a wide-ranging participatory process that resulted in the adoption and adaptation of international legal standards and instruments.

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<sup>35</sup> Study by the University of Costa Rica, 2004.

347. The standards of care for victims of sexual violence were developed and validated on the basis of official comments and interviews with emergency services at the third level of care. A strategy on standards of care has also been devised and is now being incorporated into agencies' human resource training programmes.

348. Progress is also being made on various other important fronts. A commission has been set up within the Ministry of Health to monitor and evaluate action to deal with domestic violence and with sexual abuse; national standards have been established for dealing with gender-based violence; networking strategies are being strengthened by involving a range of sectors and women's groups; and a proposal is being developed to deal with family violence that also addresses the mental health aspect.

349. Congress currently has before it a bill (No. 13874) to criminalize violence against women. It has in fact been before Congress for more than six years; it has been sent back to the plenary four times by the Constitutional Chamber on procedural and constitutional grounds.

350. As to substance, the bill aims to protect the rights of the victims of violence and to punish the various forms of violence against people - physical, psychological, sexual and material - and particularly violence against women, which is effectively gender discrimination within a power relationship. Such offences arise by definition only within a marriage or a de facto union, whether publicly acknowledged or not.

351. The Legislative Assembly also has before it bill No. 14883, on a national system for the treatment and prevention of domestic violence, which aims to establish a comprehensive system for the detection of violence within families and prompt support for victims.

#### **Article 24**

352. As mentioned previously, Costa Rica's Constitution fully guarantees the right to a name and a nationality. Costa Rican nationality can never be lost or renounced. Under the Constitution all matters relating to the registration of names and nationality are the jurisdiction of the Supreme Electoral Tribunal.

353. Applying this provision in its decision No. 299-N-2000, the Supreme Electoral Tribunal upheld an appeal challenging a denial of naturalization on the grounds that "for naturalization by marriage there can be no requirement to provide proof of moral rectitude or to meet the other criteria set forth in article 15 of the Constitution. Naturalization by marriage is, however, covered by article 15 of the Options and Naturalization Act, which establishes conditions under which the authorities may not under any circumstances grant nationality", namely that the applicant is a national of a country with which Costa Rica is at war, or has links with international drugs trafficking or has been found guilty of "social, political or religious agitation" (sic) (Supreme Electoral Tribunal; and Constitutional Chamber decision No. 5085-97, of 11.30 a.m., 29 August 1997).

354. A further impediment under article 15 of the Act is that "the applicant has, in another country, been found guilty of engaging in the above activities or of offences such as fraud, theft, arson or forgery of currency or bonds, or of offences of equal or greater gravity with reference to

the penalty established in the Costa Rican Criminal Code or in special legislation covering such offences ... For naturalization by marriage it is of no importance whether the party has committed a crime or offence in Costa Rica except insofar as it involves a link with drugs trafficking; agitation is not currently an offence under Costa Rican law and the other offences mentioned in the Act are of interest only insofar as they led to a conviction in another country. A broad interpretation of this provision is not acceptable in matters of this nature”.

### **Children of women deprived of their liberty**

355. With regard to the special problem of the children of women deprived of their liberty, the Buen Pastor prison runs a crèche that enables women prisoners to fully exercise many of their rights and fulfil their needs as women and mothers.

356. The crèche offers a programme of care for inmates’ children up to the age of 3, centred around antenatal and paediatric care, psychology, nutrition and early learning. The children are also able to take such opportunities and exercise such rights as are available to them within a structure such as the prison system.

357. The work being done to support the women prisoners includes, on the technical front, cross-disciplinary initiatives in areas such as education, work, living together, legal advice, the community, domestic violence, drug addiction, health and safety; this required a work plan allowing appropriate action to be taken to equip the women for their subsequent integration into society.

358. Under the plan, the women are continually encouraged to study and work and the Buen Pastor prison offers literacy courses, primary, secondary and university education and courses in English and the arts. There are also open courses in the areas of production, personal development programmes and prevention of addiction and addiction-related illnesses.

359. Lastly, Calle Real prison in Liberia, Guanacaste, runs a module for women designed to improve technical support and bring them nearer their families and homes; the prison maintains a unit for 30 women who have been placed in Calle Real for reasons of behaviour, length of sentence and place of residence.

### **Child labour<sup>36</sup>**

360. In response to the Committee’ s comments on the increase in child labour,<sup>37</sup> an estimated 113,523 children aged 5 to 17 (10.2 per cent) are working, 82,512 male and 31,011 female; 56 per cent of child workers are aged over 15.<sup>38</sup>

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<sup>36</sup> A detailed statement on this point was made by the Minister for Children and Adolescents during Costa Rica’ s presentation of its third periodic report to the Committee on the Rights of the Child in 2003.

<sup>37</sup> CCPR/C/79/Add.107, para. 19.

<sup>38</sup> Multi-Purpose Household Survey 2002.



361. Because they are at an educational and social and economic disadvantage, some 12,578 minors are employed in unskilled jobs, as street vendors and similar, shoeshine boys, etc.; 43.4 per cent work in agriculture, 9 per cent in construction, 21.7 per cent in business and 6.1 per cent in domestic service in other people's homes. Over 40 per cent of minors under 15 identified as working are unpaid and 42.3 per cent work 46 hours per week.

362. In addition, 55.9 per cent of those aged 15 to 17 work for no pay and 30,745 (62 per cent) of adolescents work 53 hours per week, far longer than the legally permitted working hours for this age group. Those in this age range who work and study (51.7 per cent) are behind with their education and 44.1 per cent have dropped out of school.

363. The State of the Nation Report gives a breakdown of child workers by age between 2001 and 2004 as follows:

Age Group	2001	2002	2003	2004
12-14	16 978	15 464	12 216	9 305
15-19	129 724	121 785	120 019	114 965

*Source:* Eleventh State of the Nation Report, 2005.

As to the legislative framework, adolescents' right to work is recognized under Children and Adolescents Code (Special Protection Regime for Juvenile Workers, arts. 78, 83 and 94), subject to the restrictions stipulated in the Code itself and in international agreements.

364. Costa Rica ratified the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182) in 2001. A series of internal decrees and regulations have since been adopted to implement the legislation in accordance with the Children and Adolescents Code.

365. Two plans have been launched to prevent and eliminate child labour, the National Plan for the Prevention and Gradual Elimination of Child Labour and the Protection of Juvenile Workers (1998-2002) and, more recently, the National Plan for the Elimination of Child Labour and Protection of Juvenile Workers (2005-2010)

366. In 2000 the role of the Ministry of Labour and Social Security as lead agency on child and juvenile labour was reinforced by the introduction of a national policy on the subject; among other initiatives, 80 training courses were organized which attracted 182 youngsters and 1,300 people from various communities, and 1,698 adolescents were brought back into the education system.

367. Action taken in 2001 included the revival of the National Steering Committee on the Prevention and Elimination of Child Labour and the Protection of Juvenile Workers in Costa Rica, the publication of two information bulletins on child labour, the strengthening of NGOs' capacity with the support of the ILO-IPEC programme, the promulgation of Executive Decree No. 29220-MTSS on the Regulations for Labour Contracts and Occupational Health Conditions for Adolescents, and the reintegration of around 1,600 youngsters into the education system, 834 of whom stopped working.

368. In 2002, among other initiatives, a compendium of labour law was compiled as part of the Child Domestic Workers Project; five radio programmes were produced with the aim of raising public awareness of the issue; a workshop on child domestic labour was organized for labour inspectors and 1,350 children returned to school.

369. In 2003, in accordance with ILO Convention No. 182, a series of training sessions were organized, an awareness-raising campaign was launched (“Act now, Costa Rica! Say no to child labour!”) and seven refresher workshops were held on juvenile labour law. In addition, assistance was provided to 4,290 child workers (support, advice and prevention).

370. In October 2003 an inter-agency commission was formed to begin drafting the current plan. The plan is firmly grounded in the domestic legal framework on child labour; taking a comprehensive approach, it defines public policy on the elimination and prevention of child labour, protection of juvenile workers and the restoration of the rights of child workers and their families, and provides guidelines for action in the various regions of the country.

371. The plan was adopted by the Inter-Agency Commission in 2004; organized in five chapters, it covers the statutory and conceptual framework; the results of a study of the current situation; policy; strategy, objectives, goals and programme-based action; and reflections and recommendations for monitoring, implementation and administration of the plan.

372. The plan takes a rights-based approach, in keeping with the guiding principles on the rights of children and young people, and incorporating the gender, life-cycle, risk and exclusion, and geographical diversity perspectives. It is an inclusive programme, addressing the specific characteristics of people with special abilities, migrant families and indigenous peoples.

373. The policies drawn up are general in nature and universally applicable, while the programme activities are selective so as to be sure of reaching families who have children who work. This targeted approach reflects the need for comprehensive models of support that will get results and provide an effective response to the multiplicity of causes and the multifaceted nature of child labour, and attempts to show that it is indeed possible to prevent and eliminate child labour, particularly in its worst forms.

374. The following are some of the measures being taken to prevent children’s early entry to the labour market and protect juvenile workers.

375. The Direct Support Programme for Juvenile Workers targets child workers and their families who are registered with the Ministry of Labour and Social Security. Working with other State agencies, the Ministry has provided, inter alia, financial support, house repairs, study grants and support in special situations. A total of 3,221 children received assistance under this programme in 2002, some 1,350 were reintegrated into school and 550 scholarships were awarded.

376. Another measure has been to evaluate the social and labour conditions of all the juvenile workers identified by the Labour Inspection Department, the Department of Labour Affairs or the Employment Department, or referred by other government and non-governmental agencies and organizations, or reporting directly to the Office for the Elimination of Child Labour and the

Protection of Juvenile Workers. A study was carried out for each individual looking, inter alia, into their working conditions, their return to school, protective measures and subsidies to their families.

377. The Ministry of Labour and Social Security and the National Scholarship Fund have set up a joint scholarship programme to provide child workers with more opportunities to return to school and stop working.

378. The Inter-Agency Institute for Social Assistance has also developed a programme (“We can do it!”) offering food support to extremely poor families with children at school. Beneficiaries undertake not to send their children out to work and encourage them to stay in school instead.

379. The Ministry of Education runs several programmes, including the Open Classroom programme, for those who never finished primary school, and a secondary-level programme “New opportunities for youth”, based on twice-weekly tutorials and leading to the school-leaving examination for mature students: students can proceed at their own pace, take the subjects they wish and prepare for the examinations as their own capacities allow.

380. With financial and technical support from IPEC-ILO, a set of projects on the elimination of child labour and protection of juvenile workers have been developed and implemented by NGOs and State and private agencies. The Office for the Elimination of Child Labour and the Protection of Juvenile Workers provides advice, supervision and follow-up for all national projects, as described below:

(a) Project on the elimination of the worst forms of child domestic labour: documents on the subject were prepared and published; the issue was publicized in the media; and minors in domestic service were identified and provided with direct support. Workshops were organized for educators, journalists, child workers and officials of NGOs and State and municipal agencies. Continuing assistance was also provided to the Child Rights Protection and Monitoring Network of the Canton of Desamparados;

(b) Limited-term project: under this project training was provided at the national level, principally for State and private-sector officials, and reinforcement and support offered to the National Child Welfare Agency and the Labour Inspection Department. Also under way is a programme of action to eliminate the worst forms of child labour in the Brunca region where, in coordination with other State agencies, direct support is being provided to 220 minors identified as in work, and awareness-raising and training have been provided in the various sectors represented on the Brunca Regional Development Board;

(c) Project on the elimination of child labour in the agricultural sector in Turrialba: the Office for the Elimination of Child Labour and the Protection of Juvenile Workers provided advice, training and direct assistance to the target group. With regard to training, workshops have been organized for municipal officials, district committees, juvenile workers, parents and community leaders. The second phase of the project, funded by IPEC-ILO and implemented by an NGO, Acción Solidaria, with support from the Ministry of Labour and Social Security, got

under way in June 2004 starting with the Education for Work programme, which provided vocational training and training in microenterprise start-up to 100 working youngsters aged over 15 who are excluded from the formal education system;

(d) “Solidarity in eliminating child labour in Costa Rica” (SOLETICO): this project is run jointly with the Central del Movimiento de Trabajadores Costarricenses (Costa Rican Workers’ Movement Confederation), with the Office for the Elimination of Child Labour and the Protection of Juvenile Workers providing training on child labour to all union members and advising on the preparation of all teaching materials;

(e) Teachers’ Network against Child Labour: run in coordination with the Sindicato de Trabajadores Costarricenses (Costa Rican Workers’ Union), this project aimed to provide training on child labour for teachers belonging to the union and to advise on the preparation of documents;

(f) The project on the elimination of child labour in Cuenca Savegre, in the Quepos y Pérez Zeledón region, provided assistance to 350 beneficiaries and their families. Training and direct support were provided.

381. The second National Plan for the Elimination of Child Labour and Protection of Juvenile Workers was officially launched in 2005: 101 training and awareness-raising initiatives were organized, attracting 3,019 participants; 556 scholarships were awarded to children; support was provided to 815 children in the form of advice on social and work problems; a forum entitled “The home, private sphere or place of work? Legal implications for the protection of child domestic workers” was organized and technical cooperation was provided in the preparation of a training manual for labour inspectors, funded by IPEC.

### Article 25

382. Costa Rica is a participatory democracy and on Sunday 5 February 2006, once again exercising their rights and obligations, its citizens elected a new President, Congress and local governments. All that was required in order to vote was to produce an identity card.

383. As described in previous reports, the Constitution and the Electoral Code establish various impediments to election to public office.

384. Although the voting system is not yet equipped with the technology to enable persons with disabilities to vote, and despite the fact that several *amparo* applications have been rejected out of hand by the Constitutional Chamber,<sup>39</sup> on polling day there were some polling stations with voting forms in Braille, provided by an NGO, which allowed persons with disabilities to cast a secret ballot and not have to vote in public as they have traditionally done in exercise of their right to vote.

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<sup>39</sup> Constitutional Chamber applications Nos. 16964-05 and 16241-05.

385. As to minority representation in the recent general elections, the presidential tickets included three members of the Afro-Costa Rican community, Ms. Epsy Campbell for Acción Ciudadana (Citizens' Action Party), Ms. Sadie Esmeralda Britton for Unión Nacional (National Union Party) and Mr. Howard Romper Blake for Fuerza Democrática (Democratic Force Party). Mr. Romper Blake also ran for Congress. Liberación Nacional (National Liberation Party) also fielded two Afro-Costa Rican women candidates in the Congressional elections in Limón province.

386. During the election period, the Supreme Electoral Tribunal adopted two telephone lines to enable even people with a hearing disability to check which polling station they were to use, by sending their identity card number in a text message.

387. Moreover, a national political party was formed with a platform of dealing with the problems of people with disabilities and one member of the party (non-sighted) was elected to Congress.

388. The final results of the February 2006 presidential elections gave Oscar Arias Sánchez (Liberación Nacional) as the winner with 664,551 or 40.92 per cent of the votes and a margin of 1.12 per cent over Ottón Solís (Acción Ciudadana, 39.8 per cent), the second narrowest majority in Costa Rican electoral history.<sup>40</sup>

389. It is interesting to note from the electoral roll that in the latest general elections there was a total of 2,550,613 voters, of whom 1,275,056 were men and 1,275,557 were women.

390. The total number of voters by province and the percentage of the overall total were as follows: San José, 936,826 (36.73 per cent); Alajuela, 465,871 (18.27 per cent); Cartago, 295,194 (11.57 per cent); Heredia, 245,993 (9.64 per cent); Guanacaste, 174,630 (6.85 per cent); Puntarenas, 231,511 (9.08 per cent) and Limón, 200,588 (7.86 per cent).

391. San José was the province with the largest number of registered voters (936,826) and Guanacaste the smallest (174,630). The canton with the largest number of voters was San José Central Canton (221,870) and the one with the smallest, San Mateo, Alajuela (3,451).

392. The country was divided into 1,955 electoral districts and there were 219,154 more voters on the electoral roll than in the December 2002 elections, an increase of 9.4 per cent. The province with the biggest increase in voters was Limón (11.45 per cent) and the one with the smallest, San José (7.45 per cent).

393. The abstention rate was 34.79 per cent overall, with the highest rate in Limón province (45.04 per cent) and the lowest in Cartago province (30.02 per cent).

394. One important aspect is indigenous peoples' participation in elections. For the recent February 2006 elections, the Supreme Electoral Tribunal set up a programme entitled "Equality

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<sup>40</sup> The narrowest majority occurred in the 1966 elections, when José Joaquín Trejos Fernández defeated the Liberación Nacional candidate Daniel Oduber by 0.96 per cent.

in the exercise of the right to vote”, which attempted to ensure full access to the electoral process for this group. One of the main components of the programme was a study in which various representatives of the indigenous communities took part, to identify the biggest problems standing in the way of indigenous participation in elections, their causes and possible solutions.

395. As a complement to this initiative, a leaflet entitled “Protocol for an electoral process accessible to indigenous communities” was prepared for use by election advisers in areas with indigenous communities. To facilitate voting, 25 polling boards were set up covering all the indigenous communities.

396. Another important event was the creation of the Commission on Indigenous Electoral Affairs, comprising agency officials and the National Commission on Indigenous Affairs (CONAI). The Commission’s task was to guarantee indigenous peoples’ enjoyment of their electoral and civil rights and fundamental freedoms in conditions of equality.

397. However, as mentioned previously, none of the national or local political parties included indigenous candidates on their lists. There is no record of any indigenous member of Congress in the history of Costa Rica.

398. As acknowledged in the State’s eighteenth periodic report to the Committee on the Elimination of Racial Discrimination,<sup>41</sup> Costa Rica’s senior administrative posts are insufficiently representative and there are few national institutions that have ever included members of the Afro-Costa Rican or indigenous communities. The Supreme Court still has no representatives of these minority groups and only one Afro-Costa Rican has succeeded in obtaining the rectorship of one of the four State universities.

399. As to Afro-Costa Rican women, mention should be made of the first Forum of Afro-descendant Women of Limón Province in August 2005. Organized by the National Institute for Women, this forum represented a strategic initiative to incorporate the diversity and opinion of Afro-Costa Rican women into the decision-making process.

400. The outcome of the forum is being incorporated into agencies’ approach to their work, but a series of proposals were also made, in presentations and discussions, to encourage legislative and institutional changes, such as reform of article 1 of the Constitution to recognize multi-ethnic and multicultural diversity, and of article 76 to respect the language, spirituality and religion of Afro-descendants.

401. An important event was the creation of the Black Parliament of the Americas during the Third Meeting of Parliamentarians of African Descent of the Americas, held in Costa Rica in early September 2005.

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<sup>41</sup> CERD/C/CRI/18, para. 455.

402. The Black Parliament was founded as part of a drive to promote an agenda of equity for 150 million people of African descent in Latin America and the Caribbean, in the framework of the follow-up to the Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

403. The aims of the Black Parliament will be basically to stop Afro-descendants being treated as if they did not exist in the political, economic and social spheres in the Americas, to combat all forms of racism and discrimination, to encourage initiatives to promote integration, human rights and gender equity, to promote political participation and the inclusion of Afro-descendants in all decision-making forums and to put forward proposals for development and economic integration for the Afro-descendant peoples.

### **Article 26**

404. As explained in detail in reports to the Committee on the Elimination of Racial Discrimination,<sup>42</sup> Costa Rica has an ample legal framework and institutional policies designed to guarantee full equality and the participation of all, without distinction of any kind that might violate human dignity. There are clearly still a certain number of problems, however, some structural, some cultural, which have made it difficult for minority groups to obtain full access to decision-making positions.

405. Mention should be made in this section of persons with disabilities, and in particular of the implementation of Act No. 7600 on Equal Opportunities for Disabled Persons, passed by Congress to help people with disabilities confront marginalization based on beliefs, practices, customs, norms and symbols that are deeply engrained in Costa Rican society.

406. As the Office of the Ombudsman pointed out in its 2004 report, the principle of equal opportunities is an overarching principle that should guide the State's efforts to ensure that the human rights of persons with disabilities are fully respected. Article 2 of Act No. 7600 defines equality of opportunity as "the principle of recognizing the importance of the individual's various needs; it is these needs that form the basis for social planning, so that resources can be deployed to guarantee that people have equal opportunities for access and participation under identical conditions".

407. Costa Rica has gradually become aware of the difficulties facing persons with disabilities, largely thanks to pressure exerted by the disabled themselves, either through administrative or judicial complaints or by other means. Agencies, too, have undertaken various initiatives to try to change the image of persons with disabilities, following models or approaches embodying the principle of equal opportunities; even so, attitudes that work against their full inclusion continue to prevail in the public sector. There is no doubt that it is a long and arduous task to change beliefs that have formed part of the collective consciousness for many years - a point that applies not only to persons with disabilities but also to many other marginalized groups.

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<sup>42</sup> See in particular the eighteenth report, submitted in 2006.

408. Awareness of the diverse needs of people with disabilities is a necessary condition to begin moving towards equal opportunities, but it is not sufficient to carry the process through. Planning, too, is vital. Progress towards equal opportunities does not happen by itself, it requires an act of will. So it is no accident that article 4 (a) of Act No. 7600 establishes as an obligation of the State “to include the principles of equality of opportunity and accessibility in the plans, policies, programmes and services of its institutions”. The principle of equality of opportunity should be a cross-cutting principle, to ensure that elements of our environment can be made to meet the needs of the group in question, not in piecemeal fashion but based on a comprehensive vision of all aspects of participation by the disabled.

409. In 2000, Presidential Executive Order No. 27, on public policy in the area of disability, was issued in accordance with transitional provision VIII of the Regulations to Act No. 7600. The Order instructs all State institutions to set up disability commissions to devise internal policies aimed at taking basic steps to provide access to information that is accurate, comprehensible and readily available, promoting a realistic and positive image of persons with disabilities, adapting physical spaces in accordance with the service offered and promoting financial assistance measures, among other things. In preparing such internal policies, each institution should engage people with disabilities in policy validation.

410. The institutional commissions undoubtedly have a vital role to play in mainstreaming equal opportunities for people with disabilities throughout State services and institutions.

411. Not all agencies yet have one of these coordinating bodies. Moreover, in many cases commission members have no power of decision and represent departments dealing with occupational health matters, which means the strategic vision required to improve service provision - and not just the working conditions of persons with disabilities employed in those agencies - is lost. As of 2004 49 commissions were registered with the National Council for Rehabilitation.

412. Among the reasons most commonly given for State institutions’ failure to comply with the law is the lack of sufficient public funding to meet the growing demand for services that are accessible to people with disabilities. Achieving equality of opportunity requires an investment of resources.

413. In 2006 the time limit set by transitional provision II of Act No. 7600 on Equal Opportunities for Disabled Persons for adapting public spaces - or private premises open to the public - to meet the access needs of persons with disabilities will expire. This deadline applies to buildings constructed before the Act was passed. Buildings constructed after 29 May 1996 should already comply with the accessibility specifications. Even so, despite the efforts of State agencies, it is thought that more still needs to be done to achieve full compliance.

414. The municipalities also have a part to play in improving access to physical spaces in their own cantons, for they are responsible for issuing building permits for construction in their jurisdictions and ensuring that public areas open to pedestrians, such as parks, roads and pavements, allow persons of restricted mobility to circulate freely; this applies especially to parks, which have a very important function as centres of social interaction.



415. Pavements are another urban space that should be accessible to everyone, including those with disabilities. Under the Municipal Code and the Building Regulations the owner of the adjacent building is responsible for constructing ramps on pavements. Municipalities have a duty to provide technical advice to ensure that ramps comply with current regulations.

416. The level of non-compliance means that the Office of the Ombudsman and the competent courts continue to receive a significant number of complaints about the barriers presented by architectural features of schools. The 2003-2004 annual report of the Office of the Ombudsman contained a major analysis of processes of inclusion that described students with disabilities enrolling in normal schools and requesting adaptation of the physical arrangements there. The Office of the Ombudsman recognizes the efforts made by the Ministry of Education, with private-sector support, but much work remains to be done.

417. The Office of the Ombudsman has also received complaints regarding poor physical access in hospitals. One example is the Rafael Ángel Calderón Hospital, which was built many years ago when accessibility did not need to be considered, even though many of its patients are less mobile. The relevant recommendations have been transmitted to the hospital.<sup>43</sup>

418. Most of these institutions have announced plans to make alterations, but the work will not be starting immediately and in some cases could go on beyond the deadline set in the transitional provision (May 2006).

419. In this regard, a recent Constitutional Chamber ruling instructed a municipality to make an immediate budget amendment or an extraordinary budget allocation so that the canton could provide, within six months of the ruling, pedestrian traffic lights and pavement access for persons with disabilities, coordinating as necessary with the Ministry of Works and Transport in respect of the traffic lights. The Office of the Comptroller-General of the Republic was also instructed not to approve the municipality's 2006 budget or any budget amendment if it did not contain the necessary appropriations for compliance with the ruling.

420. Turning to Committee members' comments in paragraphs 15 and 20 of the conclusions and recommendations on Costa Rica's fourth report, on discrimination in employment, it should be noted that the Ministry of Labour has a Gender Equality Unit to provide oversight and advice in this area.

421. Between 2001 and February 2006 the Unit dealt with a total of 57 calls on gender discrimination to its toll-free advice line 800-TRABAJO, as shown below.

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<sup>43</sup> See file No. 16887-22-2004.

**Gender discrimination  
March 2001-February 2006**

Year	Number of calls	Total
2001 <sup>1</sup>	47	47
2002	6	6
2003	3	3
2004	0	0
2005	1	1
2006 <sup>2</sup>	1	1
Total	58	58

*Source:* Ministry of Labour and Social Security, Gender Equality Unit.

<sup>1</sup> March-December 2001.

<sup>2</sup> January-February 2006.

422. The Unit also has dealt with 11 gender discrimination cases between 2003 and to date in 2006. In cases of this kind complainants are advised on their labour rights and where appropriate referred to other departments of the Ministry.

423. Gender discrimination is also one of the four topics taken up by the Unit in the external training talks on labour rights that it gives throughout the year. Sixteen talks on gender discrimination were given between May 2004 and March 2006, in various communities across the country, including Acosta, Puntarenas, Quepos, Heredia, San José Centro and Limón. They were attended by men and by women, from housewives to professionals such as doctors and psychologists; also women working as secretaries and accountants, and farmhands, drivers, gofers and electricians, as well as teachers and students from vocational training and parauniversity institutions. Training was also given to community workers working with pregnant teenagers or teenage mothers and with Colombian refugees.

424. The Unit also runs a series of projects that help directly or indirectly to counter gender discrimination. It is, for example, currently working on a proposal for research into working conditions and their impact on the lives of women in domestic service and of private security guards.

425. The Unit is also a member of a commission whose main aim is to obtain more equitable treatment for domestic workers than the discriminatory working conditions imposed by current legislation, which, among other things, sets a 12-hour working day for domestic workers as compared with 8 hours for all other workers.

426. The Unit is also a member of a commission looking into Costa Ricans' use of time. This study is particularly important because it will make it possible, for the first time in Costa Rica, to measure, for example, the time women spend on household chores, work they are not paid for and which is not reflected in the national accounts. More recently it has been preparing a project to provide certain facilities to men and women workers who have family responsibilities.

## Article 27

427. With regard to indigenous languages, the Constitution has been amended to place an obligation on the State to ensure their preservation and development. The results of the 2000 census must be treated with caution, for some people, though speakers of an indigenous language, did not identify themselves as speakers of that language but referred only to Spanish.

428. The territories with most indigenous people who speak an indigenous language are those of the Cabecar (84.4 per cent) and the Guaiami (84.5 per cent) peoples, who are also the peoples with the highest illiteracy rates. In this respect the census was clearly deficient, since illiteracy was assessed in relation to Spanish; the question to ask in future should be “Do you know how to read and write in your own language?”

429. There are currently 224 indigenous schools in Costa Rica, 210 primary and 14 secondary.

430. The Ministry of Education runs an indigenous language teaching programme in 170 schools; each school has materials for teaching the indigenous language, except among the Chorotega and Huetar peoples, whose languages no one now speaks.

431. The 2000 census yielded important indicators, but the fundamental principle must be that general basic education is a universal right and that the question of education as reflected in the census results should be addressed within the worldview of the indigenous peoples.

432. The following table shows a number of other important indicators.

Population group	Illiteracy (percentage)	Average schooling (years)	Basic education (percentage)	Secondary education and above (percentage)
Indigenous in indigenous territory	30.2	3.4	56.4	9.1
Indigenous in peripheral indigenous areas	15.3	5.0	69.0	22.6
Indigenous elsewhere	11.8	5.9	73.9	33.2
Non-indigenous in indigenous territory	12.8	4.6	67.7	12.8
Non-indigenous elsewhere	4.5	7.6	85.0	46.4

*Source:* National Statistics and Census Institute, Census 2000.

433. As the table shows, the indicators are low for those living in indigenous territories and improve with population groups’ distance from such areas. One interpretation is that physical/geographical and economic difficulties cause problems with access to education.

434. Moreover, major differences can be observed between the illiteracy rates for the non-indigenous population elsewhere in the country (4.5 per cent) and those of other groups. The highest illiteracy rates are to be found among indigenous groups within indigenous territories (30 per cent), whereas the other indigenous groups and the non-indigenous population within the territories have rates of between 12 per cent and 15 per cent.

435. The question that was put in the 2000 census was “Do you know how to read and write?” It was assumed the reply would refer to the respondent’s mother tongue and if they said they did not know they were counted as illiterate.

436. The percentage of indigenous people who speak an indigenous language is very small in the Boruca (5.7 per cent), Rey Curre (4.2 per cent) and Terraba (4.1 per cent) territories and practically zero in the Matambu, Zapaton and Quitirrisi territories.

437. As to the mother tongue, 60 per cent of the indigenous population aged five or over learned to speak in an indigenous language. However, although this is an indication that these are living languages, it is not clear that the language in question is the one used for communication. An exception is the Kekoldi Cocles territory, where 22.6 per cent of the population learned to speak using an indigenous language and 68 per cent currently speak that language.

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