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**IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Fourth periodic reports submitted by States parties  
under articles 16 and 17 of the Covenant**

**COSTA RICA\* \*\* \*\*\***

**(Period 1990-2004)**

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\* The initial report (E/1990/5/Add.3) concerning rights covered by articles 1 to 15 of the Covenant, submitted by the Government of Costa Rica, was considered by the Committee on Economic, Social and Cultural Rights at its fifth session in 1990 (see documents E/C.12/1990/SR.38; E/C.12/1990/SR.40-41; E/C.12/1990/SR.43; E/C.12/1990/8, paras 159-195).

\*\* The information submitted in accordance with the consolidated guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.104).

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## INTRODUCTION

This document is the first Periodic Report by the Costa Rican Government on the implementation of the International Covenant On Economic, Social And Cultural Rights It covers the 15-year period 1990-2004. The initial report was presented to the United Nations Secretary-General in 1989.

While the presentation of this report is an obligation of the Government, which it is honoured to comply with, it is also a self-assessment that is as objective as possible of the country's situation regarding progress on the observance of the rights set out in the Covenant. It has enabled the Government to take stock of the situation and adjust the main imbalances over the period and take note of the efforts made and achievements up to 2004. The report also sets out the general challenges that currently dominate the national scene and have a direct impact on the safeguarding of those rights.

This retrospective view, emphasizing the most recent developments, portrays a period featuring progress and setbacks (mainly as a result of the economic crisis of the eighties); and the overcoming of these setbacks (during the nineties), all thanks to the Government's sustained social investment. It is also noteworthy that over the past fifteen years, the country has expanded and consolidated citizens' rights, moving on from the recognition of civil liberties and individual civil rights, to the introduction of the mechanisms needed for political, economic, social and collective rights to have their place in public policy. Indeed, the main feature of the reform of the Costa Rican State in the nineties was the broad roll-out of protection for and legal enforceability of human rights.

### **Main strategies and working methods**

One of the most significant aspects in the preparation of this report, its annexes and other supporting documents, even those not forming part of it, was the participation process conducted over more than two years (27 months). With the clarity of the outstanding commitment and the scope of this responsibility, from the start the main strategies were outlined, along with the steps to be taken in preparing the report. In order to do so, by Executive Order, an Interinstitutional Committee<sup>1</sup>, an Advisory Committee and a Coordination Unit<sup>2</sup> were set up under the responsibility of the Ministry of Foreign Relations. The Committee was set up as a focal point for gathering and classifying information. It was formed of representatives, of a high technical level, of 21 public institutions, some of whom are leaders in their particular fields.

The active participation of the Committee members, under the direction of the Coordinating Unit, ensured that the process was collective and constructive at all times, in which all the participating officials had to develop a sense of ownership. This meant training and raising the

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<sup>1</sup> Composed of the Ministries of Public Education; Housing and Habitat; Public Security, the Interior and the Police; Culture; Youth and Sport; Public Health; Labour and Social Security; Environment and Energy; Agriculture and Livestock; Science and Technology; Finance; Justice; National Planning, and Economy, Industry and Trade; plus the Joint Social Welfare Institute (IMAS), the National Insurance Institute (INS), the National Institute of Learning (INA), the National Institute for Women (INAMU), the Costa Rican Electricity Institute (ICE), the Costa Rican Water Supply and Sewerage Institute (A&A); the Costa Rican Social Security Fund (CCSS) and the National Children's Trust (PANI).

<sup>2</sup> Composed of a national coordinator, Ms Gioconda Ubeda R.; an executive secretary, Ms Eugenia Gutiérrez R.; and a consultant, Ms Dina Jiménez M.

awareness of these officials, which led to another important achievement of the process: working from a rights perspective, which is by no means common in the vast majority of public institutions. This added value is very important for the development of institutional capabilities, which tends to make people think, as did happen with some participating institutions, about the function these institutions are carrying out or could carry out for the advancement of human rights.

This means, regarding the above point, that participation in and the sense of ownership of the process was ensured by means of methods allowing discussion and approval in the Committee of all the material used to prepare the report (questionnaires, guidelines and directives at the various stages, to ensure that the information was correct and of high quality). Likewise, the first draft was validated by its members before the dialogue began with sectors of civil society and international organizations, another significant feature of the process of drafting the report.

In the final phase of the process, an open dialogue was launched with sectors of civil society and international organizations, all linked to specific populations of interest to the State on account of the challenges they present for expanding the enjoyment of their economic, social and cultural rights. The Committee members took part in this activity as hosts and facilitators.

The assembly did not aim to seek the approval of the participating sectors, but rather to generate a broad discussion and frank exchange on the basis of the draft report, with a view to incorporating relevant recommendations and remarks into it. For the State it was very important to listen to the view from other perspectives, since it enabled aspects of the report to be incorporated or emphasized that helped to reflect other experiences, with variations, rather than several different Costa Ricas, without of course forgetting that the Costa Rican Government was responsible for the report. To sum up, the experience was satisfactory and gave very positive results, also contributing valuable lessons that will be of use in drafting future national reports.

Alongside the dialogue, consultations took place with acknowledged national experts working with specific population groups, such as migrants, children and adolescents, women, afro-Costa Ricans, the disabled and prisoners. This was also an important step for the drafting of the report.

This document may not be perfect, but it does have the merit of being the result of a new experience for the Costa Rican Government and, to a certain extent, for some national sectors involved in the advancement of these rights. The Government is in any case fully prepared to clarify, expand or develop the information contained in it.

### **Some added value and general conclusions deriving from the process of drafting the report**

This report has led to much added value, including the methodology developed throughout the process of preparing the report, the lessons learnt and the good practices that will be derived from the systematic application of this experience. All of this will be of use in preparing future national reports. The document itself is a useful tool for discussion and debate at national level.

The long period covered by the report (1990-2004) enables general conclusions to be drawn that are relevant for the continuing gradual development of economic, social and cultural rights. The following is an indicative but not exhaustive list:

1. The country needs to increase social investment and properly rationalize existing resources; in order to do so it needs to solve the fiscal deficit that is eating up most Central Government financial resources in order to meet internal debt obligations. The worrying factor is that this deficit in turn leads to greater inflation and a consequent reduction in the citizens' purchasing power.
2. The State should redefine and, in some areas, devise State policy that continues beyond the government's four-year term.
3. There is a clear lack of coordination between some public institutions working in the same area or for certain population groups. The need has also become apparent for some sectors of the Executive and the decentralized administration to make better use of and exploit existing resources, both financial and human.
4. There is a need to incorporate the cross-cutting theme of human rights into the National Development Plan which is drawn up every four years by the administration in government.
5. Costa Rica should invest more in training of civil servants, emphasizing a rights perspective, which would imply a structural change in the role of the public service. Through the experience of drafting this report, it is clear that this investment would result in better management by the official and the civil service, which could have a positive impact on the rights of the population.

### **Structure of the report**

The document is in two parts: Part One contains information on the basic country report and additional information on Costa Rica's economic and social context in the period 1990-2005. It also includes the main trends of national development and current challenges. This part of the report is accompanied by a CD containing 11 reports on the state of the nation and the state of education in Costa Rica.

Part Two covers articles 1 to 15 of the Covenant, each in response to the Committee's instructions. This part has two annexes: Annex I contains tables and figures to supplement the statistical information while Annex II contains additional regulations relating to each of the articles.

## PART ONE

### NATIONAL REPORT ON COMPLIANCE WITH THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

#### COSTA RICA – Period 1990-2004

Ministry of Foreign Relations  
San José, April 2006

#### 1. Economic and social context of Costa Rica 1990-2004: main trends of national development and current challenges<sup>3</sup>

1. During the period 1990-2004 Costa Rica underwent a series of demographic, economic, social and political changes that need to be reviewed in order to understand the progress and limitations that the country has experienced to ensure that the population fully enjoyed its economic, social and cultural rights during that period.

2. The fundamental aim of this part of the report is to highlight the main trends that have characterized the country's development during the reporting period. In order to help the reader's understanding, the document offers data and illustrates the main trends with figures, with references to statistical tables and figures supporting the statements made, or refers to the General annex.

##### 1.1 Main demographic trends

3. Costa Rica has an area of 51 100 km<sup>2</sup> bounded by the Caribbean Sea, the Pacific Ocean and the republics of Nicaragua and Panama. The boundaries of the Republic are those fixed by the Cañas-Jerez Treaty of 15 April 1858, confirmed by the Cleveland Award of 22 March 1888, with respect to Nicaragua<sup>4</sup>, and the Echandi Montero-Fernandez Jaen Treaty of 1 May 1941, in regard to Panama. Coco and Caño islands are part of the national territory.<sup>5</sup> According to the official population statistics (INEC: 2004) the total population of the territory in 2004 was 4 169 672.

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<sup>3</sup> The following main sources of information were used to prepare this report: official statistics from the National Statistics and Census Institute (INEC), administrative records of the public institutions of the Costa Rican Government and the 12 editions of the annual report: State of the Nation in Sustainable Human Development, produced independently of the Government by the National Council of Rectors (CONARE), a body composed of the country's four public universities and the Office of the Ombudsman. Particular use was made of the tenth State of the Nation report which made an assessment of the nineties and was also supplemented by other national studies on a variety of topics.

<sup>4</sup> At present there is a dispute between the two countries on the historical interpretation of the extent of the borders, notably with regard to the right of the Costa Rican police authorities to sail in the San Juan river, which marks the frontier between them. The case is before the International Court of Justice.

<sup>5</sup> Note that Costa Rica is more of a maritime country than a terrestrial one, as its maritime possessions are ten times larger than its continental territory. The economic exclusion zone (EEZ) covers an area of 571 191 square kilometres, 96 per cent of which is in the Pacific Ocean and 4 per cent in the Caribbean Sea. The 1 100 kilometres of Pacific coast and 220 kilometres in the Caribbean are home to a wide variety of maritime coastal environments and tremendous biological wealth: coral reefs and a variety of associated organisms (Cahuita, Gandoca, Manzanillo, Cocos Island and Caño Island), fish and invertebrates of commercial importance and natural associations of great scenic beauty (Murciélagos Island in Guanacaste and the islands of the Gulf of Nicoya in Puntarenas) (*State of the Nation, sixth report, 1999*).

4. The last population census in 2000 revealed a number of major demographic changes. The first significant change was an increase in the population in relation to the figure recorded by the 1984 census, the population in that year being 2 416 809. Between 1990 and 2000 the population rose from 3 050 556 to 4 169 730, with an annual growth rate of 2% (*State of the Nation, tenth report, 2004*).
5. The profile of Costa Rican society changed from a predominantly rural one in 1984 to a clearly urban one in 2000. According to the 1984 population census, the ratio of rural to urban population was 46.6 to 50.4%, while in 2000 that ratio was inverted, with 40% of rural population against 59% urban. The population density in the country shows a high concentration per square kilometre (74.6), especially in the four provinces making up the Greater Metropolitan Area (San José, Cartago, Heredia and Alajuela) and is focused in large urban centres, while in the provinces of Guanacaste, Puntarenas and Limón, there is a high rural component with areas typified by a population exodus.
6. Between 1990 and 2004 the Costa Rican population became more heterogeneous. The 2000 national census showed that 296 461 people, representing 7.8% of the population, were born abroad. In 1990 this percentage was only 3.8% (*State of the Nation, tenth report, 2004*). A high proportion of these were born in Nicaragua, followed by those born in Panama, the United States and Colombia.
7. In 2000, Costa Rican residents born in Nicaragua numbered 226 374 (6% of the country's total population), as against 45 914 recorded in the 1984 census. This clearly shows that this population has grown fivefold in sixteen years. It should be pointed out that there is an uncalculated number of people who did not take part in the census since they are part of the temporary labour force that continually moves around the country depending on the farming production cycles and/or belong to the group of undocumented (or illegal) migrants.
8. The Statistics Department of the General Directorate of Migration and Aliens had in September 2005 a record of 285 848 legal residents, both temporary and permanent, to whom should be added those who availed themselves of the migrant amnesty in 1999 and those who are still in an illegal situation (*General Directorate of Migration and Aliens, 2005*).
9. Various sectors working with migrant people agree that the real figure is closer to 450 000 foreigners, namely 11% of the country's total population. Costa Rica's immigration rate (110 migrants per 1 000 inhabitants) is similar to or higher than that of developed countries. Luxembourg has a rate of 114 foreigners per 1 000 inhabitants and is followed in central Europe by Germany, with 24 per thousand. Another figure that may give an idea of what immigration represents to Costa Rica is that Luxembourg has a per capita GNP of \$43 090, ten times that of Costa Rica (\$4 160).<sup>6</sup>
10. The diversity of the Costa Rican population is also evident with the presence of different racial groups, notably the indigenous population and those of African descent. According to the 2000 census there were 63 876 indigenous people in the country, representing 1.7% of the total population, 42.3% of whom live in the country's 22 indigenous territories. Regarding Costa Ricans of African descent, the census recorded a total of 72 784 people, or 1.9% of the population. It is important to state here that the methodology used in the census could result in a

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<sup>6</sup> Taken from "World Statistics", *The Economist*, 2003.

sub-register of people who did not wish to be identified as being of African descent; these data therefore have to be treated with caution. Another population group in Costa Rica is those of Chinese origin who, according to the census, number 7 873, representing 0.2% of the total population. (*CCP, et al, 2000*)

11. According to the 2000 census, Afro-Costa Ricans are the ethnic group with the highest proportion of births in Costa Rica (97.3%), while indigenous peoples include 83.6% of native Costa Ricans, and Chinese have the lowest proportion of natives (51.5%). According to the same source, indigenous people are the group with the most basic needs unmet, and in the indigenous territories, 92.4% of the natives lack some basic facility. Improving the well-being of this group is still a national challenge. (*State of the Nation, eighth report, 2000*).

12. According to the National Population and Housing Census of 2000, another important population group is the disabled, representing 5.3% of the national total, 52% of whom are men and the rest women. From the legal viewpoint, the Costa Rican Constitution safeguards equality of opportunity and comprehensive development for disabled persons.

### **A country undergoing a profound demographic transition**

13. Costa Rica is in the middle of a radical demographic transition: declining birth rate, low mortality and a growth rate close to 2%. The country's fertility rate of 3.5 children per woman in 1985 fell to 2.1 in 2000, down to the replacement rate at which each generation nowadays has children to sustain the population. (*Rosero, 2004*).

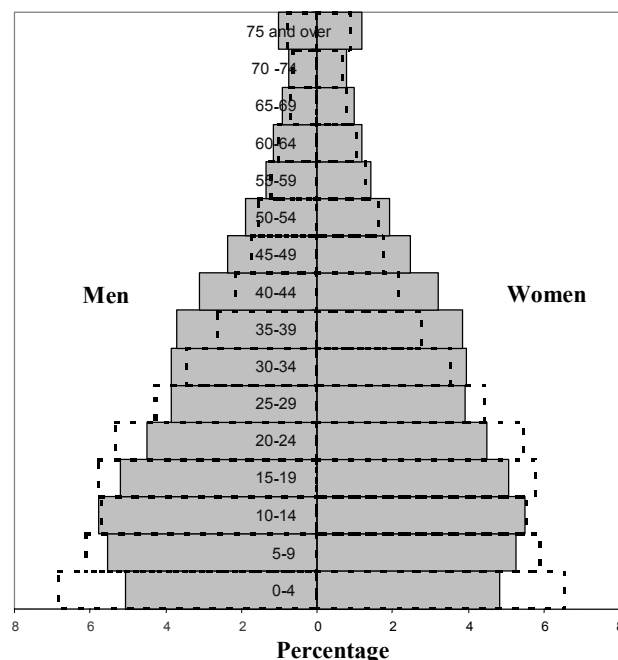
14. The 2000 census also allowed important changes to be documented regarding the profile of households and the population dynamic. While for the former the pattern of the family concentrated in nuclear households with children persists (49.7% of all households), trends were observed of changes in the composition of households. In relation to 1987 there was an increase in single-parent households, especially those headed by women, childless families and older persons living alone.

15. Regarding the population dynamic, the most significant change is the transformation in the age structure of the population. The age pyramid of the country's population shows a reduction in younger groups at the base and an increase in older groups (*see Figure 1*). In 2000, 54% of the population was aged between 18 and 59; under-18s accounted for 38% and over-60s 8%. The growth rate of the population of older persons is 4% per year and it is set to double over the next two decades. It is expected that by 2025 the percentage of older persons will double to 16.1%. The population of older persons will begin to increase and in 2025 will overtake children. (*Rosero: 2004*).

16. The 2000 population census also revealed that Costa Rica is experiencing a particular demographic situation. Owing to the falling fertility rate (1-2 children per woman), today's younger generation is the last one that, throughout its working life, will have the advantage of a relatively low number of dependants, in other words in the current climate there are more working people than dependants.



FIGURE 1  
Costa Rica: Population distribution by sex and age, 1984 and 2000



Source: INEC, 2000

17. As the groups in their thirties dwindle, the ratio changes between those of working and non-working age. In 1984, for every 100 people of working age there were 70 dependents, while in 2000 there were 60 per 100; in 2005 there are 55 and around 2018 the proportion is expected to be about 44 dependants per 100 people of working age.

18. This situation, known as the “demographic dividend”, poses very serious challenges in terms of the country’s need to offer the population quality jobs and education (*State of the Nation, eighth report, 2001*). This demographic dividend and the medium- to long-term trend in the ageing of the population pose challenges for the country regarding the conditions it should offer these groups of the population, in accordance with their specific needs.

19. It should be pointed out that, according to the 2000 census, the composition of the Costa Rican population is well balanced between men (49.9%) and women (50.1%). This balance does not apply, however, to a number of key rights and conditions that women require and which are fundamental for increasing opportunities enabling them to improve their own and their families’ living standards, and to do so under conditions similar to men, as we shall analyze in the next section.

## 1.2 Main social and cultural changes

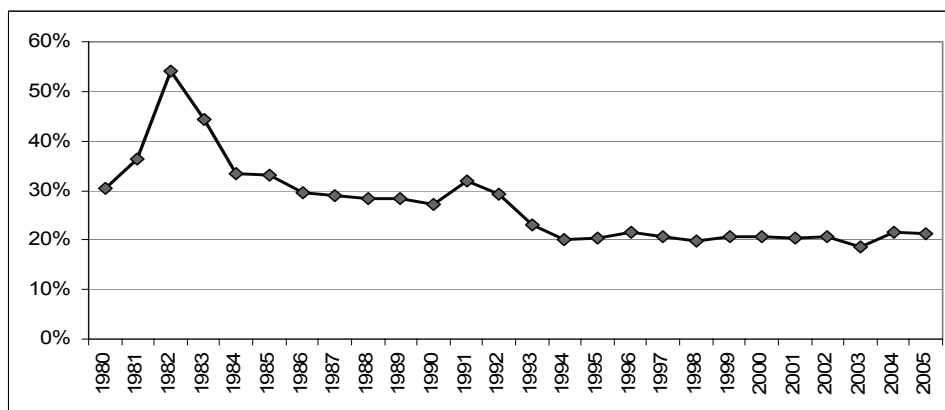
20. Costa Rica’s development over the latter half of the 20<sup>th</sup> century was characterized by national efforts to modernize the production structure and improve the living standards of the population. The latter aim was achieved through significant investment in human development and the promotion of universal social policies in health, education, sanitation and social security.

Over the long term this investment resulted in a country with high levels of human development as described in the latest UNDP Human Development Report, in which Costa Rica occupied 47<sup>th</sup> place.

21. In the early eighties the country underwent a serious economic crisis associated with increased oil prices and the foreign debt which had considerable social impact such as a drop in social investment, especially in health and education, and a significant rise in poverty, which affected almost 50% of Costa Rican households.<sup>7</sup> In this context, the country implemented a Social Compensation Plan introducing wage indexing in an attempt to arrest the marked deterioration in the purchasing power of wage earners and the rise of poverty. This proved a success when in 1987 poverty levels began to fall to 32% (Trejos, 1998).

FIGURE 2

**Costa Rica: Trend in total poverty, 1980-2005**



Source: Trejos, 2005.

22. Over the following three years, the percentage of poor households remained stable, rising in 1991 and 1992 (to 35.4 and 33% respectively) before falling to its lowest level in 1994 (22.9%). From that year onwards, poverty has remained around that percentage.

23. In 2004, some 234 000 of the country's households had an income below the poverty line, the highest number throughout the period 1990-2004. In absolute terms this represented about one million poor. Measuring poverty using the Unsatisfied Basic Needs (UBN) method, the percentage of poor households in the country was 36% of the total (*State of the Nation, eleventh report, 2005*).

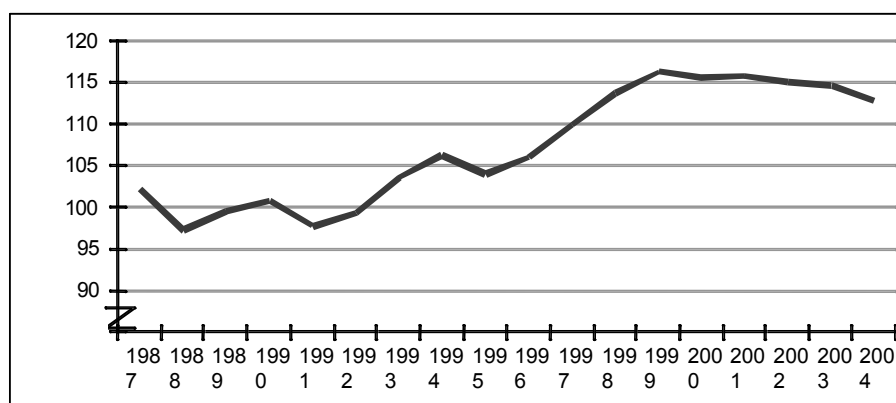
24. One aspect directly linked with the issue of poverty is wage-earners' income on the labour market. As Figure 3 shows, the country's minimum wage index showed a substantial growth rate between 1995 and 1997, followed by moderate growth rate up to 2000. Between 2001 and 2004 it dropped by 1.6% to a level similar to the 1998 value of this indicator. (*State of the Nation, eleventh report, 2005*).

<sup>7</sup> Measured using the poverty line method.

FIGURE 3

**Costa Rica: Real minimum wage index, 1987-2004**

*Base 1984 = 100, average for the year*



*Source:* State of the Nation, eleventh report, with data from the Central Bank of Costa Rica (BCCR).

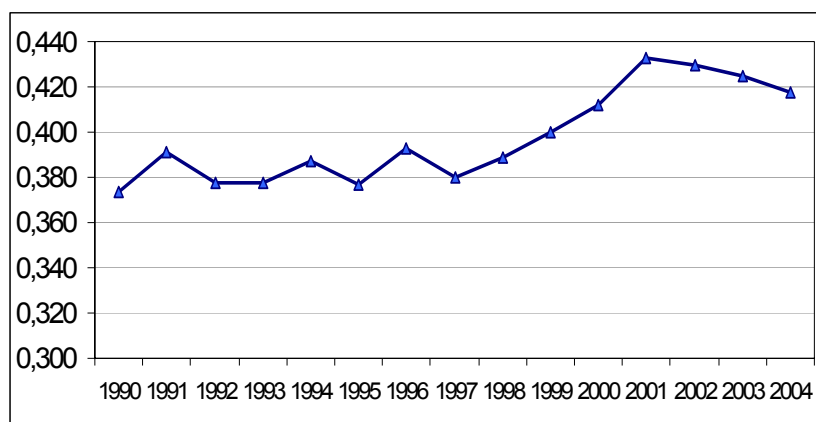
25. Wages are the main component of the income of Costa Rican households, and wage adjustments for most categories of employment are generally made on the basis of the nominal change officially laid down for minimum wages (worked out in a tripartite mechanism involving workers, employees and the Government, based mainly on the rate of inflation). The practice of adjusting the minimum wage on the basis of the inflation rate of the immediately preceding half year introduces an element of inertia in the inflationary process. Apart from the fact that this hinders efforts to reduce inflation, it also means that when inflation accelerates, as happened in the latter half of 2004, purchasing power tends to be lost. (*State of the Nation, eleventh report, 2004*).

26. Another worrying trend in Costa Rica's development during the nineties was the increase in inequality as measured by the Gini index.<sup>8</sup> While Costa Rica has the second lowest level of inequality in Latin America, after Uruguay, the Gini index has behaved erratically over the past ten years, in a country that has historically been concerned to integrate its population. While between 1988 and 1998 this indicator remained at values lower than 0.400, with an average of 0.384, after 1998 it began to show a trend of increasing steadily up to 2001, when it reached its historical high of 0.435. As shown in Figure 3, while the GI began a downward trend in 2001, in 2004 it was still above the 1990 level.

<sup>8</sup> This indicator takes values between zero and one, where zero corresponds to perfect equality (everyone has the same income) and one corresponds to perfect inequality. The closer the value of the indicator to one, the greater the inequality in a country.

FIGURE 4

Costa Rica: Trend in Gini index – 1990-2004



Source: Sauma, 2005, based on INEC, EHPM. From *State of the Nation, eleventh report, 2005*.

28. For 2004, other measurements of inequality confirm that the gap between the incomes of social groups is getting wider. Specifically, the ratio between average incomes of the 10% of the population with the highest per capita income and the 10% with the lowest incomes was 20.7. Furthermore, the ratio between average incomes of the 20% of the population with the highest per capita income and the 20% with the lowest incomes was 10.2. (*State of the Nation, eleventh report, 2005*).

### Regional inequalities

29. Inequality in the country has increased not only between social groups but also between regions, revealing a heterogeneous development and differential impacts on the country of the economic policies implemented over the past twenty years.

30. Breaking down the indicator of poverty by household income, the percentage of poor households is substantially greater in regions away from the country's central valley. For instance, in the regions of Chorotega and Brunca in 2004, 33 and 40% of households respectively were below the poverty line.

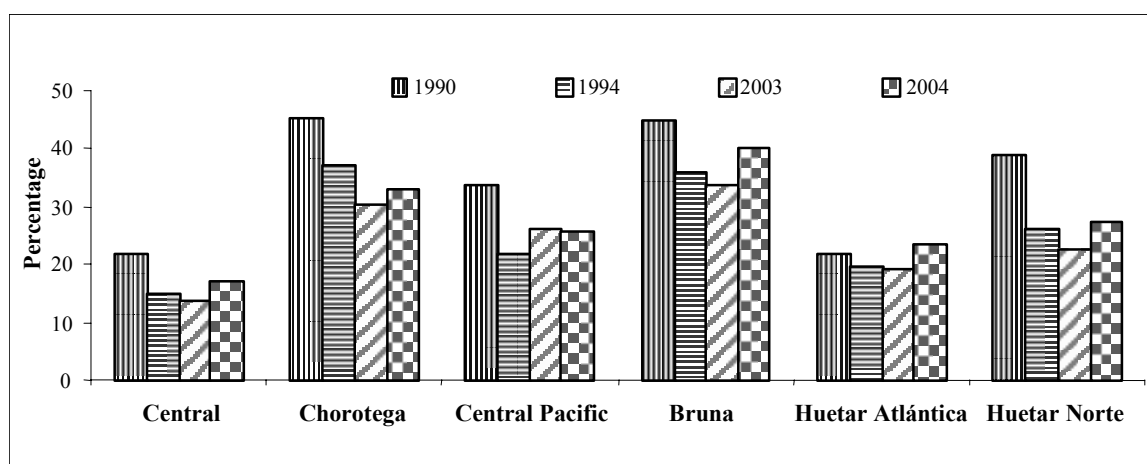
31. In the Brunca region, poverty has led many inhabitants to emigrate to the United States and it is one of the regions in the country where farming predominates, where the fewest women are involved in the labour market and where the level of education is lowest.

32. At canton level, the national indices of social development<sup>9</sup> and human development at local level both identify the country's frontier cantons as among the poorest (Upala, Guatuso, Los Chiles and La Cruz).

<sup>9</sup> The Social Development Index (SDI), Social Lag Index (SLI) and Human Development Index broken down at canton level (See *State of the Nation, tenth report, 2004, Annex p. 62, 63*).

FIGURE 5

Costa Rica: distribution of poverty by region, 1990-2004



Source: INEC (2004).

33. The same applies to the cantons of Talamanca and Buenos Aires, where there is a high level of indigenous population (*State of the Nation, tenth report, 2004*). In general, the indicators of well-being, such as access to employment, education and health, tend to diminish away from the central region.

### Gender inequalities

34. Another of the social and cultural challenges that Costa Rica faces is the reduction of the gender gap. While the country has made significant progress regarding health, education and working opportunities for women, it also has outstanding issues regarding raising living standards, income and entry into the labour market.

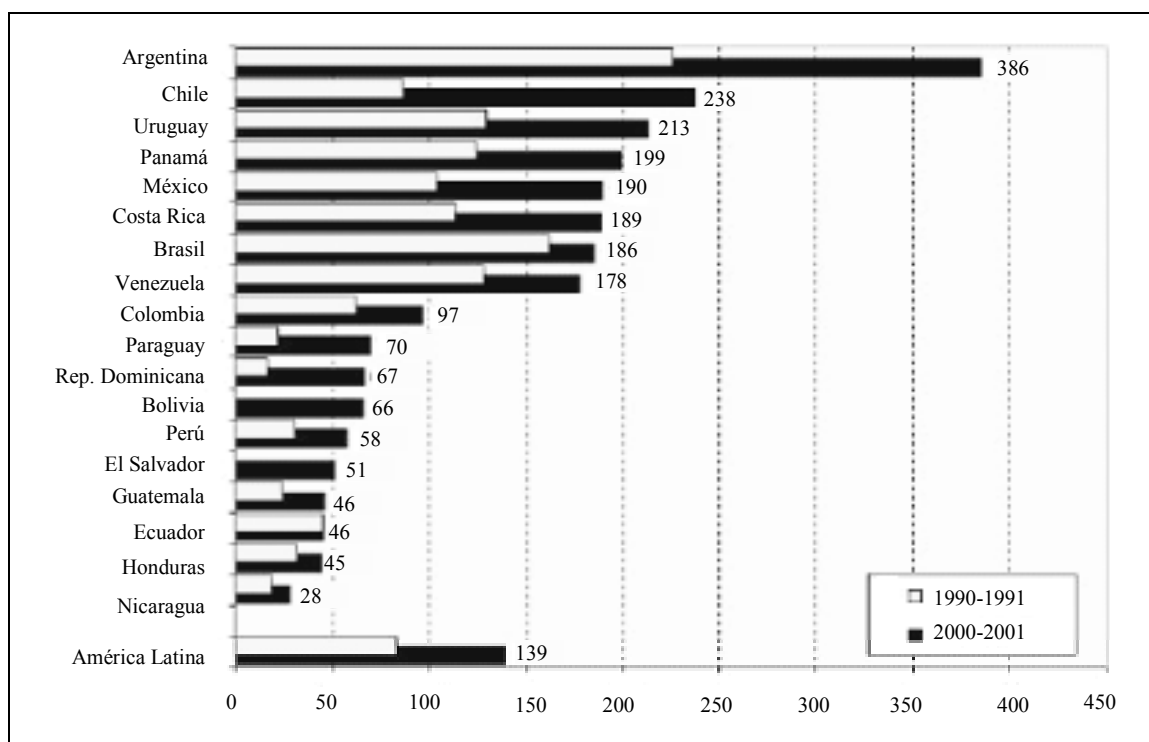
35. The approval of the Act on the Promotion of the Social Equality of Women in 1990 marked the start of a period in which significant progress was made in creating conditions to help close the gap between men and women in the country. During the nineties Costa Rica approved more than 20 acts recognizing fundamental rights for women, including the ratification of the most important international agreements on the protection of women's rights.

36. During the same period women demonstrated more academic achievements than men, and also made substantial progress in health (longer life expectancy). They also increased their participation in the labour market and the political and decision-making process. Despite this progress, the country faces fundamental challenges for gender equality in terms of poverty, employment and income.

37. The percentage of households headed by women shows the higher incidence of poverty (24%). In the early nineties the percentage of poor heads of household exceeded male heads of household by 3.3% and in 2004 the differential increased to 7.8%. More women are affected by unemployment (8.5% as against 5.4% of men), they have the highest rate of underutilization of the labour force (18%) and receive lower wages than men (*State of the Nation, eleventh report, 2005*).

FIGURE 6

**Latin America: trend in public spending on education per inhabitant (1997 dollars)**



Source: CEPAL, 2004.

38. As regards political participation, while women have succeeded in increasing their participation in elected posts, management posts in public institutions are still male-dominated. On the issue of violence, although Costa Rica does not have the levels of other Latin American countries, domestic violence affects women more than men.

39. Important instruments for the protection of women have been approved, such as the Act against domestic violence in 1996 and a number of protection measures. Nonetheless, between 2000 and 2004 an average of 20 women died each year from domestic violence in Costa Rica (State of the Nation, eleventh report, 2005), a scourge directly linked to the subordinate status of the female gender. Since 1998 a bill criminalizing violence against women has been going through the Legislative Assembly; it was approved at the first hearing but has yet to be approved at the second hearing.

### 1.3 Main trends in social spending

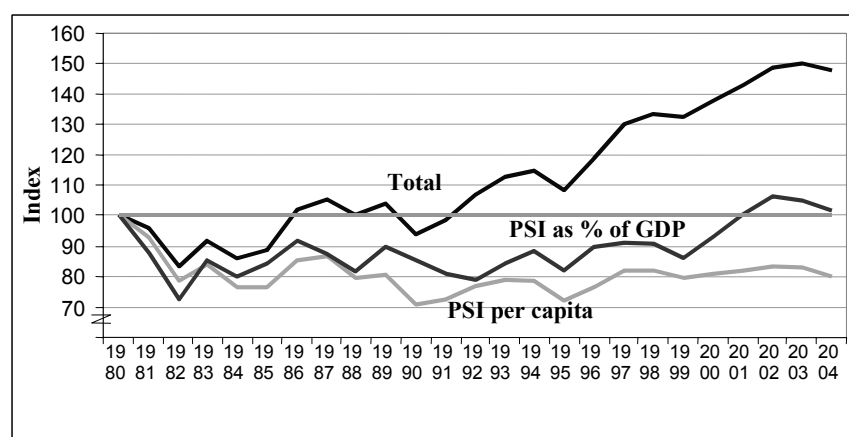
40. In order to counter the decline in equity and to reflect the high macroeconomic priority that it has given the issue, the Costa Rican Government has historically maintained high levels of social spending, in contrast to the other Central American countries, so giving the country an important status in Latin America. Indeed, Costa Rica has one of the highest levels of social spending in Latin America.

41. In the early eighties, Costa Rica's public social spending was 18.5% of GDP and 74% of central government spending. During the first half of the eighties, as a result of the debt crisis, the fall in production and the efforts to reduce the high fiscal imbalance, the country suffered a sharp drop in social investment, the low point occurring in 1982 when it was barely 13.5% of GDP.

FIGURE 7

**Index of public social investment, per capita in relation to GDP**

(base 1980 = 100)



Source: Trejos, 2005. *State of the Nation, eleventh report, 2005*.

42. Although by the end of that decade the country had succeeded in recovering the real value of its public social spending, it no longer enjoyed the macroeconomic and fiscal priority that it had prior to the eighties. In 1990, as part of the economic adjustment programmes, the country once again suffered a sharp reduction in real social spending comparable only with the worst year of the debt crisis, and from then on it began to enjoy sustained growth.

43. For 2004, public social spending (PSS) was 48% higher than in 1980 and 58% above the 1990 value. This expansion went hand in hand with the issue once again becoming a macroeconomic and fiscal priority. For 2004, it accounted for 19% of GDP and 78% of central government expenditure. This growth was nevertheless insufficient in relation to the growth in the population, PSS in 2004 being 20% lower than 24 years previously.

44. There was a declining trend in social spending per person throughout the eighties and, although from the nineties it began to expand in real terms, this was insufficient to make up for lost ground (Trejos, 2005).

45. Over two decades the country had lower levels of social investment than those attained in the seventies, meaning that the improvements have to be viewed in the context of social spending per capita which remains below the historical maxima. To sum up, in the nineties social investment in Costa Rica managed to make up for ground lost in the eighties, though it did not attain the per capita figure of the seventies (*State of the Nation, tenth report, 2004*).

## Achievements and challenges in health

46. On the subject of health, Costa Rica has made significant progress, reflected in key indicators such as life expectancy and infant mortality. In 2004 the country's inhabitants had a life expectancy of 78.7 years for both sexes (76.5 for men and 81.0 for women). For the over-80s, life expectancy is 84 years, higher than in Iceland and Japan, and for women is 95 years, exceeded only by France and Japan (*State of the Nation, tenth report, 2004*). Infant mortality in 2004 was 9.25 per thousand births, the second lowest in Latin America, after Cuba.

TABLE 1

National population by type of health insurance cover, 1990 vs 2004

<i>Population group</i>	<i>1990</i>		<i>2004</i>		<i>Change (%)</i>
	<i>Absolute</i>	<i>%</i>	<i>Absolute</i>	<i>%</i>	
National population	3 032 394	100.0	4 211 692	100.0	
Directly insured wage-earner	544 733	18.0	800 123	19.0	1.0
Insured population	2 485 142	82.0	3 697 866	87.8	5.8
Directly insured self-employed	86 095	2.8	132 423	3.1	0.3
Directly insured under agreement	50 815	1.7	71 029	1.7	0.0
Insured as a family member	280 496	9.2	539 097	12.8	3.6
Dependant of directly insured worker	1 281 909	42.3	1 773 635	42.1	-0.2
CCSS pensioner	62 601	2.1	130 743	3.1	1.0
Pensioner under special schemes	26 735	0.9	55 270	1.3	0.4
Pensioner under non-contributory scheme	49 753	1.6	80 326	1.9	0.3
Dependant of pensioner	102 005	3.4	115 220	2.7	-0.6
Uninsured population	547 252	18.0	513 826	12.2	-5.8

*Source:* CCSS Actuarial Department.

47. The country's achievements are the result of a national effort sustained for decades in terms of the development of a social security policy for all citizens and significant social spending on health. The country's health system was designed around three basic principles: universal access, solidarity and financial sustainability.

48. The institutional policy of the Costa Rican Social Security Fund and the Health Ministry, its governing body, guarantee access to health services for all of the country's inhabitants, without discrimination of any kind, including care for the poor population who are unable to pay insurance and the migrant population resident in the country. The costs of care to some of them are borne by the country, under the State insurance scheme.

49. The percentage of the population who are insured (administrative cover) rose from 82% in 1990 to 87.8% in 2004. This situation is the result of strategies adopted decades ago with a view to complying with the constitutional precept of universal health insurance, and they have enabled the following non-conventional types of insurance to be developed: i) self-employed workers,



ii) voluntary insured persons, iii) workers with special agreements, iv) persons insured by the State, v) pensioners on contributory schemes, vi) pensioners on non-contributory scheme, viii) prison inmates and ix) family members of directly insured persons. (*See Table 1*)

50. 1995 saw the beginning of a process of reforming the health sector, under which the first-level care services were reorganized to create “health areas”, which are the basic administrative units, under the responsibility of an area director supported by a technical and administrative team responsible for the local services network.

51. Based on the principle of equity, the reorganization process began in the rural areas and the socio-economically most disadvantaged cantons of the country. The process was completed in 2003 by the setting-up of 103 health areas throughout the country, covering all the population. These health areas were in turn divided into “sectors” which are geographical divisions with an average population of 4 000. Each sector has a “Basic comprehensive health care team” (EBAIS) composed of a general doctor, a nursing auxiliary and a primary care technical assistant (ATAP). In 2004 839 EBAIS had been set up throughout the country.

52. Costa Rica has also seen an important change in its epidemiological profile; while mortality associated with infectious and parasite diseases have levels close to zero, health care is focusing on causes of death associated with cardiovascular diseases, cancer, diabetes and violent death, especially road accidents, homicides and suicides (*State of the Nation, ninth report, 2002*).

53. Regarding the population affected by HIV/AIDS, the first cases appeared in Costa Rica in the early 80s, in haemophiliac patients who had received imported blood derivatives that were infected with the human immunodeficiency virus. In 1985 the first cases of AIDS were reported in homosexuals and bisexuals who had lived abroad and returned to Costa Rica in the final stages of their illness.

54. In 1997, a ruling of the Constitutional Chamber obliged the institutional policy of the Costa Rican Social Security Fund and the Health Ministry, its governing body, to guarantee access to health services for all of the country’s inhabitants, without discrimination of any kind, including care for the poor population who are unable to pay insurance and for the migrant population resident in the country.

55. Up to 2001, 2 263 cases of AIDS had been recorded, 134 of whom died in 2001 alone, so becoming the main causes of death among the illnesses subject to compulsory declaration. 80.03% of cases are in the 25 to 44 age group; 84.4% stated that they were infected sexually, the population of males having sex with males (MSM) being the worst affected (43.79%), followed by heterosexuals (24.8%) and bisexuals (16.68%).

56. From 1985 to date, the institutions in Costa Rica’s health sector, NGOs, some public agencies, the private sector, and with the cooperation of other countries and international organizations, have made substantial efforts in various fields to treat the HIV/AIDS epidemic at national level. By way of an institutional response, the National Council for Comprehensive HIV/AIDS care was set up; it functions as a network of non-governmental organizations and various private initiatives both to prevent infection and to provide comprehensive care for HIV/AIDS sufferers.

57. The most important challenges faced by the current health system in Costa Rica are associated with financial sustainability and the improvement of the quality of the services

provided. Regarding the former, the solidarity scheme created in the 1940s, with contributions from wage-earners, employers and the State, is still in force but in recent years has been affected by problems associated with a growing reluctance of employers and the State to comply with their obligations, the latter due to the growing fiscal problems that it faces, all of which leaves wage-earners to finance the system; rather than growing, their percentages have fallen, given the more dynamic growth in the black economy in which workers are not always insured.

58. The issue of quality of services is one of the areas in which the country is facing serious challenges, such as: improving first- and third-level care services; the latter is experiencing problems such as lack of infrastructure, access to drugs and growing waiting times for surgery and specialist treatment.

59. Another fundamental health challenge that the country faces is the adaptation of the health services to the new epidemiological profile of the population which, as mentioned above, demands a response to increasingly complex and costly problems.

#### **Education: progress and current challenges**

60. In education the country has made progress and faces significant challenges<sup>10</sup>. Note that at the time of the 19<sup>th</sup> century Education Reform, Costa Rica made primary education free of charge, a decision that was reinforced in the mid-20<sup>th</sup> century with the abolition of the army and the transfer of military funds to the education and health sectors.

61. In time, these decisions enabled it to consolidate a substantial public education system which has been maintained up to the present day to the extent that in 2003, 90.4% of the country's students were attending public institutions and only 7.5% were at private institutions (*State of the Nation, tenth report, 2004*).

62. During the nineties, the most significant developments in education were associated with the reform of article 78 of the Constitution in 1997 when pre-school education was made compulsory and it was decided that public expenditure on education should be no less than 6% of gross domestic product (GDP).

63. For 2004, the national pre-university educational system had coverage of 90% in the pre-school transition cycle, 100.6% in primary and 72.6% in secondary (*MEP, 2005*). Costa Rica has attained the Millennium Goal regarding the indicator for primary-school coverage.

64. In the nineties the country made a substantial effort at national level to revive investment in education which had seen a sharp decline during the eighties. The country also made a serious effort to restore educational coverage, especially in secondary. However, it was not until 2000 that it succeeded in restoring 60% coverage in secondary, the level that it had achieved in the early eighties before the economic crisis (*State of the Nation report, 2005*).

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<sup>10</sup> The Constitution of the Republic contains a chapter on education and culture, which not only maintains past achievements but also expands very important concepts and guarantees. Article 78 states that "Preschool education and general basic education are compulsory. These levels and the diversified education level are, in the public system, free and supported by the Nation. Public expenditure in State education, including higher education, shall not be less than six per cent (6%) per annum of the gross domestic product, in accordance with the law. The State shall facilitate the pursuit of higher studies by persons who lack monetary resources. The Ministry of Public Education, through the organization established by law, shall be in charge of awarding scholarships and assistance".

65. While the country succeeded in sending all children to primary school, it had problems keeping them in education and most finished after completing the diversified cycle (baccalaureate) (*State of the Nation report, 2005*). Coverage in the fourth cycle is merely 38.4% and this is directly related to the difficulty in keeping students in the system.

66. The country faces a serious problem of students abandoning their studies during the academic year. During 1990 it tended to increase significantly up to its a maximum of 16% in 1994, dropping to 11.4% in 2004 thanks to the efforts of the Education Ministry. Nevertheless, a significant number of young people continue through the system, especially in the first and third years of college where drop-out rates are still high (18.3% and 9.4% respectively in 2004) (*CONARE, 2005*).

67. In addition to the problems of keeping students in the national education system, there are other ongoing problems such as the quality of education, efficiency, infrastructure and closing the gap between rural and urban areas and between public and private institutions. The country is also facing the challenge of boosting training more focused on scientific and technological development for which it has a substantial base in the national public universities (*CONARE, 2005*).

## **2. Main changes in the production structure and economic development**

68. During the economic crisis in the early eighties, the country began to promote a set of economic policies designed to achieve macroeconomic stability and open up the country to more trade with the rest of the world. To that end, structural adjustment programmes (*PAES*) were implemented and the signing of free-trade treaties with various countries in the world was encouraged, which meant substantial changes in monetary, fiscal, credit and sectoral policy.

69. The implementation of the new policies resulted in greater macroeconomic stability, a radical diversification of the national production system stimulating production for the export market and, to a lesser extent, production for the domestic market (especially staple grains). The export sector was also significantly expanded and there was a substantial increase in foreign investment in free-trade zones. Although the economy is more stable than it was ten years ago, inflation is still high compared to other country, at 13.1% in 2004, owing to the deterioration in the terms of trade, especially the rise in the price of oil.

70. Exports for 2003 amounted to \$6 102.2 million, more than twice the 1991 figure of \$1 899.2 million. Direct foreign investment was \$586.9 million, 2.3 times the 1991 level of \$178.4 million. The national economy has grown at an average of 4.3% over the past fifteen years, higher than Latin America and the Central American countries, and similar to Chile. (*State of the Nation, tenth report, 2004*).

71. However, the weak link over the past decade has been Costa Rica's sustainable human development. There has been growth, but it has been volatile and erratic in origin. The undoubted progress in achieving better stability and economic diversification, livelier exports and attracting investment was insufficient to drive a new period of rapid development. The country is in deficit in terms of solid and persistent economic growth, and the generation of employment and business opportunities associated with productivity increases and technological advances. (*State of the Nation, tenth report, 2004*).

## 2.1 Substantial changes in employment structure and growth

72. Between 1984 and 2000 Costa Rica's employment structure underwent substantial changes, notably as a result of moving from a mainly agricultural to a service-based economy. In terms of their relative share of total employment, the service sectors increased the most, rising from 48.4% in 1990 to 62.3% in 2003. Both manufacturing industry and especially farming declined in relative importance. The latter accounted for 24.8% of total employment in 1990, falling to 14.8% in 2003. The farming and industrial sectors are now practically the same relative size. Tourism was one of the most important activities in the period: it accounted for 19.6% of total exports and is responsible for much of direct foreign investment flows (*State of the Nation, tenth report, 2004*).

73. The economically active population (EAP) increased in the nineties without any major changes in the rate of unemployment. On the one hand, the number of employed increased by 60% from 1 106 471 in 1990 to 1 676 661 in 2003 and the net participation rate for the whole population<sup>11</sup> rose between 1990 and 2003 from 53.5 to 55.5% (*State of the Nation, tenth report, 2004*).

74. In recent years the economy has succeeded in absorbing a large amount of labour. From 1990 to 2003, 570 190 jobs were created, i.e. an average of just over 47 000 a year. The most dynamic sector was services, averaging 39 000 new jobs a year; services grew 5.3% a year on average, above the national average for all sectors of 3.2%.

75. A worrying trend in employment is the fact that the informal sector has been growing faster than the formal sector or farming. Between 1990 and 2003, of all jobs created, 352 217 were formal non-farming positions and 246 191 were informal, while the farming sector lost 28 217 jobs. The informal sector was the most dynamic over that period, with an average annual growth rate of 6.0% as compared with 5.3% in the formal sector (*State of the Nation, tenth report, 2004*).

76. The open unemployment rate has remained relatively low, rising from 4.1% in 1992 to 6.7% in 2003. From 2001 it has showed a growing trend, women being the hardest hit, as mentioned above. In absolute terms, the number of unemployed almost doubled in that period: in 1994 almost 219 362 job-holders had problems of underemployment and 54 866 people were unemployed; in 2003 there were 387 736 underemployed and 117 191 unemployed (*State of the Nation, tenth report, 2004*). Most unemployed live in the country's central region.

## 2.2 Growing fiscal problems

77. Over the past decade there has been a deterioration in the country's fiscal solvency, namely its capacity to fund the social and physical investment needed by households and business, without affecting the performance of other sectors of the economy, with a fair distribution of the tax burden and within a framework of macroeconomic stability.

78. On the one hand the recurring fiscal deficit – and its financing by means of a growing public debt, whose servicing leads to inflexibility in Government spending – has reduced room for manoeuvre. On the other, it has become clear that there is a gap between citizens' expectations of the State and the contributions they are prepared to make to fund them.

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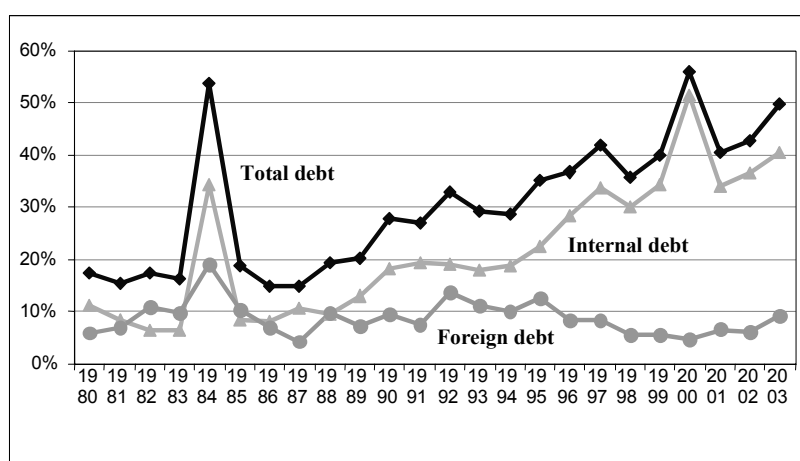
<sup>11</sup> This is the percentage of active persons (employed and unemployed) in relation to the population aged 12 and above.

79. In an international environment offering little encouragement, and with an economy that is showing serious limitations for sustaining an adequate growth rate, the fiscal position puts Costa Rica in a highly vulnerable situation. The main threat to the stability of the economy is in the fiscal area:

- The tax burden is insufficient. Satisfying demands in areas such as infrastructure and public debt – along with education and health – requires financial resources that the State does not have.
- Most current public spending goes to cover expenditure already made that was funded out of public debt. In general it is possible to document a growing rigidity in public spending.

FIGURE 8

Costa Rica - total public debt<sup>a</sup> servicing in relation to total expenditure by the Government of the Republic<sup>b</sup>, 1980-2003



<sup>a</sup> Includes interest and depreciation.

<sup>b</sup> Includes ministries, branches of Government and related institutions.

Source: State of the Nation, tenth report, based on reports by the Comptroller-General of the Republic, various years.

80. The high level of domestic indebtedness, and the pressure on public spending from servicing it, show that it is not possible to continue along the present path indefinitely. It is not possible to find forms of managing public debt that can have such abroad impact as those already used. Financing the debt reduces the possibilities of public investment and the quality and coverage of State services, creates uncertainty about its solvency and affects interests rates and inflation (*State of the Nation, tenth report, 2004*).

81. The reduction in growth of central government revenue in relation to that of the rest of the non-financial public sector (NFPS), together with growing expenditure, has led to an almost chronic worsening of the fiscal deficit. While the NFPS continues to show positive figures, these have tended to be lower, and were already almost insignificant in 2003. Between 1987 and 1993 the deficit was between 1.5 and 3.4% of GDP, while from the mid-1990s it was between 2.2 and

5.4%. The tax burden has grown slowly. The proportion of central government tax revenue in relation to GDP rose from 11.01% in 1991 to 13.01% in 2003 (*State of the Nation, tenth report, 2004*).

### **2.3 Progress and challenges regarding the environment**

82. The environment was an area in which the country made substantial progress in the nineties, by creating rights, institutions and policies aimed at preserving the natural heritage. . In the period 1990-2003 it signed a total of 45 international agreements in the field, most of which have been ratified by the Legislative Assembly. Nearly 30% of the country's territory is also protected by conservation areas, both public and private. It has more than 25 public institutions in the environmental sector, 18 of which were set up from the 90s onwards, with the Environment Ministry as governing body (*State of the Nation, tenth report, 2004*).

83. While from 1990 the country broadened the rights of Costa Ricans to protect their natural heritage and quality of life, it faces serious challenges regarding proper use of its natural resources. During the nineties the population increased by over a million, mainly in urban areas, with a haphazard expansion pattern; this increased consumption and doubled waste production, the number of vehicles on the road and emissions of polluting gases, increased incidences of water pollution in the country's urban areas and led to higher oil costs (*State of the Nation, tenth and eleventh reports, 2004 and 2005*). Given the State's fiscal problems, increasingly stringent restrictions have been introduced regarding the increase in human and financial resources of the new institutions so that they serve the purposes for which they were set up.

## **3. Main institutional and political changes**

84. Over the past fifteen years the country has witnessed a process of broadening and deepening of citizens' rights that is almost unprecedented in Costa Rica's recent political history. The State moved on from the recognition of civil liberties and individual civil rights, to the introduction of the mechanisms needed for political, economic, social, collective and common rights to have their place in public policy. This evolution towards "more democracy" has nevertheless been limited by the growing erosion of the State's capability to comply with citizens' mandates (*State of the Nation, tenth report, 2004*).

### **3.1 Broadening of the base of rights recognized and protected by the Government**

85. Indeed, the main feature of the reform of the Costa Rican State in the nineties was the broad roll-out of protection and legal enforceability of human rights. Over the past decade a series of acts have been passed that offer direct protection of the rights of groups requiring special protection: children and adolescents (11 acts), older persons (2 acts), disabled persons (3 acts) and women (12 acts). One stage in the improvement of the system of protection of human rights was the creation, in 1992, of the Office of the Ombudsman, which, since from its inception until 2001 opened 396 official cases. However, from the public policy perspective, Costa Rican legislation is incomplete: it recognizes the State's rights and obligations, but leaves it to the Administration to define the material and institutional basis for their implementation. Of a total of 249 acts passed in the first term of the 1994, 1998 and 2002 administrations, 43% create State obligations to the citizen, 11% extend existing rights and 14% grant new rights. While the majority of the acts (76%) grant institutional responsibilities for compliance with obligations, only 16% of them create new sources of funding (*State of the Nation, tenth report, 2004*).

86. The mechanisms for protecting political rights have also been expanded through two new developments: the application of electoral “amparo” by the Supreme Court, and State regulation of the internal activities of the political parties. Moreover, public regulation of environmental matters has been stepped up with three new bodies: the Administrative Environmental Court, the Environmental Ombudsman and the Environmental Inspectorate of the Public Prosecutor’s Office. However, these instruments are barely used as yet. New auditing institutions have also been set up in the financial domain: the General Financial Institutions Monitoring Department, the General Securities Monitoring Department and the Pensions Monitoring Department. Now there is also a specific regulating institution for citizens’ rights relating to the provision of public services, ARESEP; this development has helped to improve the technical criteria for the fixing of tariffs and citizens’ participation. In the nineties the Judiciary was upgraded in a major reform and modernization process (*State of the Nation, tenth report, 2004*).

### **3.2 Institutional problems with the implementation of citizens’ mandates**

87. In comparison with the early nineties, Government action today is more complex and restricted. There are more control and more limits, but less institutional capability to implement public policy measures. In contrast to the other institutions of the Republic, it is the Executive that has suffered most from the reduction of its operational capability in terms of budget and staff numbers. There are now more public bodies than there were at the beginning of the decade. Between 1990 and 1999 a total of 84 bodies were set up, more than when statism was at its height in the seventies, but the proportion of people employed in the public sector fell from 17% of the working population in 1990 to 13.9% in 2003. The State’s growing difficulties in respecting citizens’ rights has led to an erosion of Costa Ricans’ confidence in the national political class (*State of the Nation, tenth report, 2004*).

### **3.3 Changeover from a two-party to a multi-party system**

88. Since the mid-20<sup>th</sup> century Costa Rican democracy has been uniquely stable in Latin America, which has led to a deep-seated trust on the part of Costa Ricans in their institutions and the organization of the political system around the four main branches of government of the Republic (Executive, Legislature, Judiciary and Electorate – *see Annex at the end of this section*).

89. However, this stability does not mean that the system does not change over time. An example of this is the changes that have been made to the political organization specifically related to the changeover from a two-party to a multi-party system. This has been reflected in the electoral processes of the past decade during which the two traditional majority parties<sup>12</sup> have increasingly had to make do with a reduced share the vote as new parties have emerged. For the last election in 2005 a total of 27 new political parties were registered, five of which took part at national level, 10 at provincial level and 12 at canton level. The growth of the multi-party system has been taking place in an atmosphere of profound disaffection with the parties, falling voter confidence in politicians and greater indecision reflected in high rates of abstention in the last two elections, in excess of 30% (*State of the Nation, tenth and eleventh reports, 2004*). These trends will determine the country’s future development in ways that have yet to become apparent.

90. Costa Rica is facing major challenges, such as: achieving sustained economic growth, raising the tax burden in order to make more resources available to the State, forging stronger

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<sup>12</sup> National Liberation Party (PLN) and Social Christian Party (PUSC).

links between foreign investment and domestic production so as to create quality jobs and increase personal incomes. The ruling political class has a central responsibility in successfully facing these challenges. This is key not only to recovering part of the credibility politicians have lost in the eyes of the public, but also to observing the economic, social and cultural rights that the Costa Rican population acquired in the nineties.

#### **4. Costa Rican political system**

91. The present Constitution, approved on 7 November 1949, establishes a presidential regime with the following salient features:

- The President and deputies are elected by popular suffrage (articles 105 and 130 of the Constitution).
- The appointment and removal of ministers is the exclusive and discretionary power of the President of the Republic (article 139.1 of the Constitution).
- The Legislative Assembly has a single chamber.
- The President of the Republic has the exclusive power to enact laws during special sessions (article 118). He also prepares the national budget.
- The decrees, resolutions and orders of the Executive require the signatures of both the President and the appropriate minister (article 146).
- A collegiate body exists called the Government Council, which has its own political powers; it is composed of the President of the Republic and the ministers (article 147).

##### **4.1 Branches of Government**

92. The Constitution provides for three fully functioning three branches of government: the Executive, the Legislature and the Judiciary, all mutually independent. In addition, the Constitution provides for the functioning of the Supreme Electoral Tribunal and the Office of the Comptroller-General of the Republic.

93. As in the case of the branches of government, the constitutional authorities enjoy a large degree of functional autonomy, which allows them to exercise their respective powers completely independent of other State authorities. Therefore, there is no possibility of any subordination or hierarchy arising between them in their relations, and only interdependence is possible.

94. The Constitution also provides for the establishment by law of other institutions of constitutional relevance which have no autonomy as they are attached to another constitutional authority. These include: (a) the Higher Board of Education (article 81), attached to the Executive; (b) the Budget Office of the Ministry of Finance (article 177), attached to the Executive; (c) the National Treasury (article 185), attached to the Executive; (d) the National Wages Board (article 57), attached to the Executive; and (e) the Civil Registry (article 104), which is located in the administrative hierarchy of the Supreme Electoral Tribunal.



95. These institutions enjoy a degree of autonomy sufficient for proper fulfilment of their functions, and therefore belong technically under the heading of constitutional decentralization.

#### 4.1.1 Legislature

96. The Costa Rican parliament has a single chamber known as the Legislative Assembly. It comprises 57 members, elected by universal suffrage in elections taking place every four years, on the first Sunday of February (article 105 and 107 of the Constitution).

97. The 57 deputies remain in post for four years and cannot be re-elected for a consecutive term; they must wait at least one term before standing for office again. The Costa Rican electoral process counts the votes of each province and divides them by the number of seats available for each, obtaining a figure known as the quotient. If, after dividing the total valid votes for the parties, some remain unassigned, the remainder are distributed in accordance with the residual votes, most first. Nevertheless, in order to take part in the assignment, political parties must have received a number of votes equivalent to half a quotient, also known as a sub-quotient.

98. According to article 108 of the Constitution, a deputy must be a citizen in the exercise of his rights, Costa Rican by birth, or by naturalization having resided in the country for ten years after naturalization, and must be at least twenty-one years of age.

99. A deputy is not liable for opinions expressed in the Legislative Assembly in the exercise of his duties, which includes work within the parliamentary precincts (plenary, committees) and outside. That privilege is granted solely and exclusively in order to protect the deputy in the exercise of his duties (executive immunity).

100. During sessions deputies cannot be arrested for a criminal offence, except by authorization of the Assembly or with the consent of the deputy. Since the elimination of bodily constraint from civil and commercial practice in 1989, the only way this could be achieved would be through the family courts on grounds of non-payment of alimony.

101. From the time he has been declared elected by the Supreme Electoral Tribunal and until he has completed his period of office, a deputy may not be deprived of his liberty on penal grounds, unless he has been previously suspended by the Assembly. Such immunity does not apply, however, in a case of flagrante delicto or if the deputy waives it. Nevertheless, a deputy who has been taken in flagrante delicto will be freed if the Assembly so orders.

102. It should be emphasized that the deputy may only waive his immunity from detention, and not his exemption from penal liability, which in any case may be lifted by the Legislative Assembly through a qualified majority of two-thirds of its members.

103. Under article 121, subsection 1, of the Constitution the Legislative Assembly enacts, amends, repeals and gives authentic interpretation to the laws, except on electoral matters, whose authentic interpretation is the concern of the Supreme Electoral Tribunal.

104. In the same article the Constitution provides that it is also responsible, among other functions, for appointing titular and alternate magistrates of the Supreme Court of Justice, approving or disapproving international agreements, public treaties and concordats; granting or withholding its assent for the entry of military troops on national territory; suspending individual rights and safeguards, by a vote of no less than 2/3 of all its members; receiving the oath of the

members of the branches of government, except for ministers; admitting or denying accusations and if necessary suspending from their duties the highest authorities of the branches of government; fixing the regular and special budgets; appointing the Comptroller-General and Subcomptroller-General; raising taxes; ordering the sale or application for public use of property belonging to the nation; approving loans affecting the public credit; granting honorary citizenship; enacting laws on the currency; promoting the progress of the arts and sciences; appointing committees of enquiry and addressing formal questions to Government ministers.

105. The introductory stage of the legislative process involves the submission of bills to the Legislative Assembly. During regular sessions, legislation may be initiated by individual deputies or by the Executive. During special sessions, it is the sole prerogative of the Executive.

106. The Office for Popular Initiatives was established on 13 April 1999 with the aim of offering greater opportunities for taking part in the Legislative Assembly, thereby bringing Congress closer to the citizen. This Office receives suggestions, proposals and preliminary drafts of laws from any citizen (including minors); once these initiatives have been summarized, and their central theme identified, they are notified to the deputies and advisers every month, so that those of special interest can be received for preparation and placed in the legal process. Once a people's initiative has been received, the person concerned is informed immediately as well as of its subsequent progress through the procedure.

107. The discussion stage comprises the bill's passage through a committee and a plenary debate. At the committee phase, both deputies who are members of the committee and other Assembly members may submit formal and substantive motions to amend the draft text under discussion. When the draft has been discussed and approved by the committee, it is passed on to the plenary together with the opinions expressed, whether positive or negative. The bill is then included in the plenary's agenda and subjected to three debates, each on a different day.

108. At the approval stage, bills must be approved at the third debate, by the majority required under the Constitution in each case. A legislative order is then sent to the Executive for sanction. Finally comes the formulation stage, when the act is enacted and published. In Costa Rica, however, enactment and publication merge into one and publication brings it into effect.

109. Costa Rica's Parliament has not escaped the modern trend of shifting towards political or parliamentary control. Through this function, the Assembly checks that the other branches of government, especially the Executive, act within the framework of the law. Its main instrument is the special investigative committee.

110. In accordance with article 121, subsection 23, of the Constitution, investigative committees may consider any matter entrusted to them by the Assembly and must submit the corresponding report within the required time limit. The committees have free access to all official agencies in conducting their investigations and may request any data deemed necessary. They may receive any kind of evidence and call before them any person for purposes of interrogation.

111. The scope of these committees' investigations is limited by the powers reserved constitutionally for other fundamental authorities. For example, an investigative committee could not interfere with trials or matters pending before the Office of the Comptroller-General or the Supreme Electoral Tribunal. Another limitation on their work is that they may not investigate matters declared to be State secrets or request private documents, which are actions prohibited by

articles 24 and 30 of the Constitution. Their reports have no legal force, and are essentially recommendations of a political nature.

112. With regard to its jurisdictional function, in accordance with article 121, subsections 9 and 10, of the Constitution, the Assembly may lift the exemption from criminal proceedings enjoyed by members of the branches of government, and order their suspension if they have been tried or found guilty. This is exclusively a jurisdictional function, for in cases of criminal accusation against members of the branches of government the respective trial cannot proceed unless the Assembly has determined beforehand, by a two-thirds majority of all its members, that there are grounds for legal action.

113. The Constitution provides for three kinds of state of emergency: 1. - suspension of constitutional rights and guarantees; 2. - authorization to declare a state of national defence and to make peace; and 3. - the right to control sections of the budget during periods of legislative recess.

114. Some Constitutional rights and safeguards may be suspended by the Executive; the former may be suspended only in case of clear public necessity, namely freedom of movement, the inviolability of the home, confidentiality of communications, freedom of assembly, free will, freedom of expression, access to public offices and detention with a written warrant of a judge. Such a suspension requires the approval of not less than two-thirds of all members of the Assembly and may be extended up to a maximum of thirty days.

115. In this way, the Legislative Assembly exercises political control over the Executive's handling of the indeterminate legal concepts "urgent or unforeseen necessity" and "war, internal upheaval or public disaster".

#### **4.1.2 Executive**

116. The Executive is a constitutional authority that exercises the political and administrative function of State. It is independent of the other branches of government, and operates through a system of checks and balances that preclude any legal relationship between them.

117. The Costa Rican Executive is the political driving force in State activity, and thus constitutes in practice the basic arm of government. At the political level, the Executive takes the basic decisions of State, and in the legal sphere it is supreme among the other administrative bodies. Accordingly, the General Public Administration Act grants it authority to co-ordinate and direct all governmental and administrative tasks, comprising both central and decentralized areas of government.

118. The Executive is composed of the President of the Republic and the relevant minister. Other bodies of the Executive are the autonomous and semiautonomous institutions. .

119. According to the Constitution, to be President of the Republic a person must be a Costa Rican by birth and a citizen in the exercise of his rights, a layman, and over thirty years of age.

120. The election for President and the Vice-Presidents is held on the first Sunday in February of the year in which these officials are to be elected.<sup>13</sup> The presidential term is four years. Two vice-

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<sup>13</sup> National elections were held on Sunday 5 February 2006.

Presidents are elected at the same time as the President; they replace him during his temporary or complete absence, in the order of their nomination.<sup>14</sup>

121. Under article 139 of the Constitution, the main duty of the President of the Republic is to co-ordinate the efforts of the nation as a whole. This involves representing the nation officially, appointing and removing cabinet ministers, exercising supreme control of the armed forces and police, presenting an annual report on his work to the Legislative Assembly.

122. Under article 130 of the Constitution, cabinet ministers are subordinate collaborators of the President; all instruments attributed to them by the Constitution must be signed jointly with the President in order to be valid.

123. In practice, deputy Ministers share the political and administrative direction of the ministry, as the workload is such that the Minister could not possibly deal with every aspect of his responsibilities.

124. The Council of Government is the collegiate body composed of the President of the Republic and the cabinet ministers, and its functions - in an advisory capacity - are: requesting the Legislative Assembly for an assessment of the state of national defence; appointing and removing the diplomatic representatives of the Republic; appointing directors of the autonomous institutions and resolving issues submitted to it by the President of the Republic where warranted by the seriousness of the situation.

#### **4.1.3 Judiciary**

125. Article 9 of the Constitution states that the Judiciary is one of the three branches of the Government of the Republic. In particular article 152 of the Constitution states “The authority of the Judiciary is exercised by the Supreme Court of Justice and by other courts established by law”.

126. The independence of the Judiciary is secure with respect to the Executive. Its relationship with the latter is collaborative, since legal decisions must be implemented, as necessary, by the police forces that answer to the Executive.

127. With regard to the Legislative Assembly, article 154 of the Constitution states that the courts are subject only to the law, such that no other declaration by the legislative branch may be binding on judges.

128. The main limitation placed by the Legislative Assembly on the Judiciary consists in constitutional control over the laws, allowing for the fact that the Constitutional Chamber has the power to declare a law invalid on grounds of formal or substantial defect. Moreover, in accordance with the law on constitutional jurisdiction, all bills involving constitutional reform or the approval of international agreements or treaties, including reservations made or proposed by any party, must be submitted to the Constitutional Chamber for its constitutional opinion.

129. The Judiciary is exercised by the Supreme Court of Justice and by other courts established by law. The Supreme Court of Justice is the highest court of the judicial branch, and therefore of its administrative hierarchy.

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<sup>14</sup> The Vice-President posts are not regulated in the Constitution; however, in practice they play active roles and some are even responsible for ministries.

130. The Supreme Court of Justice currently comprises four courts: the First Chamber tries civil, commercial and contentious-administrative cases, the Second Chamber tries cases relating to family law, labour law and residuary decisions (inheritance and bankruptcy), while the Third Chamber tries criminal cases. In addition, the Constitutional Chamber or "Fourth Chamber" is concerned with constitutional jurisdiction and is the highest court for the protection of human rights in Costa Rica.

131. The magistrates of the first three Chambers are elected by an absolute majority of votes, whereas the magistrates of the Constitutional Chamber are elected by a qualified majority of two-thirds of the total membership of the Legislative Assembly. Each of the first three Chambers comprises five magistrates, and the Constitutional Chamber has seven.

132. In order to safeguard the independent organization and functioning of the courts of justice, the Constitution and the laws lay down a number of principles for them to follow.

133. The first of these is the guarantee of a natural judge, under article 35 of the Constitution. This principle guarantees that only legally appointed authorities and judges are competent to try cases.

134. Articles 121, subsection 20, and 152 of the Constitution grant the Legislature exclusive authority to create courts of justice; the Executive is prevented constitutionally from creating courts or determining their competence.

135. Article 41 of the Constitution requires that justice must be prompt, thorough, and "in strict accordance with the laws". In the same vein, article 154 of the Constitution states that the Judiciary is subject only to the Constitution and the law. This guarantee is strengthened by article 155, according to which "No court may take cognizance of cases pending in another court. Each court has proper and exclusive competence to resolve matters submitted to its jurisdiction, without interference from other courts and judicial bodies." When judges breach this principle of impartiality, they pervert the course of justice and may be liable to civil or penal action.

136. Article 153 of the Constitution grants the Judiciary the monopoly in solving all disputes that arise on different matters, without prejudice to the existence of administrative courts within the orbit of both the Executive and the Judiciary, whose decisions do not constitute actual judgement at law, and may always be contested in the courts of justice.

137. The only area outside the jurisdiction of the Judiciary is electoral matters, on which decisions are taken exclusively by the Supreme Electoral Tribunal, in accordance with article 103 of the Constitution.

## **5. General legal framework for the protection of human rights**

### **5.1 Constitution**

138. The Constitution of Costa Rica is the pillar of the law that guarantees full respect of all human rights to all citizens. The Constitution contains many provisions on civil rights, including: the inviolability of human life (article 21), freedom of movement (article 22), the right to intimacy, freedom and secret of communications (article 24), right of association (article 25), the right of asylum (article 31) and the equality of all human beings (article 33).

139. Regarding economic and social rights, there are provisions – among others – on the right to a healthy environment (article 50), State protection for the family (article 51) and the rights to work, health and education as already referred to.

## 5.2 International treaties

140. Article 7 of the Constitution determines the hierarchy of legal instruments, providing that “Public treaties, international agreements and concordats duly approved by the Legislative Assembly shall have a higher authority than the laws upon their enactment or from the day that they designate.”

141. In accordance with the provisions of the Constitution, international treaties require legislative approval to become part of the law of the land; however, on the basis of a consultative opinion contained in Decision No. 6624-94, Costa Rica’s supreme constitutional court established that the criteria 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, rules that are binding – *ius cogens* – and on which there is universal consensus”.<sup>15</sup>

142. In the field of human rights the country has ratified the international instruments listed below.

143. 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.

144. Other international instruments signed and ratified by Costa Rica by Act No. 4229 are the International Covenants on human rights, 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 Act No. 8459 approved the Optional Protocol to the Convention against Torture.

145. 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.

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<sup>15</sup> Constitution, Article 7

146. 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; by Act No. 3170 of 12 August 1963, published in La Gaceta No. 187 of 21 August 1963, Costa Rica's accession to the Convention against Discrimination in Education, signed in Paris on 14 December 1960, was approved; by Act No. 4463 of 10 November 1969, published in La Gaceta No. 259 of 14 November 1969, Costa Rica 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.

147. 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 n° 4534 of 23 February 1970, published in La Gaceta n° 62 of 14 March 1970, and ratified on 8 April 1970. It was deposited on 8 April 1970.

148. Likewise, by Order n° 7060-RE, published in La Gaceta No. 114 of 16 June 1977, 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. That order was submitted to the General Secretariat of the Organization of American States on 2 July 1980.

149. The scope of international legal instruments on human rights within the legal system has been defined by Decisions 3435-92, 5759-93 and 2323-95 of the Constitutional Court, which has decreed in particular in the last-named 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 on a level with that of the Constitution. Indeed, as has been recognised in the jurisprudence of the Constitutional Court, human rights instruments in force in Costa Rica not only have similar status to the Constitution but also, in so far as they grant greater rights or guarantees to persons, take precedence over the Constitution".

150. This legal hierarchy of treaties has three basic legal consequences: From the moment of entry into force of the Convention, there will be automatic derogation from any law or practice opposed to it; any rule or practical measure contrary to the provisions of the Convention that is adopted subsequently will be null and void, even if adopted by the legislature and having the status of law.

151. Any judicial or administrative recourses available in the national legal system may be resorted to to remedy any violation of the provisions of this international instrument. In this context it should be emphasised that one may bring an action for unconstitutionality against any rule or measure running counter to the provisions of the Convention. Furthermore, it is possible to file an application for amparo in the Constitutional Chamber of the Supreme Court to halt and remedy any violation of the provisions of this international instrument.

## **6. Constitutional remedies**

### **6.1 Constitutional chamber**

152. For years it was the task of the Supreme Court of Justice, as the highest court of the judiciary, to ensure the constitutionality of the law. The adoption of Act No. 7128 of 15 June 1989, entitled "Constitutional Jurisdiction Act", radically reformed the treatment of Costa Rican constitutional

law by creating a new court specializing in a new concept of interpretation that concerned itself with values, principles and ethical content over and above the letter of the law.

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

154. The Constitutional Jurisdiction Act, by creating a specialized jurisdiction, modified the system of constitutional justice in force until then, thereby bringing about the greatest change in the law of the land over the past 20 years, a change that has been described as "the real revolution in the legal world"<sup>16</sup>.

## 6.2 Constitutional remedies

155. 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. This Chamber 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 following remedies.

156. 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 fundamental character established in international instruments concerning human rights applicable in the Republic".

157. During 2004, the percentage breakdown of cases was as follows: 11.9% habeas corpus, 2.5% actions for unconstitutionality; 85.2% remedies of amparo and 0.4% other.

158. Annual data for the number of cases tried in the various courts during 2000-2004 were as follows:

TABLE 2

### Number of cases tried in various courts, 2000-2004

<i>Year</i>	<i>Chamber I</i>	<i>Chamber II</i>	<i>Chamber III</i>	<i>Constitutional Chamber</i>
2000	788	826	1202	10 808
2001	1088	762	1283	12 752
2002	746	723	1349	13 431
2003	637	877	1383	13 301
2004	830	1117	1749	13 420

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

<sup>16</sup> Gustavo Rivera Sibaja, *Ley de Jurisdiccion Constitucional y creación de la Sala Constitucional* (The Constitutional Jurisdiction Act and the creation of the Constitutional Court), ed. Editec, "Laws" collection 29, San Jose, Costa Rica, 1997, p. 5.



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

TABLE 3

**Average time taken by the Constitutional Chamber to rule on appeals (1999-2004).**

<i>Year</i>	<i>Habeas corpus</i>	<i>Amparo</i>	<i>Unconstitutionality</i>
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. Department of Planning. Constitutional chamber.

### 6.3 Habeas corpus

160. 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 his 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 his own behalf or on behalf of another person.

161. 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 providing for this procedural means, stipulates that this remedy may not be restricted or abolished in States parties whose laws provide that anyone who believes himself to be threatened with deprivation of his 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, for it must constantly seek to expand the scope of the protection and may never allow it to slip backwards.

162. Although this remedy is designed to protect the right of physical freedom and the right of movement, in fact, the doctrine and comparative legislation have expanded the extent of the cover by distinguishing between the following cases: a) restoration: the purpose of this type of remedy is to restore freedom to those citizens who have been unlawfully deprived of it owing to a failure to proceed in accordance with domestic legislation; b) prevention: here the purpose is to prevent threats of deprivation of personal freedom, including arbitrary threats; c) amendment: here the purpose is usually to change the 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) restraint: here the purpose is to put an end to improper harassment of an individual by the judicial or administrative authorities or the obstruction of his access to public or private areas.

163. 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 Law, to guarantee personal freedom and integrity against the laws or omissions of authorities of any kind, including the judicial authorities, and against threats to such freedom and any unlawful disruption or restriction of the right to move about in the Republic and the right of free residence therein, as well as the freedom of entry and exit.

164. Seen in this way, the broad scope of the legislation enables the constitutional courts to exercise full control over any act or omission which, currently or in the future, may restrict or threaten to restrict any of the rights protected by the Constitution. 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 legal protection, which also operates today as a means of preventing possible violations of that freedom (preventive habeas corpus)".

165. It is essential to draw attention to the progressive development of the international human rights instruments by Costa Rica's domestic courts. For example, the courts admitted proceedings of habeas corpus for amendment purposes in respect of a violation of the rules of international law currently in force in the domestic jurisdiction. Decision No. 199-89 held it to be a remedy against violation - inter alia - of article 8, paragraph (c) of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

166. It was held that if the detention was not the result of a sentence imposed on the person concerned, or if he had not been brought before a court, "but was merely the result of the issue of a deportation order against him because the Migrants and Foreigners Office had ordained his deportation ... his detention in a facility of the prison system intended for charged offenders but in fact also used to house convicted criminals violates the rules cited by the plaintiff and that the lack of any special detention centres is not an admissible excuse, a consideration which applies with even greater force to the claim that such places of detention are more appropriate for the detainees, for the case concerns fundamental rights which cannot be violated under any pretext: it is obvious that the detention of persons who have not even been brought before a court must be effected under conditions at least better than those under which they are being detained".

167. 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 his personal freedom and integrity, and to bring amparo proceedings to maintain or re-establish his 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."

168. These proceedings are heard by a special chamber of the Supreme Court of Justice (the Constitutional Chamber), which is made up of seven tenured judges (articles 10, 48 and its transitional provision). The system is a concentrated one, for the proceedings are heard by a single court. Decisions of the Constitutional Chamber 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 Chamber's own motion. 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.

169. The proceedings are supervised by the president or by an examining magistrate designated by him. The powers of the president or examining magistrate include the power established in article 21, second and third paragraphs, of the Law on Constitutional Jurisdiction, which authorises them to order the injured party to appear or to order an investigation when this is considered necessary in the light of the circumstances, either before ruling on the application or for the purposes of enforcement, if necessary, of a ruling for or against. He may also order at any time any interim protection measures which he sees fit.

170. According to the third paragraph of article 9 of the Law, 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 proceedings of this kind might otherwise lead to a violation of the principles of due process entailing financial and legal consequences.

171. Once proceedings have been initiated they may not be discontinued. It has been held that in the case of habeas corpus there is no rule authorizing withdrawal, which is a logical position for the law to take, since this 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.

172. Since what is at stake here is the protection of rights highly valued by society or of great importance for harmonious coexistence in society, the legal system denies the injured party the option of deciding whether the offender shall be punished. Thus, article 8 of the Act governing these matters provides that, once an application has been made for intervention by the Constitutional Chamber, the Chamber must act automatically "without the possibility of invoking the tardiness of the parties to delay the proceedings". What is involved here is the public interest in ensuring that, once the Chamber's intervention has been requested, it is not subject to the will of the parties involved in the constitutional proceedings; even against their will, it may hand down a substantive decision, one deemed necessary in the light of the purpose of all proceedings of this kind. (Decision No. 3867-91, Constitutional Chamber.)

173. The Law on Constitutional Jurisdiction does not address the possibility of bringing habeas corpus proceedings against laws of subjects of private law; this is also true of amparo proceedings, which are also regulated in the Law, in articles 57 to 65. This is because the nature of the habeas corpus remedy is to protect personal freedom and integrity against laws and omissions emanating from any authority of any kind, even judicial, which threatens to impugn or restrict them. It is a recourse against abuse of the repressive powers of the organs of State.

174. Regarding the scope of the habeas corpus remedy, opinion 0878-97 of the Constitutional Chamber states that "the remedy of habeas corpus is not a prohibitive kind of measure, aimed solely at restoring the freedom of the applicant, but is a genuine constitutional process, aimed not only at safeguarding rights to personal freedom and integrity in future, but also at revealing past breaches, with the effect of requiring the authority responsible for the violation to compensate the victim for damages and pay the applicant's costs".

175. The examining magistrate requests a report from the authority stated to be in breach. The report must be furnished within the time limit set by the examining magistrate, which may not exceed three days. At the same time, he may order the stay of any order against the applicant which may result in non-fulfilment of the Chamber's ultimate decision.

176. The examining magistrate may also order the applicant to appear, or have an inspection made if he considers it necessary, depending on the circumstances, even before making a ruling

on the habeas corpus application or for the purpose of execution, if considered warranted, whether the application is found admissible or inadmissible. Interim measures of protection of the rights in question may be ordered.

177. The report of the authority claimed to be in breach must contain a clear explanation of the reasons and legal principles on which it is based and of the evidence which exists against the applicant. If the report is not submitted within the requisite time-frame, the facts invoked to justify the application may be deemed to be established, and the Chamber will declare the application admissible, if lawfully made, within five days, unless it is found necessary to carry out an evidentiary procedure.

178. When a decision finds admissible an application for habeas corpus the measures attacked in the application will become ineffective, and the applicant will be ordered to be restored to full enjoyment of his right or of the freedom which has been impugned or violated. The responsible authority will be ordered to compensate him for the damage caused, these damages being determined and settled through a contentious administrative procedure as part of the execution of the award, as required by the Law on Constitutional Jurisdiction (articles 25 and 26, second paragraph).

179. Failure on the part of the authorities against whom the remedy is sought to comply with orders made by the Chamber will incur criminal responsibility (articles 71 and 72).

180. In stipulating that a habeas corpus remedy may not be sought against actions by subjects of private law, the Constitution is not making any discrimination, since there is also the remedy of amparo, which is broader in its regulatory scope. This is because the nature of the habeas corpus remedy is to protect personal freedom and integrity against laws and omissions emanating from any authority of any kind, even judicial, which threatens to impugn or restrict them, all within a system of law such as Costa Rica's. If the Chamber decides that the matter is not one for habeas corpus, but rather for amparo, it will say so and continue the procedure following the rules for the amparo remedy.

#### **6.4 Remedy of amparo**

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

182. In this case, as in the preceding one, the services of a lawyer are not required. According to the Italian jurist Mauro Cappelletti, amparo constitutes the "constitutional jurisdiction of freedom", being a procedural instrument designed specifically to protect those rights.

183. The right to "effective recourse" stipulated in article 25 of the American Convention on Human Rights is transformed into a primary obligation of States parties to this international instrument and requires the consequent incorporation in their domestic systems of legal remedies which satisfy that criterion. In modern times it is not sufficient to have ordinary jurisdictions such as a system of administrative law. The injustices to which an individual is could be subjected requires other privileged procedural means, even parallel ones, to combat such injustices, and amparo is the most appropriate remedy for attainment of that end.

184. Amparo may be invoked against any provision, agreement or decision and, in general, against any action, omission or simple material law not based on a valid administrative regulation committed by public servants or organs 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.

185. Amparo is also used to safeguard the human rights recognized in international law in force in our country. This is an important innovation, since there are fundamental rights enshrined in international treaties which are not expressly recognized in our Constitution, such as the right to have a published correction or reply.

186. According to article 57 of the Constitutional Jurisdiction Law, proceedings of amparo may also be brought against “acts or omissions of 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 insufficient or too slow to guarantee the fundamental rights and freedoms referred to in article 2, subsection 9a) of the Law”.

187. These requirements, which are difficult to pin down, mean that this use of the amparo remedy is an exceptional one. The Chamber has tended to declare inadmissible breaches of contract or requests for the winding up of a cooperative association in the event of a ban, claims for employment rights or non-fulfilment of a court order concerning shared parental custody rights, where there are other administrative remedies available, for instance; on the other hand, the application will be admissible for refusal to allow membership of a cooperative, for an owner cutting off a tenant's water supply, etc.

188. Where amparo is used against public authorities, article 30 of the Constitutional Jurisdiction Law states that the remedy will not apply in the following cases: a) against laws and other normative provisions, except where they are impugned together with acts for their individual application or when the provisions are automatic rules, such that their precepts become compulsory immediately on enactment, without the need for any other rules or enactments to develop them or render them applicable to the complainant; b) against decisions and jurisdictional rulings of the judiciary; c) against acts by the administrative authorities pursuant to judicial decisions, provided that such acts are carried out in accordance with the orders of the judicial authority in question; d) where the act or omission was legitimately accepted by the aggrieved person; e) against acts or decisions of the Supreme Electoral Court in electoral matters.

189. Given the broad language of the legislation, it would be difficult to find cases in which proceedings may not be brought by this means, except for the cases expressly excluded by law. However, the scope of the legislation is being delimited by legal precedents. For example, it has been held 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 infra-constitutional juridical system is derived, the existence of direct injury to the Constitution is a prerequisite for use of this remedy. Other injuries which may be inflicted on the Constitution, provided that they are indirect, should be dealt with by the courts of ordinary jurisdiction.

190. Article 33 of the Law enables any person can bring an action either on his 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 an injury to a fundamental right and not merely damage to the common interest of guaranteeing legality in the abstract. For example, violation of an organic

rule of the Constitution does not authorize an individual to seek to sanction administrative actions as if he were a public prosecutor.

191. 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 to be presented by a public body, except in the case of municipalities.

192. Amparo proceedings are heard by the Constitutional Chamber of the Supreme Court of Justice. The application states the act or omission providing the grounds for the action, the right allegedly violated or threatened, the name of the public servant or organ 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 injured right is clearly specified, except in cases where an international instrument is invoked. If the identity of the public servant is unknown, the proceedings are brought against the Administration.

193. Any third parties who derive subjective rights from the rule or legislation providing the grounds for the action will also be a party to the proceedings. In addition, any person having a legitimate interest in the result of the action is able to appear in it and be heard as an additional party.

194. 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 of the application cannot be established, or if it does not meet the requirements indicated above, the applicant will be advised to correct the defects within three days. If he does not do so, the action is summarily dismissed.

195. Amparo proceedings are heard by the President of the Chamber or a judge designated by him in strict rotation, and they are handled on a priority basis, so that any other case of a different kind, except habeas corpus, may be postponed. 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.

196. The mere lodging of amparo proceedings suspends the effects of the laws and other legislation cited against the defendant, as well as the effects of the specific acts which are challenged. This suspension comes into effect automatically and is notified immediately by the fastest possible means to the agency or official against which or whom the proceedings are brought.

197. 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 to which the defendant official or agency is responsible, if such suspension causes or threatens to cause certain and imminent damage to the public interest greater than the damage which continued application would cause to the injured party, subject to any conditions which the Chamber may deem appropriate to protect his rights and freedoms and prevent the impairment of the effects of an eventual finding in his favour.

198. The decision admitting the amparo proceedings accords the defendant authority a period of one to three days to submit its report, and this authority may request the administrative report or the documents containing the details of the case. Such reports are deemed to have been drawn up under oath. Accordingly, any inaccuracy or falsehood will render the official concerned liable to punishment for perjury or false testimony, depending on the nature of the facts contained in his report.

199. Apart from this, the Chamber must bar the application if intermediary norms are being challenged at the same time as instruments for execution, or when it decides that the act impugned in the proceedings may be based on an unconstitutional rule (article 48 of the Constitutional Jurisdiction Law).

200. If the report shows that the application is sound, it will be declared admitted. If not, the Chamber may order specific information to be obtained immediately, a process which must be completed within three days, along with any evidence which may be essential, and a hearing may be granted to the applicant and the complainant, if two separate persons are involved, and to the public servant or representative, taking certified statements from each. Before handing down its decision, the Chamber may order any other steps to be followed.

201. According to article 51 of the Law on Constitutional Jurisdiction, "A ruling in favour of the applicant entails in principle liability for the damage caused and payment of the costs of the proceedings, and payment is made as part of the enforcement proceedings in an administrative court. It should be noted that the verdict is given without full trial and without the possibility of appeal."

202. The Law does not define a time limit for making a decision in amparo cases. However the general principles relating to official conduct and promptness apply (article 8), except that these cases are to be handled "on a priority basis", taking precedence over habeas corpus cases. (article 39 CJA).

203. If the decision is executory, the responsible agency or official must comply with it immediately. If this is not done within 48 hours, the Chamber addresses itself to the superiors of the responsible party, and to take disciplinary action the guilty party or parties. After a further 48 hours, it will take proceedings against a superior who has not acted as requested, except in the case of officials enjoying privileged status, when the Public Prosecutor is requested to initiate proceedings.

204. There is no appeal against the Chamber's decisions. The Chamber's awards may be elucidated or added to at the request of a party, if the request is made by the third day, and of its own motion at any time, including in enforcement proceedings to the extent necessary to comply fully with their requirements.

205. In accordance with article 35 of the Law, an amparo action may be brought at any time as long as the violation, threat, disruption or restriction persists and for two months after its direct effects on the injured party have totally ceased. However, in the case of purely property rights or other rights whose violation can be validly allowed, 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.

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

207. Concerning acts which have immediate effects, the time limit for lodging an action is two months after its direct effects on the complainant have ceased. In this case, there may be cases of acts lawfully consented to, when the injured party has allowed the two-month time limit to elapse since the cessation of the direct effects, and the act or omission has not been complained of by way of amparo.

208. Prescription of the amparo remedy, where it is not sought in time, will not prevent the law complained of being proceeded against by another means, if the law allows (article 36 CJA).

### **6.5 Remedy of amparo against subjects of private law**

209. As an Italian jurist, Norberto Bobbio, has commented, "There is little point in an individual being free in the State if he is still not free in society. There is little point in the State being a constitutional State if its society is despotic. There is little point in an individual being politically free if he is not socially free. (...) The current problem of freedom cannot be limited solely to the problem of freedom vis-à-vis the State and in the State, for it affects the very organization of the whole of civil society and has an impact not on the citizen as such, i.e., on the public man, but on the total man as a social being"<sup>17</sup>.

210. This is the argument from which the whole justification of the constitutional guarantee is derived. In modern times it is essential to have legal procedures designed to provide effective safeguards of the rights and freedoms accorded to the individual. In modern democratic systems the legal remedies for protection against and correction of possible violations by subjects of private law are an integral part of the systems themselves.

211. An amparo action against an individual is not a remedy designed to resolve every kind of conflict which may arise in private affairs, and it is certainly not conceived as a substitute for the jurisdiction of the ordinary courts. Sometimes a case requires further discussion or proof, and it is the ordinary courts which should assess the facts with due deliberation and balance.

212. Although in ordinary amparo actions there are no major problems in identifying the fundamental rights to be defended (the constitutional and human rights laid down in international instruments in force in Costa Rica), in the case of amparo actions brought against individuals, it is more difficult in respect of those rights which are expressly conferred by rules of law as against the authorities (for example, freedom of petition), rights whose extension to private relationships, in the character of fundamental rights, inspires serious doubt.

213. Once the action is admitted, it is communicated to the person or entity cited as author of the injury, threat or omission within a time limit of three days, using the swiftest possible written means. This time limit may be extended if it is insufficient for reasons of distance.

214. The decision admitting the amparo action declares unlawful the act or omission which gave rise to the action and orders that the rule in question should be observed, as appropriate in each case, within a time limit indicated in the decision itself; the decision also orders the responsible person or entity to make reparation for the damage caused and to pay the costs.

215. If the initial law was of a negative kind, the effect of the amparo will be to compel the person responsible to act with due respect for the right concerned. The payment of damages and costs will be made through the civil enforcement procedure.

216. If at the time the amparo is declared admissible, the effects of the act complained of have ceased, or it has taken place in such a manner that the complainant cannot be restored to the enjoyment of his rights, the award will prevent the offender from committing similar or the same

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<sup>17</sup> Hernandez Valle, Rubén, *La tutela de los derechos fundamentales*, Editorial Juricentro, San José, Costa Rica, page 107, 1990.



acts or omissions as those which prompted the decision, and will order him to pay compensation for the damage caused and the costs of the case.

217. It must be borne in mind that the amparo action is not intended to solve problems concerning legality or legal effect. These should be discussed by other means, because the remedy would otherwise be deprived of its true character and turned into a test of legality rather than constitutionality. This is why amparo is used only to deal with the acts of some authority, official or employee which violate or threaten the rights enshrined in the Constitution (decision of the First Chamber, 31 January 1986).

## 7. Importance of the Constitutional Chamber for enforcement and justiciability of human rights

218. The Constitutional Chamber has played a particularly far-reaching role in Costa Rican life by becoming the body *par excellence* that safeguards human rights when they are considered to have been violated. In fact, in its history this supreme court has produced a body of broad and clear jurisprudence that incorporates concepts of protection even from the international system for the protection of human rights.

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

TABLE 4

Number of rulings handed down by the Constitutional Chamber, 1998-2004

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

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

220. It has to be understood that the decisions handed down by this authority must be enforced "*erga omnes*" (for everyone) – except for itself, which also results in immediate application of its provisions since otherwise the defendants as individuals or on account of their duties may be subject to penalties that can even be of a criminal nature.

221. Note that the Constitutional Chamber has become the supreme guarantor of human rights in general and has provided special protection for economic, social and cultural rights in particular, which makes it the most reliable and prompt mechanism in the country for providing an immediate response to violations of those rights.

222. It should be pointed out that the Constitutional Court's contribution to the justiciability of economic, social and cultural rights is highly significant since it has repeatedly and consistently passed sentence in relation to various rights in that category.

223. In that connection it has delivered opinions on access to the right to work, especially for non-nationals or detainees; it has also consistently stated its position regarding the right to a fair wage and the right to rest. Furthermore, opinion 5000-93 of the Constitutional Chamber protects trade union representation and offers special support for workers' right of representation, in the broad sense, regardless of whether they are union members. The right to join or not a trade union of the worker's free choice has been reiterated in a number of opinions over the years that the court has existed. The freedom to exercise or not the right to strike without reprisals from employers is another worker's right that has been protected by the Chamber.

224. Furthermore, the family, as defined in article 51 of the Constitution and constitutional resolutions, includes both the family linked by formal ties (marriage) as well as de facto unions established by informal emotional ties.

225. In the judgment of the Constitutional Chamber in its opinion No. 13 of 11 January 1995 at 15.30 hours, the Act on the Promotion of the Social Equality of Women brings together national jurisprudence which has consistently ruled in favour of the protection of women's rights in general.

226. With respect to the right of all persons to an decent standard of living, the Constitutional Chamber has laid down that citizens must have an income-debt ratio that enables them to honour their housing loan obligations in line with reasonable and proportional criteria.

227. The Constitutional Chamber has repeatedly stated that the responsible State institutions may not postpone solving a problem that jeopardizes the health of persons, and that it is therefore necessary to take practical technical and legal measures in accordance with the law of the land to avoid their fundamental right to health and life in terms of drinking water. The Chamber has stated that "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 (...)."

228. Along the same lines, the Constitutional Chamber has highlighted the right to health and the State's obligation to care for detainees as a special care group, and to supply and dispatch emergency medicines especially in exceptional cases.

229. Regarding the right to education, the Chamber has played a prominent role, especially by promoting access to that right for the non-nationals in the population. It has also ruled on the right to scholarships for disadvantaged students and has again made pronouncements on the case of migrant students.

230. There is a wide variety of further examples, but the essential point is that constitutional jurisprudence has made a major contribution to the enforcement of economic, social and cultural rights, and that the Chamber has provided genuine access to proper justiciability.

## 8. Law governing the work of the Office of the Ombudsman

231. The Office of the Ombudsman was established through Law No. 7319, adopted in November 1992, originally called the "Law for the Protection of Inhabitants" [Ley del Defensor de los Habitantes], subsequently called the "Law for the Protection of Inhabitants of the Republic" [Ley de la Defensoría de los Habitantes de la República], supplemented by Order No. 22.266, which establishes the "Regulation for the Office of the Ombudsman"<sup>18</sup>.

232. The scope of its competence is governed by article 12 of the Law, 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 in the public sector. However, it may not intervene in any way concerning decisions of the Supreme Court of Elections on electoral matters."

233. The intervention of the Office of the Ombudsman does not replace the acts, material proceedings or omissions of the administrative authority in the public sector, its powers being effectively to ensure their legality. The Office is competent to protect human and civil rights, to channel popular complaints about the public sector and to protect community interests in matters relating to it (article 14 of the Law).

234. In its supervisory role, the Office does not act only at the request of a party, i.e., when a complaint is lodged. It also has power to carry out studies on the spot in a particular area, and in that role has made studies of the prison system in Costa Rica, the health system and the situation of Costa Rica's indigenous population.

235. The Office of the Ombudsman has played a fundamental role in exposing breaches of citizens' rights and attracting attention to ethnic minorities and disadvantaged population groups.

236. Since it was set up, it has submitted a total of 13 annual reports on its work and the general status of the country. It also issues pronouncements on matters of national interest and has worked to publicize human rights. It has regional offices and departments for specific matters, such as the Ombudsman for Women, Special Protection, Quality of Life, Management audits, Economic Affairs, Children and Adolescents, and Promotion and Dissemination.

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<sup>18</sup> Ley de la Defensoría de los Habitantes, Government Press, published in "La Gaceta" No. 155 of 17 August 1994.

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## PART TWO

### NATIONAL REPORT ON COMPLIANCE WITH THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

COSTA RICA – Period 1990-2004

Ministry of Foreign Relations  
San José, April 2006

#### ARTICLE 1 (All people's right to self-determination)

237. Costa Rica is a sovereign republic, free and independent, as confirmed in the basic document accompanying this report. It has been a democracy without interruption since 1949. Historically, the Costa Rican democratic system has been a model in Latin America as it is based entirely on its institutional model and the defence of its democratic structures.

238. The Costa Rican Constitution sets out the organization of the State institutions through which it carries out its functions under the law of the land (principle of legality). Costa Rica is subject to the rule of law, complying with national and international principles for the respect of human rights.<sup>19</sup>

239. On 1 December 1948, the army was abolished and in the 1949 Constitution it was definitively proscribed as a permanent institution; since then, the defence of the country has been the responsibility of instruments of public international law and diplomacy.

240. The country abolished the death penalty in 1871 and slavery in 1824, and women were given the vote in 1949; since then it has ratified a large number of international human rights instruments both in the Inter-American System and the universal United Nations System.

241. In 1989 the Constitutional Chamber of the Supreme Court of Justice was set up and since then has focused not only on monitoring constitutionality by means of a very informal procedure, but also on defending the human rights recognized in the Constitution and the international instruments duly ratified by Costa Rica.

242. This protection is implemented by means of the remedies of amparo and habeas corpus, both informal and easily accessible to anyone of any social or educational level; third parties may even act on behalf of the victim. The Constitutional Chamber has been fundamental to the advancement of human rights in Costa Rica owing to its binding *erga omnes* nature, its broad openness to receive and process petitions and the dynamic and pertinent way in which it interprets the law; and it has acted as a genuine guarantor owing to the promptness with which it resolves the matters submitted to it.

243. Social, economic and cultural rights have been enshrined in the Constitution since 1949. The right to education is in the Constitution in article 78, the protection of the family in article 51, the right to culture in articles 76 to 89, the right to health in articles 21 and 50, the right to work in article 56, the right to a minimum wage in 57, the maximum working day in 58, the right to

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<sup>19</sup> Articles 1 to 12 of the Costa Rican Constitution set out the country's political structure and the general organization of the country.

trade union membership in 60, the right to strike in 61, the right to low-cost housing in article 65, the right to health and safety at work in article 66, technical and cultural training in article 67, non-discrimination with regard to wages, advantages or working conditions in 68, the protection of women and children in article 71, and social security in article 73.

244. Despite progress made and the consolidation achieved, the Costa Rican Government faces major challenges ahead, as we pointed out in Part One. Efforts have been made to ensure that the most vulnerable elements of the population can more readily attain a decent standard of living; however, this has not been enough in some cases, as will be seen below.

245. Since 1974, when Act No. 5525 was approved, the Ministry of Planning and Economic Policy (MIDEPLAN) has been responsible for directing and controlling the National Planning System and drawing up the National Development Plan. The latter is the instrument that indicates the main priorities guiding State action in the economic, social, environmental and institutional fields.

246. Article 1 of the MIDEPLAN Act states that the objectives of the National Planning System are to stimulate growth in the country's production and productivity, to promote a better distribution of income and the social services provided by the State, and to encourage citizens to play a greater part in solving economic and social problems.

247. According to the legal framework, the MIDEPLAN's main powers are as follows: laying down rules for advice, information and coordination for preparing the National Development Plan (PND), ensuring that public investment programmes are in line with the priorities laid down in the PND, coordinating the technical assistance programmes, coordinating the plans for modernizing the public institutions with a view to improving efficiency and productivity in the public sector and evaluating the outcomes of the plans, policies and programmes implemented under the PND. However, some of these functions have also been taken on by or delegated to other departments, such as the Ministry of the Economy.

248. In the present context of the 2002-06 National Development Plan, there are seven major national challenges: reducing poverty and social and geographical divides; training human capital; creating opportunities and jobs; improving competitiveness; achieving consensus for setting lasting national policies; modernizing the State and its institutions and environment-friendly development. The PND is based on the premise that achieving these aspirations will enable Costa Rica to become a democratic and egalitarian society, developing in a balanced way in harmony with the environment.

249. These major challenges in the PND still apply, but are affected by a lack of dynamism over the past decade to take fundamental decisions, the absence of national political agreements between the main parties, the lack of reforms of the country's legal framework in areas that are hindering its development, the absence of Government policy on some issues of public affairs, the rise in the domestic debt (leading to public funds being diverted to fulfil obligations, especially payment of interest) to finance the fiscal deficit. Other factors to be taken into account are the dependence, until recently, of the country's economy on exports of agricultural produce are highly variable prices and poor linkages between the export economy and domestic production sectors.

250. It should be pointed out that the current climate in the country does not in any way mean that occasional progress is not being made in realizing the rights covered by this report, as will be

seen below. Nevertheless, the country's inertia in taking basic decisions is occurring within a normal democratic context, without so far affecting the country's institutions. Proof of this is that the electoral processes are still taking place peacefully and normally, with a turnout of voters higher than the average in the Latin American region. Nevertheless, further postponement of decisions could lead to structural changes in the social arena. In this connection, there is a real danger in the growing inequality between social sectors, and the citizens' loss of confidence in the political parties and politicians in general.

**ARTICLE 2 (General measures adopted with a view to achieving progressively the full realization of rights)**

251. As a social state subject to the rule of law since the 1940s, Costa Rica has set aside a substantial proportion of its national budget for investment in the social field, an area relevant to the realization of economic, social and cultural rights.

252. Costa Rica's development during the second half of the 20<sup>th</sup> century was characterized by national efforts to modernize the production structure and improve the living standards of the population. The latter was achieved by substantial investment in human development and the promotion of universal social policies in health, education, sanitation and social security. Over the long term that investment has resulted in a country with high levels of human development, Costa Rica ranking 47<sup>th</sup> in the latest UNDP Report on Human Development.

253. Nevertheless, during the period 1990-2004 Costa Rica underwent a series of demographic, economic, social and political changes that affected the progress and setbacks that the country experienced to ensure that the population fully enjoyed its economic, social and cultural rights during that period. It should also be remembered that in the early eighties the country suffered a severe economic crisis that had a significant social impact such as the fall in social investment, especially in health and education, and a significant increase in poverty that affected almost 50% of Costa Rican households. Although by the end of that decade the country had succeeded in recovering the real value of its public social spending, it no longer enjoyed the macroeconomic and fiscal priority that it had prior to eighties.

254. For 2004, public social spending (PSS) was 48% higher than in 1980 and 58% above the 1990 value. This growth nevertheless proved insufficient in relation to the growth in the population, PSS in 2004 being 20% lower than 24 years previously. To sum up, in the nineties social investment in Costa Rica managed to make up for ground lost in the eighties, though it did not attain the per capita figure of the seventies.

255. Over the past fifteen years the country has witnessed a process of broadening and deepening of citizens' rights that is almost unprecedented in Costa Rica's recent political history. The State moved on from the recognition of civil liberties and individual civil rights, to the introduction of the mechanisms needed for political, economic, social, collective and common rights to have their place in public policy.

256. Indeed, the main feature of the reform of the Costa Rican State in the nineties was the broad roll-out of protection and legal enforceability of human rights. Over the past decade a series of laws have been passed that offer direct protection of the rights of groups requiring special protection: children and adolescents (11 laws), older persons (2 laws), disabled persons (3 laws) and women (12 laws). Of a total of 249 laws passed in the first term of the 1994, 1998 and 2002

administrations, 43% create State obligations to the citizen, 11% extend existing rights and 14% grant new rights. While the majority of the laws (76%) grant institutional responsibilities for compliance with obligations, only 16% of them create new sources of funding.

257. Costa Rica is facing major challenges, as mentioned in Part One of the report. It must generate more resources to increase per capita social investment and to enable it to further expand the economic, social and cultural rights that the Costa Rican population acquired in the nineties, especially to the most vulnerable groups in the population. This is not an excuse but, as we have repeatedly said, it is a real challenge that the State acknowledges, since as can be seen throughout this report, over the past 15 years substantial progress and has been made and lost ground recovered with regard to those rights.

258. Moreover, while it is true that most of the funding of those rights is borne by the Costa Rican Government, it is important to make reference to the role of international cooperation not only in the form of financial resources but also in terms of its contribution to the development of local capabilities.

### **International cooperation**

259. In the interests of complying with the proposals for the development and observance of economic, social and cultural rights, the Costa Rican Government has decided to channel international development cooperation, by setting up the Department of International Cooperation within the Ministry of Foreign Relations as the national body responsible for coordinating the process of managing external assistance from and to Costa Rica, incorporating, negotiating and following up the measures, projects and programmes set up to derive optimum benefit from the resources. This task is coordinated with MIDEPLAN via its Coordination Unit. The Ministry has the task of formulating, negotiating, coordinating, approving and assessing the technical assistance programmes, taking account of the objectives of the National Development Plan.

TABLE 1

**Bilateral cooperation approved, by cooperating country, 1990-2004**  
(million dollars)

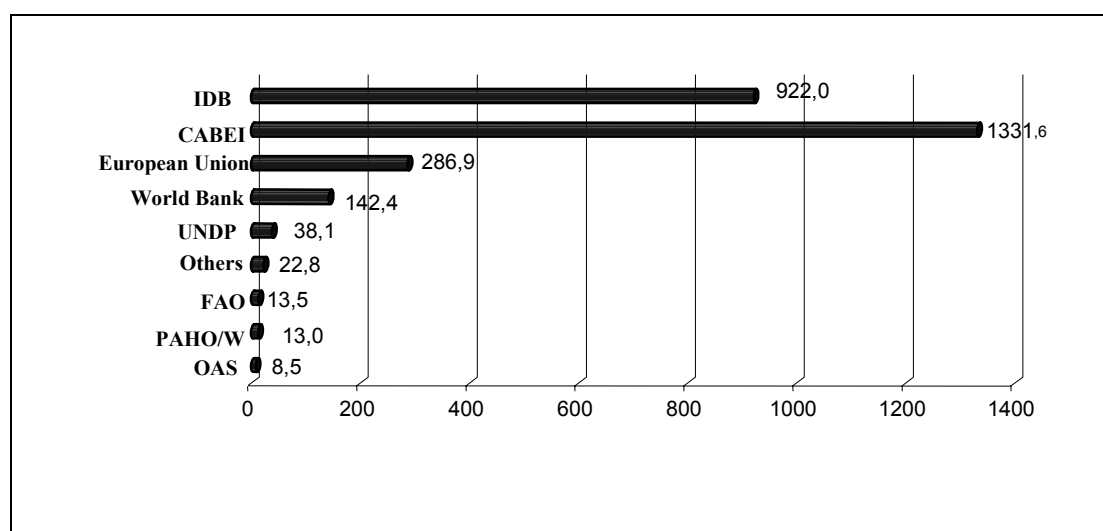
<i>Country</i>	<i>Amount</i>	<i>Percentage</i>
Taiwan	220.3	18.6
Japan	219.8	18.6
United States	205.7	17.4
The Netherlands	159.2	13.5
Germany	145.6	12.3
Spain	64.4	5.4
Canada	51.7	4.4
Others	116.5	9.8
Total	1 183.2	100.0

*Source:* MIDEPLAN, International Cooperation Unit



FIGURE 1

**Approved multilateral international cooperation, by agency, 1990-2004 (million dollars)**



Source: MIDEPLAN, Internacional Cooperation Unit.

260. In general terms, the work of tying in technical assistance programmes, public investment and external credit with the priorities laid down in the PNDs has been going on for decades now, so enabling national, sectoral, regional and institutional development programmes and projects to be promoted and carried out in some areas of interest set out in the PND.

261. In the period 1990-2004 MIDEPLAN channelled an amount of \$1 183.2 million for bilateral cooperation. Of the total cooperation received, 37% came from European countries, predominantly the Netherlands and Germany.

262. Cooperation from Taiwan, Japan and the United States also accounts for a substantial proportion of total resources approved as bilateral cooperation. In percentage terms those countries contributed 54.6% of all cooperation received. Multilateral cooperation during the same period amounted to \$2 778.8 million, three international agencies (the CABI, the IDB and the European Union and the World Bank) contributing 96.5% of cooperation approved.

TABLE 2

**International cooperation approved, by sector, 1990-2004**  
(million dollars and percentage)

<i>Sector</i>	<i>Amount</i>	<i>%</i>
Environment, energy and telecommunications	1 397.8	35.3
Finance, economy and industry	1 040.2	26.3
Health	397.0	10.0
Infrastructure and public works	316.3	8.0
Farming and livestock	195.9	4.9
Education	141.5	3.6

<i>Sector</i>	<i>Amount</i>	<i>%</i>
Housing	127.9	3.2
Foreign trade	108.2	2.7
Other	90.0	2.3
Local development	41.8	1.1
Tourism	38.7	1.0
Science and technology	33.5	0.8
Security	20.9	0.5
Culture	12.1	0.3
<b>TOTAL</b>	<b>3 961.8</b>	<b>100.9</b>

*Source:* MIDEPLAN, Internacional Cooperation Unit

263. It is noteworthy that the CABI's contribution represents almost half of resources contributed by the remaining agencies, with the IDB ranking second among the cooperating institutions.

264. This highlights the lower priority that international bodies give the country as a beneficiary of international assistance and cooperation, compared with other relatively less developed countries and geographical areas of the world.

265. The distribution of cooperation by sector during that period shows the emphasis that has been given to the issues of environment, energy and telecommunications, accounting for over a third of resources assigned as international cooperation.

266. In general, economic sectors absorb 43%<sup>20</sup> of approved resources. It should be stressed that the heading of finance, economy and industry comes in second place with 26% of the resources distributed.

267. As for the social sectors, they represent no more than 17.1% of total resources assigned; the health sector stands out among them with 10%. Education and housing account for 3.6 and 3.2% respectively. Culture receives only 0.3% of the total.

268. In general terms, science, technology, security and culture are sectors that receive a marginal share (1.7%) in the breakdown of resources approved for international cooperation.

269. Despite this, they are issues that are taking on a growing importance in Costa Rican society and are beginning to find their place in the agendas of bilateral and multilateral cooperation agencies.

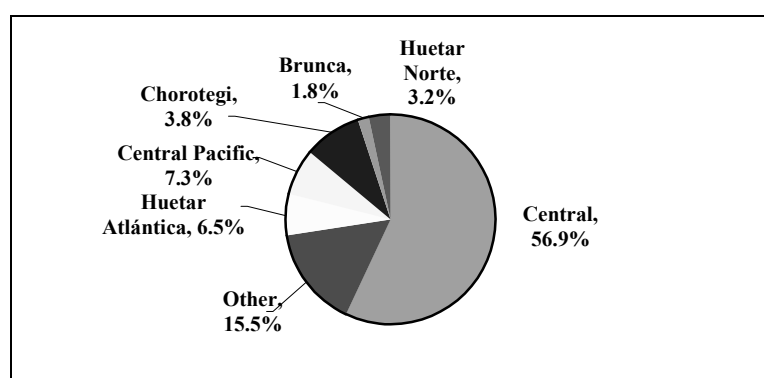
270. The concern to reduce the gaps between the living standards of the various social groups and geographical areas has been a topical issue over the years under the various administrations, but little progress has been made in the effort to distribute fairly the external resources that it has been possible to manage officially, directing them equitably over the country's geographic areas

<sup>20</sup> These include finance, infrastructure, farming and livestock, foreign trade and tourism.

and regions. This is necessary because of the uneven distribution that concentrates a higher percentage of the investment of the funds received through cooperation in urban areas, to the detriment of rural areas. Nevertheless, it has to be borne in mind that two thirds of the country's population is concentrated in the Central Region, which could explain the natural tendency to concentrate institutional resources there. However, the exodus from the countryside to the cities is also a consequence of the lack of investment in rural areas.

FIGURE 2

**Number of cooperation schemes, by geographical area, 2003-2004**



Source: MIDEPLAN, International Cooperation Unit

271. Furthermore, the low level of organization and administration characteristic of the various regions of the country has traditionally made it hard to find “partners” for implementing projects, which has led to most of the resources administered being concentrated in the Central Region.

TABLE 3

**Projects implemented and resources assigned from PL480 programme, 1990-2004**  
(thousand dollars)

<i>Secto and region</i>	<i>Project</i>		<i>Amount*</i>	
	<i>No</i>	<i>%</i>	<i>\$</i>	<i>%</i>
Road system	63	47.4	8 358.9	37.8
Farming and livestock	19	14.3	6 269.0	28.3
Health	21	15.8	4 318.5	19.5
Education	9	6.8	839.4	3.8
Environment	4	3.0	739.9	3.3
Housing	1	0.8	577.2	2.6
Social infrastructure	5	3.8	389.3	1.8
Energy	8	6.0	373.4	1.7
Industry	3	2.3	276.3	1.2

<i>Secto and region</i>	<i>Project</i>		<i>Amount*</i>	
	<i>No</i>	<i>%</i>	<i>\$</i>	<i>%</i>
<i>Region</i>				
Central	36	27.1	2 539.6	11.5
Chorotega	17	12.8	3 753.7	17.0
Pacífico Central	19	14.3	1 292.2	5.8
Brunca	22	16.5	2 456.8	11.1
Huetar Atlántica	14	10.5	1 568.9	7.1
Huetar Norte	19	14.3	4 344.7	19.6
Whole country	6	4.5	6 185.9	27.9
<b>TOTAL</b>	<b>133</b>	<b>100.0</b>	<b>22 141.9</b>	<b>100.0</b>

*Source:* MIDEPLAN, Directorate for Project Implementation

272. An example of the above is that in the period 2002-04, 56.9% of total administered cooperation approved by MIDEPLAN was concentrated in the Central Region; the regions of Chorotega, Brunca and Pacífico Central received 20% of funds administered by MIDEPLAN, reflecting an unequal distribution but also showing Government efforts to overcome the behaviour that had traditionally prevailed.

273. In this context, note that in the National Development Plan 2002-06 and in the document “Strategic guidelines on national development to support the administration of international cooperation”<sup>21</sup>, policy guidelines were set out to favour the more economically and socially deprived regions of the country, along with the strategic lines and development themes to which the Government has given priority for financial and technical support.

274. Furthermore, the Subsystem for Organizational Management and Regional Development, set up by executive order No. 31768, will help outlying regions to gain access in the short term to a larger proportion of resources from international technical cooperation.

275. In addition to the resources channelled via technical cooperation, MIDEPLAN is also responsible for the administration, coordination and monitoring of projects financed by the Pre-investment Fund (MIDEPLAN-IDB) and those of the PL480 Programme.

276. The agreement between the Governments of the United States and Costa Rica, formalized by Act No. 7307 of 1982, and published in La Gaceta No. 177 of 14 September 1992 (known as the PL-480 Programme), provides funding among other things for the conservation of natural resources, rural development, farming programmes and rural social services.

277. In the period 1990-2004 the MIDEPLAN funded 133 projects under the PL-480 Programme to the tune of \$22 141 900. Most of the projects (47.4%) related to the building of road infrastructure, while the agricultural and livestock sector accounted for 14.3% of all the projects funded.

<sup>21</sup> MIDEPLAN. Strategic guidelines on national development to support the administration of international cooperation, San José, 2003.

278. Projects in the social area represented 27.1% of all the projects implemented in the period. It is important to stress the emphasis given to health, in comparison with the other social sectors, which accounted for 15.8% of the projects and 19.5% of the resources assigned. On the other hand, it has to be acknowledged that there was only one project relating to housing, representing 2.6% of funds.

279. The breakdown of the projects by planning region reflected progress by PL-480 in the process of geographical democratization. Although most of the approved projects are concentrated in the Central Region, 68.4% of the projects funded in the period 1990-2004 were in the outlying regions.

280. In terms of distribution of financial resources, approximately 47.7% of them were distributed over the regions of Chorotega, Huetar Norte and Brunca, which are traditionally the ones with the highest rates of poverty. It is important to stress that the Brunca region, where 40.4% of households are living in poverty<sup>22</sup>, attracted 16.5% of the projects implemented and 11% of the total funding for all regions in the country.

281. Despite the above, the State remains actively committed to achieving a more democratic distribution of the resources with a view to closing the gap in human and infrastructure development between urban and rural areas.

### **Principle of non-discrimination**

282. The Costa Rican Constitution requires the State and subjects of private law to refrain from any discrimination based on gender, ethnic group, sexual orientation, national origin, social status or health.

283. The Costa Rican legal system respects duly approved international agreements and treaties and other provisions relating to the protection of the human rights of those living on its territory, without distinctions that jeopardize people's human dignity or moral integrity. It also has legal provisions to guarantee this, and jurisdictional means to safeguard them. Accordingly, in Costa Rica there are no legal or regulatory provisions that conflict with the rights covered by the Covenant.

284. There are provisions against age discrimination. For example, article 621 of the Labour Code prohibits employers from discriminating on grounds of age when requesting a service or selecting a worker, and entitles workers to have recourse to the courts to restore their rights. Moreover, there are laws prohibiting discrimination against specific groups such as women, older persons, children and the disabled.

285. Rights covered by specific provisions against discrimination include equality of access and opportunity at work, non-discrimination in terms of wages, and non-discrimination on grounds of ethnic group, gender, age, religious belief, social status or national origin.

286. It is important to stress the fundamental role that the Constitutional Chamber has played, especially in relation to discrimination that has occurred **in practice** regarding economic, social and cultural rights, handing down comprehensive and consistent rulings in favour of more

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<sup>22</sup> INEC, *Multi-Purpose Household Survey*, San José, 2005.

effective application and greater impact of these rights, notably in relation to the more vulnerable elements of the population.

### **Migrants**

287. Costa Rica is a country of 51 100 km<sup>2</sup>, with a population of slightly over 4 million. It is a developing country with immigration rates similar to or higher than developed countries: 110 of every 1000 inhabitants are foreigners, a rate close to that of Luxembourg (114 per 1000), except that the latter has the highest GDP in the world (\$43 090) while Costa Rica's is one tenth of that figure (\$4 160). Germany is the central European country with the next highest number of immigrants, after Luxembourg, with a rate of 24 per thousand inhabitants.

288. Nicaraguan nationals represent the highest percentage of immigrant population in Costa Rica: almost 90% according to the population census (76.3%) and estimates of undocumented migrants. In second place are Colombians, estimated at between 30 000 and 50 000, although only 3 000 were recorded in the 2000 census.

289. The increase in immigration from South American countries, predominantly Colombia, added to the historical and growing number of arrivals from Nicaraguan, characterize Costa Rica as a pole attracting immigration from the north and south of the American continent (sandwich effect), a situation similar to developed countries, but with the shortcomings of a developing country. Migrants from Panama, the United States, El Salvador and Cuba form a significant proportion of the foreign population recorded in the above-mentioned census (between 2 and 4% of each of those nationalities).

290. Alongside some 450 000 migrants living in Costa Rica (11% of the population), *in proportion* to its population, the country hosts the highest number of recognized refugees of all Latin America (13 500, 8 750 of whom are of Colombian nationality). Given the fact that Costa Rica is a host country, a number of good practices stand out that derive from its tradition of asylum and refuge; this has also arisen alongside the gradual development of the Right of Refugees that originated in 1980 with the implementation of the 1951 Geneva Convention and its 1967 Protocol. Since then, Costa Rica has taken the route of favouring, in all circumstances and at all times, the protection of the person, based on a broad interpretation of the universal definition of refugee contained in that Convention and Protocol. Over the past 25 years this has become State policy; it is not for nothing that Costa Rica is now the country with the second largest number of refugees (in absolute terms) in the Latin American region, with an average recognition rate of between 53 and 65%, one of the highest in the world. The country also maintains high standards in its procedures for determining refugee status.

291. For the purposes of this report article 19 of the Constitution literally states that: "Foreigners have the same individual and social rights and duties as Costa Ricans" the only restriction on the exercise of political rights being that foreigners "may not intervene in the political affairs of the country".

292. The scope of the constitutional principles of article 19 is further broadened by the provisions of article 33 which, besides stating that all persons are equal before the Law, expressly prohibits any discrimination against human dignity.

293. In labour matters, in the past all employers were obliged to guarantee that at least 90% of their employees were Costa Rican, and that at least 85% of their monthly payroll was for Costa Ricans.

294. Since this legal provision predated the present Constitution, it did not embrace the same spirit of protection for foreigners as the current legislation does. In any case, this provision was declared unconstitutional by the Constitutional Chamber of the Supreme Court of Justice, in decision No. 1999-00616 of 10.00 hours on 29 January 1999, ruling on a case brought by a subject of private law challenging that provision. This decision confirmed the Costa Rican State's observance of ILO Convention 111 and the provisions of the International Covenant on Economic, Social and Cultural Rights.

295. Regarding this point, the Constitutional Chamber ruled that "the right to work is a fundamental right governed not only by the provisions of the Constitution but also, in the broader sense, by Constitutional law, including the relevant international instruments that have been incorporated into the national legal system".

296. Among the principles set out by Chamber IV, it states that by virtue of the principle of non-discrimination it is to be understood, as a matter of principle, that not only Costa Ricans but also foreigners are entitled to these rights.

297. "As stated previously, the right to work is a fundamental right that the Constitution includes in social rights, and that has an obvious economic component (especially the right to wages). The Constitution states as follows: "Labour is a right of the individual ..." (article 56). This wording implies that it is a right for everyone, and not only those of a particular nationality (hence not only of Costa Ricans). (...) The Constitution adopts the criterion of equivalence of fundamental rights between nationals and foreigners, so establishing the principle of equality. However, the right to work is not only the freedom to work; hence the Constitution, after recognizing this right, adds that it is also "an obligation to society". It embraces the right to free choice of work, but is also, by its very nature – in the context of this report – the right to effective access to work, to a job. The Constitution creates a series of guarantees around the right to labour: one, with clear social repercussions, is that it obliges the State to strive to see that everyone has lawful and useful employment, duly compensated; (...). Accordingly, the Constitution requires a policy of full employment, which would not offer genuine full employment if it were based simply on excluding foreigners from jobs. Another very relevant guarantee is that it outlaws any discrimination with regard to wages, advantages, or working conditions between Costa Ricans and foreigners (article 68). Under equal conditions it does allow preference to be given to Costa Rican workers, but it goes no further than this moderate and limited impact in the sphere of the principle of equality".

298. As if that were not enough, it maintains that this "implies that if exercising the right to labour by some means denying it to others on account of their national extraction, this is a discriminatory measure. For the purpose of Convention 111, the term "discrimination" includes "any distinction, exclusion or preference made on the basis of race, colour sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation".

299. In general, the prohibition of discrimination at work is present in the legal system not only tacitly under article 33 of the Constitution, but it is also prohibited by explicit rules. For example,

article 1 of Act No. 2694 of 1960 reads as follows: “Article 1. Any form of discrimination, manifested as a distinction, exclusion or preference made on the basis of race, colour sex, age, religion, civil status, political opinion, national extraction, social origin, affiliation or financial situation which has the effect of impairing equality of opportunity or treatment in employment or occupation is hereby prohibited”. Act No. 8107 of 18 July 2001 added a new Title Eleven to the Labour Code, entitled: “Prohibition of Discrimination” which, supplemented by Act No. 2694 of 19 November 1960, consolidates a system of protection against discrimination in employment and jobs towards non-nationals.

300. Meanwhile the Labour Code states that such distinctions cannot be justified, providing that: “All persons, without any discrimination, shall enjoy the same opportunities to obtain employment and must be regarded as eligible in the field in which they specialize, provided that they meet the formal requirements laid down by the employer or contracting party”. (article 622)

301. Furthermore, the Constitutional Chamber has extended and developed protection of the basic rights to health and education, by means of jurisprudence, to all citizens regardless of whether they are foreigners or Costa Ricans. It has done so on the basis of the constitutional principles of equality before the law and the respect for human life underlying the protection of human rights and dignity, and the existence of inalienable fundamental rights. This has led the emergency services to provide care for everyone, regardless of whether they contribute to social security, and care for childbirths, which we shall discuss below.

302. On the right to education, the Constitutional Chamber has established that since it is free of charge and compulsory for all, the grants provided by the State to help defray the costs of certain students in financial difficulties should also include immigrant students without discrimination, since in principle, according to the Act on the National Grants Fund (FONABE), only Costa Rican students are eligible.

303. Among the best practices that have been implemented at national level for the protection of recently arrived refugees (from 2000 on account of the worsening of the conflict in Colombia), is the Communal University Labour Project which was launched in 2001 by the University of Costa Rica and the public institutions concerned (Ministry of Labour and Social Security – Employment Grant – and the Department of Migration and Aliens) with substantial support from the United Nations High Commission for Refugees (UNHCR) and the NGO ACAI, that body’s implementing partner.

304. In addition to support from students for the work on the eligibility of refugees carried out by the Department of Migration and Aliens and for the employment grant for refugees of the Ministry of Labour and Social Security, this project diagnosed the level of integration of Costa Rica’s refugee population (2002 and 2003) which provided relevant information to support decisions regarding the protection of that segment of the population.

305. As an example of the results of this initiative (involving academia, the Government, one international organization and one NGO) the 2003 diagnosis (published by UNHCR and the University of Costa Rica) revealed that 82% of Colombian refugees who were heads of household were employed, while nearly 70% of the children of refugees has access to public education and 10% to private education. 81% of Costa Rica’s Colombian refugee population has access to public health services via the Basic Comprehensive Health Care Teams (EBAIS) and 66% of refugee heads of household have access to health services. At the time the 2002 diagnosis



shed light that helped to clarify the course of the strategy to support the integration of refugees in the country. "The diagnosis clearly revealed that a key element for improving integration of refugees was closely related to the need to support activities generating income and to promote employment in the face of the high rate of unemployment among refugees at the time."<sup>23</sup>.

306. Indeed, this warning light enabled action to be taken to generate more employment amongst the refugee population, both by creating an employment grant and through training and awareness-raising plans and developing a programme of loans to small businesses which today also lends financial resources to Costa Ricans in vulnerable social circumstances. This latter situation, where favourable terms are offered to refugees without including equally disadvantaged nationals within the same host community can, as has already happened in other countries, lead not only to discrimination but also to social conflict.

307. One of the major challenges that the country has taken on in this area, migration and refugees, is that these segments of the population have equal rights to Costa Ricans, with the political safeguards already mentioned. The challenges that the country has to face regarding the effective rights of this population are basically the same as it has with its own nationals; mainly regarding those rights that are restricted by structural factors in the system.

308. The high percentage of Nicaraguans in the country (some 90% of all foreigners) and the disagreements between Costa Rica and Nicaragua over navigation rights in the San Juan river are factors that the governments of both countries and the mass media must take into account if they are to avoid the rise of xenophobia between the two nationalities. Highlighting these efforts and best practices, in 2000-01 the United Nations Development Programme (UNDP) implemented a binational project (a network of Nicaraguan and Costa Rican working parties and civil society bodies) with six sectors of civil society and municipal frontier governments, with a view to creating real opportunities for binational integration. That project, which derived from a court case, led to many results and relationships enabling collaboration and cooperation between the various sectors (academics, women, culture, environment, media, business and local government). Seminars and workshops were conducted with the media specifically to examine their role in building national identities and to explore the possibilities of journalism promoting mutual understanding and respect between the two countries. According to the coverage of the item by the media (radio, television and printed press) of both countries taking part in the workshops, the results were very positive. Continuing binational measures of this type are currently being used as a means of prevention.

### **Disabled persons**

309. Act No. 7600 on Equal Opportunities for Disabled Persons lays down a number of obligations on the State and private individuals to ensure that this segment of the population can have access to the rights protected by the Covenant.

310. In this connection, protection is provided for the right to work (articles 23 et seq.), the right to health (articles 31 et seq.) and within this framework a highly important step forward is being

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<sup>23</sup> Andrés Ramírez, "La respuesta en Costa Rica ante la llegada de refugiados colombianos al país (2000-2003)" (Costa Rica's response to the arrival of Colombian refugees in the country (2000-2003), *Revista Costarricense de Política Exterior* (Costa Rican Foreign Policy Review), Vol. III issue 2, December 2003.

made to expressly prohibit the possibility of life and health insurance companies denying insurance to people on the grounds of their disability.

311. In the same way, protection is provided for the right to education (article 14 et seq.) – note that this applies to education of all levels, including vocational and university courses; access to information and communication (articles 50 et seq.) to be provided with Braille reading, sign-language interpreters (LESCO), universal-access telephones and access to culture and sport, which also implies the obligation to use all possible technological means to enable everyone to enjoy such events (article 54 et seq.).

312. Finally, a number of financial and other penalties such as refusals to grant permits and revocation of licences are being imposed on anyone failing to comply with the Act.

### **Protection of older persons**

313. Act No. 7935 on the Protection of Older Persons protects their rights to improve their quality of life by devising and implementing programmes to promote: “a) access to education, at all levels, and proper preparation for retirement; b) participation in recreational, cultural and sports activities promoted by organizations, associations, municipalities and the State; c) decent housing, suited to their needs, allowing them to live in safe and adaptable surroundings; d) access to credit from public and private financial institutions; e) access to a substitute home or other alternative care, to enable their rights and interests to be protected if they are in a socially vulnerable situation; f) immediate emergency, preventive, clinical or rehabilitation care in hospital; g) timely award of a retirement pension to help them meet their basic needs, whether or not they have contributed to a pension scheme; h) social welfare in the event of unemployment, invalidity or loss of earnings; i) participation in the country’s production process, in line with their means, skills, circumstances, vocation and wishes; j) legal and psychosocial protection for older persons affected by physical, sexual or psychological abuse or vandalism; k) preferential treatment when carrying out administrative formalities in public or private institutions; l) sharing of solutions to their problems with other members of their age group” (article 3).

314. The entry into force of this law raised awareness of the situation of older persons and started a debate at national level on this subject. There is a greater awareness of the problems of this segment of the population.

### **Protection of women**

315. Act No. 7142 on the Promotion of Social Equality for Women, of 1990, promotes a series of positive measures to ensure that women can take part in a range of activities on equal terms. These measures include quotas in management posts and posts subject to popular election at the national, regional and internal levels of the political parties.

316. Besides establishing as an obligation of the State the promotion and guarantee of equal rights for men and women in the political, economic, social and cultural fields, it ensures *inter alia* access to housing, the creation of child-care centres to look after minors while their mothers work (subsidized by the State at low cost to the mothers) and education for all at all levels. We will refer to it again throughout this report. Other women’s issues are also mentioned under article 3 on equality between men and women.

## **Protection of children**

317. Regarding the protection of minors as subjects of law, the Children's Code (Act of the Republic No. 7739) provides that the rules laid down in it are of "public interest, may not be renounced or altered and shall be applied without any distinction of ethnic group, culture, gender, language, religion, ideology or any other condition of them or their parents or representatives". The Code affords a system of special protection for minors under 18 against any possible form of exploitation or violation of their rights.

318. They are recognized as subjects of law and may therefore have recourse to effective protection mechanisms. This applies with no distinction, as recognized by the above-mentioned article 2. Regarding children and adolescents it also governs their right to a family, to know their parents, protection against sexual exploitation, and to formal education; these provisions are discussed further in this report.

## **Protection of indigenous peoples**

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

320. In a decision (vote No. 06229-99 of 11 August 1999), the Constitutional Court decreed that ILO Convention No. 169 ranked equal with the Constitution. The importance of that statement lies in the fact that the particular provisions concerning indigenous affairs contained therein tend towards guaranteeing for indigenous people the chance to define their own development independently and compel the State to respect their traditions and customs. Furthermore, since this is an international convention, failure to comply with it becomes a violation of the constitutional order, which is the reason why it is the Constitutional Court that deals with these cases<sup>24</sup>

321. 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.

322. 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 are indigenous people, the legal character of indigenous communities, ownership of reservations and their inclusion in the Public Register, the organizational structure of indigenous communities, formalities for expropriation and compensation, means to prevent invasions of lands, expropriation funds, the internal administration of commercial premises, the exploitation of natural resources and the priority nature of the Act.

323. The importance of the Indigenous Act is that, in its time, it represented a milestone in the history of the Latin American indigenous movement because it constituted an advanced set of rules protecting indigenous rights. The Act recognised not only the right of peoples to their lands (article 5) but also their identity (article 1), their own organization (article 4) and a series of other rights not expressly recognised in the rest of our national legislation.

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<sup>24</sup> "Decision of the Constitutional Chamber", vote No. 06229-99 of 14.30 hrs on 11 August 1999.

### **Protection of detainees**

324. In Costa Rica everyone has the right to health, which derives directly from article 21 of the Constitution which states that human life is inviolable. Nevertheless, on some occasions, basic living conditions for the prison population have not been provided for. This has been based on financial arguments or the condition and infrastructure of the prisons.

325. The Chamber has ruled that the only permissible restriction on the rights of detainees is their freedom of movement, and that the State must therefore continue to protect and safeguard their other rights. Decision No. 2003-9696 of 16.45 hours on 9 November 2003 reiterated the State's obligation to guarantee the right to health of detainees, as follows: "The right to health of detainees. This Chamber has established a doctrine, consistently upheld in its pronouncements, in which it has recognized that some of the rights of persons convicted or in preventive detention are subject to restrictions peculiar to the circumstances, but has also highlighted that the essential core of their fundamental rights remains inviolable, particularly those relating to dignity, such as the right to health. It is clear that the State has a serious responsibility in safeguarding the rights of detainees, whose other fundamental rights must not be diminished, and the prison administration has that responsibility on behalf of the State from the time detainees enter the establishment until they leave. The starting point is therefore that the State has the duty not to require more than the decision and the law demand, and the sentenced person has the right to suffer no more restrictions or limitations than those laid down in them. Hence the constitutional jurisprudence is consistent in the sense that everything regarding the health of detainees, whether sentenced or in preventive detention, must be taken care of promptly and effectively by the prison administration, and it is not acceptable to argue that the protection of that right is subordinate to bureaucratic procedures or the availability of financial resources; the same applies to prisoners on parole, where the Constitutional Court has rejected similar arguments by the State. (...)"

### **ARTICLE 3 (Equal rights)**

326. Since the eighties, the Costa Rican Government has been taking various measures to expose and eradicate practices that run counter to the equal right of men and women to the enjoyment of all economic, social and cultural rights. As we outlined in the early pages of this report, this effort was stepped up after the approval of the Act for Promotion for the Social Equality of Women in 1990. These measures have supported investigations in critical areas and legal and social studies, to identify discriminatory practices in the administration of justice and in the provision of State services; and the conducting of specialist seminars, forums and conferences, where various sectors of civil society have made important contributions in the form of their experience and the results of studies.

327. Act No. 7142 for Promotion for the Social Equality of Women, approved on 8 March 1990, was an historical landmark. Article 1 states that "It is an obligation of the State to promote and guarantee equal rights between men and women in the political, economic, social and cultural fields." This is a pioneering law for the promotion of women's rights in Latin America. It is based on the principle of equality contained in the Convention, going beyond the formal equality enshrined in article 33 of the Constitution in that it accepts and encourages positive action in order to achieve its objectives. It also includes two kinds of rules: a) those which apply directly, which have to be enforced in the courts, and b) those which lay down obligations for State institutions. It provides for a series of measures designed to eliminate discrimination against women in the exercise of public offices and in decision-making in political parties, as has been

observed in the past, in access to ownership of real estate awarded through social programmes, in the sickness and maternity scheme, child-care centres, in protection against sexual offences and domestic violence, and in education. It also includes the setting up of the Office of the Ombudsman for Women, a branch of the Office of the Ombudsman for Human Rights (when the Office of the Ombudsman was set up, this branch was merged with it). (Legal progress towards gender equality, CMF, 1998).

328. Mainly since 1994 the State has backed, through its National Mechanism, a series of investigations and other measures that have enabled a number of discriminatory practices to be identified in various fields, including the legal area. It was based on a set of public policies, national plans, specific programmes and legal reforms (more than 20 laws were passed during the 90s), aimed at eliminating various obstacles to gender equality and fairness in the family, education, culture, health, employment, environment, media, decision-making, legislation, and living a life free of violence. Progress has been made with the reforms of the main codes and specific legislation, endeavouring to apply the gender perspective and provide relevant training for public-sector staff, the branches of government and the administration of justice. There have been attempts to incorporate in current legislation rules prohibiting discrimination and penalties for offences.

329. A major step forward in the legal system was the enactment of the law against Domestic Violence which lays down measures to protect victims of domestic violence and penalties for offenders. The segment of the population most vulnerable to such attacks is women; indeed, this body of legislation has been introduced to offer measures to protect them and others, and to generate a series of mechanisms to implement the provisions in practice, in order to prevent and eradicate the potential harmful effects of this social scourge.

330. Account should also be taken of the fact that early in 2006 a bill criminalizing violence against women was approved at first reading in the Legislative Assembly; it has to be approved at the second reading before it comes into force.

331. Furthermore, through the national mechanism, the organization of women at canton level is being stepped up by means of a variety of training activities on issues such as: life without violence, leadership, human rights for women and national legislation protecting them. Over the past four years they have been trained and supervised in management, with public bodies and NGOs.

332. In 1999 Executive Order No. 27913-S set up the Inter-Agency Committee on Sexual and Reproductive Health and Rights, chaired by the Minister of Health and with members of other institutions. On the basis of this order, men and women can volunteer for surgical sterilization by social security. According to research by the Office of the Ombudsman (Final report and recommendations, August 2003), 90.92% of all sterilizations were performed on women, the remaining 9.08 percent on men. 95% of the hospitals consulted provided advice before surgery, from interdisciplinary groups, which represents substantial progress on compliance with the Order.

333. Although legislation on sexual and reproductive health and rights exists, people actually find it difficult to discuss their sexual and reproductive health as a couple, implying that the country faces a challenge for improving this skill in both men and women.

334. Finally, it should be borne in mind that even when a series of important laws has been enacted to uphold the principle of equality, especially in relation to women, in practice there have been failures to observe economic, social and cultural rights in the application of that principle. Therefore, the effect of the Constitutional Chamber becoming the guarantor par excellence of its resolutions is to strengthen the framework of protection and also ensure a more direct and prompt application of the rights discussed here.

335. An analysis of the situation of some issues in this connection and the challenges that they present can be observed in the development of the specific rights.

#### **ARTICLES 4 and 5 (Limitations on rights)**

336. The country's commitment to the provisions of articles 4 and 5 is apparent throughout this report, and in the description of the measures taken to comply with each right it is specified whether the country has imposed limitations deriving from the law and to the extent compatible with the nature of those rights, and whether those measures and decisions by the country are genuinely compatible with an interpretation that is in line with the provisions of the Covenant.

337. The specific safeguards outlined in the preceding pages will be analyzed below in relation to each of the articles of the Covenant discussed in this report.

#### **ARTICLE 6 (Right to decent work)**

##### **Conventions**

338. Cost Rica is a party to an important group of international labour conventions of the International Labour Organization (ILO), duly approved and ratified by the country. Costa Rica has approved ILO Convention No. 122 concerning Employment Policy<sup>25</sup>, of 1964, and Convention No. 111 concerning Discrimination in Respect of Employment and Occupation<sup>26</sup>, of 1958, among others<sup>27</sup>.

339. In 2002 the Government presented the Government Memorandum for that year referring to the ILO conventions ratified. That document contains detailed information on the labour conventions to which Costa Rica is a party and their application at national level. It also ratified the International Convention on the Elimination of All Forms of Racial Discrimination of 1966<sup>28</sup> and the Convention on the Elimination of All Forms of Discrimination against Women.<sup>29</sup>

##### **General framework**

340. The Cost Rican Government is committed to observing the right to work and its associated safeguards. They have their basis in constitutional rules in the Title on social guarantees as set out in article 56 and related articles of the Constitution.

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<sup>25</sup> Act 3640 of 6 January 1966, ratified on 27 January 1966.

<sup>26</sup> Act 2848 of 26 October 1961, ratified on 1 March 1962.

<sup>27</sup> See Annex 2, Conventions on Article 6.

<sup>28</sup> Act 3844 of 5 January 1967.

<sup>29</sup> Act 6968 of 2 October 1984. Note also that Costa Rica has approved 50 ILO Conventions, 48 of which are in force.

341. That article concerns labour as a right of the individual and obligation to society and provides as follows: “Labour is a right of the individual and an obligation to society. The State should endeavour to see that everyone has lawful and useful employment, duly remunerated, and to prevent the establishment on that account of conditions which may in any way curtail a man’s freedom or dignity or degrade his labour to the status of mere merchandise. The State guarantees the right to free choice of work.”

342. The Constitution of Costa Rica also guarantees full and productive employment of the population in two articles: article 63 protects against unfair dismissal, as follows: Workers removed without a fair cause shall be entitled to compensation unless they are covered by unemployment insurance. To complement this, article 72 guarantees that “Until unemployment insurance is established, the State shall maintain a permanent technical system of protection for those involuntarily unemployed and shall strive to restore them to employment.”

343. Regarding fundamental rights, the Constitutional Chamber has adopted those that are internationally recognized, giving them supra-constitutional status. Among them it has included the “right to work” for non-Costa Ricans<sup>30</sup>, which is supplemented by the “prohibition of discrimination” in the new Title Eleven of the Labour Code.<sup>31</sup> It is also worth referring back to the discussion of Act No. 7142 of 8 March 1990 on the Promotion of the Social Equality of Women and related regulations in the section on compliance with article 2 of the ICESC in Costa Rica.

344. The main body governing the right to work is the Ministry of Labour and Social Security (MTSS), with the assistance of the Ministry of the Economy, Industry and Trade (MEIC), the National Training Institute (INA) and others.

### **Employment situation**

345. According to statistics from the National Statistics and Census Institute (INEC), employment levels in the country were fairly constant between 1990 and 2004.<sup>32</sup> Over the four-year period 2000-2004, 326 000 new jobs were created, with an increase in the employed population of 26.5%. In the period 1990-2003 the gross rate of participation of the labour force has been constantly increasing. Note here that the cumulative rate of participation of women increased, to 8.5% in the period, while the cumulative rate for men was 1.7%.<sup>33</sup> The rate of women entering employment accelerated during the period.

346. The rate of open unemployment oscillated between 4.6% in 1990 and 5.2% in 1995. Over the following decade there were substantial changes, but the final cumulative change was only 1.3%, rising from 5.2 to 6.5 in 2004. In 2003 it attained 6.7%, the highest figure in the past two decades.

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<sup>30</sup> Votes 1999-00616 and 5965-94 take this line. In the first decision, the highest jurisdictional authority analyzed the situation of the quota or percentage enrolment of non-national workers, laid down in Article 13 of the Labour Code, which was then annulled as it was declared unconstitutional to prohibit any employer from hiring less than 95 per cent of Costa Rican workers. This brought the Code into line with the Article 68 of the Costa Rican Constitution which states that non-nationals have the right to work.

<sup>31</sup> Regarding the right to work and of access to work without discrimination, see the list of regulations in Annex II.

<sup>32</sup> Please see Table 4 for more information.

<sup>33</sup> Figure 1, Report 19, MTSS, 2005.

347. In the same decade, visible underemployment rose from 3.7 to 5.3%, with a 1.6% change at the end of the period. Finally, invisible unemployment rose by 0.5% from 2.1 to 2.6%.<sup>34</sup> Total underutilization was higher, rising from 11.0 to 14.4%, an increase of 3.3% over the decade.

348. Job creation was not sufficient “to compensate for the loss of labour opportunities” in other sectors, such as agriculture, particularly traditional farming. It is significant that “(...), jobs are being created more quickly in the informal sector (6%) than in the formal sector (5.3%). This increasingly precarious employment situation has serious implications for the quality of life of families, owing to the instability of their incomes (...) The labour market is becoming increasing inequitable.”<sup>35</sup>

TABLE 4

**Rates of open unemployment, under-employment and total under-utilization of the labour force, 1995-2003**

<i>Rate</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>
Unemployment	5.2	6.2	5.7	5.6	6.0	5.2	6.1	6.4	6.7	6.5
Visible underemployment	3.7	4.4	4.2	4.8	4.8	3.8	4.3	4.9	5.5	5.3
Invisible underemployment	2.1	3.3	3.2	2.7	3.0	3.0	3.3	3.3	2.8	2.6
Total under-utilization	11.0	13.9	13.1	13.1	13.8	12.0	13.7	14.6	15.1	14.4

*Source:* Multi-Purpose Household Survey (EHPM), 1995-2004, National Statistics and Census Institute

349. As elsewhere in Latin America, specific particularly vulnerable population groups can be identified that face problems entering the labour market. Examples are young people and women, the disabled, the indigenous population and the poorest elements of society, and workers linked to traditional economic activities that are now in decline. Geographically, the most disadvantaged are the rural areas, especially in the provinces of Limón, Puntarenas and Guanacaste.

350. An analysis of the 2000 census reveals that the Costa Rican employment structure is highly segregated by sex. Males dominate or are in the majority in the higher paid occupational groups with better working conditions. Women, on the other hand, continue to work in the categories more susceptible to vulnerability, in sectors of low productivity and where subsistence wages prevail.

351. The level of segregation varies across the various cantons of the country and is associated with the level of development<sup>36</sup>, of urbanization and, to a greater extent, of female participation. 28.3% of women, in a proportion fairly similar to men, work mainly in “unskilled occupations”; a similar proportion (23.1%) work in services, a group employing a lower percentage of men

<sup>34</sup> See Table 1.

<sup>35</sup> State of the Nation, tenth report, summary on page 23.

<sup>36</sup> Measured as the percentage of the population all of whose basic needs are satisfied.

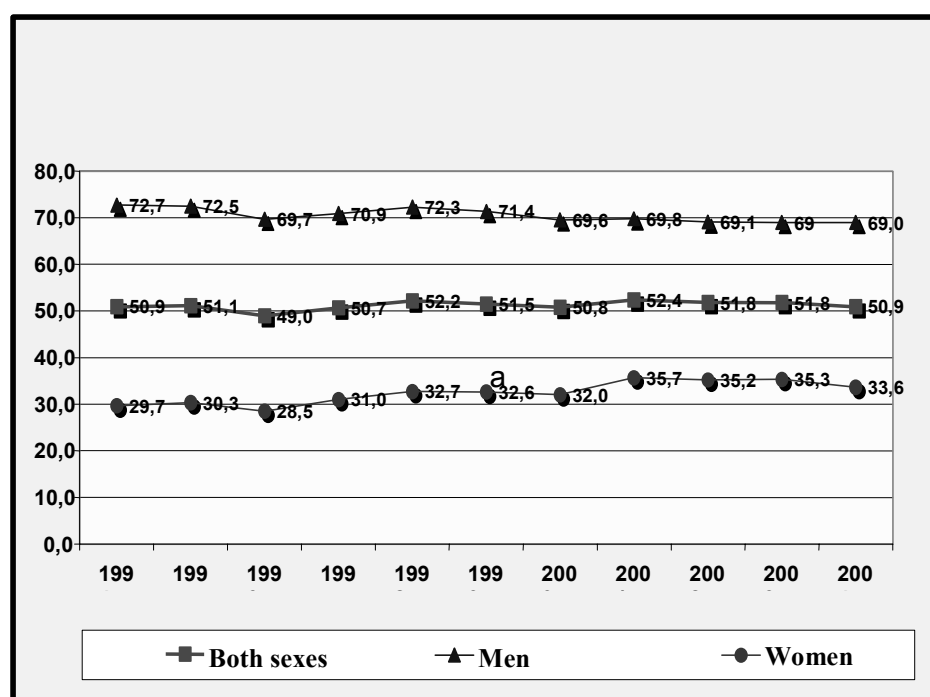


(12.6%), and in the “professional, scientific and intellectual” group.<sup>37</sup> In 2004 the employed female population represented slightly more than a third (33.9%) of total employment.

352. According to the results released by the 2004 household survey by the National Statistics and Census Institute (INEC) a mere 4.9% of workers have a secondary paid activity. (See figure 2) .

FIGURE 3

Costa Rica: Employment rates by sex, 1994–2004



Source: EHPM 1994-2004, National Statistics and Census Institute

353. Neither can it be said that exercising a secondary activity really makes a substantial improvement in the family’s living standard, as only 5.1% of the non-poor obtain income from a second occupation.

354. The link between gender, poverty and unemployment became stronger. On average, for every two employed men, there is only one woman in paid work, even where women have higher levels of education than the men. This is reflected in employment levels, which in the last four years of the study remained stagnant, and in 2004 tended rather to fall.

355. For that same year, the available data indicate that women suffered more unemployment problems – with an unemployment rate of 8.5% as against 5.4% for men – and a high level of under-utilization of the female labour force – 17.8% compared with 12.6% for men<sup>38</sup>. In 2003 the unemployment rate of poor women rose to 22%.

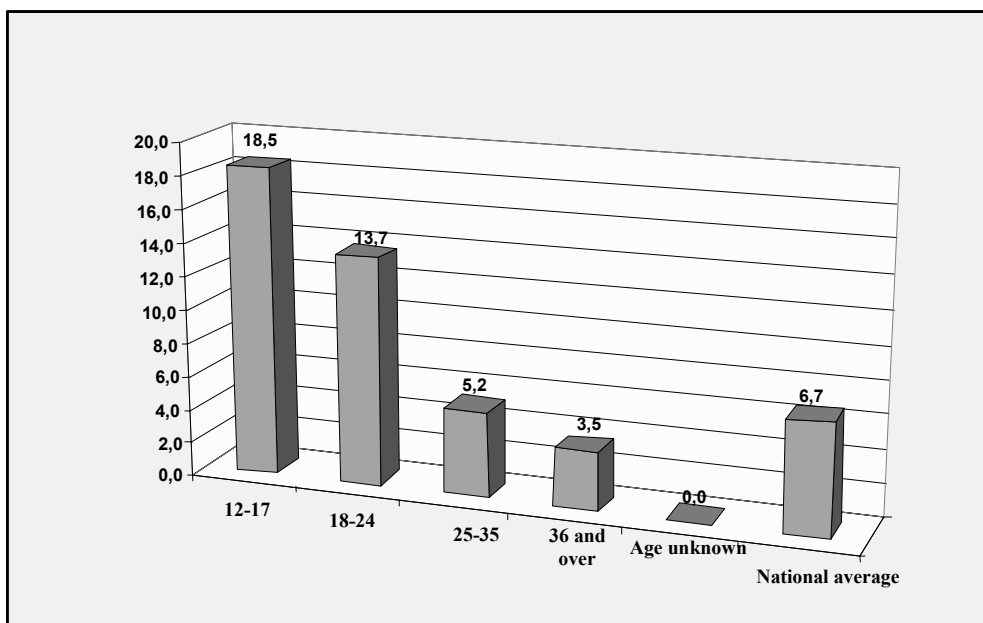
<sup>37</sup> Annex 1, Table 1.

<sup>38</sup> MTSS report, p. 72.

356. Around 2000, in general terms, women gained a higher share of the labour market, especially in the public sector, in specialist areas such as professional and technical jobs, where they accounted for almost half of the total, and in management, where one third were women. For those who had completed secondary vocational and para-university education, it fell from an average of 91% at both levels at the start of the decade to 87 and 77 percent at the end of it. Similarly, the percentage of employed women having completed secondary education fell from 85.6 to 78.4 over the same period.

FIGURE 4

**Unemployment rates by age group, 2003**



Source: EHPM 2003, National Statistics and Census Institute

357. For the employment of black women, depending on the branch of activity, the labour market is segmented. 19.5% work in education and 13% in trade and repairs. 27.7% of men are in farming and livestock, and 13.4% in transport and communications (INEC, 2002).

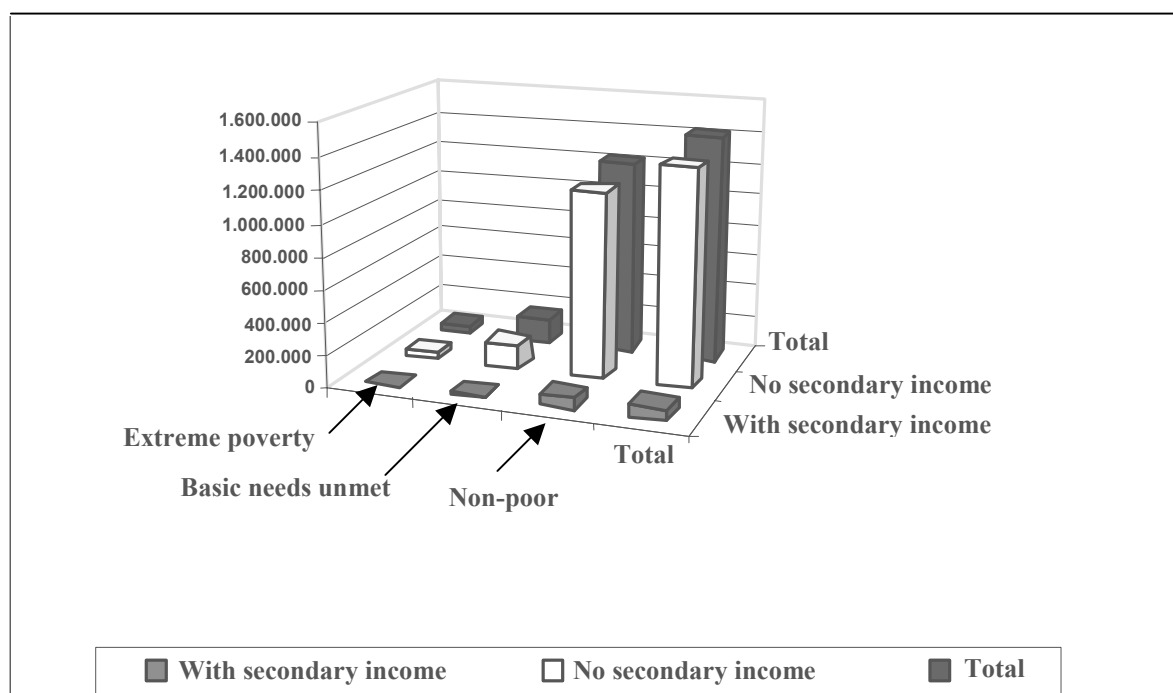
358. The largest proportion of indigenous women are employed in farming and livestock (34%), followed by 18.85% in households with domestic service. 66.6% of the men work in the farming sector (INEC, 2002). Worthy of note is the employment of the indigenous population aged 12 and over, since of all the women in the labour force, 48% work in unskilled jobs, very similar to the situation of indigenous males, 49% of whom work in jobs of this type.

359. Young people face very similar problems; unemployment among 24-year-olds is much higher than for the average worker. The unemployment rate for 18-24 year olds is double that of the whole country and it is triple for those under 17. Note that national laws prohibit those under 15 from working, and regulate working by 15-18 year-olds (working day, working environment and type of work).

360. Preliminary information on the disabled population of working age indicates that only 31% are in work, 69% being unemployed.<sup>39</sup> National studies have yet to look at these data in detail.

FIGURE 5

**Employed workers by secondary wage, by level of poverty, 2004**



Source: EHPM 2004, National Statistics and Census Institute.

361. Economic activity indicators for the indigenous population reveal net participation rates of around 50%, with high levels in the territories of Talamanca Bribrí (58%), Talamanca Cabécar (62%) and Nairi Awari (80%). On the other hand, participation rates are relatively low in the territories of Rey Curré, Ujarrás, Abrojo Montezuma and Zapatón, where the average is 40%.

362. The rate of open unemployment is no more than 2% in 14 of the territories but over 5% in four of them: Zapatón (5.4%), Térraba (5.6%), Boruca (5.9%) and Guatuso (10.4%). Most of the population works in farming and livestock, except in Quitirrisí, where a large number of the population is involved in the secondary and tertiary sectors (35.4 and 42.7% respectively).

363. The economic activities absorbing immigrant labour, especially from Nicaragua, are as follows: agriculture for export, agro-industrial plants and services. The Panamanians tend to move between the frontier communities and the coffee and banana producing areas. The Colombian population mostly settles in the cities, attracted by the relatively skilled jobs in business and services.

364. The average age of the migrant population is between 20 and 29, an indicator that the search for job opportunities has influenced the recent trend in the migration processes. Around the year

<sup>39</sup> However, no in-depth study has been made in the country to corroborate those percentages, since there has been no analysis of the economically active population, how many of them are in a condition to join the labour market in a competitive job, given their level of disability, and whether it is slight, moderate or severe.

2000, some 50% of the Nicaraguan population was in that age bracket, only 11% being over 50. The participation of adolescents and young people as an important segment of this migration is partly due to the strategies for intensifying the use of the labour force in the family unit.

### **Main policies and measures for employment**

365. To boost employment prospects, the 2002-2006 National Development Plan considers that policies and measures should be implemented in two main areas: “Stimulation of growth and production for job creation”, which covers fiscal, monetary and financial matters, farming and livestock, industry, tourism, external trade, employment and wages; and “Creation and development of human skills” which includes the area of education.

366. The main factors influencing employment policy in recent years include the fall in the main agricultural exports, the fiscal deficit and the growth in the public debt. Accordingly, attempts have been made to create stable macroeconomic conditions conducive to an environment favourable to the development of economic activities generating jobs, in which fiscal and monetary policy coincide.

367. Efforts in the fiscal area are directed at improving tax collection, controlling public spending and the internal debt and, in the case of monetary policy, countering inflationary pressures by controlling liquidity and improving the external position of the national economy.

368. With the Economic Activation Plan devised for the period 2002-2006, the present Government is trying to reduce poverty and improve Costa Ricans’ quality of life. “The growth in the economy will serve as a basis for a creating more jobs, increasing wages and better opportunities for all”. Prominent among the global and sectoral policies are the investment policy and the employment policy, which offer continuity with those implemented between 1998 and 2002, and promote the necessary investment to revive domestic production and increase employment.

369. In this connection, Agreements on Promotion and Mutual Protection of Investments (APRIs) have been promoted, establishing substantive rights for the investor and mechanisms for resolving disputes in this area between signatory States. So far agreements have been reached or technical negotiations concluded with 18 countries<sup>40</sup>; it is hoped that these will lead to investments in the country and create jobs in a number of sectors and areas.

370. The 1990 free-trade zone regime was amended in 1998<sup>41</sup> with a view to facilitating and encouraging businesses to set up under that regime; further changes in 2000 and 2001 were designed to simplify formalities and procedures.

371. At the same time, in November 1999, in order to help increase domestic added value in the production of multinational high-tech enterprises established under the free-trade zone regime in Costa Rica, the Government signed with the Inter-American Development Bank (IDB) the “Project for the Development of Suppliers for Multinational High-Tech Enterprises (MHTEs)”. The project was designed to improve the technological production capacity of small and medium-

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<sup>40</sup> Agreements with Argentina, Venezuela, Paraguay and the Netherlands, Germany, Chile, Spain, Canada and the Czech Republic. Technical negotiations have been concluded with Bolivia, Finland, Ecuador and El Salvador, and progress has been made in negotiations with Italia, Austria and Colombia.

<sup>41</sup> Act No. 7830 of 22/09/98.

sized enterprises (SMEs) up to levels enabling them to supply inputs and services to meet the production needs of MHTEs and to compete globally. In 2001, the project was extended to high-tech enterprises outside the free-trade zones. That year, 20 MHTEs registered to take part in the project and there were six formal supply applications.

372. In 2002, six MHTEs paid their membership, including Intel, Baxter, Conair, Wai Semicon, Pórtico and CIK Components. Three major projects were begun and then 16 linking projects were worked on, worth an estimated \$8 000 million, which the supply contracts handled could match.

373. The National Employment and Social Development Programme (PRONAE) – under the auspices of the MTSS – is a means of stimulating employment and the development of projects having a positive impact on the economic and social conditions of communities and persons. From 2000 onwards, new regulations were drafted that expanded its scope to include less-developed areas where free-trade zone businesses are located; vulnerable sectors such as the disabled in the benefits and the gender component.<sup>42</sup>

374. By means of this programme, in accordance with the Free-Trade Zone Act No. 7467, grants or financial incentives are applied for training in businesses located in relatively less developed areas, as a means of stimulating permanent employment. Another facet of the programme includes alternative youth employment, especially in rural areas, the promotion of employment for women heads of household and training for employment<sup>43</sup>.

375. The year 2000 saw the introduction of the regulation for the National Employment Mediation Council<sup>44</sup> which, according to article 6 thereof, has the following functions: “integrating employment services at national and local levels by means of a network of computerized or electronic centres to satisfy the needs of each of the country’s regions and the regional employment management units.” It must also promote “an improvement in the quality of employment and fair participation of women and men in the labour market, with special attention to disadvantaged sectors”. According to article 7, the Council must promote information and careers guidance measures that are free from gender stereotypes, to enable prospective employees to improve their employability.

376. The Interinstitutional Employment Mediation Committee was also strengthened; it existed previously and was chaired by the MTSS and composed of the INA, the public universities, business and trade unions. In 2002 the National Employment Policy Commission was appointed in an attempt to offer an effective response to the requirements of employment supply and demand. The State has also striven to help revive the production sectors and expand opportunities for access to employment by the general population and by specific groups requiring special attention on account of their circumstances. This is the case of farming and livestock, where the Programme for Production Restructuring and the Farming and Livestock Protection and Development Trust (FIDAGRO) for small and medium-sized producers are being implemented in the form of irrigation, drainage and basic infrastructure projects.

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<sup>42</sup> By means of Order No. 29044-MTSS-COMEX of 9 November 2000.

<sup>43</sup> The law setting up the para-university higher education institutions, of 19 November 1980, established conditions for the operation of the vocational technical level known as Para-university Education, and for the creation of University Colleges as a level of education within the organizational scheme of Costa Rican education (MIDEPLAN report).

<sup>44</sup> Order No. 29219-MTSS of 22/12/2000.

377. In industry, the policy of State and private-sector support for small and medium-sized enterprises (SMEs) takes the form of a number of programmes, projects, measures and initiatives. In 1999 the Comprehensive System of Support for Small and Medium-Sized Enterprises (SIAMYPE)<sup>45</sup> was established which in turn set up the Supreme Council for Support to Small and Medium-Sized Enterprise (COSUMYPE), chaired by the Ministry of Labour and Social Security.

378. In 1998 the National Programme of Support to Small and Medium-Sized Enterprises (PRONAMYPE) was set up by the Ministry of Labour and Social Security with a view to improving the productivity, competitiveness and management of small business, in line with market trends. To that end it provides support in terms of finance, advice, training and marketing, and carries out other activities to encourage women to take part in small businesses.

379. The programme operates under the MTSS-PRONAMYPE/Banco Popular 02-99 Trusteeship, the Family Allowance Fund and the with support of Dutch cooperation. Support has been given to technical and administrative, marketing and trade activities through fairs, promotion, sales and information of interest for the sector.

380. Since 2002, the Ministry of the Economy, Industry and Trade (MEIC), as governing body of the economy, has been managing projects and carrying out a series of activities to promote institutional and civil-society synergies to promote good organization and working together for the common good. For job creation and the development of the labour market, it promotes a policy of stimulating small and medium-sized enterprises which involve large segments of the population.

381. Highlights of 2004 were the establishment of the Support Network for Small and Medium-Sized Enterprises (SMEs), the implementation of the Regional SME Support Programme, consisting of a monitoring system to match supply and demand in goods and services, and the application of the guarantee fund of the Banco Popular y de Desarrollo Comunal.

382. In April 2004, as a result of the initiative of more than 50 public and private institutions, the SME Support Network was set up to stimulate comprehensive assistance to small firms. It is coordinated by the Ministry of the Economy, Industry and Trade (MEIC), with the initial participation of public and private institutions<sup>46</sup> and the support of many others. During its first year of operation it assisted more than 3 000 businesses with non-financial services provided by the MEIC and members of the network such as the Banco Nacional, INA, PROCOMER and the Banco Popular.

383. Under the Regional Support Programme, the Ministry of the Economy offers a raft of business development services designed to strength the production sectors, especially of SMEs, and the creation of production chains of small firms with businesses in the most dynamic sectors

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<sup>45</sup> Order 27603 MTSS-MEIC of January 1999, set up the System and the Council.

<sup>46</sup> The National Institute of Learning (INA); the Costa Rican Chamber of Industry (CICR); the National Bank (BN); the Technology Institute of Costa Rica (TEC); Foreign Trade Promotion (PROCOMER); the Popular Communal Development Bank (BPDC); the Costa Rican Association of Development Organizations (ACORDE); the Costa Rican Network of Microenterprise Organizations (REDCOM); the Business and Social Development Foundation (FUNDES); Bancrédito; the Trainers' Training Centre (CEFOF) and the Costa Rican High-Technology Advisory Committee (CAATEC).

of the economy in the regions of Atlántica, Zona Sur, Norte, Pacífico Central and the Province of Guanacaste.

384. The aim of the CREA-PYME project is to stimulate economic development and competitiveness in rural areas by encouraging local agents, generating business and investment opportunities, through comprehensive support to business, promoting production linkages, stimulating entrepreneurship and putting business ideas into practice.

385. The guarantee fund of the Banco Popular y de Desarrollo Comunal has 9 000 million colons to guarantee loans to SMEs that have good production projects that lack the necessary guarantees to obtain loans from the country's commercial banks. Using this fund and the financing programmes for SMEs devised by the Banco Nacional and the Banco Popular it was possible to provide finance for this sector in 2004 to the tune of more than 68 000 million colons.

386. The policy of effective protection of labour is being established to encourage the development of good relations between workers and management by the systematic and focused implementation of the Standing Programme for the Prevention of Labour Conflicts, the application of the current labour legislation that promotes inspection of working conditions, and recreation and labour promotion in job centres to improve overall health.

### **Worker training**

387. Article 67 of the Costa Rican Constitution states that "The State shall see to technical and cultural training for workers". The main legislative measures in the field of vocational training include Act No. 3506 of 21 May 1965. Act No. 6868 of 27 May 1983 reforms the earlier one and sets up the National Vocational Training System and the National Training Institute (INA).

388. The INA has national specialist centres that can provide effective responses to the needs of the various production centres in non-traditional, relatively new areas, and flexible procedures, and technological development centres in mechanical engineering, microelectronics, IT and telecommunications and vehicle electronics. For the training of entrepreneurs, the INA implements measures through the Technology Training and Services Management Coordination Unit, which designs profiles and programmes in the following production sectors: graphics, textiles, tourism, electrical, food, trade and services, and craft trades.

389. One important project developed by the INA is the "National Network of Training Centres for Encouraging Entrepreneurs with a Technical Background on a Regional Basis", which aim to offer the latest professional training to all regions in the country so that workers need not necessarily go to the Central Region in order to have access to training with a high technology content. This project is being implemented with the aim of giving the various regions a training centre matching the requirements of the labour force in each region.

390. Since 2001, the INA's Regional Management Coordination Unit has been running the National Plan for Training in Technical English (PLANACIT). In that year it received 97 requests for training in businesses located in a number of Free-Trade Zones and regions: Parque Zeta de Cartago, Zona Franca Metropolitana, Ultrapark, Saret, Parque Industrial de Cartago, Global Park and Forum. In 2002 contracts were placed for 228 technical training courses and 202 were awarded for the sum of 94 million colons and an average close to 3 000 workers trained.

391. In 2002 the National Training Institute (INA)<sup>47</sup> proposes to “j) provide directly or under subcontract, technical assistance, training programmes, advice and training to improve SMEs’ competitiveness”, “k) devise, prepare and implement professional qualification and training programmes aimed at satisfying the needs of the formal business sector, or having existing qualifications recognized.”

392. The Ministry of Labour has granted subsidies to enable workers to train within the firms where they work on courses given by the INA. This programme has been implemented in businesses located in relatively less developed areas such as Guácimo, Puntarenas, Barranca, Turrialba and Tucurrique, for a total of some 800 beneficiaries.

393. Between 1998 and 2001 the MEIC and INA promoted the training and technical assistance programme designed to make businesses in various sectors more competitive. Training and technical assistance activities are regarded as indispensable for generating quality goods and services, creating jobs, improving workers’ productivity and improving the quality of products and processes. Over the four-year period more than 300 training and advice measures were carried out in six provinces of Costa Rica and assistance was given directly to 6473 micro-entrepreneurs.

394. The Ministry of Public Education (MEP) implemented the dual training methodology based on worker skill standards to strengthen innovative technical training strategies in the country. In 2000 the National Committee for the Promotion of Education and Dual Training (CONAFODUAL) was established as the body responsible for organizing and standardizing this field.

395. In 1998 the National Integrated System of Technical Education for Competitiveness (SINETEC) was introduced by Executive Order No. 27113-MP-PLAN of 13 July. It was amended by means of Order No. 29425-MEP-MP-PLAN of 22 March 2001. It established SINETEC as a highly decentralized body of the Ministry of Public Education. It is composed of a series of public- and private-sector institutions, bodies and agencies that carry out recognized activities in the field of technical education, together with production-sector bodies requiring specialist services from professional technical resources.

396. Its general aim is the harmonious integration of the various levels of technical education, both public and private, from basic to higher technical level, achieving efficiency and effectiveness through measures agreed between the institutions of which it is composed and applicants in the production sector. It aims to promote human development in harmony with socioeconomic development.

397. Another important aspect is the introduction of women to the non-traditional specialities taught by the vocational technical colleges. This sector has been more dynamic, accounting for an average of 16.7% of total registrations in these colleges. The technical colleges also run the programme aimed at students with special educational needs, helping them to gain access to and stay on the courses.

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<sup>47</sup> The relevant law was amended by the Small and Medium-Sized Enterprise Support Act (No. 8262 approved on 17 May 2002), which amended Article 32 and Article 3 sections j and k of the INA’s organic law.



398. The academic syllabus in State para-university institutions has close ties with the national production sector, offering training, refresher and advanced courses for human resources in production sectors such as: farming, livestock rearing, sustainable development, water resources, environmental legislation, IT and communications, municipal administration, graphic design, hotel administration and electronics, food technology, farm- and eco-tourism, forestry and woodland wildlife management, plus veterinary assistance.

399. Other initiatives in this field that have continued over the years are: the Central-American Livestock College (ECAG)<sup>48</sup>, the Technical Education Research and Advanced Training Centre (CIPET)<sup>49</sup>, the University Colleges of Alajuela, Cartago and Puntarenas<sup>50</sup>, the University College of Dry Tropical Irrigation (CURDTS)<sup>51</sup>, and the Atlantic University College<sup>52</sup>. These para-university, higher education and public institutions train human resources relating to the regions of Chorotega and Huétar Atlántica. Their mission is to offer complete short courses lasting two or three years for first-stage university diploma-holders and to offer decentralized services to the universities and other educational institutions.

### **Assistance to specific groups**

400. The State has also striven to provide opportunities for access to employment by reviving the production sectors and as sources of jobs for both the general population and specific groups requiring special attention on account of their circumstances.

401. The Act establishing and regulating the National Centre for the Development of Women and the Family was adopted during the 1994-98 government term. The following functions of the Centre relate to the right to work: to protect women's rights as enshrined in international declaration and conventions and in the Costa Rican legal system; to promote gender equality and implement measures designed to improve the circumstances of women; to devise and adopt programmes for training women in activities other than domestic service, home industries or other chores, that exploit their abilities to the full, develop them and acquire skills for the benefit of themselves, their families and the community.

402. In 1996 the "Plan for Equal Opportunities between Women and Men 1996-1998" was set up with the aim of "eliminating continued gender discrimination in working conditions, the environment and labour relations; stimulating and improving female rural and urban business activities; and improving knowledge of women's social and economic situation in relation to work". The Plan was devised by the National Centre for the Development of Women and the Family, which in 1998 became the National Institute for Women (INAMU).

403. Other measures have also been adopted to prevent age and sex discrimination: In 2000 the National Employment Programme was established, along with its implementing regulation,<sup>53</sup> according to article 1 of which it is "a means of stimulating employment and the development of

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<sup>48</sup> Act 4401 of 1 September 1969.

<sup>49</sup> By means of Act 6995 of 22 July 1985, Executive Order No. 21167-MEP and its Organic Regulation of 17 March of 1992, and Executive Order No. 21167-MEP and its Organic Regulation of 17 March 1992.

<sup>50</sup> Act 6541 of 19 November 1981.

<sup>51</sup> Act 7403 of 3 May 1994.

<sup>52</sup> Act 7941 of 1999.

<sup>53</sup> No. 29044-TSS-COMEX of 30 October 2000, published in La Gaceta No. 215 of 9 November 2000.

projects having a positive impact on the economic and social conditions of communities and persons taking part in them”.

404. According to article 2 subsection h, its objective is “to promote the application of gender (men and women), in a balanced proportion, with the aim of promoting equal opportunities in the various projects concerned”. That same year the Gender Equality Unit was set up in the Ministry of Labour and Social Security<sup>54</sup> along with a Linea 800 telephone reporting and advice service on women’s labour rights.<sup>55</sup>

405. Administrative guideline No. 2 was issued on 16 May 2001, signed by the Minister of Labour and Social Security, on non-discrimination on grounds of gender. It lays down that where the National Inspection Directorate observes an anomaly regarding discrimination on grounds of gender, it will take precautionary measures and any appropriate legal action to correct it and impose the necessary sanctions on anyone responsible for labour breaches in the institution.

406. Special attention has been paid to children and adolescents since although minors under 15 are not allowed to work in Costa Rica, child labour still exists and in 1996 the Government signed a Memorandum of Understanding with the ILO to join the International Programme for the Eradication of Child Labour (IPEC), under which Costa Rica undertook to take serious action aimed at the progressive elimination of child labour.

407. In terms of administrative measures, a National Steering Committee to Combat Child Labour<sup>56</sup> was established (in 1998 the Committee’s name was changed to National Steering Committee for the Prevention and Progressive Elimination of Child Labour and the Protection of Juvenile Workers). The Committee’s main responsibility is to direct policy and practical action in this area. The Office for the Prevention and Eradication of Child Labour and the Protection of Juvenile Workers was also established as a standing body attached to the Ministry’s National Social Security Directorate, as a support unit for the Standing Committee.

408. In 1998 the Children and Adolescents Code was enacted, which sets out a minimum legal framework guaranteeing the comprehensive protection of the rights of children and adolescents. It contains not only the fundamental rights of children but also embraces special mandatory rules regarding child and adolescent labour, in chapter VII entitled “Special Protection Regimen for Juvenile Workers”. The basic aim of this regimen is to regulate the participation by adolescents aged over 15 in the formal and informal sectors of the economy and exclude those under 15.

409. In 2001 Costa Rica approved International Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Finally, regarding programmes, 2004 saw the approval of the second national action plan for the prevention and eradication of child labour and for the special protection of adolescent workers.<sup>57</sup>

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<sup>54</sup> No. 29221-MTSS of 20 December 2000, published in La Gaceta No. 6 January 2001.

<sup>55</sup> This reporting service is a communication facility consisting of one person acting as an operator or adviser, representing the Ministry of Labour and Social Security, and a worker or her representative.

<sup>56</sup> By means of Executive Order Nos 25890-MTSS of 12 March 1997 and 25517 of 18 December 1998.

<sup>57</sup> In the section devoted to the protection of the family, special attention is given to minors, and other important measures are mentioned about the hiring of or work by children and adolescents.

410. There was also progress on care for specific groups, notably the disabled population. The Equal Opportunities Unit for Disabled Persons of the Labour Ministry's Directorate of Social Security implemented a series of measures to stimulate employment of disabled persons.

411. The Unit published Act No. 7092 on fiscal incentives for employers hiring disabled persons, in both rural and urban areas, and within this context promoted a pilot scheme in the regions of Puntarenas, Limón, Turrialba and San Carlos, which are less developed than the urban regions.<sup>58</sup>

412. From 2003 amendments were made to the Job Creation Programme, a significant one of which was the incorporation of the benefits set out in Law No. 7600, the Equal Opportunity for Disabled Persons Act. This involved a campaign to convince employers or staff taking recruitment decisions about placing disabled persons for which visits to firms are planned or multi-sectoral meetings are promoted.

413. In the vocational technical colleges of the Ministry of Public Education, the programme is running for the 3<sup>rd</sup> and 4<sup>th</sup> cycles of special education for disabled persons. Students are trained for work. The course terminates in the 4<sup>th</sup> cycle and young disabled people are placed in a firm for work experience, many being recruited permanently. There are 91 placement schemes throughout the country.<sup>59</sup>

414. Note that there was a decrease in the proportion of disabled students from the province of San José, but Guanacaste, Puntarenas and Limón made up the difference, increasing their share of all students from 12.2% in 2002 to 20% in 2004. This reflects efforts to ensure greater fairness in access to the institutional services for disabled persons living in areas further away from the centre of the capital. The province of Alajuela also benefited from the process of geographical redistribution of the quotas in training courses, since the number of trained students tripled, from 92 to 405 between 2002 and 2004.

415. It is important to add to these measures other similar ones but focusing on a population that is doubly disadvantaged or at least requires special care for two separate reasons: disability and poverty. The programme of care for disabled poor, implemented by the National Council on Rehabilitation and Special Education (CNREE), offers information, guidance, assistance and promotion services to this population group. Promotion services, for example, were provided directly to 1 670 people.

416. Nevertheless, it has to be pointed out that the programmes have a moderate impact on the disabled population and an exhaustive study is needed to be able to corroborate the initial data.

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<sup>58</sup> This pilot scheme involves the promotion of a coordination strategy to incorporate the disabled population into the labour market, with all the institutions acting for and placing disabled persons in the various regions involved, with the support of Act 7600 (on Equality of Opportunity for Disabled Persons), the Children and Adolescents Code, in the case of minors entering the labour market, the Apprentice Contract Act and Act No. 7092 on Incentives for Employers Recruiting Disabled Persons.

<sup>59</sup> Other institutions such as the INA, as governing body for vocational technical training, have succeeded in placing disabled persons, both in public workshops and in the job offers received. The Hellen Keller Institute, through its social employment process, has a staff of 8 handling both training and placing visually handicapped (partially sighted and completely blind) workers in the labour market. The Institute belongs to the Ministry of Public Education, and is the only one of its kind in the country. Over the years it has acquired a wealth of broad experience in the field.

No study has been made of the economically active population, how many of them are in a condition to join the labour market in a competitive job, given their level of disability, and whether it is slight, moderate or severe. If they are working, whether in the public or private sectors, it is important to know more about the working conditions, wages and guarantees to implement measures that safeguard their rights and avoid labour exploitation.

417. The Comprehensive Older Persons Act (No. 7935) of 19 April 2002 was approved which states that all older persons must be given the opportunity to carry out activities earning them financial resources. According to the 2000 census, of the total population of older persons aged over 65, 27 434 were employed, 23 724 of whom were men.

418. Regarding the migrant population, the Ministry of Labour has a Technical Migration Unit dedicated to catering for the needs of that group.<sup>60</sup> There is also an agreement between the United Nations High Commissariat for Refugees (UNHCR) and MTSS for the entry of refugees into the labour market; this has helped to achieve a degree of acceptance of workers with refugee status.<sup>61</sup> Using UNHCR funds, as soon as the agreement was signed a full-time technician was taken on and with the support of the TCU project a university student was selected to set up a database with the job profile of the refugees, an employment grant, an employment promotion brochure and a portfolio of employers to contact in the short term.

419. The above is linked to the fact that the Constitutional Chamber of the Supreme Court of Justice of Costa Rica has established very important parameters regarding access to the right to work for non-nationals, mainly deriving from the guarantee of equality of labour and social security rights for foreigners or non-nationals, which originates in article 19 of the Constitution, which establishes the general principle that “Foreigners have the same individual and social rights and duties as Costa Ricans...”.

420. Finally, we should look at the position of detainees in relation to access to the right to work. Following a 1995 ruling by the Constitutional Chamber, we note that persons in these circumstances have a chance to shorten their sentence by carrying out actual work. That vote does not define work as that carried out by muscular or physical effort alone.

421. In line with that conception, in 1993 the prison service introduced a regulation defining work as follows: a human act, that is not distressing, corresponding to any action signifying creation, effort and/or modification of nature or objects, and the product of the creation of the mind and thought. This definition enables education and intellectual effort to be regarded as a productive occupation during time in prison.

### **Important changes to the right to work**

422. One of the most important steps forward regarding the right to work is the guarantee of equal access, hence the fostering of the fight against discrimination at national and international levels. The most significant legislative advances for ensuring equal rights for women and disabled persons include Costa Rica’s ratification of the Optional Protocol to the Convention on the Elimination of

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<sup>60</sup> Vote No. 10314-2000 of the Constitutional Chamber of the Supreme Court of Justice relates to the training of the duly legalized immigrant population, offering them tools for entering the country’s labour market.

<sup>61</sup> Faced with the latest wave of refugees, on 5 August 2003 the Labour Minister, Ovidio Pacheco, and the UNHCR representative signed a cooperation agreement designed to promote employment for refugees, for implementation during the remainder of that year and 2004.

All Forms of Discrimination against Women, Act No. 8089 of 6 March 2001 which was ratified on 6 August 2001 and the Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disabilities – Act No. 7948 of 22 November 1999.

423. Consequently, national legislation has been evolving to adapt to the new international requirements, proposing Act No. 7146 on the Promotion of Gender Equality of 1990 which safeguards the right to equal opportunities for men and women at work, Act No. 7600 on Equality of Opportunity for Disabled Persons of 1996, and Act No. 7092 on Incentives for Employers Recruiting Disabled Persons of 21 April 1998.

424. Finally, Act No. 8107 of 18 July 2001 added a new Title Eleven to the Labour Code, entitled: “Prohibition of Discrimination” which, supplemented by Act No. 2694 of 19 November 1960, consolidates a system of protection against discrimination against women and disabled persons in employment and jobs and, very importantly, safeguards equal opportunities at work for non-national workers.

425. In the jurisprudence there have been three key votes of the Constitutional Chamber regarding equal rights to work: Nos 1444-96 of 27 March 1996, 10314-2000 of 21 November 2000 and 1999-616 of 29 January 1999, guaranteeing the right to work of detainees and migrant populations, and declaring unconstitutional the requirement for all employers to hire at least 95% of Costa Rican workers.

### **International cooperation**

426. The most noteworthy projects carried out in recent years with the support of international cooperation are:

Project to Modernize the Labour Market, funded by IDB-SIECA, carried out by SIECA (early August 2002). Results:

- Pilot project for the centre for alternative resolution of labour disputes.
- Training in conciliation techniques and preparation as trainers for MTSS officials.
- Donation of a server and implementation of an employment information system, still pending.

RELACENTRO Implemented by the ILO, funded by the United States Department of Labor, from January 2001 to December 2003. Results:

- Social partners trained in courses of best practices, alternative conflict resolution, and labour relations. Research work. Contribution to a Subregional Labour Agenda
- Magistrates and judges trained in international labour law
- Defence of women’s labour rights

Project for Women's Rights Office, funded by the United States Department of Labor, implemented by the MTSS and the INAMU, from August 2000 to August 2002. Results:

- Participation and training of leaders from all over the country and MTSS officials for the dissemination of women's labour rights.
- Media campaign consisting of four radio and four television advertisements from March to October
- Drafting of a guide on Good Labour Practices.

Cooperation of the United States Government for the development of information systems

Project for the modernization of the Labour Ministries in Central America, Panama and Belize. Implemented by the Foreign Service Foundation for Peace and Democracy, funded by United States Agency for International Development (USAID) based in Guatemala, carried out between December 1998 and November 2000. Results:

- Labour Information System (ILS) delivered in September 2001 and installed;
- Training: national and regional workshops, regional courses, regional videoconferences for MTSS Officials.

Regional Project for Modernization of the Labour Market. Implemented by the Central American Secretariat for Economic Integration (SIECA), funded by the United States Agency for International Development (USAID) based in Guatemala and the Inter-American Development Bank (IDB). Results:

- Donation of software and hardware.
- Development of the Regional Labour Information System, available on the internet only and hosted by SIECA, and training of officials.

Projects aimed at preventing and eliminating child labour in coffee growing. Implemented by Defence for Children International in cooperation with the Rural Children's Education Foundation, COOCAFE and the Office for the Prevention and Eradication of Child Labour and the Protection of Juvenile Workers of the MTSS. Donor country: United States of America. Carried out from 2001 to March 2003. Results:

- Training workshops aimed at spokespersons of the cooperatives, members of the community and prominent officials of other institutions in the area.

## **Conclusions**

427. The Costa Rican Government has sought appropriate means and mechanisms for implementing an employment policy that is respectful of people's geographical, physical and intellectual peculiarities, and generating an institutional care structure, both preventive and in response to any breaches of guarantees in the field of the right to work of the country's inhabitants. The period 1990-2004 has witnessed far-reaching strategies, mechanisms and practices that have proved to be important elements in the effort to build a more clearly defined and structured national employment policy in Costa Rica.

428. In view of the country's significant progress on the observance of the right to work which is also being made in the context of a constant unemployment rate of around 6% over the past five years and the sustained creation of sources of jobs, the country must face the fact that jobs are growing fastest in the informal sector, obliging the Government to find mechanisms for offering more employment opportunities in the formal sector. It is also necessary to find mechanisms to respond to the erosion of job creation, especially in traditional areas that have been declining, such as farming.

429. Efforts to create jobs have focused mainly on the fields of technology, employment generated by foreign investment, specific areas such as provision of services and the stimulation of entrepreneurship, which tallies with the need to adjust to the new social and global requirements.

430. Against that background, there has been an emphasis on technical training for new entrants to the labour force and within the mechanisms and measures that have been implemented, a trend has been observed of focusing them in rural or relatively less developed areas, but even these strategies must be broadened and consolidated; trainees will be attracted by setting-up training centres that are better matched to the needs of each region.

431. Thus there is also a special emphasis on encouragement and support for small and medium-sized enterprises (SMEs); nevertheless, there is a need to provide more and better support tools, especially in terms of credit for the creation of opportunities through those firms.

432. As we have observed, mechanisms have been set up for protecting special groups such as women, children and adolescents, older persons, disabled persons and even non-nationals. The efforts deployed in job creation and training for these groups demonstrate a significant development and natural progression, as certain elements still need to be fine-tuned and some factors adapted so that the impact on care, especially for groups such as disabled persons, migrants and the indigenous population, is significantly increased.

433. However, the measures taken and implemented to facilitate more and better access to the right to work for women have been highly significant in incorporating this population group into the labour force, although it is still possible and necessary to make greater efforts to enable women to penetrate into other non-traditional areas, which is beginning to become apparent with technical education for this group.

434. There are a number of clear challenges that the Costa Rican Government has to face if it is to make further progress on the right to work.

435. Firstly the aim has been to achieve economic growth as a basis for creating more jobs, increasing wages and better opportunities for all. Even though the Costa Rican Government has been striving since the late 1980s to reduce and eradicate poverty, the fact is that Costa Rica, as a country, has had difficulty attaining higher growth rates that can create more jobs, reduce poverty and increase levels of economic well-being of the Costa Rican population in an equitable way.

436. The country has faced problems devising a clear, comprehensive and permanent employment policy that transcends the various government administrations, helps to identify supply and demand in the labour force and match the education offered to the projections and needs of the production sectors.

437. The conception of a comprehensive employment policy implies consistency and coordination in various State domains such as Government fiscal and monetary policy, planning of an education policy that is in line with the national strategy for development and job creation. Accordingly, the Government also faces the challenge of working towards increased and better interinstitutional coordination.

438. In order to ensure that the right to work is properly monitored, the Ministry of Labour and Social Security must step up its periodic studies that provide the necessary statistical, technical and field data. The items affected by budget restrictions should be assessed and resources redirected to increase training for staff designated for supervising and monitoring rights. Human resources must be sufficient to provide effective coverage of the whole country.

439. Finally, it should be considered that while striving for the socioeconomic development of the country in general and social sectors in particular, the aim is also to achieve human development for its inhabitants and to improve the quality of the workforce, reversing the current trend.

## **ARTICLE 7 (The right to just and favourable conditions of work)**

### **Conventions**

439. Costa Rica is a party to and has ratified the following conventions relating to the content of article 7 on decent working conditions: ILO Convention No. 14 concerning Weekly Rest in Industrial Undertakings of 1921<sup>62</sup>, ILO Convention No. 81 concerning Labour Inspection of 1947<sup>63</sup>, ILO Convention No. 100 concerning Equal Remuneration of 1951<sup>64</sup>, ILO Convention concerning Weekly Rest in Commerce and Offices of 1957<sup>65</sup>, ILO Convention No. 120 concerning Hygiene in Commerce and Offices of 1964<sup>66</sup>, ILO Convention No. 129 concerning Labour Inspection in Agriculture of 1969<sup>67</sup>, ILO Convention No. 131 concerning Minimum Wage Fixing of 1970<sup>68</sup> and ILO Convention No. 148 concerning the Hazards in the Working Environment Due to Air Pollution, Noise and Vibration of 1977.<sup>69</sup>

### **General framework**

440. The Labour Code, Act No. 2 of 27 August 1943, contains public regulations governing labour rights and obligations between employers and workers such as the contract of employment, ordinary and extraordinary working days, wages, notice, dismissal, vacations and rest days. It also includes the causes of termination of the working relationship and suspension from work.

441. The Ministry of Labour and Social Security is the body that is endeavouring, through its various departments, to apply the provisions concerning the right to just and favourable

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<sup>62</sup> Act 6765 of 7 June 1982, ratified on 25 September 1984.

<sup>63</sup> Act 2561-B of 11 May 1960, ratified on 2 June 1960.

<sup>64</sup> Act 2561 of 11 May 1960, ratified on 2 June 1960.

<sup>65</sup> Act 2330 of 9 April 1959, ratified on 4 May 1959.

<sup>66</sup> Act 3639 of 6 November 1965, ratified on 27 January 1966.

<sup>67</sup> Act 4737 of 29 March 1971, ratified on 16 March 1972.

<sup>68</sup> Act 5851 of 9 December 1975, ratified on 8 June 1979.

<sup>69</sup> Act 6550 of 18 March 1981, ratified on 16 June 1981.



conditions of work. The National Labour Inspection Department is responsible for monitoring compliance with the provisions.

## **Wages**

### *Wage-fixing system*

442. According to article 57 of the Constitution, “Every worker is entitled to a minimum wage, to be fixed periodically, for a normal working day, which will provide for his welfare and a decent living. Wages shall always be equal for equal work under identical conditions of efficiency. A technical organization to be defined by the law shall be in charge of all matters related to the fixing of minimum wages.”

443. Since 1949, when Act No. 832 was passed that set up the National Wage Council, its implementing regulation, and the 1996 and 1997 amendments, the main method used to fix wages, through that Council, is continuous dialogue, constantly seeking consensus between the parties, as a guarantee for the periodic revision and fixing of wages to be earned by all workers.<sup>70</sup> This procedure complies with the provision in ILO Convention No. 131 concerning Minimum Wage Fixing, recognized by Costa Rica in 1975 and ratified in 1979.

444. Chapter V of the Labour Code governs minimum wages in articles 163, 177, 178 and 179. The first of these stipulates that while wages can be fixed freely they may never be below the current minimum wage. The second acknowledges the right of all workers “to earn a minimum wage covering the normal needs of their household in material, moral and cultural terms, which shall be fixed periodically with regard to the conditions of each job, and the particular conditions of each region and of each intellectual, industrial, commercial, livestock or farming activity”.

445. It should be pointed out that according to article 179 “The fixing of the minimum wage decided by the National Wage Council shall automatically amend any contracts of employment setting a lower wage and shall not imply the renunciation by the worker or the withdrawal by the employer of pre-existing agreements favouring the former, regarding higher remuneration, housing, arable land, working tools, medical service, supply of medicines, hospitalization or other similar benefits.”

446. The fixing of minimum wages applies to intellectual, industrial, farming, forestry, livestock and commercial activities, services and other production activities. The system of minimum wages makes use of a very broad nomenclature system, by economic activity, divided into general occupational groups, such as unskilled workers, semi-skilled workers and skilled workers within the first chapter, with these same groups but with different wages.

447. Minimum wages are set for the private sector in general, for the public sector and also through collective labour agreements. They are of mandatory application in all cases.

448. The system for fixing minimum wages for the private sector involves two periods each year. During October and June of each year, the National Wage Council – composed of three directors representing the employers, three for the workers and three for the Executive, plus three alternates, one for each sector – call hearings to enable the sectors to present their proposals.

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<sup>70</sup> Though it has to be said that year after year the system comes in for criticism from various sectors, especially the unions, as they are not totally satisfied with the resulting increases.

These generally consider the Index of Consumer Prices (IPC) which is based on the basic food basket, made up since January 1995 of 264 products.<sup>71</sup> The minimum wage has to be fixed taking account of variations in the process of those products.

449. The proposals are analyzed, reviewed and approved by the Council and they apply from 1 January and 1 July of the following year. Finally, once all the procedures are complete, the wage levels fixed come into force by the publication of an Executive Order. The Council also has the power to carry out intermediate wage reviews as presented by workers during the course of the half-year.

450. For the fixing of wages in the public sector, Order No. 16965-MTSS-P of 4 April 1986 set up the National Public-Sector Wage Commission which has a bipartite composition with representatives of officials and the Government. This commission is responsible for reviewing the wages of public-sector workers, which also has to be done within a framework of dialogue. In June 2001, Regulation No. 29576-MTSS was issued for the negotiation of collective agreements with the public sector.

451. Collective labour agreements are made between one or more trade unions and one or more employers, including the State. According to article 55 of the Labour Code, their provisions have the force of law on the parties that sign them, on those currently working in the firms, even if they are not union members, and also govern future individual and collective contracts.

452. Besides wages<sup>72</sup>, they also include other aspects relating to working conditions covered by article 7 of the Covenant. These agreements are valid for at least one year and up to three or five years, depending on the case. Before they expire they have to be reviewed by the MTSS to ensure that they do not automatically apply the same conditions, for a similar period. The Labour Ministry's Directorate of Labour Relations is responsible for periodically reviewing the relevant documents, in accordance with the provisions of article 57 of the Labour Code.

453. Responsibility for supervision and monitoring the effective enjoyment of the right to wages fixed by the three means mentioned falls to the Ministry of Labour's inspection team which also takes action in the courts against any breaches committed by employers of the right to a minimum wage.

454. The National Labour Inspection Department carried out a total of 11 476 inspections during 2002; in 2003 the figure rose to 12 264 and again to 13 317 in 2004. In all these inspections, the team verified compliance with labour legislation as a whole, including minimum wages and any discrimination in relation to the principle of equal wages.

### *Wages*

455. According to information provided by INEC in May 2005, the Costa Rica Central Bank and the Wages Department of the MTSS, between 1995 and 2004, on average workers were remunerated at 5.81% above the Consumer Price Index, the basis on which they are calculated.

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<sup>71</sup> The 1995 basic food basket comprises 264 products including basic foodstuffs, clothing, housing and related services, medical care, transport and education.

<sup>72</sup> According to Article 58 of the Labour Code, "collective agreements shall specify everything relating to: a) the intensity and quality of the work; b) the working day, rest days and vacations; c) wages; d) professions, occupations, activities and places concerned; e) duration of the agreement and the date it comes into force" .

Minimum wages in 1995, 2002, 2003 and 2004 were below the IPC. On the other hand, minimum wages from 1996 to 2001 attained levels higher than the published index.

TABLE 5

**Trend in minimum wages and private-sector consumer price index, 1995-2004**

<i>Year</i>	<i>Consumer price index</i>	<i>Percentage increase</i>	<i>Difference</i>
1995	22.56%	19.69%	-2.87%
1996	13.89%	16.40%	+2.51%
1997	11.20%	17.42%	+6.22%
1998	12.36%	13.54%	+1.18%
1999	10.11%	11.11%	+1.00%
2000	10.25%	10.37%	+0.12%
2001	10.96%	12.85%	+1.89%
2002	9.68%	7.67%	-2.01%
2003	9.87%	9.76%	-0.11%
2004	13.13%	11.01%	-2.12%

*Source:* Statistics and Census Institute, Central Bank of Costa Rica and MTSS Wages Department, May 2005.

***Situation of specific groups***

456. There are gaps between the wages and incomes of men and women, though in recent years these have tended to diminish for those with a university education. For almost all occupational groups and at all levels of schooling there are still differences. Over the past decade women have been approaching the average hourly wage that men receive at some levels of education. For women university graduates this ratio was 76.4% in 1990, 84.5% in 1995, and barely changed in 1999 at 85.4%.

457. Paid domestic work is the type of work with the lowest minimum wage fixed by the private sector; it involves a working day of more than eight hours and rest periods and vacations are being reduced, in many cases by half. The Costa Rican Social Security Fund and the National Insurance Institute, the latter providing insurance cover for occupational hazards, keep sub-registers of this population since in 2000 the CCSS reported only 7 500 registered domestic workers while 200 were registered in the INS. This compares with the estimate of 80 000 domestic workers by the National Association of Domestic Workers for the same year.

458. Domestic work, regarded as a low productivity sector, absorbed 14.5% of the female working population in 2000 and a mere 0.4% of the male population. In 2002 the MTSS calculated the value of non-remunerated domestic work by women and estimated it at a market value equivalent to 17% of GDP, while the value of domestic work by men was 1.2%.

TABLE 6  
Average hourly wage rates of women compared to men by level of education,  
1990, 1995, 1996-1999<sup>73</sup>

<i>Level of education</i>	<i>1990</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
No qualification	67.6	73.3	94.1	92.3	68.2	73.7
Primary incomplete	71.3	79.5	79.6	77.6	80.7	82.0
Primary completed	77.1	78.1	83.5	82.0	81.8	80.4
Secondary incomplete	74.4	78.8	86.1	87.8	87.2	81.6
Secondary completed	85.6	85.1	81.8	89.4	87.8	78.4
Vocational secondary completed	91.0	82.5	91.8	107.7	100.0	87.4
Para-university	91.2	84.6	64.9	97.4	86.6	77.1
University	76.4	84.5	81.4	91.7	91.3	85.4

*Source:* INEC-MTSS. Multi-Purpose Household Survey, various years.

459. On the other hand, estimates by the State of the Nation project put the figure at 9.4% of GDP in 1995 and over 10.5% in 1997. It is not officially recognized as a contribution to the national economy.

460. Regarding children and adolescents aged between 5 and 17, data from the 2002 Multi-Purpose Household Survey indicate that 127 077 were working in undesirable conditions. More than 30% of the total were girls and adolescent women.

461. More than 40% were children and adolescents under 15, in other words they were not of legal working age, which is in breach of article 92 of the Children and Adolescents Code.

462. Of them, 13 110 were aged between 5 and 9 and 37 041, nearly 35% of the total, were between 9 and 15. More than 40% of those under 15 were unpaid and 42% worked 46 hours a week.<sup>74</sup>

463. Almost 44% of all minors under 18 were working as farm labourers, where monitoring and supervision of working conditions is very limited.

<sup>73</sup> Economic, social and cultural rights report, INAMU, Table 10, p. 103.

<sup>74</sup> MTSS report (19), p. 179-181.

TABLE 6A

## Average wage of employed population by industrial sector and occupational group, 2004

<i>Occupational group</i>	<i>Institutional sector</i>			
	<i>Total colons</i>	<i>Central Govern-ment</i>	<i>Rest of public sector</i>	<i>Private sector</i>
All occupations combined	166 599	241 794	279 635	143 074
Director level, civil service and private enterprise	546 938	501 869	516 489	571 072
Professional, scientific and intellectual level	351 779	278 510	440 886	388 242
Technical and mid-professional level	215 754	235 439	243 519	206 343
Administrative support	160 711	158 601	197 408	151 343
Sales on premises and direct provision of services	114 948	157 765	177 919	106 914
“Skilled” stockbreeding, farming and fishing	88 660	166 599	98 356	87 419
Craft work, construction, mechanical engineering, graphic arts and manufacturing	137 948	147 831	191 596	133 768
Assembly and operation of installations and machinery	140 011	157 923	193 187	137 129
Unskilled occupations	85 557	111 818	139 562	82 988
Occupation unspecified or unknown	72 196	65 934	—	75 306

*Source:* EHPM 2004, National Institute of Statistics and the Census

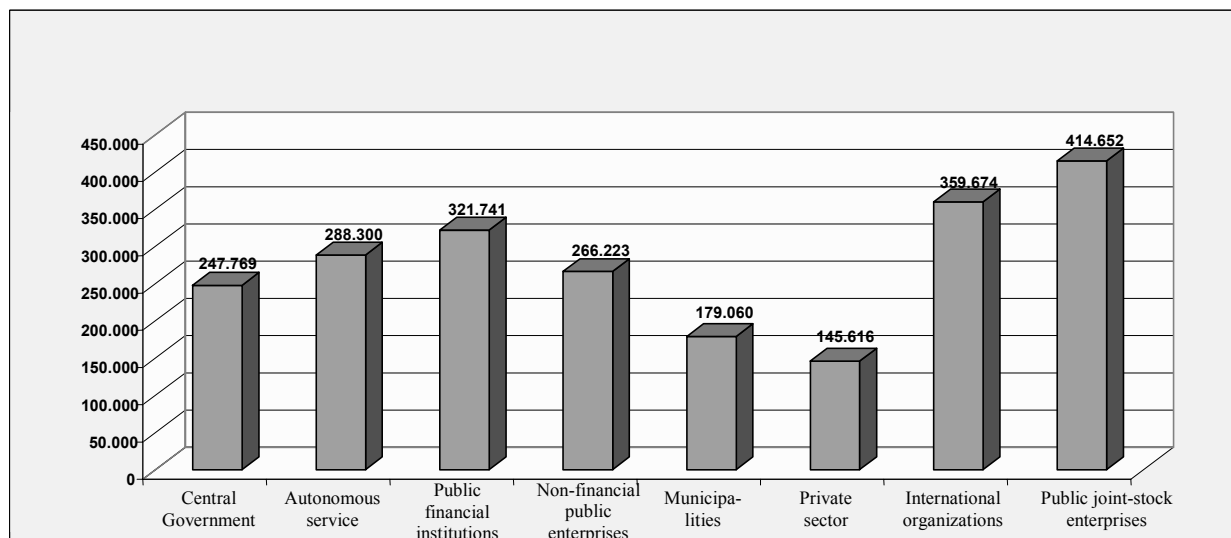
### *Income in the public and private sectors*

464. Regarding the income distribution of employees, both in the public and private sector taking into account both remuneration and non-monetary benefits, employees in the public sector generally earn more than those in private enterprise. However, at management level, private-sector wages are the best in the country. At professional level, remuneration in the private sector is higher than in central government. (*see table 6 b*).

465. Nevertheless, there are wide differentials between public-sector jobs. Employees of the municipalities and Central Government are the least well paid in this sector. Meanwhile, the “autonomous institutions”, which include State banks and public-sector enterprises, are better paid owing, in some cases, to collective agreements that guarantee then higher wages. (*see figure 5*).

FIGURE 5

**Costa Rica: Average income of employed workers by industrial sector, nominal colons, 2004**



Source: EHPM 2004, National Statistics and Census Institute.

### Minimum occupational health and safety conditions

466. Article 66 of the Constitution establishes occupational health and safety as a labour right and a minimum working condition, and on this basis the Costa Rican Government has adopted a comprehensive and varied set of health and safety regulations. The MTSS inspection service has the necessary powers to monitor compliance with occupational health regulations at any place of work, regardless of the economic sector concerned.

467. The legislation on minimum occupational health and safety conditions does not allow categories of workers to be excluded from its scope.<sup>75</sup>

468. The occupational health and safety regulations offer special coverage for some categories of workers: construction workers, those working with boilers, in industry, on bird farms, firemen, refuse disposal workers, adolescents and bus drivers. For a breakdown of laws, see Annex II, regulations of article 7.

469. The economic sectors that do not adequately apply the occupational health and safety regulations are mining, farming, fisheries and construction. Given this situation, the State must face the challenge of looking deeper into the causes and effects of this problem and try to provide

<sup>75</sup> The following is a list of general regulations on occupational safety: Order No. 1: general occupational health and safety regulations of 2 January 1967. Order No. 18379-TSS on the regulation of occupational health committees of 19 January 1988. Order No. 27434 on the regulation of the offices or department of occupational health. Order No. 10541-TSS on the noise and vibration control regulation of 14 September 1979. Order No. 22088-S on the emergency stairs regulation of 22 March 1993. Order No. 25056-S-MEIC-MINAE: regulation on the controlled use of asbestos and products containing it. Order No. 30222-S-MINAE: regulations on the emission of air pollutants from boilers. Order No. 24037-S: regulations on protection against ionizing radiation. Order No. 30465-S: general regulation for the granting of operating permits by the Ministry of Health.

a more effective response. As these cases have been identified, it has only to find ways of solving them.

470. The task of monitoring occupational health and safety rights falls to the MTSS inspection service, which also has the necessary powers to monitor compliance with occupational health regulations at any place of work, regardless of the economic sector concerned.

471. However, it has to be taken into account that the public-sector spending control policy has affected the budget of the National Labour Inspection Department, limiting the human, technological and transport resources in the inspection service, but it is clearly continuing to work as best it can in practice.

472. Benefits for accidents at work, known in Costa Rica as occupational hazards insurance, are the responsibility of the National Insurance Institute (INS). Occupational health and the protection of workers while at work are regulated by Act No. 6727 on Occupational Hazards, enacted on 2 January 1982, as an amendment to Title IV of the Labour Code.

473. Article 193 thereof requires employers to take out insurance covering the workers against occupational hazards and diseases, giving workers the right to medical and health benefits for occupational hazards.

474. Article 300 of the Code states that everything regarding occupational health is in the public interest and article 195 expands the concept of occupational hazards, while article 201 makes occupational hazard insurance mandatory, universal and enforceable.

475. Article 273 establishes the concept of occupational health, aimed at promoting and maintaining the worker's physical, mental and social well-being at the highest level. In line with article 66 of the Costa Rican Constitution, a series of responsibilities are assigned to the employer, regarding insurance, risk and prevention (articles 214, 215 and 284). The worker is granted benefits (articles 218 and 221) but also has obligations, as set out in articles 285 and 286 of the Code.

476. Occupational hazards insurance is funded basically from employers' contributions. The National Insurance Institute manages occupational hazards insurance on a not-for-profit basis, and article 205 of the Labour Code clearly establishes how any surplus from the scheme is to be distributed: 50% to fund programmes operated by the Occupational Health Council and 50% to make improvements to the scheme, such as increasing payments to beneficiaries for permanent invalidity or death, etc.

477. Against the backdrop of these regulations it should be pointed out that, in the light of the most pertinent jurisprudence handed down by the Labour Tribunals of the Republic, including consistent jurisprudence of Chamber II of the Supreme Court of Justice, the Court of Cassation, which is responsible for resolving legal aspects of labour cases, the courts have repeatedly and consistently ruled that employers are required to take out insurance covering their workers against occupational hazards and diseases.

TABLE 7

**Occupational hazards insurance**

**Labour force, employed population of the country and insured workers, 1997-2004**

<i>Group</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>
National labour force	1 301 625.0	1 376 540.0	1 383 452.0	1 535 392.0	1 653 321.0	1 695 018.0	1 757 578.0	1 768 759.0
Employed population	1 227 333.0	1 300 005.0	1 300 146.0	1 455 656.0	1 552 924.0	1 588 491.0	1 640 387.0	1 653 879.0
Wage-earning employed population	858 094.0	922 223.0	922 617.0	1 040 794.0	1 068 412.0	1 083 573.0	1 140 069.0	1 137 869.0
Population insured against occupational hazards	706 915.0	760 446.0	723 976.0	741 367.0	775 141.0	800 052.0	775 515.0	813 762.0
Insured employers	41 513.0	40 095.0	36 180.0	38 873.0	37 578.0	39 394.0	42 877.0	47 278.0
<b>Rates (per cent)</b>								
Net participation (1)	53.8	55.3	54.8	54.8	55.8	55.4	55.5	54.4
Employment (2)	50.7	52.2	51.5	51.9	52.4	51.8	51.8	50.9
Open unemployment (3)	5.7	5.6	6.0	5.3	6.1	5.4	6.7	6.5
Insurance index (4)	82.4	82.5	78.5	71.2	72.6	73.8	68.0	71.5

(1) Labour force as a percentage of population of working age.

(2) Employed population as a percentage of population of working age.

(3) Unemployed population as a percentage of the labour force.

(4) Ratio of insured population to employed wage-earning population.

NOTE: Insured workers for the year is calculated as the average of the figures available on the last day of each month.

Source: Annual report on labour, occupational hazards and health, INEC Multi-Purpose Household Survey. Mechanized occupational hazards system

478. The courts have sentenced employers repeatedly breaching labour regulations by failing to take out insurance against occupational hazards, obliging them to refund the National Insurance Institute the costs of each case receiving care but not covered by insurance; furthermore, for the infringement of the social security regulations employers have been obliged to pay the statutory fine laid down in article 614 of the Labour Code.

479. As an administrative measure adopted by the State to ensure compliance with the legislation compelling employers to take out insurance against occupational accidents and diseases, the Department of Occupational Hazards<sup>76</sup> has staff assigned to the Inspection Unit, whose task it is not only to investigate in cases of dubious accidents but also to carry out surprise visits to places of work in any economic sector and to verify compliance with labour legislation.

<sup>76</sup> The main goal of the Department of Occupational Hazards is to provide cover for the whole working population including their families, in the form of financial, medical and surgical, hospital, pharmaceutical and rehabilitation benefits, in the event of an accident at work leading to the temporary or permanent invalidity or death of the worker.



480. Where there are breaches of the legislation, a report is drawn up, the employer is given a time limit within which to comply, and in cases of extreme danger the work site is closed down.

481. Mention should also be made of the training programme in Occupational Hazards and Preventive Management that is provided free of charge by the service, and the support from the National Insurance Institute's Directorate for Solidarity Insurance, in its capacity as administrator of the Occupational Hazards Scheme. The goal of the programme is to offer information and training on specific topics with the aim of imparting basic knowledge to participants about the hazards to which they are exposed, prevention and protection mechanisms, and management and control information.<sup>77</sup>

### *Occupational accidents and diseases*

482. Occupation accidents by economic activity in 2004 were most frequent in farming, hunting, forestry and fisheries. During that year 29 102 occupational accidents occurred in those activities.

483. The next heading was community, social and personal services, with 21 188 accidents occurring in 2004, a highly significant number considering that these activities are not inherently dangerous. In third place was manufacturing industry with a total of 17 778 accidents and, lastly, in fourth and fifth places, commerce, restaurants and hotels with 13 463 accident victims, and construction with 12 612 accidents.

484. Preventive measures are being taken in relation to these five areas of activity, where occupational accidents are most likely to occur, not only by the Department of Business Management and Occupational Health but also by the Occupational Health Council and the ILO's Costa Rica office.

485. It should be pointed out that accidents decreased from 2001 to 2004, thanks to the wide-ranging preventive measures taken by the Department: leaflets, CDs, posters, etc., and talks and seminars on the premises of businesses and in the Institute's offices.

TABLE 8

#### **Occupational hazards insurance – Indicators of claims, 1997-2004**

<i>Indicator</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>
Population Insured under labour scheme	706.915	760.446	723.976	741.367	775.141	800.052	775.515	813.762
Employed wage-earning population	858.094	922.223	922.617	1.040.794	1.068.412		1.140.069	1.137.869
Occupational accidents declared	115.344	116.501	120.279	118.646	110.249		103.376	105.930
Occupational accident rate in employed wage-earning population (1)	13,44	12,63	13,04	11,40	10,32	10,22	9,07	9,31
Permanent invalidities granted	4.721	6.979	8.033	8.833	11.374	10.497	9.810	10.778
Serious invalidities	9	6	12	8		6	7	3
Deaths through occupational accidents	58	47	84	71	74	60	55	50
Cost of claims incurred	1.473.407	1.509.877	1.502.509	1.631.386	1.543.506	1.539.663	1.329.688	1.1.297.594

(1) Report of occupational accidents / Employed wage-earning population.

Source: Mechanized Occupational Hazards Insurance System, IND.

<sup>77</sup> The annexes to Article 7 show the proportion of insured workers in the country. The text of Article 9 discusses the improvements in cash benefits for occupational hazards insurance.

### **Principle of equal opportunities for promotion**

486. In central government circles, the Civil Service Staff Regulations are applied, which also has a body offering the possibility of reviewing or overturning any act that infringes the regime for Civil Service officials, within which there are parameters governing promotion opportunities for both men and women. In the private sector, the provisions of the Covenant apply, along with current legislation on discrimination in the workplace.

#### ***Measures adopted to tackle inequality***

487. The 1990 Act on the Promotion of the Social Equality of Women safeguards the right to equal opportunities of men and women at work and in May 2002 was supplemented by the setting-up of a Gender Equality Unit at the Ministry of Labour. This unit is in charge of a number of services, including from 2001, an 800 labour telephone hotline to handle questions about women's labour rights and offer guidance and prevent problems between women workers and employers, providing both parties with proper information.

488. In 2001 over 4 000 calls were received from women on a variety of topics, rising to 5 540 in 2004. The service also received 3 075 calls from men in 2004, many to do with pregnancy, dismissal, occupation health, gender discrimination at work, and sexual harassment.

489. The Household Survey conducted in July 2004 included a module of questions designed to assess women's contribution to the economy through domestic work, not only in rural areas but also in urban areas, which will shed light on this situation and enable policies to be adopted.

490. With the creation of the Office for the Prevention and Eradication of Child Labour and the Protection of Juvenile Workers it is hoped that the Ministry of Labour and the specially trained labour inspectors will step up supervision and monitoring of the working conditions of this group.

491. In 2002 an immediate assistance programme was implemented based on interinstitutional coordination between the National Children's Trust, the Joint Social Welfare Institute and the Ministry of Public Education, with the aim of providing comprehensive care for this segment of the working population, and has also promoted the pooling of efforts with NGOs and municipalities. In cooperation with the National Insurance Institute, the Insurance Regulation was drafted for occupational hazards for self-employed and own-account workers, designed for adolescents.

492. The MTSS equal opportunities unit for disabled persons was set up by Order 30391-MTSS of 17 May 2002. This enabled a series of one-off measures to be promoted and carried out for this sector.

### **Working day and free time**

493. Regarding the statutory regulations governing rest periods, free time, working hours, vacations and paid public holidays, the relevant texts are annexed. However, we will mention here some fundamental regulations that support decent working conditions in Costa Rica.

494. Article 59 of the Costa Rican Constitution states that: "All workers shall be entitled to one day of rest after six consecutive days of work." Meanwhile, article 152 of the Labour Code states that "All workers are entitled to one day of complete rest after each week or every six days of continuous work."

495. Regarding free time and working hours, the Constitution stipulates as follows: “A regular working day for daytime work may not exceed eight hours a day or forty-eight hours a week. “The regular working day for night work may not exceed six hours a day or thirty-six hours a week.” Article 135 of the Labour Code adds the following definition: “Daytime work shall take place between 05.00 and 19.00, and night work between 19.00 and 05.00.”

496. Regarding vacations, article 58 of the Constitution states that: “All workers shall be entitled (...) to annual paid vacations, the duration and time of which shall be regulated by law, but which shall not be in any case less than two weeks for every fifty weeks of continuous service, all without prejudice to well-defined exceptions established by law.” On the subject of public holidays, the first paragraph of article 148 of the Labour Code provides as follows: “The following are regarded as public holidays, and therefore must be paid: 1 January, 11 April, Holy Thursday and Good Friday, 1 May, 25 July, 15 August, 15 September and 25 December. “August and 12 October shall also be regarded as public holidays but payment for them shall not be obligatory.”

497. The transcription of the above articles shows the regulations that apply to the whole population, which also includes older persons or senior citizens, migrant workers, disabled persons, etc.

498. There is no provision that precludes or limits the rights set out in the preceding paragraphs; on the contrary, article 11 of the Labour Code, in line with article 74 of the Costa Rican Constitution, provides as follows: “any waivers by workers to the provisions of this Code and the associated laws in their favour shall be null and void.”

499. The right of workers to enjoy the rights concerned here is safeguarded by the work of the Inspection Unit, without prejudice to the conciliation work by the Directorate for Labour Relations and the advisory work carried out by the Directorate of Legal Affairs.

### ***Difficulties in complying with rights***

500. In addition to the limited financial, human, technological and transport resources mentioned in the section on the right to work, the Ministry of Labour and Social Security often lacks precise information about the degree of compliance with these rights.

### **Progress on the right to just and favourable conditions of work**

501. Regarding proper working conditions for workers, especially from the occupational health point of view, Act No. 6727 on Occupational Hazards of 9 March 1982 completely recasts Title Four of the Labour Code, from articles 193 to 362, on the protection of workers while at work, and this protection was further supplemented by Act No. 7983 on Worker Protection of 16 February 2000.

502. Regarding wages policy, Costa Rica has striven to establish standard mechanisms and procedures for setting wages, so avoiding arbitrariness and discrimination when awarding and fixing wages for different categories of workers.

503. Order No. 25619 MTSS of 1977 regulates the National Wages Council. This is complemented by the implementing order for minimum wages that is published every six months and for each category of work establishes a minimum wage level that employers must pay and serves to prevent exploitation of labour.

504. Two important directives were issued in 2001: No. 29513-H: General guidelines on wage policy and regulations on employment and job classification, and No. 29514-H: Procedures for the application of guidelines and general regulation of wage policy and regulations on employment and job classification. Other regulations were also approved covering occupational health and safety.

505. The jurisprudence of the Second Chamber of the Supreme Court of Justice makes it clear that equal wages must be paid for equal job descriptions and work done. This is in line with votes Nos 25 of 3 March 1993 and 98 of 19 March 1993. Regarding the right to receive just and fair wages, the Constitutional Chamber of the Supreme Court of Justice has handed down a large number of rulings (notably numbers 1243-1991, 1252-91, 1474-91, 138-93, 1472-94, 1727-94, 1823-94, 3294-94 and 3579-94) which consolidate and support the protection of this important right.

506. The right to weekly rest, one day of rest after six consecutive working days, was reaffirmed in the constitutional votes during the nineties. The votes of the Higher Labour Court and the Administrative Court, over the same period, were also consistent with this.

507. Regarding vacations, apart from Act 325 of October 1943, laws of 1996, 1998 and 2000<sup>78</sup> have reformed article 156 of the Labour Code on the enjoyment of vacations, and have ruled that they are not subject to compensation, except in the cases expressly set out in the article.

508. One of the most significant decisions was 5969-93 in which a court action claimed that article 607 of the 1943 Labour Code and article 27 of the 1990 MTSS independent internal regulations were unconstitutional. The decision upheld that claim and they were subsequently annulled. The application of that decision resulted in the workers' right to vacations. The decision stated that for workers, "all their labour rights shall expire, pursuant to article 602, from the termination of their contract of employment" and not before. This action resulted in an important clarification of the regulations, and more favourable time limits for workers in terms of expiry of entitlements to vacations.

509. Over the last three years, the MTSS Directorate of Labour Relations, through its work of conciliation and prevention of labour conflicts, has provided employment advice and consultancy in almost 75 thousand cases. In 2002 it handled 20 462 cases, far exceeding this in 2003 with 30 342 cases, while the number fell to 25 359 in 2004. In many cases, its intervention guided the parties towards the resolution of labour conflicts at an early stage.<sup>79</sup>

## Conclusions

510. In general terms it is observed that there are still wage disparities between some groups, notably in the case of men and women, which the State must tackle with more determination and create better practical mechanisms to improve wage parity. Since many of the legislative and jurisprudential measures have already been taken, it is now a matter of consolidating the conditions.

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<sup>78</sup> Acts 325 of 6 October 1943; 7641 of 17 October 1996; 7805 of 25 May 1998 and 7989 of 16 February 2000.

<sup>79</sup> MTSS report for the report on economic, social and cultural rights (19) p. 52.

511. In relation to the previous point, more efforts must be devoted to improving supervision of decent working conditions, since budget cuts and restrictions have often put the Labour Ministry's inspection service in difficulties for providing more and better monitoring of compliance with labour safeguards throughout the country.

512. The Costa Rican State must also improve mechanisms for supervising the working conditions facing certain population groups, such as disabled persons, older persons, the indigenous population and migrants, who owing to their circumstances are more likely to find themselves in less than ideal working conditions, with a consequent erosion of their rights. However, as the constitutional Chamber of the Supreme Court of Justice has upheld, it is essential to highlight the situation of migrant workers whose guarantees of decent working conditions must be safeguarded regardless of their status, and their situation must be monitored by the competent authorities.

513. With respect to occupational health and safety, it is essential to keep up the pressure in the face of the shortcomings that can still be observed in the mining, farming, fisheries and construction sectors; knowing the situation of these groups, it is important to study their causes in more depth to enable the State to provide an effective response.

514. Nevertheless, the considerable efforts of the National Insurance Institute (INS) to disseminate and improve the mechanisms for preventing and managing occupational hazards and accidents at work must be acknowledged, all of which is a great step forward in the gradual application not only of improved occupational safety and health measures, but also of the actual right to decent working conditions.

515. The State has endeavoured to create and consolidate mechanisms offering workers more safeguards surrounding their work and has indeed achieved major progress and shown an interest in attaining a greater respect of the dignity of workers, regardless of their origin, race, sex or differences of any other kind.

516. Nevertheless, there is a growing need to take account of the challenges facing the State in terms of improving its monitoring mechanisms, giving more budgetary resources to the bodies responsible; indeed, this would flow from a genuine strategy for the overall protection of labour guarantees.

## **ARTICLE 8 (The right to form trade unions and associated freedoms)**

### **Conventions**

517. Costa Rica is a party to the following international treaties relevant to this area: ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise of 1948<sup>80</sup>, ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively<sup>81</sup> and the International Covenant on Civil and Political Rights.<sup>82</sup>

### **Right to form trade unions**

#### *Conditions for unionization*

518. The right to form trade unions is enshrined in several of the country's laws. In the specific case of the Costa Rican Constitution it lays down a general rule underlying trade union freedoms and on which the formation of any trade union must be based. article 60 states that "Both employers and workers may organize freely, for the exclusive purpose of obtaining and preserving economic, social or professional benefits. Foreigners are prohibited from exercising direction or authority in unions. This constitutional premise is implemented in the Costa Rican Labour Code which dates from 1943.

519. Regarding the content and form of the conditions for forming a trade union, article 342 of the Code states that:

"Unions are of the following types:

- a) Trade unions: formed by individuals of the same profession, occupation or speciality;
- b) Company unions: formed by individuals of several professions, occupations or specialities, working for the same company;
- c) Industry unions: formed by individuals of several professions, occupations or specialities, working for two or more companies of the same kind; and
- d) Mixed unions for several occupations: formed of workers involved in different or interrelated activities. Such unions may be formed only when the number of workers of the same trade in a particular canton or company attains the legal minimum. The management board of any union may include persons who do not satisfy the conditions of this article."

520. As provided by article 343 of the Labour Code, the basic requirement for forming a union is twelve members for a trade union, and at least five employers in the same field for an employers' union.

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<sup>80</sup> Act 6550 of 18 March 1981, ratified on 2 June 1960.

<sup>81</sup> Act 6550 of 18 March 1981, ratified on 2 June 1960.

<sup>82</sup> Act 4229 of 11 December 1968.

521. No prior authorization is required to form a union either for workers or for employers; however, according to article 344 of the Code, procedures for legal constitution must be initiated with the Ministry of Labour and Social Security (MTSS) within 30 days of its foundation.

522. That article states that “in order for a union to be regarded as legally constituted with full legal personality, it is essential that a written application be drawn up and signed by its president or secretary-general and sent to the Trade Unions Office of the Ministry of Labour and Social Security, either directly or via the local labour or political authorities, together with authentic copies of its deed of incorporation and articles of association. The deed must state its number of members, type of union and the surnames and forenames of the members of its governing body.

523. The Head of the Trade Unions Office of the Ministry of Labour and Social Security shall examine, under his responsibility, within fifteen days of receipt, whether those documents satisfy the statutory requirements; if so, he shall deliver a favourable report to the Ministry of Labour and Social Security to enable it to enter the union as quickly as possible in the appropriate public registers; this may not be refused if the above requirements have been satisfied; otherwise, the official shall notify the parties concerned of any errors or shortcomings that he judges there to be, to enable them to be corrected if possible, or to appeal at any time to the Ministry, which shall announce a decision within ten days.

524. If the application is approved and the Head of the Trade Unions Office of the Ministry of Labour and Social Security makes the required entry, he shall issue a certificate of registration on request of the parties concerned and shall order the publication of an extract from the register, free of charge, in three consecutive issues of the Official Gazette.

525. The certificate issued by the Office shall be authentic for public purposes and, on production of the certificate, employers are obliged to recognize the union for all legal purposes. Should an employer refuse to recognize a union legally accredited by means of the proper certificate, if the union so requests, the courts shall declare a strike legal. This shall be without prejudice to article 366 of the Code.

526. We also quote the aforementioned article 332 of the Code: “The legal forming of social organizations, including trade unions, are hereby declared to be in the public interest, as one of the most effective means of helping to sustain and develop Costa Rican popular culture and democracy.”

### ***Provisions and restrictions***

527. The only condition for a worker to join a trade union of his choice is to be a worker, professional person or self-employed person. This enables him to join any of the above-mentioned types of unions. There are no restrictions on the right of workers to form or join unions.

528. The following decision No. 00177-2001 of 09:30 hours on 22 March 2001 of the Labour Cassation Court or Chamber II is pertinent here:

“The right of association, as a human right and foundation stone of democracy, has been expressly protected by a number of international instruments and article 25 of the Constitution. This fundamental labour right contains a specific safeguard guaranteeing

workers and employers the right to unionize freely, for the sole purpose of obtaining and preserving financial, social or professional benefits (article 60 of the Constitution).”

529. In vote No. 42 of 10:50 hours on 11 February 1998, Chamber II held that “freedom to unionize can be viewed from different perspectives. On the one hand it concerns the individual (the individual aspect) and consists of the freedom to form unions, to decide whether or not to join unions, or to cancel a union membership and, on the other hand, it refers to those associations themselves, their organization, administration and operation; plus the exercise of trade union freedom of the second degree (union or collective autonomy).”

530. It was on this basis that Chamber II granted legal recognition to the Union of Associated Fertilizer Workers (ATFE), even going so far as to state that workers who no longer worked for the company were still entitled to belong to the union and hold a leadership post in it, if applicable.

531. The right of unions to form federations and join international union organizations is guaranteed under article 358 of the Labour Code, with no legal or practical restrictions in that respect. Article 358 states that “Two or more unions may form federations and two or more federations may form confederations, which shall be governed by the provisions of this Chapter, where applicable, (...)Unions, federations and confederations shall be entitled to join international workers’ or employers’ organizations. (...)”

532. Again in the field of exercising the right of association, article 363 of the Labour Code prohibits “acts or omissions tending to avoid, limit, constrain or impede the free exercise of the collective rights of workers or unions or coalitions of workers”, also stating that “any act originating from such acts shall be null and void and shall be penalized in the manner and under the conditions set out in the Labour Code or its supplementing or associated laws for unlawful prohibitive provisions”.

533. Likewise, the corpus of legislation referred to provides that members of unions being formed enjoy job security (for a period not exceeding four months), as do a certain number of union leaders (while exercising their duties and for up to six months thereafter) and candidates for the management board (for three months from the moment they announce their candidacy).

534. The law reforming the Solidarity Associations Act, the Labour Code and the Organic Law of the Labour Ministry, Act No. 7360 of 4 November 1993 states that, in the event of unfair dismissal of workers benefiting from job security in this way, “the competent labour judge shall declare the dismissal null and void and, as a consequence, order the worker to be reinstated and any lost wages paid, in addition to any penalties imposed on the employer under the Code and its supplementing or associated laws”.

535. It states that “acts or omissions by employers, workers or organizations of the same that infringe the rules laid down in the conventions adopted by the International Labour Organization and ratified by the Legislative Assembly, and the rules laid down in this Code or in the social security laws, shall constitute punishable offences”. If these rights are infringed, the worker or his organization may appeal to the relevant administrative authority, in this case the National Labour Inspection Department, or directly to the courts.

536. The Act grants broad powers to the National Labour Inspection Department to investigate breaches that come to its notice, in accordance with the Constitutional Chamber’s rulings in this



area, in votes 5000-93 and 4298-97. The Act empowers the National Labour Inspection Department to use “whatever means it deems appropriate” for that purpose, which means that the inspector concerned may visit the place of work and gather all the available information, including examinations of accounts and books, taking statements, etc.

537. If he observes unfair labour practices, the Director of National Labour Inspection will inform the competent legal authority, giving it priority over any other matter. Moreover, in order better to protect the worker, the decision ordering the transfer of the case is not subject to appeal. If a court finds that union rights have been violated, the judge will order the worker to be reinstated and lost wages paid, without prejudice to any penalties imposed on the employer under the Labour Code and its supplementing or associated laws.

538. The Constitutional Chamber has contributed to the effective application and respect of the right to unionize and its associated safeguards, through a number of decisions that are binding *erga omnes* (except for itself). For instance, in vote No. 5000-93 of 10:09 on 8 October 1993 the Chamber ruled as follows: “Freedom of association and its consequent right of representation, namely the fundamental right to band together for lawful purposes without that involving pressure or interference that may alter or distort those purposes is embodied in article 25 of the Constitution (...).”

539. The same vote stresses that “(...) The use of any means liable to impair the work of labour representation, especially dismissal, must be regarded as contrary to the law, since the removal of a workers’ representative implies that the workers represented are defenceless and that any collective bargaining that those representatives are able to engage in is obstructed, especially where employers remove a representative because they regard him as a threat to their particular interests...”.

540. This vote also establishes the necessary independence for union organizations to act freely, in order that collective groups can carry out and achieve their aims without adverse outside interference in their specific ends. Likewise, it establishes that the dismissal of workers’ representative is in breach of the fundamental right of association where workers are deprived of their leaders and hence of the proper and legitimate defence of the personal and trade union interests.

541. With regard to the amendments made to the labour legislation, law No. 7360 was enacted on 4 November 1993, adding a third chapter to Title Five of the Labour Code, entitled “Protection of union rights”. This reform brought national law into line with commitments taken on mainly in ILO Conventions Nos 87 and 98 concerning freedom of association, which are analogous with the related rules set out in the Covenant.

542. Immediately before this reform of the law, vote No. 5000-93 of the Constitutional Chamber, referred to above, came as a landmark judgment in labour law, as that decision made constant reference to international rules, both those contained in ratified ILO Conventions and those enshrined in documents of the Catholic Church, Papal encyclicals and the American Convention on Human Rights.

543. This vote not only protects “union representation” as a fundamental part of the freedom of association contained and expounded in ILO Conventions 87 and 98, but also offers special constitutional support for the workers’ “right to representation”, in the broad sense, regardless of whether or not they are union members, as provided for in Convention 135 and Recommendation

143. The remedy of amparo referred to in the decision was even upheld in favour of a Standing Committee of Workers, which is a coalition rather than a trade union organization.

***Free collective bargaining agreements***

544. The Costa Rican Constitution guarantees free bargaining of collective agreements and also free bargaining. Article 62 states as follows: “Collective labour agreements shall have force of law, if entered into by and between employers or employers' unions and legally organized trade unions, in accordance with the law.”

545. The Labour Code devotes the whole of chapter three to this issue. Note that the legal definition of collective agreement is as follows: “Article 54. - A Collective Agreement is one made between one or more trade unions and one or more employers, or one or more employers' unions, with the aim of regulating conditions of employment and other related matters. A collective agreement has the status of a professional law and its terms must be in line with all individual or collective contracts that exist now or in future in the affected companies, industries or regions.”

546. There is a “Regulation on the negotiation of collective agreements in the public sector” which is designed to be applied to all State employees provided that they do not have a public management role, and all staff of public enterprises of the State or belonging to its institutions, regarded as ordinary industrial or trading enterprises.

547. Costa Rica has striven to balance the right for workers to have the opportunity to engage in collective bargaining, and open up a more clearly defined possibility of signing collective agreements in the public sector.

548. In this connection, it is worth highlighting some social and labour reforms of the Constitution and other laws currently going through the legislative process:

- Bill reforming article 192 of the Costa Rican Constitution, legitimizing the right to make collective agreements in the public sector, Legislative case No. 14370;
- Draft “Law on the negotiation of collective agreements in the public sector and adding a subsection 5) to article 112 of the general law on the public administration” which, besides establishing that all employees of the State, State enterprises and workers who do not have a management role, may negotiate collective agreements, also promotes to the status of a law current Order No. 29576-MTSS regulating the operation of the provisional regime for resolving conflicts and collective bargaining for the servants in question, Legislative case No. 14675.
- Bill reforming the chapter on trade union freedoms of the Labour Code, currently in the legislative process under case No. 14676. This bill aims to expand the scope of legal protection for unionized workers and workers' representatives, with a view to strengthening and safeguarding the right of association of Costa Rican employees and the free exercise of union representation duties by their leaders.
- Case No. 14542: Approval of ILO Convention No. 151 and Case No. 14543: Approval of Convention 154, on the promotion of collective bargaining in the public sector; both are going through the legislative process for debate.

549. These bills and their goals are ongoing challenges for the Costa Rican Government.

550. On the subject of collective bargaining, the special situation in the public sector deserves a mention. The report of the ILO's Technical Assistance Mission, which took place in Costa Rica from 3-7 September 2001, drew the Costa Rican Government's attention to a number of decisions adopted by the Constitutional Chamber. These declared certain clauses of agreements unconstitutional, particularly with regard to criteria of legality, proportionality, rationality and equality, invoking unreasonable and disproportionate privileges that in some cases are granted with public funds (Constitutional Chamber, vote No. 7730-2000, of 30 August 2000). It is necessary to highlight these extracts of the Constitutional Chamber's vote in order to understand its scope.<sup>83</sup>

551. The Committee of Experts on the Application of Conventions and Recommendations, in its 2002 analysis of Convention 98 concerning the Right to Organise and to Bargain Collectively, expressed concern about the possibility that the Constitutional Chamber's rulings might be in breach of that Convention. However, the vote referred to continues to exclude from its scope only public servants engaged in the State administration who are defined by the Costa Rican legal system. Hence Convention 98 is being complied with since, as regards the right to collective bargaining in the public sector, the Convention does not deal with such servants (article 6).

### **Degree of unionization**

552. Regarding the degree of unionization in the country for 2003, more than 90% of the unions formed are of the first degree, 5.3% are federations and 1.3% confederations, out of a total of 303 unions. (see table 9).

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<sup>83</sup> The relevant part of this vote is as follows: "III. - CONCLUSIONS. - Based on the facts and by way of summary, the Chamber reaches the following conclusions: in view of its competence as the highest authority interpreting the Constitution, an examination of the organization and administrative structure of the State and the desirability or otherwise of collective agreements in the public sector, the Chamber may not restrict itself solely to the application of the provisions of the Chapter entitled "Social guarantees". It is also necessary to examine this judicial institution in coordination with the principles set out in Article 191 and 192 of the Constitution; such an examination fully convinces the Chamber that the will of the constituent assembly, following the historical thread of the development of the labour rights institutions, was to exempt public servants from the general rules laid down in the collective right to work, making them subject to a special public-sector regime, also commonly known as the "statutory relationship" governed by public law. Without doubt and as a general thesis, this implies that no public servant may negotiate his conditions of employment as they were a contractual relationship subject to labour law. However, the development of legal thinking and the adoption of conventions under the influence of the International Labour Organization and the jurisprudence of this Chamber, have led to changes in the institutions concerned. Accordingly, it is now accepted that collective agreements are compatible with the law and the Constitution when negotiated by the category of employees and servants which, despite working in the public sector, is subject to relationships under labour law, particularly in the terms of the definitions contained in Article 111 and 112 of the General Public Administration Act. Or, in the case of State enterprises or financial services responsible for operations subject to common law, and working relationships with workers and employees who are not members of the public administration's staff and are governed by labour or trade law, as appropriate. This is the opinion of the Chamber, but it warns that it is for the administration itself, those implementing the law in general and in the last resort for the judge, where specific cases are concerned, to determine whether the exception applies to a State institution or a group of its servants or officials, or whether on the contrary they are barred from pursuing that course. Finally, as stated in the report of the Office of the Attorney-General of the Republic, which this Chamber also accepts, staff working for the country's municipalities are restricted in terms of collective bargaining under the terms of this decision since, unless proven to the contrary, they are public servants subject to a public employment relationship."

TABLE 9

Active trade unions by level of organization, April 2003

	<i>Number</i>	<i>% valid</i>	<i>Cumulative %</i>
First-degree union	283	93.4	93.4
Federation	16	5.3	98.7
Confederation	4	1.3	100.0
<b>TOTAL</b>	<b>303</b>	<b>100.0</b>	

*Source:* Database of the Department of Social Organizations at April 2003 (purged). \*Advance statistics on trade unions active in Costa Rica (May 2000 to April 2003). Prepared by: Franklin Benavides Flores, Research and Management Quality Unit, Nation Labour Inspection Department”

553. It should be stressed that retired persons are also entitled to form unions and, according to information provided by the MTSS Department of Social Organizations, there are unions of pensioners:

Association of Public Servants and Pensioners

National Association of Retired Telegraph and Postal Workers

National Association of Retired Telecommunications and Public-Sector Workers

National Association of Retired Communication Workers

Union of Retired Teachers

Union of Retired National Registry and Similar Workers

Joint Union of Retired Officials of the Costa Rican Social Security Fund

National Union of Retired Musicians

### **The right to strike**

#### ***Regulatory and practical criteria***

554. The right to strike is a constitutional right for workers in Costa Rica, in the following terms:

*Article 61.* The right of employers to lockout and of workers to strike is recognized, except in public services, as they are determined by law and in accordance with the legal regulations on the subject, which shall prohibit all acts of coercion or violence.

555. Moreover, article 371 of the Costa Rican Labour Code defines a legal strike as follows: “the temporary stoppage of work in a company, establishment or business, agreed and carried out peacefully by a group of three or more workers, with the sole aim of improving or defending their common financial and social interests.” The following article set out the procedure for declaring strikes as legal.

### **Limitations on the exercise of the right to strike**

556. In 1998, the Constitutional Chamber issued the far-reaching vote No. 1317-98 at 10:12 on 27 February 1998. This vote declared unconstitutional subsections a), b) and e) of article 376 and the second paragraph of article 389 of the Labour Code, concerning the prohibition of strikes in public services in article 375 of the Code. Accordingly, article 376 provides that “for the purposes of the preceding article, public services are understood to mean: d) Those provided by workers that are absolutely essential to keep particular enterprises functioning which cannot suspend their services without causing serious and immediate damage to public health or the economy, such as clinics and hospitals, and public hygiene, sanitation and lighting.”

557. For a number of years, the ILO bodies responsible for monitoring the application of its conventions, especially the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Tripartite Committee on the Application of ILO Conventions and Recommendations, in its 2002 analysis of Convention 98 concerning the Right to Organise and to Bargain Collectively, expressed concern about the possibility that the Constitutional Chamber’s rulings might be in breach of that Convention.

### **Progress on union rights**

558. There have been some important changes relevant to this discussion. For instance on 4 November 1993 law No. 7360 was enacted, adding Chapter Three to Title Five of the Labour Code, entitled “Protection of union rights”. This brought national law into line with the undertakings regarding freedom of association acquired through ILO Conventions Nos 87 and 98.

559. On 31 May 2001 Regulation No. 29576-MTSS was issued on the negotiation of collective agreements with the public sector.

560. Noteworthy among the contributions of the jurisprudence is vote 5000-93 of the Constitutional Chamber of the Supreme Court of Justice which protects trade union representatives and offers special support for the workers’ right to representation, in the broad sense, regardless of whether or not they are union members. This vote backs up the rules set out in Convention 135 and Recommendation 143. It also highlights the union privilege that protects union leaders against unfair dismissal on the grounds of their union activities. The constitutional right to join or not a trade union of the worker’s free choice has been reiterated in the following opinions: No. 482-90, No. 483-90, No. 672-90, No. 1977-91, No. 2763-91, No. 320-92, No. 5000-93, No. 5003-93, No. 5969-93, No. 687-94, No. 1365-94, No. 1631-94, No. 1890-94, No. 3421-94, No. 3736-94, No. 3869-94, No. 4991-94, No. 6329-94, No. 6594-94, No. 233-95, No. 0712-95, No. 571-96, No. 3007-96, No. 2085-96, No. 5649-96, No. 5727-96, No. 2810-97. Likewise, the Second Chamber has consistently upheld the right in the following votes: No. 98 of 21 June 1991, No. 336 of 22 December 1993, No. 412 of 22 December 1995, No. 75 of 6 March 1996, No. 150 of 18 July 1997, No. 300 of 22 March 2000.

561. All workers are free to exercise or not their right to strike without fear of reprisals from employers. This right is enshrined in votes Nos 3808-93 and 4440-97 of the Constitutional Chamber of the Supreme Court of Justice.

562. Finally, vote No. 1317-98 of 27 February 1998 of the Constitutional Chamber, declared unconstitutional to prohibit striking in public services.

## Conclusions

563. The right for form unions in the country has been amply secured by the conditions that have been created in that respect, since it was safeguarded by law, promoted to constitutional rank, and through application itself via administrative mechanisms such as the setting-up of the Department of Social Organizations at the Labour Ministry. Similarly, the forming of unions without any prior requisite of authorization or recognition has been promoted, subject only to the condition that in order to be legally constituted, a union must be registered with the above-mentioned department after it has been founded.

564. Again the right to form unions has been significantly strengthened owing to the various provisions, mainly regulatory, that prohibit acts or omissions tending to limit, restrict or impede the free exercise of the collective rights of workers or unions or coalitions of workers, and it is hence observed almost absolutely throughout the country by the various players involved. However, when they are or there have been breaches of this right either the Labour Ministry, through its Body of Inspectors and by issuing administrative pronouncements, or the courts, specifically the labour courts and in particular the Constitutional Chamber, through its decisions, have safeguarded observance of those rights.

565. On the other hand, the fact that foreigners are not allowed to form unions is an issue that the State must consider carefully since there are sectors of work where the majority of employees are non-nationals. Accordingly, the Government is going to have to assess the conditions under which this right can be adapted to the new needs of the country, i.e. for the large number of foreigners living there, with a view to setting up mechanisms for effectively guaranteeing the right to unionization for all the country's inhabitants.

566. In general terms, the freedom to negotiate and sign collective agreements has been safeguarded in Costa Rica and in practice the benefits deriving from these agreements are incorporated into contracts of employment as rights acquired by the workers. Nevertheless, there is still a need for a thorough and careful study of the situation of the right to negotiate collective agreements for public servants as this has been one of the issues highlighted by the ILO's Committee of Experts on the Application of Conventions and Recommendations.

567. To that end, the Government has taken initiatives and is planning to open up more clearly defined possibilities for collective bargaining and signing collective agreements for the public sector, and accordingly bills have been presented to the Costa Rican parliament and are currently awaiting study and entry into the legislative process.

568. Moreover, the Constitutional Chamber has declared unconstitutional certain clauses of agreements, with regard to the requirements of legality, proportionality, rationality and equality, since in the opinion of this high court, some of the privileges granted under these agreements have proved unreasonable and disproportionate and are paid for with public funds. The Government has to keep an eye on this situation since, while it has to monitor the union rights of workers, it is also obliged to consider whether and ensure that these rights do not diminish the rights of other inhabitants of the country.

569. On another tack, note that the country has a regime of respect for the right to strike and in practice it is regarded as being a constitutional right. Significantly, in 1998 the Constitutional Chamber issued a far-reaching opinion declaring unconstitutional the prohibition that there was in some sectors on the right to strike, so the relevant subsection of article 376 were automatically

deleted. As a consequence, from then on public services were understood to be only those provided by workers that are absolutely essential to keep particular enterprises functioning which cannot suspend their services without causing serious and immediate damage to public health or the economy, such as clinics and hospitals, and public hygiene, sanitation and lighting. As a result, this is the only direct restriction on the right to strike.

570. It should be clarified that in view of the ILO's comments about adopting measures to allow strikes in farming, livestock breeding and forestry, as well as in the public sector, the Constitutional Chamber also declared unconstitutional the law prohibiting strikes in those sectors, so in absolute terms no such restriction applies in the country. Nevertheless, it is the Government's responsibility to ensure that these provisions are properly observed.

571. It is true to say that, in general, the Government has made major progress in responding to the right to unionize, collective bargaining, signing of collective agreement and the right to strike; however, as is logical in the gradual implementation of these guarantees, there are still some points on which the State has to implement more measures and consolidate mechanisms to make these rights effective in a balanced and fair way for all the country's inhabitants.

## **ARTICLE 9 (Right to social security)**

### **Conventions**

572. In terms of international rules, Costa Rica has ratified ILO Convention No. 102 concerning Minimum Standards of Social Security of 1952. - Act 4736 of 29 March 1971, ratified on 16 March 1972, and the Ibero-American Convention on Social Security of 1978. Act 6554 of 9 April 1981. Also ILO Convention No. 130 concerning Medical Care and Sickness Benefits of 1969. - Act 4736 of 29 March 1971, ratified on 16 March 1972.

### **General framework**

573. The Costa Rican Constitution establishes the workers' right to social security, by means of a tripartite system contributions from the State, the employer and the worker. In particular, article 73 states: Social security is established for the benefit of manual and intellectual workers, regulated by a system of compulsory contributions by the State, employers and workers, to protect them against the risks of illness, disability, maternity, old age, death and other contingencies as determined by law. The administration and direction of social security shall be entrusted to an autonomous institution named Caja Costarricense de Seguro Social (Costa Rican Social Security Fund). Social security funds and reserves may not be transferred or used for purposes other than those for which they were created. Occupational hazard insurance shall be exclusively at the expense of employers, being governed by special provisions.

574. In order to administer social security in accordance with the constitutional mandate, the law establishing the Costa Rican Social Security Fund (CCSS) was enacted in 1943. Act No. 17 of 22 October 1943. 575. Two additional laws of particular impact completed the legal and instrumental platform on which the subsequent extension of health insurance cover was based: Act No. 24 of July 1943, providing social guarantees as a constitutional right, and entrusting the administration of social security to the Costa Rican Social Security Fund, and the Universal Social Security Act of 1961, giving the CCSS constitutional responsibility for covering the whole population of the country.

576. Subsequently, with a view to providing better care for the insured, a law was passed decentralizing the hospitals and clinics of the Costa Rican Social Security Fund and setting up the Health Boards. Act No. 7852 of 30 November 1998.

577. The social security system is composed of the Costa Rican Social Security Fund (CCSS) and the National Insurance Institute (INS) which is responsible for benefits for occupational accidents, and is regarded as a public enterprise. Both are autonomous State institutions.

## **Branches of labour insurance**

### *Health insurance*

578. In Costa Rica, social protection for health-related contingencies is strictly linked to the development of “health insurance” administered by the Costa Rican Social Security Fund, which is making marked progress as regards both its insurance focus and its funding scheme.

579. Health insurance, initially known as “sickness and maternity insurance”, dates back to the forties, when the law of 17 November 1941 set up the Costa Rican Social Security Fund, previously subordinate to the Executive. This law laid down that social security should be compulsory for both employed workers and the self-employed, whose annual incomes did not exceed a set ceiling, and set up the tripartite system of compulsory contributions by employers, workers and the State.

580. The social security subsector based its health care model for the population on three fundamental principles: 1. Universal coverage; 2. Equal access and 3. Solidarity of funding.

581. The principle of universal coverage derives from article 1 of the Social Security Regulation of the Costa Rican Social Security Fund which states, on the basis of article 177 of the Constitution, that “health insurance is universal and covers all inhabitants of the country”. This provision is implemented through the different forms of insurance: compulsory, voluntary, direct-payment or State-funded insurance for vulnerable groups such as the destitute and detainees.

582. Within this evolving framework, the level of insurance cover is now a respectable 87.5% of the national population. A relatively small proportion of the uninsured population take out private medical insurance or simply pay directly out of their pockets. Others rely on State health insurance as the last resort and take out formal insurance when a health need arises.

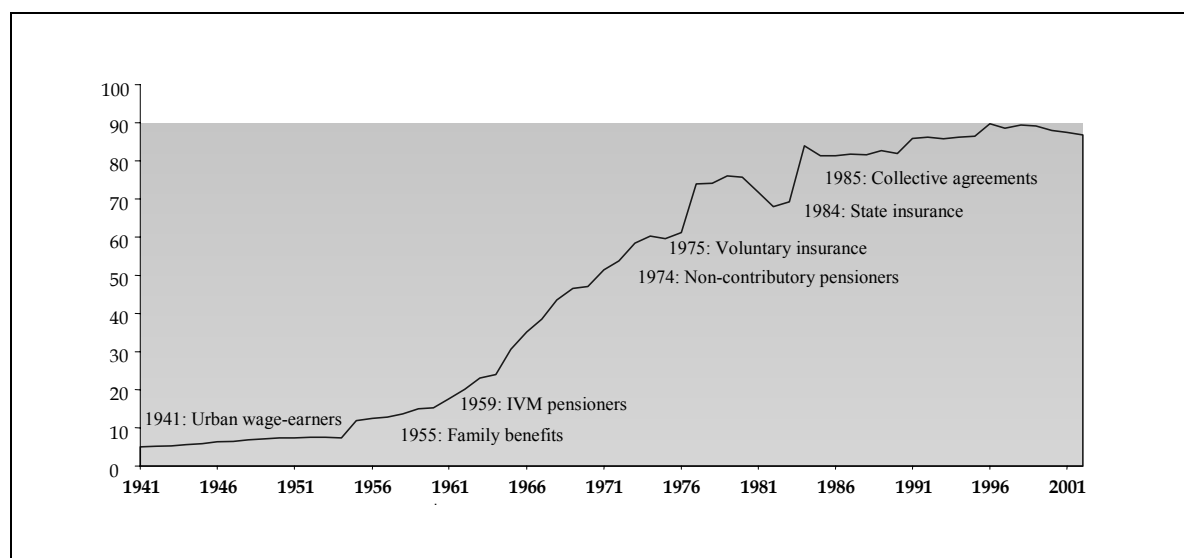
583. Coverage of the population by the health insurance administered by the CCSS has increased by 5.8 percentage points. Indeed, as the following table shows, the percentage of the population who are insured (administrative cover) rose from 82% in 1990 to 87.8% in 2004. This creditable result is undoubtedly the result of strategies adopted decades ago with a view to complying with the constitutional precept of universal health insurance, and they have enabled the following non-conventional insurance types to be developed: i) self-employed workers, ii) voluntary insured persons, iii) workers with special agreements, iv) persons insured by the State, v) pensioners in contributory schemes, vi) pensioners in the non-contributory scheme, vii) prison inmates and viii) family members of directly insured persons.

584. It should be pointed out that in Costa Rica the social security mechanism is basically composed of official or public services; however, it is possible to contract private health services, as mentioned above.



FIGURE 6

**Historical trend in level of insurance, 1950-2001**



Source: CCSS Actuarial Department.

585. Over more than six decades, health insurance has evolved from a classic Bismarkian model, aimed at protecting employed workers and their dependent family members, to a universal protection system, in a process similar to that which took in most industrialized countries, especially in continental Europe. Five institutional policies stand out in this respect.

586. Considering the historical development set out below, five types of State health insurance can be identified:

- *Wage earner*: This is compulsory insurance applicable to all workers having a conventional worker-employer relationship, characterized by the principles of subordination, provision of a service and remuneration. The employer is responsible for reporting his workers to the Fund and deducting the relevant contributions from their wages.
- *Self-employed*: This is compulsory insurance taken out mainly by working in any economic activity on their own account. The category also includes workers insured under special agreements between the CCSS and public or private bodies such as associations, unions, cooperatives, etc.
- *Voluntary insured*: Includes persons who do not take part in an economic activity: students, those temporarily inactive.
- *Pensioner*: This type covers pensioners who have taken retirement under one of the pension schemes available in the country, namely: non-contributory scheme, invalidity, old-age, death (IVM) scheme, treasury scheme, national education, judiciary and other public institutions.

- *Family members*: This type of insurance covers the family members of directly insured wage earners, pensioners, self-employed or under agreements, economic dependants being determined on grounds of age, studies or disability.
- *State insured*: Includes all persons with insufficient financial resources to obtain insurance in any other way. The State is obliged by law to insure this segment of the population after a socioeconomic means test. This insurance covers the whole nuclear family with insufficient resources.

TABLE 10

**National population by type of health insurance cover, 1990-2004**

<i>Population group</i>	<i>1990</i>		<i>2004</i>		<i>Change (%)</i>
	<i>Absolute</i>	<i>%</i>	<i>Absolute</i>	<i>%</i>	
National population	3 032 394	100.0	4 211 692	100.0	
Insured population	2 485 142	82.0	3 697 866	87.8	5.8
Directly insured wage-earner	544 733	18.0	800 123	19.0	1.0
Directly insured self-employed	86 095	2.8	132 423	3.1	0.3
Directly insured under agreement	50 815	1.7	71 029	1.7	0.0
Insured as a family member	280 496	9.2	539 097	12.8	3.6
Dependant of directly insured worker	1 281 909	42.3	1 773 635	42.1	-0.2
CCSS pensioner	62 601	2.1	130 743	3.1	1.0
Pensioner under special schemes	26 735	0.9	55 270	1.3	0.4
Pensioner under non-contributory scheme	49 753	1.6	80 326	1.9	0.3
Dependant of pensioner	102 005	3.4	115 220	2.7	-0.6
Uninsured population	547 252	18.0	513 826	12.2	-5.8

*Source*: CCSS Actuarial Department.

587. Combined with the above, the CCSS contributory health insurance scheme assumes as general principle that each group participates in the funding of the health insurance programmes according to its ability to pay, and access to health services is the same for all, regardless of the type of insurance. The fact that no balance is required at individual level between benefits, risks and contributions introduces an element of solidarity into the system, enabling cross-subsidization in favour of those with relatively lower incomes or greater health risks.

588. As the following table shows, the contributory health insurance scheme – in contrast to the conventional schemes – provides for contributory insurance for non-earning workers who have the financial means to pay for it, and covers the whole poor population who are unable to contribute, either as State-insured persons or pensioners in the non-contributory scheme, and the State plays an active part in subsidizing those groups (wholly or partially).

TABLE 11  
Percentage contribution by type of insurance, 2005

<i>Type</i>	<i>% contribution</i>				
	<i>Worker</i>	<i>Employer</i>	<i>State</i>	<i>Pension scheme</i>	<i>Total</i>
Wage-earner	5.50	9.25	0.25	-	15.00
Self-employed	4.75	-	5.50	-	10.25
Voluntary	4.65	-	5.50	-	10.15
Contributory pensioner	5.00	-	0.25	8.75	14.00
Non-contributory pensioner	-	-	0.25	13.75	14.00
State insured	-	-	14.00		14.00

589. CCSS health insurance currently covers a wide range of services embracing the insurance function, and two types of benefits:

- a) *Benefits in kind*, subdivided into comprehensive health care benefits and social benefits, and
- b) *Financial or in cash*: subsidies for invalidity (sickness and maternity) and financial aid for medical procedures, treatment and implements. Table 12 summarizes all benefits to which the insured population is entitled.

TABLE 12  
CCSS health insurance benefits

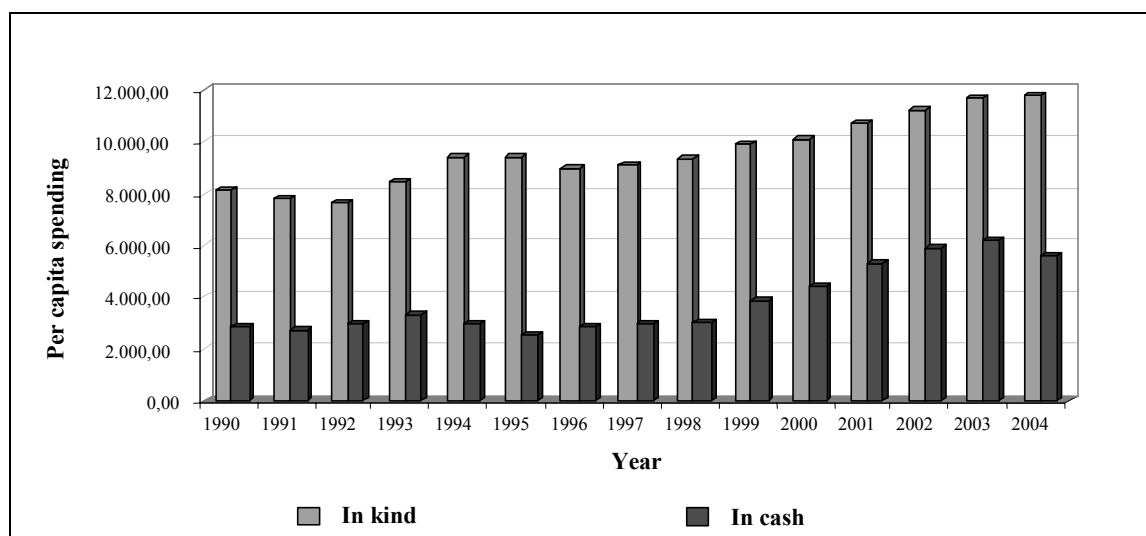
<i>Benefit</i>	<i>Definition</i>	<i>Details</i>
<b>A) IN KIND</b>		
1) Comprehensive health care	Care received by insured persons at home and in out-patient and hospital care establishments designated by the Fund (article 18)	<ol style="list-style-type: none"> <li>a. Promotion, prevention, therapy and rehabilitation</li> <li>b. Specialist medical and surgical care</li> <li>c. Out-patient and hospital care</li> <li>d. Pharmaceutical services</li> <li>e. Laboratory service and surgery examinations</li> <li>f. Oral hygiene assistance</li> <li>g. Social, individual and family assistance</li> </ol>
2) Social benefits	Meet social needs directly related to comprehensive health.	<ol style="list-style-type: none"> <li>a. Fostering social participation.</li> <li>b. Cooperation agreement with public or private welfare institutions.</li> <li>c. Rights during unemployment.</li> <li>d. Extension of welfare protection</li> </ol>
<b>B) IN CASH</b>		
	Financial aid granted to directly insured workers, wage-earners or self-employed.	<ol style="list-style-type: none"> <li>a. Subsidies and financial aid for invalidity or maternity leave</li> <li>b. Financial aid for purchase of prostheses, eyeglasses and orthopaedic appliances</li> <li>c. Financial aid for removals and lodging Financial aid for funeral expenses</li> <li>d. Financial aid for free choice of doctor</li> </ol>

*Source:* Health insurance regulations, Costa Rican Social Security Fund.

590. Increase in real per capita spending for health insurance benefits. Another noteworthy achievement is the increase in real terms in per capita spending on health benefits by social security, kind or in cash<sup>84</sup>. Figure 7 shows that real per capita spending in 2004 for benefits in kind (comprehensive health care services and social benefits) was 1.45 times the 1990 figure, while the same ratio for cash benefits was 1.98.

FIGURE 7

**Health insurance. Real per capita expenditure by type of benefit, 1990-2004**  
(1990 colons)



591. This is the result of an average annual growth over the period 1990-2004 of the order of 2.78% for real per capita spending on benefits in kind, and 5.64% in the case of cash benefits.

**National pension system**

592. The Costa Rican National Pension System (SNP) is composed of three pillars: the first is designed to offer a basic pension covering loss of earnings, except for pensions in the non-contributory scheme which owing to their amount are of the welfare type; the second offers compulsory supplementary protection and the third offers supplementary pensions but by voluntary individual membership.

593. Table 13 describes each of the schemes incorporated into each pillar.

<sup>84</sup> Per capita spending on benefits in kind means spending per inhabitant in colons, whereas per capita spending on cash benefits means spending per directly insured person (in colons).

TABLE 13

**National pension system, basic structure and functions**  
**Basic structure and functions (2004)**

<i>Pillar and objectives</i>	<i>Scheme</i>	<i>Membership, funding and management</i>
<p><b>First pillar:</b> The purpose of the schemes in this pillar is to provide basic protection against the risks of invalidity, old age and death, with the exception of the non-contributory scheme which grants a welfare pension only.</p> <p>They are all contributory, with the exception of the non-contributory and transitional schemes.</p>	<p>Non-contributory scheme.</p> <p>Invalidity, old age and death (IVM).</p> <p>National education pensions, including two schemes:</p> <ul style="list-style-type: none"> <li>- With profits; this is of a specific duration.</li> <li>- Funded.</li> </ul> <p>Judiciary scheme.</p> <p>Non-contributory transitional schemes, charged to the national budget.</p>	<p>Funded from taxes, grants benefits to the indigenous population and administered by the CCSS.</p> <p>Tripartite funding (workers, State and employers), compulsory for wage-earners and self-employed workers (subject to certain special regulations). Administered by the CCSS.</p> <p>Administered by the National Education Pensions Board.</p> <p>As a result of the reforms of the nineties, some of the workers linked to National Education were placed in a funded scheme.</p> <p>New entrants to National Education must be placed in this scheme.</p> <p>Compulsory for all workers in the Judiciary. Administered by the Judiciary.</p> <p>Funded out of taxes and administered by the Labour Ministry's Directorate-General for Pensions.</p>
<p><b>Second pillar:</b> Schemes in this pillar are intended to be a supplementary pension.</p>	<p>Compulsory supplementary pension scheme for wage-earners.</p> <p>Institutional or trade union supplementary pension schemes.</p>	<p>These are personal funded plans, created in 2000 and funded by reassigning social charges previously existing but intended for other purposes, plus an additional employer's contribution. This scheme is administered by pension operators subject to the regulation and monitoring of the SUPEN.</p> <p>These are trade union pension funds, with substantial funding from employers, operating in some State institutions.</p>
<p><b>Third pillar:</b> These are designed as a voluntary personal scheme.</p>	<p>Private supplementary pension schemes</p>	<p>These pension schemes are administered by specialist financial institutions, under single administration and subject to SUPEN monitoring.</p>

594. Between 45 and 50% of the country's economically active population contributes to one or other of the compulsory basic pension schemes.

595. With this coverage, Costa Rica ranks as the Latin American country with the third highest social security protection under basic contributory pensions. Only Uruguay (60%) and Chile (58%) were higher in 2002. The other countries have coverage from contributors or 30% or much less. (Mesa-Lago: 2004)

TABLE 14

**Costa Rican Social Security Fund. Pension insurance indicators, 1990-2004**

<i>Indicator</i>	<i>1990</i>	<i>1995</i>	<i>2000</i>	<i>2004</i>
Pensions by risk (%)	100.00	100.00	100.00	100.00
Invalidity	38.40	35.76	34.74	34.65
Old age	36.31	37.85	36.38	35.78
Death	25.29	26.39	28.87	29.57
Annual growth in number of pensions, by risk	9.59	5.49	3.28	4.28
Invalidity	7.08	4.52	3.09	3.77
Old age	12.97	4.77	2.37	3.72
Death	8.80	7.90	4.68	5.58
Annual new pensions, by risk (%)	100.00	100.00	100.00	100.00
Invalidity	29.36	26.16	24.17	27.91
Old age	34.37	28.52	23.60	31.63
Death	36.27	45.32	52.23	40.46
Average monthly amount of pensions, by risk (current)	10 191.91	24 414.03	46 412.46	73 755.07
Invalidity	8 486.31	20 310.76	43 068.52	68 177.40
Old age	13 595.65	30 120.97	58 768.67	95 795.91
Death	7 894.36	21 787.52	34 866.14	53 620.97
Average monthly amount of pensions, by risk (current)	24 529.27	24 414.03	25 577.24	27 224.93
Invalidity	20 424.32	20 310.76	23 734.45	25 166.07
Old age	32 723.59	30 120.97	32 386.57	35 360.79
Death	18 999.67	21 787.52	19 214.23	19 792.91
Average pension as % of wages	43.49	39.05	35.23	39.72

***Disability, old age and death (IVM) scheme***

596. According to the Constitution, the disability, old age and death (IVM) scheme is responsible for the administration of social security pensions. It covers the largest number of pensioners and therefore manages large amounts of financial resources on the national financial market. In 2004, the disability, old age and death scheme covered 848,495 workers, a 4% increase compared with 2003. There was an increase of over 5% in the private sector, represented by private enterprise and domestic service. In private enterprise alone, there was an absolute increase of 25,000 workers. There was also a 16% increase in the self-employed sector.

597. Table 14 shows that the proportion of old-age pensions is similar to the proportion of disability pensions.

### *Non-contributory pension scheme*

598. Because it is non contributory and is designed to offer protection for low-income persons, particularly those who are aged 65 and above, and who are subject to verification of such status, this scheme provides assistance pensions.

599. The average pension amounts to 18,000 colones per month and about 80,000 pensions are being granted at the present time, 66% to persons aged over 65 years and, according to housing survey data, 41%, to persons aged over 65 who qualify as poor.

600. In 2004, 7,671 pensions were granted by reassigning pensions canceled as a result of death and other causes. During the period under review, moreover, a total of 2,178 beneficiaries were included as dependents of direct pensioners. In addition to increasing the amount of a direct pensioner's benefit, they are automatically protected by health insurance benefits, in accordance with article 5 of the Basic Non-Contributory Pension Scheme Regulations.

### **Special groups**

601. Costa Rica has a universal health coverage system, which is referred to in article 33 of the Constitution, and, consequently, no group is excluded from health care. As a result of the universalization of social security, all persons who live in the country are entitled to health insurance services, to which effect is given by means of various types of insurance: compulsory, voluntary, direct-payment and State-funded insurance for unprotected groups such as destitute persons and foreigners.

602. The principle of equality is embodied in article 2 of the Health Insurance Regulations, which provides that "all insured persons are equal before the law and these Regulations. No discrimination may be practised for economic, ethnic, religious, ideological or any other reasons offensive to human dignity. Only those distinctions shall be made that are appropriate to the type of disease or illness".

603. The main relative increase in the number of insured persons took place in the "State-insured" sector, which covers poor persons who cannot be otherwise insured. It should be pointed out that the 12.2% of the population which is not insured is composed primarily of wage-earning and independent workers and their families, many of whom can afford to contribute directly to the financing of health insurance, but who have decided to evade their responsibility in respect of the system. A relatively small proportion of these persons concludes medical expenses contracts with private insurers or simply makes direct payments "out of pocket". Others rely on the health insurance scheme as a "lender of last resort" and contract formal insurance once a health problem arises.

604. Social benefits are designed as instruments available to society in general and to the Costa Rican Social Security Fund (CCSS) in particular to facilitate the full development of individuals and social groups, to promote their unity and social integration, to prevent and eliminate marginalization, to include those who are excluded and to bring about greater equality and more effective individual and collective assistance for anyone who might need it.<sup>85</sup>

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<sup>85</sup> Social benefits are "social security and prevention measures of an educational nature whose main purposes are to raise the standards of living of families and the community and to provide training for jobs and the use of free

605. Social benefit activities and their objectives are based on national and international legislation and their wording and implementation follow the provisions of Comprehensive Older Persons Act No. 7935, the 2002 Madrid International Plan of Action and Equal Opportunity for Disabled Persons Act No. 7600.

606. Structurally, the social benefits system is implemented by means of four programmes defined in the Social Benefits Regulations:

- Senior citizens' programme
- Education and training programme
- Preparation for retirement programme
- Subsistence and social welfare programme.

607. The general objective of these programmes is to promote the development of beneficiaries through education, guidance and prevention so that they might receive comprehensive assistance with a view to improving the quality of their lives.

608. As a result of insurance conditions, there are problems with regard to the health of the immigrant population. According to the available information, persons who are not covered by social security form part of the specific most vulnerable groups of the Nicaraguan migrant population, in which 8 out of 10 uninsured persons are children aged under 12; the economically inactive population, primarily women; unemployed persons and persons employed in the most backward and lowest income sectors: the non-agricultural informal sector, the traditional agricultural sector and the domestic service sector.

609. The following table shows the main achievements of these programmes:

TABLE 15

**Costa Rican Social Security Fund – Achievements in terms of social benefits, 1996-2005**

<i>Programme</i>	<i>Activities</i>	<i>Number</i>	<i>Participants</i>	<i>Achievements</i>
Senior citizens	Commercial discounts (agreements)	5 000	210 000 elderly beneficiaries	Improve the economic situation of economically vulnerable older persons by means of agreements with the private sector for discounts which increase their purchasing power and improve access to goods and services they need for their subsistence and quality of life.
	Public transport subsidy (tickets)	90 million tickets	60 000 elderly beneficiaries	Improve the economic situation of vulnerable older persons, in accordance with national legislation, in order to increase their purchasing power and create new social integration and recreational opportunities

time. They cover a broad range of activities, including the provision of educational social welfare services to beneficiaries and the population as a whole” (CISS, Glossary of social security terms).



<i>Programme</i>	<i>Activities</i>	<i>Number</i>	<i>Participants</i>	<i>Achievements</i>
	Card issue (including card replacement)	252 000 cards		Handle requests for cards proving that they are affiliated senior citizens and providing access to the benefits of this programme.
	Recreation and health (courses)	252	7 560	Designed to promote health by creating opportunities to enable older persons to engage in physical activities which are organized by professionals and lead to a better quality of life.
	Cultural workshops	217	5 425	Designed to help participants fill their free time with activities to improve their manual dexterity and creative potential. Such activities may eventually be not only recreational, but also a source of income.
Development of older adult population Subprogramme Education and training	Better quality of life courses for older persons	174	4 587 national coverage	Provision of basic information on healthy life styles and strengthening of support networks to promote the social integration of older persons.
	Continuing training for older persons	108	1 603	Courses have been provided to contribute to the individual development of older persons through inclusion in social and educational activities on specific topics and participatory social integration. Courses are organized through strategic alliances with various public institutions and organizations. Topics include literature, self-help health care, languages, history, art, modern-day society, literacy.
	Group integration activities	62	3 763 national coverage	Activities have been organized with a focus on recreation and social integration to provide older persons with opportunities for active and productive leisure and personal growth.
	Follow-up to educational activities	86	1 597	These social and educational activities provide information tools on specific topics and are intended to maintain personal growth and development through group participation and the motivation of support networks. They meet the need for older persons to give continuity to informal education processes and participation with persons in their age group.

<i>Programme</i>	<i>Activities</i>	<i>Number</i>	<i>Participants</i>	<i>Achievements</i>
	Volunteer groups	41	444 national coverage	An opportunity has been created for older persons to volunteer their services for administrative tasks with a view to achieving the two main objectives of ensuring the appropriate use of free time by the target population and providing resources for the completion of non-complex institutional tasks.
	Discussion groups	382	8 449 national coverage	Activities involving the discussion of topics with a view to dispelling myths about the elderly population, improving their quality of life and providing information on this age group.
Development of older adult population Subprogramme Preparation for retirement	Preparation for retirement workshops	231	5 974 national coverage	Educational activities of a preventive nature which enable workers at the pre-retirement stage to obtain useful information to prepare themselves for retirement and design a satisfactory life project to ensure quality of life during old age.
	Training courses for retirement programme facilitators	46	1 414 national coverage	Educational activities which ensure that employers have trained persons to promote and carry out activities for workers' preparation for retirement.
	Discussion groups	119	2, 419 national coverage	Activities to provide information and discuss topics to help dispel myths about retirement, thereby improving planning and preparation for that step and improving the quality of life of the persons concerned.
Subsistence and social welfare	Comprehensive assistance workshop for parents/caretakers of persons pensioned off as a result of severe cerebral paralysis	6	166	166 families with better information tools for taking care of severely disabled persons at home, without institutionalization.
	Training course for caretakers of dependent older persons	4	131	131 families with better tools for taking care of dependent older persons at home. Establishment of a communal and institutional support network which provides support and motivation for keeping older persons at home, thus avoiding institutionalization.

### **Changes in the right to social security**

610. During the process of modernization the health sector has been going through since 1994 as a result of the reform adopted by Act No. 7441 in December 1993, great importance has been attached to the development of more appropriate model of care making it possible to deal efficiently, effectively and more humanely with the population's new health needs by adopting a

new approach at a price the country can afford and within the framework of the principles of Costa Rican social security: universality, solidarity and equality.

611. The new model is based on a new approach to comprehensive care. From the viewpoint of the provision of services, activities involving prevention, promotion, cure and the rehabilitation of the individual, the family and the community constitute a comprehensive approach to the health-illness process, with particular emphasis on a primary health care strategy. In order to take account of the new characteristics, priority has been given to strengthening the first level of care in the first stage, to be followed by the second and third stages. The chapter on the right to health describes specific activities relating to the provision of services in the primary health care field.

TABLE 16

**Occupational hazards insurance – Increases in benefits. 1997-2004**

<i>Type</i>	<i>Jan.97</i>	<i>Jan.98</i>	<i>Jan.99</i>	<i>Jan.00</i>	<i>Jan.01</i>	<i>Jan.02</i>	<i>Jan.03</i>	<i>Jan.04</i>
Temp. disability up to 45 days	75% of average daily wage	75% of average daily wage	75% of average daily wage	75% of average daily wage	75% of average daily wage	75% of average daily wage	60% of average daily wage	60% of average daily wage
Temp. disability after 45 days	100% up to LMW 75% over excess	100% up to LMW 75% over excess	100% up to LMW 75% over excess	100% up to LMW 75% over excess	100% up to LMW 75% over excess	100% up to LMW 75% over excess	100% up to LMW 67% over excess	100% up to LMW 67% over excess
Perm. Partial disability (minimum)	23 569/mo.	27 506/mo.	32 436/mo.	39 898/mo.	44 394/mo.	47 058/mo.	52 444/mo.	54 804/mo.
Perm. total disability and severe disability (minimum)	35 178/mo.	41 054/mo.	48 412/mo.	59 550/mo.	66 260/mo.	70 236/mo.	78 275/mo.	81 797/mo.
Add. amount for severe disability	21 928/mo.	27 687/mo.	32 292/mo.	37 465/mo.	38 303/mo.	40 602/mo.	44 547/mo.	46 552/mo.
Maximum housing allowance	Up to 600 000.01	Up to 1 100 000	Up to 1 100 000	Up to 1 100 000	Up to 1 100 000	Up to 1 100 000	Up to 1 100 000	Up to 1 100 000
Minimum family allowance	35 178/mo.	41 054/mo.	48 412/mo.	59 550/mo.	66 260/mo.	70 236/mo.	78 275/mo.	81 797/mo.
Average increase in allowances	6%	12.43%	13.85%	16.60%	9.60%	6.00%	7.43%	4.50%
Scholarships for persons with residual capacity	-	-	46 scholarships at an average cost of ₡210 000	56 scholarships at an average cost of ₡197 000	38 scholarships at an average cost of ₡190 395	NA	NA	NA

*Source:* Report on increases for beneficiaries of the occupational hazards scheme, Social Security Department. Board of Directors agreement No. 8611-XII, 26 June 2003.

612. In recent years, the Costa Rican Government has endeavoured to promote reforms to ensure the sustainability of the pension scheme administered by the Costa Rican Social Security Fund. It is also promoting a far-reaching programme of social benefits based on the need to give content to the quality of life of persons who are now living longer lives as a result of the country's social development.

613. The country has a very important new regulatory framework which has broadened the range of work-related social protection and guarantees, namely, Worker Protection Act No. 7983 of 16 February 2000. The objectives of this Act are the following:

- (a) To create and establish a framework for the regulation of labour capitalization funds belonging to workers;
- (b) To make pensions available to all poor older persons;
- (c) To establish mechanisms to broaden the coverage of and strengthen the Costa Rican Social Security Fund's disability, old age and death scheme as the main system of solidarity for the protection of workers;
- (d) To authorize, regulate and establish the framework for the monitoring of the operation of public and private complementary pension schemes which provide protection for cases of disability, old age and death;
- (e) To establish monitoring mechanisms for agencies responsible for contributions intake and the administration of the various pension programmes forming part of the national pension system;
- (f) To establish a system to monitor the proper administration of workers' resources so that they might receive their pensions in accordance with their acquired rights.

614. It is thus quite clear that the country has established a system of public and private benefits for workers, including the following: the general complementary pension scheme, the compulsory complementary pension scheme, the voluntary complementary pension scheme and the substitute public regime.

615. These schemes work in the following way: article 3 of the Worker Protection Act creates labour capitalization funds, under which public and private employers contribute 3% of workers' monthly wages to a labour capitalization fund. This contribution is made as long as the labour relationship exists, without any time limit.

616. The compulsory complementary pension scheme is an individual capitalization scheme whose purpose is to supplement the benefits provided for in the CCSS disability, old age and death scheme or its replacements, on behalf of all dependent and wage-earning workers.

617. With regard to the voluntary complementary pension and voluntary savings scheme, article 14 provides that workers affiliated with the compulsory complementary pension scheme, either individually or through collective affiliation agreements, may become members of the voluntary complementary pension scheme in accordance with the above-mentioned Act. Employers may conclude agreements with one or more of their workers for periodic or ad hoc contributions to complementary pension accounts. A contribution of up to 15% of the profits of State public enterprises has also been provided for in order to strengthen the financing of the CCSS disability, old age and death scheme and to extend CCSS coverage to poor unemployed workers.

618. Reference should also be made to benefits for work-related accidents, in which improvements were made from 1997 to 2004. The following table shows improvements in occupational hazard insurance and increases in cash benefits.

619. Some of the main achievements and main challenges in the workers' social security sector are:

TABLE 17

**Achievements in workers' social security sector**

<i>Objectives</i>	<i>Main achievements</i>	<i>Main challenges</i>
1. To provide coverage for the entire working population, including families, by granting financial, medical, surgical, hospital, pharmaceutical and rehabilitation benefits in the event of a work-related accident causing the temporary or permanent disability or death of a worker.	<p>Increases in benefits: advances on benefits for up to one year, job training loans, pension increase every six months, extension of the CCSS IVM scheme to families, scholarships for workers and their children, permanent National Insurance Institute (INS) care.</p> <p>Improvements in the insurance scheme: OH-home, independent OH, young persons' OH insurance.</p> <p>Improvements in the system of prevention: inclusion in the Occupational Health Act, establishment of the Occupational Health Council.</p> <p>Health care for persons with OH insurance.</p> <p>10% increase in benefits in 2004.</p> <p>5% increase in the number of insured workers.</p> <p>Occupational hazards and preventive management training programme.</p> <p>Computerized system of statistical information on work-related cases.</p> <p>Recovery of 94.48% in renovations and improvements.</p> <p>Recovery of 25.1% of uninsured cases in 2003.</p>	<p>(i) To include occupational hazards insurance (OHI) in the INS marketing model.</p> <p>(ii) To improve methods of covering OHI debts.</p> <p>(iii) To design strategies to prevent non-payment by means of inspections.</p> <p>(iv) To improve OHI information recording systems.</p> <p>(v) To design an occupational health programme in order to reduce accident rates.</p>
2. To promote safety and hygiene in the workplace.	<p>To design a range of services to provide support for companies insured for occupational hazards in order to facilitate the process of improving occupational health.</p> <p>To provide companies with incentives for the occupational health activities they carry out (Global Prevention Prize and rebates on premiums).</p> <p>4.13% drop in claims between 1997 and 2004.</p>	

**Conclusions**

620. The right to social insurance, including social security, is one in respect of which the Costa Rican Government has established mechanisms, strategies and specific forward-looking activities which have led to high rates of insurance coverage as a result of various methods designed to cover the majority of the population. It is thus truly worth pointing out that, in 2004, 87.85% of the population of Costa Rica had insurance coverage.

621. The successful increase in health insurance coverage is primarily the result of the implementation of three basic principles forming the basis of this system: universal coverage,

equal access and financial solidarity. In this connection, it should be noted that social security is basically composed of public services, i.e. the Costa Rican Social Security Fund (CCSS), which has been the means of providing universal insurance coverage for the population.

622. The CCSS contributory scheme is based on the general principle that each group takes part in the financing of health insurance programmes according to its particular possibilities. Access to health services thus takes place under the same conditions, regardless of the type of group insured.

623. The various types of insurance include State-funded insurance, which applies to all persons who have a few financial resources and who have no other possibility of obtaining insurance in any other way. This group includes persons who are indigent and foreigners who are beneficiaries of the system, something which is essential in order to achieve universal coverage and equal access to insurance and social security.

624. The Costa Rican social security system has led to many advantages and benefits as a means of facilitating access and qualification for such access by older persons, and this is one of the most important advances to be noted.

625. Attention is also drawn to the changes which have taken place in occupational hazards insurance and coverage, for which the National Insurance Institute (INS) is responsible and which has increased in recent years, since it covers the very important working sector of the population, which receives medical care and cash benefits in the event of work-related accidents.

626. The Costa Rican Government is nevertheless aware that it must make greater efforts to increase insurance coverage and make it available to vulnerable groups such as migrants, farm labourers and domestic workers.

## **ARTICLE 10 (Right to protection of the family)**

### **Conventions**

627. The right of all persons to establish and belong to a family is provided for in the International Covenant on Civil and Political Rights and the Optional Protocol thereto, adopted in Costa Rica by Act No. 4229 of 11 December 1968. The Convention on the Elimination of All Forms of Discrimination against Women, ratified by Act No. 6968 of 2 October 1984, protects women from being discriminated against on the grounds of maternity, particularly in the workplace. Several years later, Act No. 7499 of 2 May 1995 ratified the Convention on the Prevention, Punishment and Eradication of Violence against Women, which provides special protection to guarantee the physical and mental integrity of women.

628. Children are protected under international law by the Convention on the Rights of the Child (Act No. 7184 of 18 July 1990). On 13 June 1996, the Government of Costa Rica signed a Memorandum of Understanding with the ILO to join the International Programme for the Eradication of Child Labour (IPEC), under which Costa Rica agreed to take serious action aimed at the progressive elimination of child labour. In 2002, it adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

## General framework

629. At present, the following agencies are working to protect the family in general: the National Women's Institute (INAMU); the National Children's Trust (PANI); the Ministry of Public Safety;<sup>86</sup> the Ministry of Justice and Pardons; and the Office of the Ombudsman. Follow-up to legislation relating to the protection of children is ensured by the Inter-Agency Commission, convened by the Office of the Ombudsman, which monitors the results of and progress in the implementation of the Children and Adolescents Code.

## Concept of the family

630. The Constitution of Costa Rica contains important provisions on the protection of the family:

*Article 51:* The family is entitled, as a natural element and the foundation of society, to special protection from the State. That right shall be equally enjoyed by mothers, children, the elderly and the sick and destitute.

*Article 52:* Marriage is the essential basis of the family and rests on equality of the rights of the spouses.

*Article 53:* The duties of fathers towards children born outside of marriage shall be the same as towards those born within the marriage. Every person has the right to know who his parents are, in accordance with the law.

631. In its Opinion No. 155-94, the Constitutional Chamber provides for equality among the persons forming part of a family, which is thus composed of individuals who are free and equal in dignity and rights before the law.

632. According to article 51 of the Constitution and the Constitutional Chamber, "family" means both a family united by formal ties of marriage and a family established by informal affective ties and constituting a *de facto* union.<sup>87</sup> This interpretation by the Constitutional Chamber represents progress in recognition of socially established family relationships not created by marriage.

633. The concept of a *de facto* union is governed by articles 242 to 246 of the Family Code. This amendment is provided for in Act No. 7532 of 8 August 1995 and relates to a union between a man and a woman which is public, a matter of common knowledge and exclusive and has been stable for three years. All of the patrimonial effects of marriage and alimony are applicable to anyone who may need them.

634. It should be pointed out that, culturally, the country tends to give the nuclear family greater value than single-parent families, thus showing that discrimination against single women with children continues to exist. However, social scientists are carrying out studies based on the idea that there are different types of families.

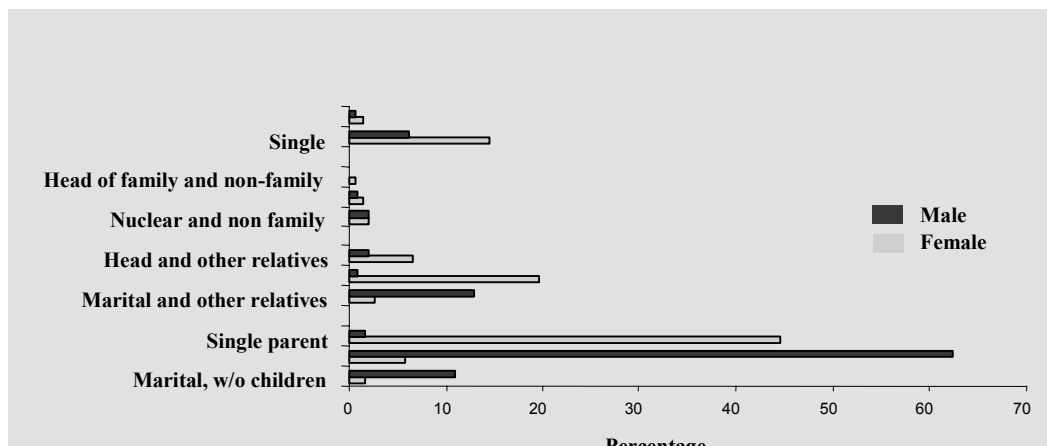
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<sup>86</sup> The Ministry of Public Safety plays a very important role in the implementation of measures of protection and safety for families. It enforces laws and rules for the maintenance of social peace and the resulting protection of persons, particularly primary care of the family. In this connection, reference should be made to related policies which have been and continue to be implemented by or through the Ministry of Public Safety. The main focus of the right to protection of and special assistance for the family is action to combat domestic violence, child sexual exploitation and trafficking in children and to combat drug trafficking and crime.

<sup>87</sup> Constitutional Chamber, Opinions Nos. 1975-94 and 346-94.

FIGURE 7 A

**Costa Rica: Distribution of households by sex of head of household and type of household, 2000**



Source: Ninth population census, 2000. National Statistics and Census Institute, 2002.

635. Most households in Costa Rica are made up of married couples and their unmarried children. However, the profile of Costa Rican households shows that, as in other countries, there has been a decline in the proportion of this type of household, as well as an increase in the proportion of single-parent and single-person households. One factor which may be causing this change of family profile is the increase in the number of separations and divorces.

636. Various studies have shown that male heads of household predominate in the case of central marriage units and that there is a majority of women heads of household in the case of single-parent households. Although the number of women heads of household in single-parent households increased, there has also been an increase in the number of men at the head of such households.<sup>88</sup> This situation deserves careful consideration because it might indicate a change in gender roles where, contrary to custom, a father without a wife would be responsible for his minor children.

**Right to marry and to found a family**

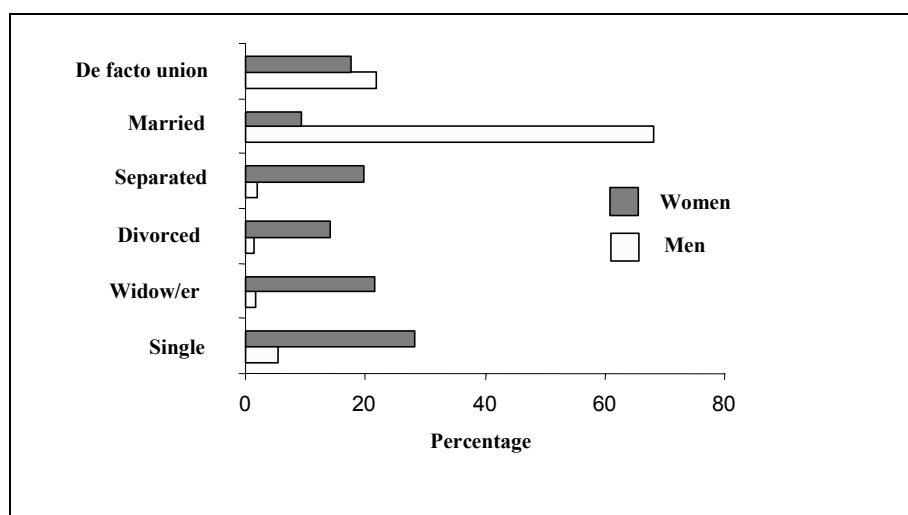
637. The right to enter freely into marriage is provided for in article 52 of the Constitution. Marriage is the essential basis of the family and rests on equality of the rights of the spouses. Marriage may be entered into as of the age of majority, 18 years, except in the case of girls over 15 and under 17, who require the consent of the persons who exercise parental authority. All persons are free to choose their marriage partner. The woman and the man must appear before the authorized official in order freely and voluntarily to express their willingness to marry.

<sup>88</sup> Compared to 1996, the rates of change were 8 per cent and 40 per cent, respectively.



FIGURE 7 B

**Costa Rica: Distribution of households according to sex and marital status of head of household. 2000**



Source: Ninth population census, 2000. National Statistics and Census Institute, 2002.

638. According to article 34 of the Family Code, men and women have the same rights and responsibilities. Article 35 states that the husband is mainly responsible for paying for family costs and that the wife is required to contribute jointly and proportionally if she has her own resources.

639. These provisions have a cultural basis, the assumption being that the husband provides the largest financial contribution; according to the foregoing, moreover, the husband is the head of the family. As indicated above, many Costa Rican households are headed by women, either because the husbands abandoned the household or as a result of divorce, death or the women's single status or because the women share household decision-making and financial contributions.

***Family protection and assistance***

640. The custody of children in the event of divorce is usually awarded to the mother, the theory being that she is “naturally” better qualified to bring them up. In cases of contested divorce, contested legal separation or the annulment of the marriage, the judge’s ruling takes account of the children's best interests and regulates all matters relating to parental authority, custody, upbringing, education and administration of assets (art. 139 of the Family Code).

641. The Government also makes it a duty to pay monthly alimony in advance, in accordance with the judge's ruling. The payment of alimony for the children is governed by the 1997 Alimony Act and may be requested by both spouses. Either of the spouses may request it during the marriage and in the event of divorce, if it is contested, or by agreement between the parties, if the divorce is mutually agreed.

642. The programmes and services offered by the Joint Social Welfare Institute (IMAS) are essential for women as mothers, heads of household or members of poor families, which are priority groups for this Institute. Activities in this regard may be described as providing special protection for mothers, since they have been designed with a highly promotional component so

that women may initiate planned development processes for their own families through access to other services offered by the Institute and other public and private bodies enabling them to achieve social mobility.

643. Since 1999, IMAS has been carrying out specific activities for adolescent girls at risk who already have children or are pregnant. Financial support for this population group is designed to provide it with life skills training, technical training and formal education.

644. Activities for adolescent girls at risk who already have children or are pregnant are also special means of providing protection and assistance for all adolescent girls and mothers. These activities are based on an assessment of the extent of the vulnerability and risks to which this group is particularly exposed and on the fact that their gender and poverty place them at greater risk of aggression and violence, prevent them from being able to form relationships and limit effective responses, thereby also jeopardizing their future.

645. Special care for the children of families with social and economic problems is also provided by the Comprehensive Child Care Centres Programme (CINAI), which started in 1975 and continues to operate, now offering additional nutritional services for children aged between six months and six years and, in some cases, for school children and pregnant and nursing mothers.<sup>89</sup> The Ministry of Labour's day care programme also provides services for working mothers with limited financial resources.<sup>90</sup>

### *Domestic violence*

646. Although no differences according to sex are provided for by law, women continue to be the population sector that is most vulnerable to domestic violence, especially those living in conditions of vulnerability, such as the poor, the disabled, minority groups and minors.

647. Applications to the courts for protection measures increased from 32,643 in 2000 to 43,929 in 2001, an increase of nearly 35%. Of all the applications, 89.6% were made by women and 86.5% were made against their partners or former partners.

648. In 2002, the special "Let's break the silence" phone line received 70,128 calls about domestic violence and sexual violence, 94% of which were requests for support for women victims of violence. Ninety-eight% of calls reporting situations of sexual violence related to women. In 2003, the 911 and 800-300-3000 phone lines received over 25,000 calls for such reasons. The Women's Delegation and the INAMU Gender Violence Section took care of 6,021 women in 2003 and 5,866 in 2004, the majority of whom were victims of domestic violence. The three shelters for women victims of domestic violence which are managed by INAMU took in 80 women in 1995, 749 and 367 in 2003. The University of Costa Rica's Women's Studies Research Centre (CIEM) conducted the first national survey of violence against women, determining that 58% of Costa Rican women claim to have been subjected to some form

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<sup>89</sup> Such support is channeled through the Education and Nutrition Centres (CEN), some of which operate on an equal footing with the CINAI. The CEN have existed since 1949 and the programme was established by Executive Decree No. 5828-SPPS of 3 March 1976. In 1983, it was legally consolidated by Act No. 6879 of 21 July 1983 on CEN-CINAI integration.

<sup>90</sup> In 1980, the Ministry of Labour extended the programme to the entire country in order to take care of children aged between six months and nine years whose parents work and receive low wages. At coffee harvesting time, it set up temporary day care centres in coffee and sugar cane growing areas, as well as two day care homes.

of violence. The study found that 643,347 women in the country (49.6%) are affected by psychological violence, 498,922 (38.2%) by sexual violence and 590,829 (45.4%) by physical violence and that the majority are between the ages of 25 and 49, i.e. in the reproductive stage of their lives.

649. On the basis of the Domestic Violence Act, a number of major efforts have been made to respond to the need to prevent both manifestations of this social problem and the alarming results to which it gives rise, as well as to combat the problem, particularly as it is women who are most affected by it.

650. The Officials against Domestic Violence Programme began its work in August 2000 in the Operations Department of the Ministry of Public Safety. It was part of the training for police officers provided by the National Women's Institute. According to a decision by the Minister of Public Safety, it started out as a small group, with one official being trained for each of the 10 regional departments. It is based on the provisions of article 20 of the Domestic Violence Act (obligations of the administrative police).

651. During the current administration, this programme has been considerably strengthened and now has 138 officials trained to combat domestic violence throughout the national territory. The variety of topics included in their training helps them to carry out their work and prepares them to provide training in primary schools and secondary schools for children and adolescents. Teachers have also been trained and churches have been visited, bringing the message of prevention of domestic violence.

652. Further information on the Domestic Violence Programme is provided in the chapter on special measures of protection for children and young people. It should nevertheless be pointed out that the Programme is designed to make the population more aware of the problems to which domestic violence and the sexual exploitation of children and adolescents give rise and to identify those involved in and responsible for domestic violence and non-family sexual abuse.

653. During the period 2000-2001, the Ministry of Public Safety made major efforts to professionalize the police forces' response to problems of domestic violence by training them and giving them theoretical and practical knowledge to deal with reports of such violence.

654. The results of efforts to professionalize the police may be seen in the increase in the number of actual arrests as a means of preventing attackers, owing to the increase in violence. A total of 4,380 persons were arrested for violations of the Domestic Violence Act.

655. The police and the Government have joined forces in networks to promote clinics in each area of risk, providing care for victims by multidisciplinary teams (lawyers, police officers, psychologists, social workers, doctors, etc.).

### **Maternity protection system**

656. The objectives of Promotion of Social Equality of Women Act No. 7142 of 8 March 1990 and Protection of Adolescent Mothers Act No. 7735 of 19 December 1997 are to prevent discrimination against women in the workplace and to protect the vulnerable group of adolescent mothers so that they may receive specialized medical care.

657. A body of law relating to maternity protection is to be found in the Labour Code and, in particular, in articles 94 to 100.

658. Article 94 reads: “Employers are prohibited from dismissing pregnant or nursing workers, except for a justified reason arising out of a serious failure to fulfil contractual obligations, in accordance with the grounds provided for in article 81. In such a case, the employer must arrange for the dismissal with the National Department and the General Labour Inspectorate and must provide proof of the worker’s failure to fulfil her contractual obligations. In exceptional cases, the Department may order the worker's suspension while arrangements are being made for the dismissal. In order to benefit from the protection provided for herein, the worker must inform the employer of her condition and submit a medical certificate or proof from the Costa Rican Social Security Fund”.<sup>91</sup>

659. In a situation of this kind, article 94 bis protects a pregnant or nursing worker so that she may apply to the competent authorities and be reinstated or paid for all her labour rights, in addition to compensation amounting to 10 days’ wages for loss or injury. She is entitled to four months’ compulsory paid maternity leave (one month before and three months after childbirth). The three months are also regarded as the minimum nursing period, which may be extended on doctor's orders.

660. The system of remuneration during maternity leave is governed by the Costa Rican Social Security Fund's provisions on “maternity risk”. This remuneration is calculated for the labour rights deriving from the labour contract. The amount corresponding to the payment of maternity leave is the equivalent of the worker's wages and is paid in equal parts by the Costa Rican Social Security Fund and the employer. In order not to interrupt contributions during this period, the employer and the worker pay their social contributions to the Fund on the total wages earned during maternity leave.<sup>92</sup>

661. Workers are entitled to one hour per day to nurse their children during the breast-feeding period, in accordance with the Labour Code. This right is widely exercised by women in the public sector. Some private enterprises recognize it, but many impose restrictions. According to article 100, any employer who employs more than 30 women in his establishment is required to provide premises where they may nurse their children, without danger.

662. In many cases, women do not exercise their right and also do not report violations of their right for fear of losing their jobs. Self-employed workers and workers in the informal sector, seasonal activities or agriculture do not have an opportunity to exercise this right. They usually take their children with them to work to nurse them when they can, with all the risks this implies for the children's safety and health.

## **Children and young people**

### ***Conventions***

663. The Convention on the Rights of the Child, Act No. 7184 of 18 July 1990, governs the labour, health, education, justice and other rights of this population sector. It takes account of the

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<sup>91</sup> This paragraph was amended by article 32 of Act No. 142 of 8 March 1990.

<sup>92</sup> Article 95 of the Labour Code.

special needs of this group and its possible sources of vulnerability. It is supplemented by other, more specific international instruments on the protection of child labour, such as ILO Convention No. 38 concerning Minimum Age for Admission to Employment, 1973 (Act No. 5594 of 21 October 1974, ratified on 11 June 1976) and ILO Convention No. 82 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Act No. 8122).

### *General framework*

664. Following the ratification of the Convention on the Rights of the Child in 1990 on the basis of the doctrine of comprehensive protection, the country amended its legislation relating to children and, as a result, a large number of bills were adopted to bring legislation on children and adolescents into line with the doctrine of comprehensive protection.

665. Article 71 of the Constitution provides special protection for minors and their work, in particular, through the establishment of a special institution by means of article 55 of the Constitution, which reads: “The special protection of mothers and minors shall be the responsibility of an independent institution called the National Children’s Association, with the cooperation of other Government institutions”, including the National Women’s Institute (INAMU). For the protection of minors who work, article 71 states: “The law shall provide special protection for working women and for minors who work”.

666. Act No. 7648 (Organizational Act on the National Children's Association) was adopted on 9 December 1996 and Act No. 7739 (Children and Adolescents Code) was adopted on 6 January 1998 as the national instrument for the protection of minors which governs, inter alia, health, education, culture and justice.

667. Before the adoption of the Children and Adolescents Code in 1998, there were more than 40 related pieces of legislation. Legislation was adopted at that time to regulate adoption, sexual offences, responsible paternity and other matters, thus establishing a very innovative legal framework for the protection of minors who are subjected to any kind of violation of their human rights. In this connection, particular attention is drawn to the adoption of the 1996 Juvenile Criminal Justice Act and the 2002 Responsible Paternity Act.

668. According to article 92 of the Children and Adolescents Code (CNA), the hiring of children and adolescents under age 15 for any type of activity or occupation is prohibited in Costa Rica. Any violation of this provision is punishable by article 101 (f) of the Children and Adolescents Code, which reads: “Any violation of article 92 shall be punishable by a fine of 20 to 23 wages”. The wage in question in this case is the minimum wage of an office worker.

669. Attention should also be drawn to the Regulations for Labour Contracts and Occupational Health Conditions for Adolescents (Decree No. 29200-MTSS), which were adopted to give effect to article 83 of the Children and Adolescents Code and which govern activities that are prohibited and restricted for working adolescents, such as working hours and labour laws, and follow-up by the Ministry of Labour and Social Security.

670. Regulations relating particularly to the protection of children are followed up by the Interagency Commission convened by the Ombudsman, which also monitors the results of and progress in the implementation of the Children and Adolescents Code.

### ***Situation of children and young people***

671. Although Costa Rican legislation prohibits work by minors under age 15, statistics indicate that this problem does exist in Costa Rica. The Multi-Purpose Household Survey conducted by the National Statistics and Census Institute in 2002 provides the following information:

672. There are 13,110 working children between the ages of 5 and 9 and 37,041 working children and adolescents aged between 10 and 14. There are also 76,926 working adolescents between the ages of 15 and 17. In all, 113,523 children and adolescents between the ages of 5 and 17 are gainfully employed. Of the total number of working minors, 90,846 are male and 36,231 are female.

673. Because they are at an educational and social and economic disadvantage, some 12,578 minors are employed in unskilled jobs, as street and other types of vendors, shoeshine boys, etc.; 43.4% work in agriculture, 9% in construction, 21.7% in businesses and 6.1% in domestic service in other people's homes. Over 40% of minors under age 15 who have been found to be working do not receive any wages and 42.3% work 46 hours per week.

674. Housework, or what is commonly known as "child domestic labour", is reported on in the National Report on the Results of the Child and Adolescent Labour Survey in Costa Rica, which indicates that, at the time of the survey, 6% of the total population aged between 5 and 17 years was in domestic service in other people's homes.

675. It should be pointed out that the term "farm labour" is not widely used in Costa Rica. It may be considered that the activities most closely related to this term are those involving jobs in agriculture, forestry and hunting, which, according to the above-mentioned Report, are carried out by some 49,096 children and adolescents, 46.9% of whom are male and 34.4%, female.

### ***Special measures of protection for children and adolescents***

676. In view of the above-mentioned situation, attention is drawn to the final paragraphs of the information relating to the exercise of the right to work and the undertaking made by Costa Rica when it signed a Memorandum of Understanding with the ILO to join the International Programme for the Eradication of Child Labour (IPEC).

677. The National System of Comprehensive Protection was established after the adoption of the Children and Adolescents Code and the following agencies dealing with various matters affecting this population group were set up later: the National Children and Adolescents Council, the National Steering Committee for the Eradication of Child Labour and the Protection of Juvenile Workers in Costa Rica and the National Commission against Sexual Exploitation (CONACOES), as well as the Children and Adolescents Protection Boards at the local level and the Protection Committees at the district level, in many of which Government agencies, municipalities and civil society organizations take part.

678. One of the primary activities of the National Steering Committee for the Eradication of Child Labour and the Protection of Juvenile Workers was the formulation of the National Plan for the Prevention and Gradual Elimination of Child Labour and the Protection of Juvenile Workers, which was submitted to public opinion on 10 December 1998 and which reflects the commitments made by the various institutions forming part of the Steering Committee. The National Plan, which was scheduled to be implemented during a four-year period, served as a

basis for the preparation of annual and biennial operational plans. It was monitored and evaluated by MTSS through its Child Labour Office, in cooperation with the Office of the Ombudsman.

679. The evaluation of the National Plan measured the extent to which institutional commitments were being fulfilled. The formulation of the Second National Plan for the Elimination of Child Labour and the Protection of Juvenile Workers began in 2003, was headed by MTSS as lead agency and involved the participation of representatives of various Government agencies, non-governmental organizations and employers and unionized workers. The Plan is to be in effect from 2005 until 2010.

680. In addition to strategic activities, the purpose of the Plan is to deal comprehensively with the problem of child labour. It contains a chapter outlining public policy in respect of child labour, which goes beyond Government policy to become State policy and provides for continuing action on behalf of juvenile workers and their families. In accordance with an agreement adopted by the National Steering Committee for the Eradication of Child Labour and the Protection of Juvenile Workers at its April 2004 session, all institutions were requested to incorporate their objectives under the National Plan in their 2005 operational plans.

681. At the national level, 57 projects have been carried out with an investment from the Children and Adolescents Fund amounting to 71 million colones, a quantitative increase compared to previous years both in budget terms and in the number of projects. This is part of a strategy which corresponds to a considerable extent to some of the recommendations made by the Committee on the Rights of the Child on the last report submitted by Costa Rica on the implementation of the Convention on the Rights of the Child (2004).<sup>93</sup>

682. The projects being carried out have some of the following characteristics:

- They include information on the rights of minors in discussion groups and projects designed to prevent situations which make this population sector more vulnerable and to promote the establishment of community groups to ensure its sustainability;
- They promote the full participation of other community organizations and Government agencies in order to guarantee the rights of children and adolescents;
- The projects being carried out by the Boards are more comprehensive, since minors are their main focus, but they are also intended for parents, teachers and officials of

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<sup>93</sup> In its concluding observations, the Committee on the Rights of the Child expressed concern because it considers that the Government has adopted insufficient measures to combat child abuse, child labour, the sexual exploitation of children and adolescents and the problem of street children. Accordingly, the Committee recommended that the Protection Boards should be strengthened, that PANI should be given adequate financial resources, that further efforts should be made to establish Protection Boards and Protection Committees in all cantons and districts and that coordination should be strengthened to make the system of protection for minors more effective because it is not operating in accordance with the Children and Adolescents Code. The Committee also emphasized that effective measures should be taken to ensure regulated and strengthened coordination between agencies and that the Protection Boards and Protection Committees should be strengthened to guarantee the coordinated and effective functioning of all actors involved in the implementation of the Convention on the Rights of the Child.

other institutions, inter alia, as a means of promoting cultural exchanges to strengthen respect for children and adolescents.<sup>94</sup>

683. In connection with these activities, account should be taken of the joint PANI-UNICEF work being done to promote the activation and strengthening of local protection systems at the cantonal level, where the Protection Boards and the Protection Committees form part of this governmental and community network based on strategic plans identifying activities to be carried out on behalf of children and adolescents at the cantonal level.

684. A project is also being carried out jointly by the National Department of Community Development Associations (DINADECO) and UNICEF; it is known as the “Strengthening of Community Development Associations” and is designed to enhance the ability of the community movement to provide protection for the rights of children and adolescents in surrounding local communities.

685. Attention should also be given to the Children and Adolescents Council,<sup>95</sup> which is composed of all Government ministries dealing with issues relating to children and adolescents and representatives of non-governmental and civil society organizations. The Council constantly monitors the daily work of the National Commissions which deal with the following priority issues:

- Commercial sexual exploitation
- Child labour
- Sexual and reproductive health, teenage pregnancy
- Responsible and sensitive paternity
- Trafficking
- Drug addiction
- Mental health.<sup>96</sup>

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<sup>94</sup> Project implementation is channeled through mechanisms such as regional workshops with members of the Protection Boards, workshops with minors who are members of the children’s and adolescents’ boards and the strengthening of the Boards’ local work through direct monitoring by local PANI offices and regional coordinating bodies.

<sup>95</sup> This Council was established by the Children and Adolescents Code.

<sup>96</sup> In order to combat commercial sexual exploitation, three annual campaigns are waged for the purpose of making it known that it is a criminal offence to have paid sexual relations with minors. All agencies directly or indirectly involved in the question of commercial sexual exploitation have been made aware of and trained in theoretical and methodological ways of dealing with the problem. In addition, a decree was adopted on the monitoring of access by minors to public Internet premises (Regulations to Monitor and Regulate Premises Offering Public Internet Service) in order to restrict access by minors to dangerous Internet contacts. Institutional competence in respect of care for victims has thus been clarified. One very important point is that the Tourism Institute and the migration authorities are committed to monitoring the flow of foreigners entering the country for the purpose of commercial sexual exploitation.



686. Since the establishment of the National Commission against Commercial Sexual Exploitation (CONACOES), which is coordinated by the Minister of Children and Adolescents and the Executive President of PANI, the country has been promoting the Annual National Plan, which is monitored by the above-mentioned National Children and Adolescents Council.

687. With regard to sexual exploitation and trafficking, Costa Rica has concluded strategic alliances with all countries in the region to establish a common front against trafficking in minors. At their thirty-fourth session, the 34 member countries of the Organization of American States (OAS) agreed to sign and ratify international instruments to combat sexual exploitation, carry out a study on trafficking in children and adolescents, particularly for purposes of exploitation, and analyse the legislative framework of all member States relating to this problem.

688. The Costa Rican General Migration and Aliens Department has made considerable efforts in this regard, including the establishment of a database for the Migration Departments in the region on alerts, arrests and prevention of entry and exit in connection with offences relating to the traffic in persons and the sexual exploitation of minors.<sup>97</sup>

689. The most important action taken against commercial sexual exploitation in 2004 included 212 investigations, 16 searches involving 118 victims, 72% of who were minors, and the arrests of 18 persons.

690. One achievement to which attention should be drawn in this regard is the establishment of the Specialized Investigation Department in the Ministry of Public Security, which deals with cases of procuring, rape and trafficking in minors, among other related offences. In this connection, 78 operations have been carried out since 1999,<sup>98</sup> making it possible to break up gangs and find persons involved in trafficking of minors, procuring, rape and related offences. It should be pointed out that action to combat such social problems is not channeled only through the Ministry of Public Security, since there are other agencies which take part in this type of work, such as the Judicial Investigation Agency, which is part of the judiciary.

691. It should also be pointed out that the National Prevention Department, which is part of the Ministry of Justice, has done a great deal of work, particularly in cooperation with the Ministry of Public Education, to explain the content and scope of the Act against the Commercial Sexual Exploitation of Minors.<sup>99</sup>

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<sup>97</sup> The Guardian Angels project was started in 2005 to raise awareness among migration officials in Central America, Panama and the Dominican Republic and train them in the rights of children and adolescents and the commercial sexual exploitation of minors, with particular emphasis on their own obligations as public officials. The Campaign against Trafficking was launched at Juan Santamaría International Airport in April 2005 after the General Migration and Aliens Department joined forces with Save the Children International and Save the Children Sweden. Since 74 per cent of migratory movements in 2003 went through Juan Santamaría International Airport, the campaign will reach a total of 2.5 million persons who will enter Costa Rica in 2005 and it will be extended to all border posts throughout the country.

<sup>98</sup> Since 1999 and until May 2005 inclusive.

<sup>99</sup> In association with other agencies, it has produced three manuals designed to prevent and deal with such violations of the human rights of children: 1. How the police deal with situations of commercial sexual exploitation of children and adolescents. Manual for leaders of training workshops. 2. Procedural manual for detention and complaints. What to do in situations of violence and ill-treatment against minors in the Educational Centre? 3. Commercial sexual exploitation of children and adolescents. What can be done by young people working in the tourism sector? Juvenile tourism training module.

692. Another important administrative action was the establishment of the Government Front against Paedophilia by Executive Decree of 25 September 2003, which is composed of the highest authorities of the following agencies: the Office of the President of the Republic, Internal Affairs, Police and Public Security, Education, Justice, Tourism and the National Community Development Department. It is presided over by the Minister of Children and Adolescents.

693. The objective of this body is to implement mechanisms to prevent and report acts involving the sexual exploitation and sexual abuse of minors and participation in child pornography.<sup>100</sup>

694. In cooperation with the Office for the Prosecution of Sexual Offences and the Office of Juvenile Criminal Prosecutions, preventive action has been taken to improve the approach to situations involving Costa Rican children.

695. In addition to these efforts, it should be pointed out that, in the case of domestic violence, the National Plan to Combat Domestic Violence against Children and Adolescents has been adopted in the framework of the Non-Violence Plan (PLANNOVI).

696. The action being taken includes: training for all social groups involved in the prevention, treatment and punishment of violence against children and adolescents; the empowerment of civil society for the comprehensive protection of this population group; and the formulation and approval of interagency protocols, including the protocol for the monitoring of family violence and non-family sexual abuse for implementation in the hospital environment, which already exists.

TABLE 18

**Action taken in cooperation with the Office of Juvenile Criminal Prosecutions (2005)**

<i>Work done</i>	<i>Quantity</i>
Full investigations at the request of the Office of Juvenile Criminal Prosecutions (accused aged between 12 and 18 years); offences: aggravated robbery, unlawful carrying of weapons, rape, sexual abuse; and misdemeanors: injuries, threats, blows, etc.	364
Arrests of minors or adults who committed offences while they were minors; offences such as attempted murder, aggravated robbery, larceny, sexual abuse	27
Preventive operations in support of various delegations (Estudios, la Carpio, los Cuadros, Hatillo, San José city centre)	60
Temporary dismantling of the "Teletubbies" youth group	Arrests, detention, preventive follow-up
Investigation and dismantling of the BOBOSHANTI sect in cooperation with PCD and PANI	Follow-up
Investigations, undercover work in high schools for alleged drug sales by minors	12 in all: 10 users and 2 sellers

<sup>100</sup> It should be pointed out that, according to Costa Rican legislation, there is no possibility of plea bargaining in respect of sexual offences and it is thus possible to try persons who violate the rights and integrity of minors more effectively. As related bodies, the Victim Treatment Offices were set up within the judiciary to carry out specific action to prevent further victimization during legal proceedings and definitions of psychological damage and financial compensation have been included in legal writings.

<i>Work done</i>	<i>Quantity</i>
Package search committee in educational centres	Representing MSP, in Support of MEP in cooperation with PANI
Detoxification Centre Committee for minors	Representing MSP, in cooperation with the Office of Juvenile Criminal Prosecutions, ICD, PANI, the Ministry of Justice, IAFA
Preventive work through counselling on the Juvenile Criminal Act in educational centres; prevention of gangs	10 educational centres at the national level

*Preparation:* Police Legal Support Department.

*Source:* Office of the Deputy Minister of Public Security.

697. Action is also being taken to establish a vocational training centre to deal with violence against children and adolescents, as well as highly specialized assessment and treatment centres for cases of violence against children and adolescents for the purpose of making clearly differentiated diagnoses and formulating strategies for minors and their families. Strategies are being developed for the identification of and early attention to conditions of risk that might lead to violence against children and adolescents and for the establishment of services to deal specifically with complex problems such as commercial sexual exploitation.

698. Attention is also drawn to the very relevant work being done by the Ministry of Public Security to develop prevention programmes for the purpose of reducing the number of cases of domestic violence and sexual abuse by training children directly in its educational centres.<sup>101</sup>

699. It should be noted that a great deal of training has been given to the police force in accordance with the provisions of the Children and Adolescents Code and other legislation stipulating the rights of children and adolescents and appropriate treatment for them.<sup>102</sup> Minors are also being given tools through training, for example, to prevent drug use.<sup>103</sup>

<sup>101</sup> For example, 360 police officers have been trained in the “rights and responsibilities of children and adolescents: a practical approach”; 120 police officers have been trained to prevent and deal with sexual violence: abuse and commercial sexual exploitation of children and adolescents; 232 schools have been visited with a total of 61,011 children trained to prevent domestic violence; 22 high schools have been visited with 7,965 adolescents trained to prevent domestic violence; 4,564 teachers have been trained as part of the “For a Culture of Peace” programme.

<sup>102</sup> Awareness raising and training in commercial sexual exploitation for 83 per cent of administrative police authorities and staff in the province of Limón for appropriate intervention with minors, with IPEC-ILO support; conclusion of a service contract between the International Labour Office and the PANIAMOR Foundation in connection with the implementation of the “Awareness raising and training of administrative police in the province of Puntarenas for action to combat the commercial sexual exploitation of minors, from a rights point of view”, whose purpose is to train 100 per cent of the administrative and police officials in the province of Puntarenas (1,264 persons); formulation of a policy of “Support for the institutional strengthening of the Ministry of Public Security in respect of human rights, gender, children, adolescents and young people”, which is coordinated by the Ministry in question and the PANIAMOR Foundation with UNFPA financial support. As part of this project, 233 officials have been trained. There are many more examples of this kind.

<sup>103</sup> The annex to this article describes some of the prevention work being done.

700. With regard to specific programmes designed to prevent, reduce and minimize violence against children and solve the problem to which it gives rise, Costa Rica has, since 1998, through the Ministry of Public Education and in cooperation with the National Crime Prevention Department (DINAPREVI) in the Ministry of Justice, been implementing the Ongoing Juvenile Promotion and Participation Campaign, whose main work scenario is the National Network of Young People for the Prevention of Violence in Secondary Education, which provides a genuine opportunity for participation by 534 male and female students from 133 high schools located in the 20 regional education departments of the Ministry of Public Education (MEP).

701. Students thus become part of the Network and receive training in workshops, camps, forums, video forums and lectures on subjects such as “Young people as subjects of rights and duties”, “Formulation of projects to prevent violence in schools” and “The right to participation”.

702. It is also important to point out that minors in situations of vulnerability are a group which deserves special attention, since it has been proven that a large number of children and adolescents live below the poverty line. The Joint Social Welfare Institute (IMAS) also plays a very important role, particularly on behalf of children from poor families in situations of greater vulnerability, for whom it provides considerable resources.

703. As may be seen in table 19 below, from 2001 to 2004, IMAS kept a large budget for programmes which relate to the care of the most vulnerable minors and which include support activities for this population group and educational subjects for its inclusion and the improvement of its quality of life.

TABLE 19

**Resources for Children's and Adolescents' Programmes. 2001-2004**  
**Joint Social Welfare Institute – Resources for Children's and Adolescents' Programmes**

<i>Component</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>
Alternatives to child and juvenile development	34,530,200.00			
Opportunities for child and adolescent care (including group and other homes)		1,478,500,000.00	731,650,300.00	813,714,100.00
“Creating opportunities”	483,824,900.00	560,000,000.00	280,068,900.00	316,548,000.00
“We can do it!”	734,782,000.00	970,000,000.00	839,610,000.00	
Group and other homes	888,849,200.00			
Cases referred by PANI	2,309,600.00			
Domestic violence	7,000,000.00			
Development of social capital		35,016,712.00		
Child professional services			10,800,000.00	
Professional services for “Creating opportunities”			72,490,000.00	
Access to education (“We can do it!”)				1,252,905,000.00
<b>Total</b>	<b>2,151,295,900.00</b>	<b>3,043,516,712.00</b>	<b>1,934,619,200.00</b>	<b>2,383,167,100.00</b>

*Source: National Child Welfare Agency, Reply to the questionnaire on the International Covenant on Economic, Social and Cultural Rights, San José, Costa Rica, June 2005, p.12.*

704. There are other specific measures being implemented behalf of minors, particularly those at risk, by Government agencies such as PANI, which provides foster care services, upbringing, feeding and stimulation through assistance for children in day care and canteens; the Joint Social Welfare Institute, which promotes and subsidizes group homes; and the Ministry of Public Health, which operates the above-mentioned Comprehensive Child Care Centres (CEN-CINAI).

705. All of the legal and practical measures which the Government has adopted are designed to combat the commercial sexual exploitation of minors, but the total eradication of such exploitation and its effects are still a challenge for the country.

TABLE 20

**Subsidies for children and adolescents, 2001-2005**  
**Budget Costa Rican National Children's Association – Subsidies for children and adolescents**  
**in protection alternatives and group homes – 2002-2005**

	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>*2005</i>
Direct transfers to persons (610)		308,000,000.00	427,000,000.00	426,122,000.00	490,040,000.00
Transfers to NGOs (637)		1,577,773,000.00	1,699,988,600.00	1,447,938,300.00	1,143,490,000.00
Group and other homes	888,849,200.00	1,478,500,000.00	731,650,300.00	813,714,100.00	
<b>TOTAL</b>	888,849,200.00	3,364,273,000.00	2,858,638,900.00	2,687,774,400.00	1,633,530,000.00

*Sources:* 2002-2003-2004 budget reports; IMAS. Child and adolescent care sector.

\*N. B.: Data estimates for 2005 correspond to document PAO-2005.

### **Changes in the right to protection of the family**

706. The adoption in 2002 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, is another aspect of the protection of the family in Costa Rica.

707. Act No. 7586 against Domestic Violence of 10 March 1996 was a significant legislative step forward in the protection of the family from domestic violence, without regard or distinction as to the family member responsible for the violence, which may be physical, psychological or financial.

708. Common law marriage is governed by articles 242 to 246 of the Family Code. This amendment is supplemented by Act No. 7532 of 8 August 1995 and applies to a common law marriage between a man and a woman which is public, a matter of common knowledge and exclusive and has been stable for three years. All the property effects of marriage and alimony are applicable to anyone who may need them.

709. Alimony is governed by the Alimony Act, as amended by Act No. 7654, which has been in force since 23 January 1997. With a view to the protection and well-being of vulnerable members of a family unit, the Act provides that special payments are determined officially,

guarantees assistance by the Government and punishes employers who do not withhold alimony payments from wages.

710. With regard to children, it must be considered that, following the ratification of the Convention, the recognition of minors as social subjects of the law is a paradigm shift in relation to minors under the doctrine of the full protection and basic assumption of the best interests of the child. The new approach, as established by the Convention on the Rights of the Child, took effect in Costa Rica when the Children and Adolescents Code was adopted in 1998, making it necessary to amend the legislative framework and bring about social changes. Article 3 of the Code provides that the rights and guarantees of children and adolescents are a matter of public interest. The protection of minors was strengthened as a result of the adoption of Act No. 8101 on Responsible Paternity of 16 April 2001, which reduced the number of children who have not been given their fathers' name from 45% to 5%.

711. The Legislative Assembly's Committee on Children and Adolescents has proposed a total of 70 bills which include new legislation and amendments to existing legislation and the most important of which are referred to below.

712. Act No. 5476, which amends the Family Code to strengthen the best interests of the child in the case of international adoptions; the strengthening of action to combat the sexual exploitation of minors by amending and supplementing various articles of the Criminal Code, Act No. 4573 of 4 May 1970; the amendment of various articles of the Code of Criminal Procedure, Act No. 7594 of 10 April 1996; the Act on the National System for the Treatment and Prevention of Domestic Violence; and the Act on the Protection of Children and Adolescents from Harmful Internet Content.

713. With regard to domestic violence, attention is drawn to the Abolition of Physical Punishment of Children and Adolescents Act and the partial amendment of the Criminal Code to provide for the offence of kidnapping of minor and disabled children and guarantee justice for Costa Rican children. Article 256 bis of the Criminal Code was amended to protect Costa Rican children and adolescents who are subject to child labour on public roads.

714. With regard to the establishment of specialized agencies, reference should be made to the establishment by law of the National Centre for the Comprehensive Treatment of Minors Addicted to Psychotropic Substances and the establishment of the Crime Registry of Persons Who Have Committed Crimes and Offences against Minors (Kattia and Osvaldo's Act).

715. Since 1990, Costa Rica has been going through a process of legislative change by eliminating male-centred bias from the laws. Such laws have been adopted to give effect to women's rights. For further information, reference may be made to Costa Rica's September 2002 report to the Committee on the Elimination of All Forms of Discrimination against Women.

## **Conclusions**

716. In broad terms, the organization of the family is a topic of the greatest importance for the Costa Rican Government and, from the Constitution on down, legislation provides for the protection and support of its members, especially women, children and older persons.

717. According to the modern-day approach to the family, the Government must determine whether the right to found a family is being restricted for homosexuals and persons with some

disability, since society has deeply rooted cultural ideas which must continue to be studied in order to improve respect in the country for the right to a family.

718. However, it may be observed that, in recent years, major changes in the structure of the family have taken place in Costa Rica, including the increase in the number of households headed by single women (women heads of family) and the significant increase in single-parent households headed by men (single fathers), to which the Costa Rican Government is paying closer attention and which it is monitoring.

719. Attention is drawn to the country's achievements in respect of the protection of maternity because, generally speaking, an entire system has been set up to protect pregnant women by covering them one month prior to and three months following childbirth and providing them with financial benefits. Shortcomings in respect of this right are nevertheless to be observed in private employment, where many women do not receive such protection. However, it should also be pointed out that, at least from the viewpoint of legislation and the scope of its implementation by the courts, women have guarantees that they may appeal any labour action taken against them as a result of their pregnancy.

720. Substantive legal progress has been made in the protection of children and adolescents as a result of the adoption of important legislation to protect their rights, as well as the adoption of a number of administrative measures on their behalf which deal with very important issues such as action to combat commercial sexual exploitation, child labour, sexual and reproductive health, responsible and sensitive paternity, trafficking in minors and the question of drug addiction and mental health.

721. Since the ratification of the Convention on the Rights of the Child and the resulting adoption of the Children and Adolescents Code, Costa Rica has promoted the doctrine of the comprehensive protection of minors, which is also based on the concept of "best interests", and this is led to the new paradigm making minors subjects of law.

722. Despite the mechanisms which have been established to guarantee respect for the rights of children and adolescents, ways must still be found to provide guarantees of the labour rights of adolescents and to eliminate child labour.

723. To deal with the abhorrent scourge of the commercial sexual exploitation of minors, progressive efforts of the greatest importance have been made and substantial progress has been achieved, but this is still a challenge for the Government, as is work by street children and minors at risk. The efforts made and the progress achieved are the result of broad coordination and cooperation among institutions and with other social partners. One achievement worth noting is the strengthening of the Protection Boards and the Protection Committees.

724. It should also be pointed out that major progress has been achieved in action to combat the various social problems that threaten the security and sound development of minors, including the action being taken by the Special Investigation Department of the Ministry of Public Security and the prevention measures being worked on by the National Crime Prevention Department of the Ministry of Justice.

725. The mechanisms which already exist in Costa Rica for the protection of the family, particularly mothers, minors, older persons and persons with disabilities, must be maintained and improved so that such persons may enjoy full respect as subjects of law.

## **ARTICLE 11 (Right to an adequate standard of living)**

### **General framework**

726. The right of everyone to an adequate standard of living for himself and his family has a number of aspects which must be considered by the Government in order to provide the population with services and amenities that guarantee genuine quality of life. Article 50 of the Constitution lays down guidelines for the quality of life of Costa Ricans by providing that: “The Government shall guarantee the well-being of all inhabitants of the country to the greatest extent possible by organizing and promoting production and the most appropriate distribution of wealth”.

727. Articles 51, 56, 65, 67 and 74 give greater force to the overriding mandate to guarantee the rights and benefits stipulated, which “... shall be equally applicable to all the factors which go into the production process and are provided for in social and labour legislation, with a view to establishing a permanent policy of national solidarity”.

728. Article 69 of the Constitution states that rural sharecropping contracts are administered in such a way as to ensure rational land use and equitable crop sharing between owners and sharecroppers, thus promoting crop production and sharing.

### **Costa Rica’s standard of living**

729. In 2004, a report on Costa Rica’s progress in implementing the “Millennium Development Goals” was prepared by the Social Council of the Costa Rican Government and the United Nations system in Costa Rica. The information contained in the report, the data contained in the tenth Costa Rican State of the Nation report for 2004 and information from Government agencies involved in the implementation process provide relevant information on the country's standard of living and the way it has changed in the last 10 or 15 years.

730. In 2004, 21.7% of Costa Rican households were living in poverty, meaning that they had insufficient income to purchase a basket of basic goods and services to satisfy the needs of each and every one of their members, and 5.6% of the households were living in extreme poverty,<sup>104</sup> meaning that their income did not enable them to purchase a basic basket of food to satisfy the minimum food needs of their members. In the early 1990s, 27.4% of Costa Rican households lived in poverty. The proportion of households living in extreme poverty was 9.1%. In absolute terms, the percentage of poor and extremely poor households has thus declined, although there was a slight increase in this percentage in 2003-2004.

731. According to the Millennium Development Goals report, inequality in the distribution of wealth (Gini index) increased from 1990 to 2003, although it remained stable between 2001 and 2003, with a tendency to drop in the latter year. It must be considered that, according to the tenth State of the Nation report, the dividing line between vulnerability and poverty is very easy for some population groups to cross.

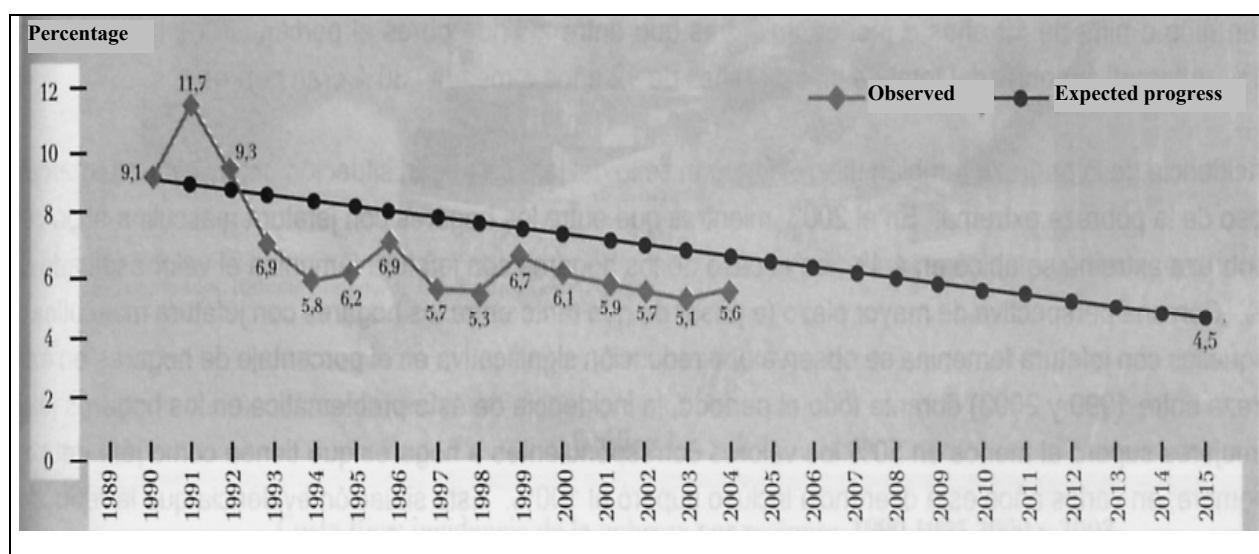
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<sup>104</sup> The way extreme poverty is measured at the national level (in relation to the minimum cost of basic food) also is similar to the dimension of hunger included in the Millennium Summit Goal and the indicator proposed by the United Nations system for its follow-up: “the proportion of the population which consumes less than the minimum dietary energy requirement”, Millennium Development Goals---Costa Rica, 2004, p.10.



FIGURE 8

Households living in extreme poverty and expected progress 1990-2015



Source: National Statistics and Census Institute (INEC).

732. In connection with such data, attention is drawn to the work of the Joint Social Welfare Institute (IMAS), which was established by Act No. 4760 adopted in 1971 and whose mandate is to solve the problem of extreme poverty in the country, for which purpose it has to draw up, manage, implement and monitor a national plan.

733. IMAS has made efforts to carry out its work as the specialized agency dealing with poverty and has even gone beyond its institutional limits, particularly with the implementation of the Objective Population Selection and Classification System (SIPO), which includes a database on the population living in poverty. This tool has made IMAS the source of information in this regard and has served as a basis for the adoption of decisions relating to the provision of services by various agencies in the social sector.

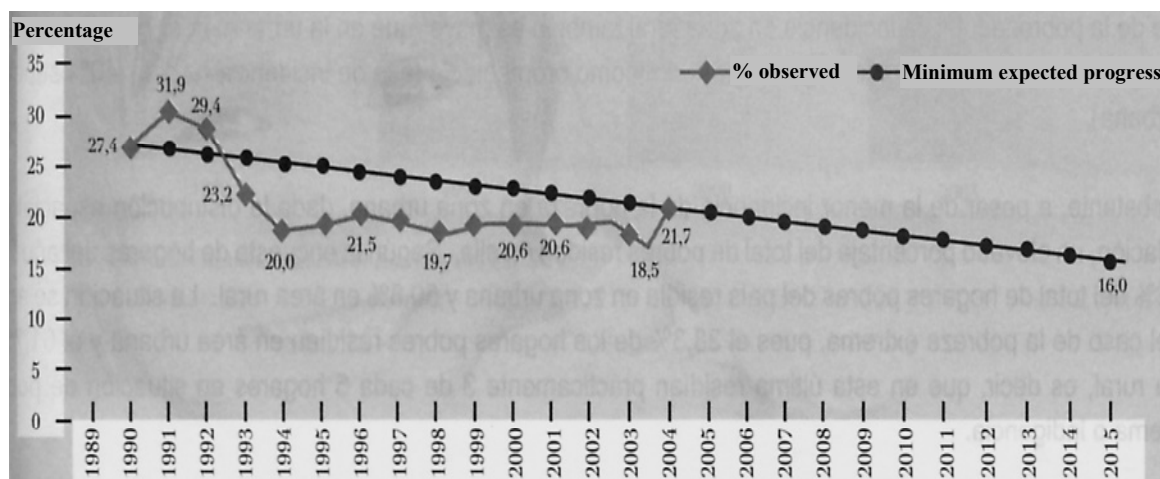
734. In order to achieve the appropriate range for its regional activities, IMAS has strengthened the decentralization of its institutional social work, thereby establishing and strengthening a decentralized organizational structure making it possible to cover the national territory by means of administrative units known as “regional management units”, which are primarily responsibility for implementing institutional social action and have been given far-reaching powers for regional management and decision-making. Through these units, IMAS is better able to approach persons living in poverty and ensure that the poorest families have access to the services and benefits it offers.

735. There are 10 regional management units,<sup>105</sup> which in turn are divided up into offices and teams in order to establish a presence in communities which are far away from a regional management unit because of their geographical location.

<sup>105</sup> Northeast San José, southeast San José, Pérez Zeledón, Cartago, Limón, Guanacaste, Puntarenas, Alajuela, Heredia and San Carlos.

FIGURE 9

**Percentage of households living in poverty 1990-2004 and minimum expected progress 1990-2015**



Source: National Statistics and Census Institute (INEC).

736. Two systems, the Beneficiary Selection System (SISBEN) and the Beneficiary Care System (SABEN), have been established to ensure that beneficiaries are selected and cared for on the basis of criteria of equity and quality.

737. SISBEN was set up in 1991 to establish a technical, objective, uniform and reliable means of identifying, selecting and prioritizing potential beneficiaries of IMAS assistance and social development programmes, as well as to maintain a permanent, current database to facilitate the formulation of plans, programmes and projects for the lowest income sectors. Its implementation and use made for interesting achievements in relation to the proposed objectives and for technological innovations within IMAS by improving the focus and distribution of resources on the basis of knowledge of the target population and its location.

738. SABEN is a standardized system for the registration of families who request benefits from various institutional programmes. It is used to record treatments, requests, decisions, budget control and the payment of benefits, thus guaranteeing the uniformity and reliability of information and the rapid and smooth transfer of resources.<sup>106</sup>

739. With a view to meeting the challenge of eliminating hunger and poverty in order to give effect to the right of everyone to an adequate standard of living (art. 11, para. 2, of the Covenant), IMAS has been carrying out a number of activities relating to social welfare, children and young people, women, improvement of housing, production and employment and social welfare agencies.

<sup>106</sup> The system is a basic tool for the care, treatment and follow-up of the beneficiary population, since it makes such actions easier to carry out by relieving professionals of the task of recording patients' histories or writing notes on treatment.

## Right to food

### *Food situation*

740. The country does not have continuous data on levels of child feeding, but the National Nutrition Survey conducted in 1996 showed that 5.1% of children over age 1 and under age 7 were moderately or severely malnourished (0.4%, severely, and 4.7%, moderately). It should be pointed out that, in 2000, there was a downward trend in malnutrition among some population groups, especially preschool-age children, school-age children and women of childbearing age.<sup>107</sup>

741. The 1996 Survey determined that the main general problem is anaemia, which primarily affects preschool-age children (26%) and women of childbearing age (18.9). Among preschool-age children, the incidence was higher in rural areas (31.7%) and there was no gender difference. In the urban sentinel community, the incidence was similar, but not in rural areas, where it was considerably lower. This improvement in rural areas may be attributed to the fortification of wheat flour and, in particular, of maize flour, which is a staple food item in these areas.<sup>108</sup> According to the 1996 Survey, the main cause of anaemia is an iron deficiency, since 24% of preschool-age children and 44.6% of pregnant women had depleted iron reserves; in sentinel communities, the figure was 30.4% for rural preschool-age children.

742. A possible second cause of anaemia is a folic acid deficiency, which affected 24.7% of women of childbearing age in 1996. In the sentinel sites, however, the prevalence was significantly lower in two districts (2.8 and 12.1% in Damas and San Antonio, respectively). This may be the result of the fortification of wheat flour with folic acid in late 1997 and the fortification of maize flour with folic acid in early 2000.

743. In the sentinel sites, vitamin A deficiency is considerably higher in rural areas.<sup>109</sup> In San Antonio district, vitamin A deficiency is higher in school-age children than in preschool-age children.<sup>110</sup> According to the 1996 National Nutrition Survey, iodine and fluoride deficiencies are not a public health problem, since salt is adequately iodized and fluoridated.<sup>111</sup>

744. In addition to the 1996 National Nutrition Survey, surveys of the weight and height of school children were conducted in 1997. The sentinel site methodology was implemented in 1999 and 2000 in the Damas de Desamparados community in the metropolitan area and in the rural area of San Antonio de Nicoya with the support of the Institute of Nutrition of Central America and Panama (INCAP), the Pan American Health Organization, UNICEF and the European Union.

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<sup>107</sup> Annex I, art. 11.

<sup>108</sup> The micronutrients biochemically determined in the 1996 National Nutrition Survey and the sentinel sites were hemoglobin, ferritin, folic acid, vitamin A, iodine and fluoride, depending on the group studied.

<sup>109</sup> Annex I, art. 11, nutritional table.

<sup>110</sup> In 1996, it was found that, although vitamin A deficiency is a slight public health problem, it was 4.8 times more prevalent in school-age children than in 1981; no differences by area were observed.

<sup>111</sup> In Damas de Desamparados, however, the average urinary excretion of iodine in school-age children was significantly lower than in the metropolitan area in 1996. In addition, a large percentage of school-age children presented with iodine and fluoride-deficient excretion, despite the fact that 90 per cent of the salt was adequately iodized (see annex I, nutritional table). In the sentinel sites, salt consumption was low because it was being replaced by consommé and cubes.

745. Some of the results of these studies show that the percentage of low birth weight children has remained invariably low in recent years.<sup>112</sup> It has also been observed that the nutritional situation of the various population groups at the national level and in the two sentinel sites, except for school-age children, tends more towards overweight or obesity than towards malnutrition, which increases with age.

746. According to 1996 Survey data, malnutrition mainly affects school-age children, reaching figures that are 2.2 to 3.9 higher than in the reference population (5%). There are no gender differences. In sentinel communities, school-age children also had the highest prevalence of malnutrition, which is nevertheless lower than in 1996. The percentages were higher among males than among females.

747. Until school age, excess weight in children is greater in metropolitan areas, but, as of adolescence, the percentage is slightly higher in rural areas. There were no significant gender differences in excess weight among preschool-age children. Excess weight is more prevalent among female school-age children in rural areas (twice as high as among males). It is 3.2 times as prevalent among female adolescents in metropolitan areas.

TABLE 21  
Characteristics of diet in Costa Rica. 1996 and 2001

<i>Indicator</i>	<i>1996 National Nutrition Survey/Area<sup>a</sup></i>			<i>2001<sup>a</sup> National Food Consumption Survey</i>		
	<i>National</i>	<i>Urban</i>	<i>Rural</i>	<i>National</i>	<i>Urban</i>	<i>Rural</i>
<i>Per capita/per day consumption</i>						
Energy	1 942	1 836	2 124	2 134	2103	2 273
Proteins	53.4	58.3	53.1	63.0	64.8	62.0
<i>% Daily value</i>						
Energy	91.5	86.4	101.6	96.6	94.0	100.7
Proteins	113.9	113.6	116.9	112.0	123.7	119.3
Iron	68.2	66.7	69.9	106.4	107.0	105.5
Calcium	50	56	45	68.9	72.7	63.4
Vitamin A	127.5	152.8	8.6	171.4	197.6	130.2
Vitamin B12	142	153	118	316.7	341.1	282.5
Folic acid	120	110	141	306.3	304.0	308.5
Vitamin C	120	155	90	188.4	210.6	156.1

<sup>a</sup> Where information is not given, it is because it was counted together with information on the metropolitan area.

*Sources:* Ministry of Health, 1996 National Nutrition Survey, part 3: Apparent consumption; Meza, R.N., Predisposing diet factors for cardiovascular disease, cancer and osteoporosis in the Costa Rican population, 2001. Ministry of Health, National Food Consumption Survey.

<sup>112</sup> For further information, see the figure in annex I on the percentage of low birth weight children.

748. The 1997 surveys of the weight and height of school children indicated that 8.4% of children and adolescents were overweight and that there were no great gender differences (8.1% and 8.9% in males and females, respectively). Among adults, it was found that, in sentinel sites, the problem of obesity was greater among men in the metropolitan area and among women in rural areas.

749. The prevalence of delayed growth in first graders is a good indicator of the level of a population's development because it is a summary indicator. According to the last height survey in 1997, the number of school-age children with delayed growth continues to decline; on average, school-age children gained 0.6 cm in a period of eight years.

750. Delayed growth has declined throughout the country, more so in some areas than in others. However, in districts such as Talamanca, Upala, La Cruz and Limón (rural areas), the prevalence is still between 18.1% and 12.4%.

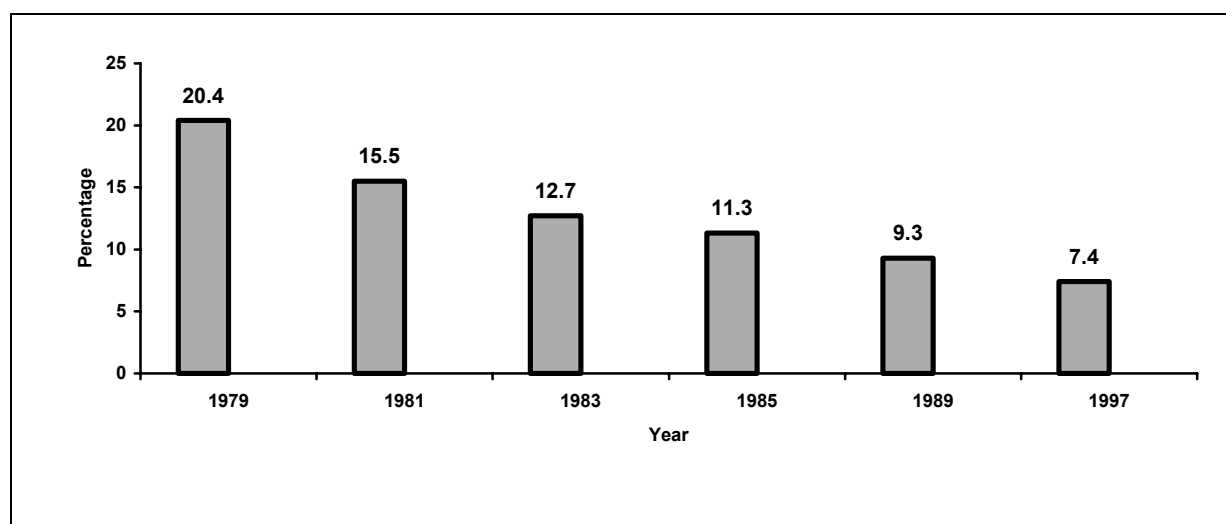
### *Measures adopted for the right to adequate food*

751. The measures the Costa Rican Government has taken to reduce micronutrient deficiency include the fortification of food as a result of restricted physical and economic access to adequate food, especially in low-income socio-economic groups.

752. Such measures have made it possible to use salt iodization and fluoridation to reduce endemic goitre and tooth decay, which are thus no longer regarded as a public health problem.

FIGURE 10

Percentage of school-age children with delayed growth, by age\*. 1979-1997



\* Cut-off point: < -2 standard deviations.

Source: Ministry of Health-Ministry of Education. National height survey of first-grade school children, 1997.

753. Recently, there has also been a 35% reduction in neural tube defects as a result of the fortification of wheat and maize flour, milk and rice with folic acid.<sup>113</sup>

<sup>113</sup> In this connection, broad legislation has been adopted on the fortification of food (see annex II).

754. In response to the right to adequate food, the Ministry of Health has been implementing the Nutrition and Child Development Programme, which began in 1951 with technical and food assistance from UNICEF for the opening of nutrition centres. In 1974, financing was provided by the Social Development and Family Allowances Fund and, in 1983, Act No. 6879 provided funds for the Education and Nutrition Centres (CEN) and the Comprehensive Child Care Centres (CINAI). At present, the Programme has 629 centres throughout the national territory.

755. The Programme's objective is to bring about optimal nutritional and development conditions as a matter of priority for children under age 7, their families and communities and low-income pregnant and nursing women. The selection criteria for the beneficiaries are: low incomes, malnutrition or risk of malnutrition, psychological and social problems in the home and children of working mothers.

756. The most important action being taken includes the promotion of health and nutrition, the monitoring of growth and development, education and community participation by means of two types of care: supplementary feeding and comprehensive care; and the two main strategies of intramural care and extramural care.<sup>114</sup>

757. In 1990, there were 72,384 beneficiaries of supplementary food and 119,597 in 2004. This increase has been most apparent in the last two years.<sup>115</sup> Comprehensive care promotes the full development of children so that they may have access to adequate physical growth and the development of their psychomotor, social and emotional potential. Data on this type of care is available as from 1994, when care was provided for 10,142 beneficiaries, a figure which increased to 21,610 in 2004.

#### *Additional measures in relation to adequate food*

758. The Agricultural Development Institute (IDA) not only promotes efficient land use, but also helps to implement an agricultural policy. In recent years (1989-2004), it therefore provided support for the social and economic development of farm settlements by means of resources which are intended for food security, inter alia, and which also relate to measures for access to housing. The population segment taken care of by IDA is responsible for a large percentage of national food production and security, the protection and use of natural resources and the provision of basic services. Although these persons have experience of agricultural work, they require assistance from IDA for organizational, administrative and management training.

759. It should be borne in mind that, in accordance with the Constitution, the Costa Rican Government established the Agricultural and Renewable Natural Resources Sector (Promotion of Agricultural Production Act No. 7064 (FODEA)) for the purpose of setting up an agency to

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<sup>114</sup> Supplementary feeding involves the provision of food to beneficiaries by means of three components: (a) served meals, i.e. the daily distribution of breakfast, lunch and dinner to beneficiaries; (b) the monthly distribution of 1.6 kg of powdered whole milk to beneficiaries who are malnourished or at risk of malnutrition; and (c) the Distribution of Food to Families (DAF), in which a monthly food package is distributed to families with moderately and severely malnourished children (each ration contains rice, beans, sugar, oil, pasta and tuna).

<sup>115</sup> Annex I contains two tables showing the average population cared for by the Nutrition and Child Development Programme by type of care from 1990 to 2004 and the nutritional state of beneficiaries of the served meals component.

manage, plan, coordinate, implement, monitor and evaluate Government activities in support of national agricultural development.<sup>116</sup>

760. The Ministry of Agriculture and Livestock is the lead agency in the agricultural sector and therefore has functions and tasks relating to the right to adequate food, such as:

- Facilitating the adoption of agricultural technology, with particular emphasis on the needs of producers and their inclusion in agri-food processes;
- Contributing to the country's agricultural development by promoting credit policies, plans and programmes, helping to increase food production and improving the marketing and processing of agricultural products;
- Providing support for the formulation of policies, plans and programmes for the conservation of natural resources, the general improvement of the environment and the sustainable development of society as a whole;<sup>117</sup>
- Managing the use, marketing, quality control and wastes of agricultural inputs, including fertilizers and related substances, pesticides, additives and application equipment;<sup>118</sup>
- Monitoring appropriate soil use and management with a view to sustainable agricultural development.

761. With regard to the right to food, attention is drawn to the protection received by consumers in connection with the production, marketing and consumption of food in general. It is highly important to point out that, in 1995, Costa Rica adopted Promotion of Competitiveness and Comprehensive Consumer Protection Act No. 7472, which provides that consumers are entitled to a sound, competitive and quality market.

762. Through an ongoing process of education and information, the Ministry of Finance, Industry and Trade (MEIC) promotes greater awareness and knowledge of consumer protection and support policies so that consumers and retailers may know their rights and obligations, thereby improving their trading relations.

763. The National Consumers' Commission, which is attached to the Ministry of Finance, Industry and Trade, and the Ministry as a whole have been entrusted with the task of developing programmes to train consumers so that they might require compliance with their rights through local training programmes and activities and the publication in the media of the results of studies on common consumer products and services in the country.

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<sup>116</sup> The establishment of the agricultural and renewable natural resources policy is an activity shared by the Government bodies responsible for the development of the sector and it is thus designed to achieve its strategic objectives in accordance with the guidelines contained in the National Development Plan.

<sup>117</sup> In relation with the objective of protecting and ensuring the health and improvement of animals and their products and byproducts which benefit human beings through the study, surveillance, prevention monitoring and elimination of diseases and the implementation of quarantine measures relating to imports and national and international transit and trade in products and byproducts, secretions, excretions and wastes.

<sup>118</sup> It also helps to protect crops and animals, as well as the country's agricultural imports and exports, by carrying out phytosanitary diagnoses.

764. This very important idea is linked with MEIC's technical regulation responsibilities, since technical regulations define the specific quality, hygiene and labelling requirements that products must meet in order to be marketable. National producers are thus guaranteed that they will be able to compete with foreign producers on equal terms and consumers are guaranteed that the products they buy meet certain quality standards and are free of contaminants.<sup>119</sup>

765. The purpose of the National Quality System, which was set up by the 2002 Act and is referred to in footnote 119 below, is to offer a stable and all-inclusive framework of confidence for the promotion of quality in the production and marketing of goods and services with a view to improving the competitiveness of productive activities and helping raise the general standard of living.<sup>120</sup> As may be seen in the footnote, a large body of legislation has been adopted.

766. The Intersectoral and Interdisciplinary Commission was set up in 1994 to prepare the National Nutrition Guides (GA). It is composed of representatives of the Ministry of Health (coordinator), the Ministry of Public Education, the Costa Rican Social Security Fund and the University of Costa Rica's School of Nutrition. From the outset, it has been receiving technical advice from the Institute of Nutrition of Central America and Panama (INCAP) and the Pan American Health Organization (PAHO).

767. Its most important achievements are: (a) the publication of the Nutrition Guides: Methodological Approach and Technical Criteria (1995); Nutrition Guides for Nutritional Education in Costa Rica (1997); and four fascicles and posters on the topic; (b) dissemination of information on the topic on radio and television and in the press; (c) preparation of a video for nutritional instruction; (d) a plan of action for officials, training of officials of the Ministry of Health (coordinator), the Ministry of Public Education and the Costa Rican Social Security Fund, as of 1998; (e) three investigations in cooperation with the University of Costa Rica: "Evaluation of graphical representations for the teaching of healthy nutrition in Costa Rica", "Nutritional practices of six groups of women in the Greater Metropolitan Area" and "Manual of techniques for the teaching of the Nutrition Guides".

## **Right to housing**

### *Housing situation*

768. According to data from the 2000 National Population and Housing Census, the country had a total of 935,289 individual dwellings occupied by a population of 3.8 million inhabitants. Of the total number of dwellings, 669,754 (nearly 72%) were owned and 569,724 were in good condition (64%). The country had a total housing shortage of 170,233 units, both quantitatively

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<sup>119</sup> Article 39 of National Quality System Act No. 8279 established the Technical Regulation Body (ORT) as an inter-ministerial commission whose responsibilities are to contribute to the preparation of technical regulations by providing technical advice during the drafting process and to coordinate the preparation of technical regulations with the ministries concerned in order to ensure the full and efficient protection of human, animal and plant health, the environment, consumer safety and other relevant legal rights.

<sup>120</sup> The achievements of the Technical Regulation Body include the design of the [www.reglatec.go.cr](http://www.reglatec.go.cr) Web site, which is a compilation of all the basic legislation with which producers must comply in order to operate on the market. It contains 277 revised technical food sector regulations. Various regulations relating to specific foods have also been adopted and are in the process of being published, including the technical regulation on juices and nectars, the technical regulation on butter and the technical regulation on cauliflower. Regulations have also been adopted and published on tuna and tinned bonito, spiny lobster, vegetable oil, olive oil, raw milk, beans, broccoli, cabbage, sweet cassava, tomatoes, dried onion and potatoes. All these regulations were adopted between 2002 and 2005.



and qualitatively. The housing shortage in Costa Rica is primarily qualitative, consisting mostly of dwellings which are in poor condition and lack basic services.

769. According to a 2000 study carried out by the Housing Promotion Foundation (FUPROVI) using data from the System of Sustainable Development Indicators, 254,034 dwellings had additional defects.<sup>121</sup>

TABLE 22

**Occupied individual dwellings and population in occupied individual dwellings, according to type, tenure, condition and overcrowding, 2000**

Total occupied individual dwellings	935 289
Population in occupied individual dwellings	3 790 875
Slum dwelling	
Total dwellings	15 014
Population in dwellings	64 070
Owner occupied	
Total dwellings	669 754
Population in dwellings	2 766 233
Tenant occupied	
Total dwellings	153 513
Population in dwellings	567 328
Slum tenure	
Total dwellings	18 101
Population in dwellings	83 253
Rent free or loaned	
Total dwellings	93 921
Population in dwellings	374 061
Condition of dwelling – good	
Total dwellings	596 724
Population in dwellings	2 367 464
Condition of dwelling – normal	
Total dwellings	240 863
Population in dwellings	1 008 504
Condition of dwelling – poor	
Total dwellings	97 702
Population in dwellings	414 907
Overcrowding	
Total dwellings	73 735
Population in dwellings	468 421

Source: Statistics and Census Institute, National Population and Housing Census, 2000.

<sup>121</sup> Dwellings with additional defects are defined as the total number of normally occupied individual dwellings without overcrowding and dwellings in good condition without overcrowding which lack at least one of the three basic services, namely, electricity, sanitation and piped or well water.

770. The illegal occupation of public and unoccupied land in the past three decades speeded up the process of squatting, sometimes on river banks, slopes and other high-risk areas from the point of view of vulnerability.<sup>122</sup>

771. Local Transparency Committees composed of representatives of the Catholic Church, the National Christian Alliance, municipalities and the Costa Rican Social Security Fund's Basic Comprehensive Health Care Teams (EBAIS) were set up to identify squatter communities. They thus identified 10,000 families who were living in extreme poverty and who needed housing. Other families were also identified by the Objective Population Identification System (SIPO) in communities defined by the New Life Plan as having priority. Information on the total number of families identified by these two mechanisms was entered into a database for possible consideration by the National Housing Finance Scheme.

772. The average number of persons per dwelling in indigenous territories is 5.3, more than in peripheral indigenous areas and the rest of the country, where it is 4.1. In indigenous territories, the basic needs of 7.6% of indigenous persons and 14.4% of non-indigenous persons are being met; this percentage increases as indigenous persons move away from their territories: for indigenous persons in peripheral areas, the figure is 29.4% and, for indigenous persons in the remainder of the country, it is 36.2%. However, these figures continue to be low compared to the rest of the inhabitants of the country, 60.4% of whose basic needs are being met.<sup>123</sup>

773. According to the 2000 Census, the dwellings of 10.67% of the Afro-Costa Rican population are in very poor condition, the dwellings of 29.02% are in normal condition and those of 59.71% are in good condition; those of 0.60%<sup>124</sup> are not taken into account; by comparison, 64.9% of the dwellings of the rest of the country's population are in good condition.

774. The 2000 census showed that 7.1% of households headed by Nicaraguans lived in slums and 7.9% in squats (1.2% and 1.5%, respectively, in the case of households headed by Costa Ricans). In urban areas, Nicaraguan households account for 35.4% of the total number of households living in slums and 30.1% in squatter settlements.

### ***Right to adequate housing***

775. Broad legislation guarantees Costa Rican families the right to decent housing. According to article 65 of the Constitution, the Government promotes the construction of low-income housing and creates workers' family property. Other specific legislation is especially designed to establish agencies such as the National Housing Finance System (SFNV), the Act on the Housing and Urban Planning Institute (INVU) and the Joint Social Welfare Institute (IMAS).

776. As long as they comply with the requirements laid down in this legislation, families may be potential beneficiaries of family housing allowances (BFV) and obtain loans based on their ability to pay. The only possible restriction on guarantees of the right to housing is that illegal immigrants are not authorized to remain in the country or do not constitute a typical or atypical

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<sup>122</sup> It should be explained that the classification of squatter settlements is linked to legal land tenure. However, some squatter families' dwellings are in good condition and have basic services.

<sup>123</sup> Basic report, op. cit., p.18.

<sup>124</sup> Idem, p.19.

nuclear family, as provided for in the legislation on the National Housing Finance System (SFNV).<sup>125</sup>

777. As a result of the implementation of article 59 of the SFNV Act, authorized agencies have the possibility of helping families in squatter settlements by offering solutions such as purchases of land (which may or may not be in the same place) and the construction of dwellings built as projects or individual houses.<sup>126</sup>

778. Families who have been authorized by the Agricultural Development Institute (IDA) and who have received plots have been allowed, subject to approval by the Board of Directors, to impose limitations in order to keep their land separate, within the parameters established by the National Housing Mortgage Bank (BAHNVI), and may be given attention by SFNV. Such land may be used as a guarantee for the operation carried out with the authorized agency, with which the family housing allowance and the possible loan are agreed on, without involving the entire plot.

779. IMAS Act No. 4760 of 4 May 1971, which was adopted to help families living in poverty and extreme poverty, has several programmes to provide comprehensive care for this population sector, including financial assistance for the improvement of dwellings and related work to improve the housing situation.

780. The public housing legislation in force in Costa Rica, i.e. the Act establishing SFNV and the Housing Mortgage Bank (BAHNVI), are designed to enable families to purchase dwellings by means of Government subsidies known as housing allowances and family housing allowances (BFV). General Urban and Suburban Tenancy Act No. 7527 of 7 July 1995 is intended for other population sectors.

781. Attention should be drawn to Guideline No. 27, which was promulgated in La Gaceta No. 169 of 3 September 2003 to guarantee five types of housing for: indigenous peoples, urban areas, disabled persons, flood-prone areas and warm areas; and to legislation on dwellings and urban development work which are needed for housing projects in order to ensure that their inhabitants fully enjoy the right to adequate housing and a healthy environment. It may thus be guaranteed that housing projects financed by means of family housing allowances have the necessary basic infrastructure and services for the adequate development of human settlements.

782. National legislation describes the procedures to be followed in the event of eviction from unlawfully occupied land. All citizens have the following two types of legal protection from arbitrary expulsion or eviction: civil proceedings and amparo proceedings, which are applied for

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<sup>125</sup> The following legislation governs the construction and establishment of infrastructure: the Building Act and its regulations; the Adoption of a Code on Earthquake-Resistant Public Works Act; the Condominium Property Act and the regulations thereto; and the Eradication of Slums and Protection of Property Owners Act; the General Urban and Suburban Tenancy Act; Urban Planning Act No. 4240 of 15 November 1968; the Regulations on National Monitoring of Subdivisions and Housing Developments; and the General Health Act. The Housing and Urban Planning Institute Act (INVU), Act No. 2825 of 14 October 1961 establishing ITCO and, subsequently, Act No. 6735 of 29 March 1982 repealing Act No. 2825 and establishing the Agricultural Development Institute are also very important.

<sup>126</sup> IMAS implemented a serviced land programme by which land was bought, basic infrastructure work was carried out and dwellings were built by BFVs. This programme was later transferred to INVU, but it is hoped that resources will be obtained for its implementation.

in the Constitutional Chamber of the Supreme Court of Justice and do not involve any formalities because access to them is free.<sup>127</sup>

783. The legislation in force in the country is applicable for the purpose of measures adopted during urban renewal programmes and new development projects. For example, when families have to be moved as a result of a building or urban renewal project, such as the widening of secondary roads or the construction of a hydroelectric power station, due process and the notification of the persons concerned are applicable. Expropriation is also applicable; it is governed by the Expropriations Act and based on the article 45 of the Constitution, which provides that the owner of the property being expropriated is entitled to compensation.

784. The Agricultural Development Institute (IDA) is a key land distribution and allocation agency. It has been promoting the strengthening of a social and economic policy to guarantee better distributive justice and participation in national wealth. Its main objectives are to ensure greater access of producers to agricultural property through land purchases and distribution and the provision of title deeds; to help ensure the autonomous operation of farm settlements; and to promote agricultural production and output and the rational use of natural resources.

785. IDA's work is intended to change the structure of land tenure in order to bring about more equitable distribution and the promotion of its development.<sup>128</sup> During the period 1989-2004, IDA focused its policies on land purchases and distribution and the training of farm communities and farming families as a means of finding a solution to the country's problem of constant land pressure.

786. During that period, priority was given to the purchase of buildings to meet the pressure being exerted by organized groups and the purchase of farms with problems of occupation by squatters was relegated to second place. The Autonomous Regulations on Land Purchases were adopted in 1986 in order to base the purchase of buildings on technical studies and the Autonomous Regulations on the Selection and Allocation of Applications for Land were adopted in 2003. In 2004, the number of farms purchased and plots distributed decreased compared to previous years, in terms both of size and of the land-family relationship, and priority was given to farming methods based on individual plots

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<sup>127</sup> A special body of law which protects citizens from the legal and due process point of view is the above-mentioned General Urban and Suburban Tenancy Act No. 7527 of 7 July 1995, which embodies a number of procedural guarantees to protect tenants from eviction. According to article 104, judicial prevention of eviction from low-income housing must therefore take place prior to eviction proceedings. If the documents are in order, the court proceeds to protect the tenant so that eviction from the dwelling takes place after the lease has expired. The Costa Rican Code of Civil Procedure also governs administrative eviction proceedings under article 7 of the General Urban and Suburban Tenancy Act.

<sup>128</sup> Act No. 2825 of 14 October 1961 states: "...land ownership shall be promoted with a view to the gradual increase in output and the equitable distribution of produce, thereby improving the social status of farmers and making them conscious participants in economic and social development...". This relates to the above-mentioned measures to guarantee adequate food.

TABLE 23

**Consolidated national land purchase report, 1989-2004**

<i>Year</i>	<i>Amount of land purchased (ha)</i>	<i>Amount invested (¢)</i>	<i>Beneficiary families</i>
1989	5 145.60	303 415 894	783
1990	5 403.80	451 082 852	699
1991	2 095.40	260 735 444	363
1992	3 258.50	681 974 608	543
1993	5 255.80	1 171 071 967	1 001
1994	3 920.20	720 674 726	641
1995	2 195.00	552 600 000	486
1996	5 901.00	1 927 000 000	1 541
1997	5 487.00	2 331 000 000	1 452
1998	3 329.00	1 696 540 000	2 418
1999	273.00	137 770 000	3 127
2000	6 53.00	551 000 000	1 616
2001	714.00	475 095 660	1 674
2002	2 482.10	1 979 800 000	1 477
2003	1 443.06	2 146 440 000	1 712
2004	272.16	647 104 611	890
TOTAL	47 828.62	16 033 305 762	20 423

*Source:* Settlements Training Department.

787. From 1989 to 2004, 20,423 families benefited from the purchase and allocation of land and 55,690 land titles were granted to peasant family owners in farm settlements and private owners in title areas and national reserves. During the same period, 6,508 land leases were granted in border areas and national reserves; a large percentage of these leases were given to landless peasants for the development of agricultural activities.<sup>129</sup>

<sup>129</sup> In general terms, IDA's sphere of activity includes groups such as landless peasants, marginalized peasants, farm workers and some indigenous peoples.

TABLE 24

**Consolidated national land title report, 1989-2004**

<i>Year</i>	<i>Titles granted</i>	<i>Year</i>	<i>Titles granted</i>	<i>Year</i>	<i>Titles granted</i>	<i>Year</i>	<i>Titles granted</i>
1989	2 429	1993	3 594	1997	5 319	2001	344
1990	2 585	1994	1 195	1998	5 018	2002	3 191
1991	7 456	1995	2 701	1999	4 320	2003	1 412
1992	8 031	1996	2 921	2000	2 810	2004	2 364
TOTAL							<b>55 690</b>

*Source:* Agricultural Organization Department, progress report.

788. To a greater or lesser extent, this legislation has been providing the basic legal instruments so that the authorities can require the development of adequate and environmentally sustainable human settlements, thus guaranteeing their inhabitants a better quality of life. In some cases, however, difficulties in the implementation of the legislation by local and national authorities have led to the establishment of slum and squatter settlements in parts of the country, particularly in risk areas in the Greater Metropolitan Area, and to failures to implement environmental and urban planning legislation which have endangered the health of persons and damaged natural resources.

789. With regard to the right to a healthy environment, the following legislation has been adopted: Act No. 5395 and the amendments thereto; the General Health Act; the Slum Clearance and Tenant Protection Act; Act No. 7152 establishing the Ministry of the Environment and Energy (MINAE) of 21 June 1990; Environmental Organization Act No. 7554 of 4 October 1995; Forestry Act No. 7555 and the amendments thereto; Biodiversity Act No. 7788 of 30 April 1998; Soil Use, Management and Conservation Act No. 7779 of 30 April 1998; National Emergencies Act No. 7914 of 13 October 1999; Construction Act No. 833 of 4 November 1949 and the regulations thereto; and Urban Planning Act No. 4240 of 15 November 1968 and the regulations thereto.

790. Attention should nevertheless be drawn to the increasing deterioration of natural resources, such as water, soil, forests, air and biodiversity, and to restricted community participation in their protection and stewardship. The deterioration taking place in one fifth of the national territory is caused by various factors.

791. Inappropriate systems of production and short-term agricultural policies have led to limited land use planning and there has also not been enough basic and applied research for the development of appropriate technologies.

792. Inequitable land distribution makes it necessary to use fragile and unsuitable areas and the concentration of land ownership in the hands of citizens who are not from the communities in question restricts efforts to involve them in land reclamation for the benefit of local farmers and the country as a whole.

793. Reference should also be made to the use of land that is not suited for agricultural production; the abandonment of areas which were being used for farming and fishing; the

establishment of free range husbandry on unsuitable land; and changes in the use of land for crops which are not suited to the soil; and the use of inappropriate technologies.

794. Last but not least, reference may be made to the mismanagement of catchment areas; badly planned, designed and operated irrigation systems; water imbalances; the irrational increase in deforestation; poor forestry management; and burning in dry areas and forest fires.

### ***Measures adopted for the right to adequate housing***

795. The Costa Rican Government does not build housing. This activity was transferred to the private sector many years ago and the only contribution the Government makes is to provide resources for the National Housing Finance System (SFNV), through which subsidies are given to the lowest income families whose housing needs have not been met.

796. The Ministry of Housing and Human Settlements (MIVAH) supports the political stewardship of the sector during the formulation of policy proposals, the definition of priorities, the identification of housing demand, etc. These are analyzed in the National Sectoral Council, the political body which provides support for the work of the Minister of Housing and Human Settlements and is composed of officials from agencies in the sector, and then submitted for consideration by the President of the Republic.

797. As part of “facilitation strategies” for the construction of housing, non-governmental organizations have had successful experiences with Habitat for Humanity and the Housing Promotion Foundation (FUPROVI). These organizations work with grass-roots groups and carry out do-it-yourself and mutual assistance activities, but, at present, this building method is not in operation. These organizations both coordinate with SFN-authorized agencies, which are responsible for classifying families and granting BFVs for families qualifying for Government assistance.

798. With regard to rental dwellings, it should be pointed out that a case which arose a few years ago was that of the National Housing and Urban Planning Institute (INVU), which became involved by renting multi-family buildings, but, in the last few years, it has changed its policy and now grants property titles.

799. With a view to proper land use, there are special provisions which include legislation relating to expropriations, ownership information for the registration of land that is not officially registered and the National Housing Finance System Act, article 169 of which places a set of limitations on properties acquired by means of the system and provides that they may be used only by the beneficiaries of the system, in accordance with its objectives.

### ***Public Housing Programme***

800. One of the main means of guaranteeing full access to the right to decent housing is the Public Housing Programme,<sup>130</sup> which is intended for poor and extremely poor families. For SFNV purposes, these are families whose family income is less than or equal to \$231 (first

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<sup>130</sup> Act No. 7052 of 1986 and the amendments thereto are the legal basis for the activities of this Programme, through which the Housing Mortgage Bank (BANHVI) was established as the governing body of the National Housing Finance System (SFNV) and subsidies or family housing allowances (BFV) were created.

income level) or as much as four minimum wages, i.e. \$924 (fourth income level). These families are entitled to a subsidy that is inversely proportional to their income.

801. The subsidy or family housing allowance is 3.2 million colones (\$3.362 as at February 2005). It is used to meet housing needs of various kinds: persons who live in squatter settlements or slums or who have their own lots and are not able to pay off a loan under the normal conditions offered by finance institutions.

802. As a result of the implementation of the Public Housing Programme, 211,389 poor and extremely poor families benefited between 1989 and 2004 from an investment of 206,295 million colones.

TABLE 25

**Number and amount of family allowances paid per year. 1989-2004**

<i>Year</i>	<i>No. of cases</i>	<i>Total investment on allowances paid (millions of current colones)</i>	<i>Amount of average nominal allowance (current colones)</i>	<i>Average yearly CPI</i>	<i>Total investment in allowances paid in real terms<sup>a</sup></i>	<i>Amount of average real allowance (constant colones)</i>
1989	13 421	2 467	183 789	37,5	19 145	1 426 494
1990	15 454	3 340	216 103	44,6	21 774	1 408 977
1991	15 008	5 386	358 851	57,5	27 282	1 817 806
1992	15 238	6 106	400 686	70,0	25 396	1 666 604
1993	16 845	6 501	385 957	76,8	24 633	1 462 307
1994	9 398	5 087	541 308	87,2	16 977	1 806 410
1995	15 708	10 832	689 583	107,4	29 344	1 868 092
1996	17 423	16 202	929 909	126,3	37 350	2 143 724
1997	20 191	20 457	1 012 998	143,0	41 644	2 062 497
1998	10 652	12 089	1 134 942	159,6	22 040	2 069 078
1999	6 602	8 124	1 230 509	175,7	13 458	2 038 527
2000	14 337	20 029	1 396 993	194,9	29 903	2 085 713
2001	11 857	19 349	1 631 839	216,9	25 965	2 189 862
2002	9 238	19 996	2 164 550	236,8	24 581	2 660 806
2003	8 449	20 216	2 392 653	259,1	22 705	2 687 316
2004	11 568	30 115	2 603 294	291,0	30 115	2 603 294
<b>TOTAL</b>	<b>211 389</b>	<b>206 295</b>			<b>412 311</b>	

<sup>a</sup> Investment amount expressed in millions of 2004 colones.

Source: MIVAH with data provided by the Housing Subsidy Fund, Housing Mortgage Bank.

803. The Squatter Settlement and Slum Clearance and Emergency Assistance Programme is designed to obtain building lots on favorable terms for the implementation of the project and



BFVs are used for the construction of dwellings. Lots may be contributed by family groups or by municipalities and other authorities. This Programme dealt with 20,651 cases during the period 1989-2004.

804. With regard to other programmes that are being implemented, it should be noted that, on 7 November 2002, the BAHNVI Board of Directors adopted the Savings, Allowances and Loans Programme, which enables families to increase possibilities of solving their housing problems through accumulated savings, loans and BFVs.

805. On 5 December 2002, the BAHNVI Board of Directors also agreed to the implementation of the Housing Repair, Expansion, Improvement and Completion Programme (RAMT), which enables families who have a dwelling to make improvements in order to reduce overcrowding, among other problems.

TABLE 26

**Number of family allowances paid per programme. 1989-2004**

<i>Years</i>	<i>Total</i>	<i>Savings, allowances and loans programmes</i>	<i>Disabled</i>	<i>Emergency</i>	<i>Slum clearance</i>	<i>Ordinary</i>	<i>Older adult<sup>a</sup></i>
1989	13 421	0	0	0	0	13 421	0
1990	15 454	0	0	0	0	15 454	0
1991	15 008	0	2	1 133	0	13 873	0
1992	15 238	0	15	2 204	0	13 019	0
1993	16 845	0	32	952	0	15 861	0
1994	9 398	0	11	39	0	9 348	0
1995	15 708	0	32	12	131	15 533	0
1996	17 394	0	37	234	1 148	15 975	0
1997	20 191	0	40	780	1 258	18 113	0
1998	10 623	0	25	656	995	8 947	0
1999	6 601	0	34	227	365	5 975	0
2000	14 337	0	365	1 235	849	11 888	0
2001	11 857	84	482	677	722	9 850	42
2002	9 237	104	418	1 773	1 425	5 452	65
2003	8 449	599	546	413	1 423	5 409	59
2004	11 568	882	829	758	1 242	7 725	132
<b>TOTAL</b>	<b>211 329</b>	<b>1 669</b>	<b>2 868</b>	<b>11 093</b>	<b>9 558</b>	<b>185 843</b>	<b>298</b>

<sup>a</sup> The Older Adult Programme began with the publication of Act No. 8021 in Gaceta No. 187 of 29 September 2000. Before that date, older persons

*Source:* MIVAH with data provided by the Housing Subsidy Fund, Housing Mortgage Bank.

806. With regard to assistance for families according to area, the table in annex I shows that, from 1989 to 2004, participation by the country's rural sector increased from 57.1% to 76.3%.

807. Other important activities carried out by IMAS include: the Improvement of Settlements Programme, which began in 1992 and whose activities include the granting of subsidies for the improvement, completion and repair of dwellings; and loans<sup>131</sup> for construction on individually owned building lots and the payment of mortgages. Action is also being taken to grant property title to beneficiaries of IMAS projects which were implemented in previous years and from which 2,716 families benefited. Additional programmes which followed this trend were: "Housing Improvement" in 1993 (7,984 beneficiary families); "Housing Development" in 1994 (6,853 beneficiary families); "Strengthening of the Family and Community Improvement" in 1995 (9,510 beneficiary families); "Housing Development and Quality of Life" in 1996-1997 (8,914 beneficiary families); and "Housing Development and Opportunities for Local Development" in 1998-1999, which broke with the previous trend by linking the concept of community infrastructure with work (4,403 beneficiary families). In 2000, "Housing Improvement" benefited 8,126 families; in 2001-2002, "Housing Improvement and Land Title" benefited 6,098 families; in 2003, "Housing Improvement" again benefited 687 families; and, in 2004, "Human and Local Development" benefited 1,019 families.

808. Statements regarding unhealthy or unsafe dwellings are made by the Ministry of Health and the National Housing and Urban Planning Institute (INVU), which use a protocol of criteria and parameters for statements concerning dwellings and commercial and other premises. The criteria used include: unhygienic conditions, insecurity of inhabitants as a result of non-existent or poor electrical installations and sanitation (domestic sewage disposal, etc.) and the geographical-physical location of the premises or dwelling because of the risk of flooding, landslides, etc. Such criteria are taken into account in measuring dwelling quality and, for this purpose, the Costa Rican Risk Prevention and Emergency Assistance Commission is responsible for the consideration and follow-up of cases.

### *Specific groups*

809. BANHVI has adopted assistance programs for vulnerable groups, such as women heads of household, disabled persons, older persons,<sup>132</sup> persons in need, etc. Such persons receive one and one-half BFVs, as determined by a study carried out by the authorized agency. As a result of the adoption of Guideline No. 27, types of dwellings for disabled and indigenous persons were identified in accordance with these characteristics.

810. It should be noted that, in view of the special circumstances of families which include a disabled person or older adult, the BFV amounts to 4.8 million colones (\$9.562).

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<sup>131</sup> With regard to loans, reference should be made to Constitutional Chamber decision No. 3409-94, which relates to the obligation of the Government to ensure that the income-debt ratio enables the persons concerned to meet their housing loan obligations on the basis of the criteria of reasonability and proportionality.

<sup>132</sup> The Legislative Assembly adopted Comprehensive Older Persons Act No. 7935 and the regulations thereto, one of whose objectives is to enable older persons to remain with their families and communities. The Act contains a specific chapter on housing, which includes provisions on housing finance and the right to decent housing (purchase and remodeling). In public housing projects, couples composed of older persons, single persons and heads of household are given equal opportunities (art. 29).

811. Another segment of the population which has benefited from this policy is that of poor families headed by a woman, since, on the basis of the total BFVs paid out, such participation rose from 23.2% in 1989 to 41.5% in 2004.

TABLE 27

**Number of family allowances paid, according to sex of head of household. 1989-2004**

<i>Year</i>	<i>Absolute values</i>			<i>Relative values</i>		
	<i>Total allowances</i>	<i>Women</i>	<i>Men</i>	<i>Total de bonos</i>	<i>Femenino</i>	<i>Masculino</i>
1989	13 421	3 115	10 306	100.0	23.2	76.8
1990	15 454	4 166	11 288	100.0	27.0	73.0
1991	15 008	4 346	10 662	100.0	29.0	71.0
1992	15 238	4 360	10 878	100.0	28.6	71.4
1993	16 845	4 723	12 122	100.0	28.0	72.0
1994	9 398	2 635	6 763	100.0	28.0	72.0
1995	15 708	4 391	11 317	100.0	28.0	72.0
1996	17 394	5 117	12 277	100.0	29.4	70.6
1997	20 191	6 359	13 832	100.0	31.5	68.5
1998	10 623	3 957	6 666	100.0	37.2	62.8
1999	6 601	2 649	3 952	100.0	40.1	59.9
2000	14 337	5 482	8 855	100.0	38.2	61.8
2001	11 857	4 669	7 188	100.0	39.4	60.6
2002	9 237	4 197	5 040	100.0	45.4	54.6
2003	8 449	3 737	4 712	100.0	44.2	55.8
2004	11 568	4 801	6 767	100.0	41.5	58.5
<b>TOTAL</b>	<b>211 329</b>	<b>68 704</b>	<b>142 625</b>	<b>100.0</b>	<b>32.5</b>	<b>67.5</b>

*Source:* MIVAH with data provided by the Housing Subsidy Fund, Housing Mortgage Bank.

812. It should be noted that action for assistance to indigenous families, whose members usually live in remote areas,<sup>133</sup> has been taken by adopting a protocol and implementing typology III (Guideline No. 27), which states: “This group includes dwellings located in indigenous reserves and indigenous protection and other areas. By way of example, this type of area includes the indigenous regions of Talamanca, Térraba and others.<sup>134</sup> It must, however, be agreed that indigenous communities have to be assisted more systematically and comprehensively and that Government agencies must learn more about their culture and customs.

<sup>133</sup> In annual progress reports from previous years, the Ombudsman has drawn attention to the backwardness of indigenous communities in terms of health, education, basic services (water, electricity, road infrastructure), occupation and loss of indigenous land, exploitation of natural resources and wildlife, tree felling, etc.

<sup>134</sup> The purpose of this typology is to maintain users’ customs, both in terms of architectonic distribution and in terms of types of building materials to be used so that dwellings remain cool during the day and sheltered and warm at night. Contractors may use light materials such as dry walls made of fibrocement, DensGlass, Permabase, Styrofoam, treated wood, etc. Buildings can be put up with foundations made of rust-proof steel or wood that has been treated and protected against moisture and insects.

TABLE 27 A

**Indigenous dwellings**

<i>Geographical area</i>	<i>Average number of persons per dwelling</i>	<i>Dwellings in good condition</i>	<i>Dwellings with running water</i>	<i>Dwellings with septic tank sewage disposal</i>	<i>Dwellings with electricity</i>
In indigenous territory	5.3	26.5	29.1	21.2	38.3
In peripheral indigenous areas	4.1	48.5	67.6	75.9	90.4
In the rest of the country	4.1	64.9	91.0	90.7	97.5

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

813. With regard to migrants, assistance was provided to a total of 5,379 families with at least one foreign member during the period 1989-2004, as shown in annex I, table F, together with the investment amount paid in BVFs.

TABLE 27 B

**Number of cases and amounts of family allowances paid to families with a foreign member, 1989-2002**

<i>Year</i>	<i>No. of cases</i>	<i>Total amount (millions of current colones)</i>
1989	242	42.5
1990	289	60.6
1991	287	103.1
1992	359	137.7
1993	347	134.3
1994	207	107.5
1995	334	227.1
1996	336	316.3
1997	476	484.3
1998	262	298.6
1999	221	261.1
2000	654	946.8
2001	764	1 309.3
2002	601	1 326.7
<b>TOTAL</b>	<b>5,379</b>	<b>5 756.0</b>

*Source:* Report of the Ministry of Housing and Human Settlements for the DESC report, July 2005 (annexes).

*Persons deprived of liberty*

814. Persons deprived of liberty are a special group which deserves mention; attention is also drawn to the progress made in respect of their living conditions.

815. One of the Costa Rican Government's greatest achievements in terms of the living conditions of persons deprived of liberty came during the period 1991-1992, when it shut down San Lucas Prison, where infrastructure conditions were deplorable and the human rights of prisoners were being violated.

TABLE 28

**Prison population. 1996-2005**

<i>Years</i>	<i>Population</i>	<i>Prison capacity</i>	<i>Absolute overcrowding</i>	<i>Relative overcrowding</i>
1996	4 408	2 979	1 429	48
1997	4 967	3 029	1 938	64
1998	5 208	3 323	1 885	57
1999	5 374	4 125	1 249	30
2000	5 636	5 169	467	9
2001	5 772	5 445	327	6
2002	6 571	6 060	511	8
2003	6 691	6 146	545	9
2004	7 116	6 799	317	5
2005*	7 569	7 276	293	4

*Source:* Report of the Ministry of Justice and Pardons for the DESC report, June 2005.

816. The Government regards the closure of this prison as part of the new criminology policies which were adopted by the National Criminology Institute in the Ministry of Justice and are based on deinstitutionalization, since it has been proven that prison does not rehabilitate, but only stigmatizes more. On the basis of this policy, 60% of prisoners were placed in regional trusty units in various parts of the country and 40% were placed in closed units.

817. The process of building new units for the housing of prisoners began in 1996, together with technical assistance premises, improvements in existing infrastructure and accommodation for security staff. This trend has continued until the present as a result of the sharp increase in the prison population.

818. With regard to the questions of prison infrastructure and overcrowding and in order to measure the size of the Costa Rican prison system, the initial reference date is May 1990, when prison capacity was exceeded by 262 persons, the equivalent of relative overcrowding of 24.3%, since prison capacity stood at 1,340 places. In April 2005, there was an absolute population of 7,569 prisoners and room for 7,276, so that capacity was exceeded by 293, thus equalling relative overcrowding of 4%. Obvious efforts are being made to solve this problem.

819. It is quite clear that there has been a considerable increase in the Costa Rican prison population, but major efforts have been made, particularly in recent years, to increase the amount of space in the Costa Rican prison system.

820. It should also be pointed out that, as a result of the entry into force of the Institutional Development Plan in 1990, the organizational and functional structure of prisons provides for interdisciplinary teams, according to specific types of care, who are responsible for proposing and taking technical and professional action in their areas of expertise. The Government has also been taking action to meet the various needs of the prison population by setting up special institutions for each prison group.

821. In view of women prisoners' specific needs in terms of a more open type of prison environment, a women's semi-institutional section was established in Buen Pastor Institutional Care Centre in 1980. In order to ensure the success of this approach, the Centre became an independent technical administrative unit in 1994 and is physically separated from Buen Pastor.

822. The need to make room for specialized care for some sectors of the prison population led to the decision to set aside space for older persons who were already being held in some prisons in the country and who, because of their age or some other type of disability, were being victimized by the rest of the population. The facilities intended for this population brought about substantial improvements in conditions of housing, hygiene, food and professional care, according to characteristics and needs. As an assistance unit, the Centre was turned into facilities located in San Rafael de Ojo de Agua and now houses 131 prisoners.

823. In May 1996, the Juvenile Criminal Justice Act required the prison authorities to make organizational changes, since the use of deprivation of liberty only in exceptional cases considerably reduces the number of young prisoners, and it was decided to impose non-custodial sentences, particularly probation. This led to the strengthening of a programme outside the prison system that assumes control over alternative sentences and complies with all the requirements defined by law.

824. Since 1998, there have been facilities which provide support for the juvenile prison population of both sexes, as well as offices which assist the population serving alternative sentences in the Greater Metropolitan Area and visit the population in the rest of the country once a month for follow-up purposes.

825. The concept of "person deprived of liberty" as seen from the viewpoint of modern-day humanism goes to the heart of concepts such as dignity, liberty and the equality of all human beings and also includes the principle of solidarity and the social dimension, which would make it possible to refer to individual civil and political rights, public freedoms and economic, social and cultural rights.

826. Accordingly, the right to food is given effect within the administrative services provided by the General Social Rehabilitation Department in the Ministry of Justice, which is responsible for providing care to this large population group. A unit known as the Nutrition Department was established in 1989 and is now composed, in central administrative terms, of a head nutritionist, two national supervisors and support staff for the institutional prison system.

## Cooperation

827. Some of the activities carried out with support from international cooperation in order to ensure an adequate standard of living relate to children and adolescents, women living in poverty, housing and institutional strengthening and modernization.

828. Particular attention is drawn to rural housing construction projects, such as the community households programme; support for the development of the system to select beneficiaries for the targeting of social spending, carried out with the cooperation of the World Bank and UNDP in 1991; and, in recent years, UNDP's participation in various projects.

829. Such international cooperation focused on support for activities which were carried out with a view to the achievement of some of the rights provided for in the Covenant, primarily with regard to the sound development of children, and which included the financing of the micro-enterprise child care programme, community households and the "hand-in-hand" project; on the right to an adequate standard of living, for which methods of identifying and selecting beneficiaries were established; and on training activities for women living in poverty and the promotion of and support for the construction of public housing.

830. With regard to the right to adequate food, the International Health Cooperation Office (OCIS) in the Ministry of Health channels international assistance funds amounting to about 3,743.6 million colones, which are invested primarily (98.8% (3699.2 million colones)) in purchases of materials and supplies, particularly for the provision of food products, nutrition and child development. Comprehensive care is being provided to pregnant and nursing women and children under age 6 living below the poverty line. Intramuros care is also being provided at the national level in Education and Nutrition Centres (CEN) and Comprehensive Child Care Centres (CINAI).

831. Various projects have been implemented with the assistance of international organizations involved in institutional purchasing, distribution and land legalization policies, support activities for the integrated rural development of peasant settlements and food assistance.

832. These projects include IDA-AID peasant settlements and promotion of agricultural output project No. 034; the EEC comprehensive rural development project; AID northern area infrastructure development project No. 041; the UNDP promotion and integration of peasant women project; the Arenal-Tempisque irrigation project; the Osa Golfito comprehensive rural development project; the WFP project for food assistance to small farmers for the production of basic foodstuffs; the Act No. 7059 land title project; the PRODAZA Atlantic region agricultural development project; the Chorotega forestry project; and the Coto Sur agro-industrial development project.<sup>135</sup>

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<sup>135</sup> With regard to the Coto Sur agro-industrial development project (1989-1998), the promotion of organizations and peasant training component of the IDB/CDC/Costa Rican Government-financed industrial subprogramme led to the establishment of a sound organization which is responsible for the planting, industrialization and marketing of oil palm and to the implementation of a successful development model. Similarly, in the project for the consolidation of the appropriate use of forestry resources in rural communities in the Chorotega region (1989-1999), financed by FAO-Netherlands Government-Costa Rican Government resources, the agro-forestry development and support programme made it possible to establish organizations and provide training in the rational use of resources, the planting of native species, the establishment of Bancomunales, fire control, soil conservation and crop practices.

833. With regard to the right to housing, international assistance has been used in the past through resources from the Swedish International Cooperation Agency and the Canadian Cooperation Agency to promote initiatives such as the establishment of the Housing Promotion Foundation (FUPROVI) and the Costa Rica-Canada Rural Housing Foundation, two non-governmental organizations which have achieved considerable financial and institutional equilibrium.

834. In the framework of international cooperation with AID resources (PL480), the Public Works and Housing project was implemented in 1989-1991 and, through it, IMAS carried out activities designed to reduce the housing shortage by promoting housing projects through the granting of bridge loans to organize groups set up to build basic infrastructure and pave the way so that families might apply to SFNV.<sup>136</sup> Some 8,951 families received assistance from this programme.

835. Another type of cooperation is being used in the implementation of phase 3 of the National Urban Development Plan and political and technical seminars and meetings have been held at the national and international levels to prepare analyses and progress reports on, inter alia, Central American financing and subsidies, which do not have a direct effect on housing construction, but help to improve decision making and policy formulation capacity.

## **Conclusions**

836. The Costa Rican Government has been making considerable efforts to fulfil the obligations imposed by the right to an adequate standard of living in various fields such as action to combat poverty and hunger and the right to a decent dwelling. However, the country has to amend its objectives in these areas of activity and, in terms of financing, planning and human resources, strengthen some of its activities and strategies, as in the case of action to combat poverty, which has remained at constant levels in recent years, although the social gap has widened.

837. Attention should also be drawn to the valuable work done by the Joint Social Welfare Institute (IMAS) since it was established in the 1970s until the present, since the majority of mechanisms set up to benefit families living in poverty and facilitate their access to services has been implemented by this institution and, although there is a large number of poor households, it has remained constant in the last 10 years and has not tended to increase sharply. Measures of all kinds must nevertheless be taken to halt the increase in the number of families living in extreme poverty and to protect those who are increasingly living on the margins of risk and social vulnerability.

838. The national health policy with regard to the right to adequate food must be further strengthened because it has already made great strides and proved to be effective. Attention must nevertheless be paid to levels of excess weight and anaemia in some population groups, since anaemia has proved to be the main general nutritional problem that primarily affects preschool-age children and women of childbearing age. The Government must establish mechanisms to guarantee better nutritional conditions for indigenous children, who have one of the highest levels of malnutrition.

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<sup>136</sup> With bridge loans and the IMAS-National Bank of Costa Rica (BNCR)-BANHVI Trust Fund, allowances and basic credit were granted to poor families for the construction of their dwellings.



839. Work must also be done to improve food security as far as the use of pesticides in agricultural products is concerned, since changes in food quality control have been made by the institutions concerned, such as the Ministry of Health, and regulations are constantly being adopted, particularly by the Ministry of Finance. It is, however, necessary to strengthen mechanisms for the distribution of food, which is, in most cases, nationally produced. In this connection, the establishment of bodies such as Consumer Protection has led to considerable progress in the protection of and more effective access to the right to adequate food.

840. The promotion of a culture of awareness and informed access to the right to adequate food is one of the greatest advances the country has made in recent years. Closer and better ties between institutions and the support of international cooperation have thus been extremely valuable and must be consolidated and improved.

841. The Government must pay the greater attention to and therefore manage and implement a more comprehensive and systematic policy of assistance to certain specific groups, especially with regard to the right to a decent dwelling, since there has been progress in this regard, but there has to be a more proactive stance in view of the housing situation in indigenous territories and in the case of disabled persons. It is also extremely important to follow up on quality, which is the country's main shortcoming in terms of housing, since housing construction has increased, especially to meet the needs of the population living in poverty and extreme poverty, but the improvement in access to basic housing services and infrastructure quality has not kept pace.

842. Access to property ownership is widespread in Costa Rica, but, as part of this process, respect for natural resources must be observed and guaranteed more effectively and land use must be more equitable and more specialized.

843. The country has nevertheless shown great determination in establishing mechanisms to meet the property and housing needs of families, especially those which are more socially vulnerable. This reflects the progress that has been made in implementing the right to an adequate standard of living, an obligation for which the Government is primarily responsible and to which it has reacted positively. Other important social partners involved include non-governmental organizations, organized civil society and international organizations.

844. The progress that has been made in respect of persons deprived of liberty is satisfactory, since, although prison overcrowding still exists, considerable efforts have been made, particularly in recent years, to expand the capacity of the Costa Rican prison system. Mention should be made of the changes made in prisons, which have been adapted to the needs of the widely diverse prison population. It is nevertheless both appropriate and essential that the prison population's living conditions should continue to be improved.

## ARTICLE 12 (Right to health)

### Conventions

845. Costa Rica is a party to the Convention to Combat Desertification and Drought (UNCCD) and the Convention of the Regional Coordinating Committee of Drinking Water Supply and Sewerage Companies of Central America. An important historical landmark was the ratification by the Costa Rican Legislative Assembly of the Convention on the Rights of the Child (Act No. 7184), adopted by the United Nations General Assembly on 20 November 1989. The right of children to health and medical services is provided for in article 24 of the Convention. Costa Rica also signed and ratified ILO Convention No. 169 on Indigenous and Tribal Peoples of 1989, which recognizes the special needs of the indigenous population.<sup>137</sup>

### General framework

846. Although the Costa Rican Constitution does not expressly provide for the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, this right is, for all practical purposes, derived from the constitutional right to life, which is inalienable.<sup>138</sup> The right to health is also recognized by Costa Rica in various international conventions.

847. The protection of this right by the Costa Rican Government involves the Ministry of Health, the Costa Rican Social Security Fund, the National Insurance Institute, the Costa Rican Water Supply and Sewerage Institute, municipalities and universities. All these public agencies, which, together with hospitals, clinics and private doctors’ offices, cooperatives, self-managed enterprises, private universities and the community, are part of the national health system, have the specific goal of guaranteeing the health of persons, families and the community. The national health system is quite unsegmented and allows for considerable savings as a result of economies of scale.

848. The Ministry of Health is the lead agency in the health sector and, as such, is responsible for defining national health policy, adopting standards, carrying out the planning and coordination of all public and private health activities, encouraging and promoting health and monitoring the environment, whereas the Costa Rican Social Security Fund is an agency with constitutional rank that is responsible for compulsory health insurance and pensions and for providing health promotion, prevention, recovery and rehabilitation services.

849. The National Insurance Institute is responsible for preventing workplace and traffic accidents and providing persons who have been injured with comprehensive hospital and rehabilitation services. The Costa Rican Water Supply and Sewerage Institute deals with all matters relating to drinking water supply for domestic, industrial and other uses and adopts decisions relating to the country's wastewater and rainwater. Universities are involved in professional and technical training in the various disciplines required by national health system

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<sup>137</sup> Act No. 7316 of 3 November 1992. Ratified on 2 April 1993.

<sup>138</sup> Constitutional Chamber decision No. 7154-94 reads: “This Court has stated on numerous occasions that the right to health, derived from the right to life, and to a healthy environment are fundamental rights to be protected in this way. The Government has an obligation to take the necessary measures to protect the environment and prevent levels of pollution which endanger the health of the population”.

agencies. Municipalities and local governments are responsible for promoting comprehensive cantonal development in line with national development.

850. During the period 1990-2004, a set of acts and decrees were adopted for the benefit of the rights of children, adolescents, pregnant women, older persons, indigenous persons, disabled persons and persons with HIV/AIDS,<sup>139</sup> groups which are regarded as vulnerable and are usually protected in charters of rights and international conventions which Costa Rica has ratified and made an integral part of its national legislation. These provisions are directly linked to the Government's obligation to provide health services without discrimination of any kind, an objective which is reflected in the implementation of institutional health sector policies.

TABLE 29

**Costa Rican demographic indicators. 2000**

<i>Indicator</i>	<i>2000</i>
Total population	3 810 179
Crude birth rate	19.9 per 1 000
Infant mortality rate	10.2 per 1 000 live births
Crude death rate	3.8 per 1 000
Life expectancy at birth (males)	75.4 years
Life expectancy at birth (females)	80.11 years
Total fertility rate	2.35 children
Population growth rate	Annual 1.61 %
Percentage of foreign population	7.8 %
Estimated annual immigration balance	20 000-30 000 persons

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

### **Health situation in the country**

851. Demographic indicators show a number of favorable health conditions and challenges, such as the reduction of infant mortality, the increase in life expectancy, which rose from 76.87 years in 1990 to 78.39 in 2003,<sup>140</sup> and the reduction of under-15 mortality.

852. General mortality has tended to be on the decline, although less sharply than in the 1960s, as a result of the improvement in living conditions. Circulatory diseases are in first place on the list of the main causes of death.<sup>141</sup>

<sup>139</sup> Children and Adolescents Code (Act No. 7739), General Protection of Adolescent Mothers Act No. 7735, Responsible Paternity Act No. 8101, General Young Persons Act No. 8261 of 2002, General HIV/AIDS Act No. 7771 of 1998, Equality of Opportunity for Disabled Persons Act No. 7600 of 1996, etc.

<sup>140</sup> See figure in annex I (life expectancy).

<sup>141</sup> See annex I, table on mortality according to the five main groups of causes.

853. According to the 2002 Sectoral Health Analysis, infectious and transmissible diseases have continued to be highly ranked and the country has therefore maintained the national health system by drawing up policies, plans, programmes and projects for promotion, prevention and treatment and, of course, the epidemiological monitoring of such diseases.

854. National health spending amounted to 42,202 million colones in 2003, i.e. 6.68% of GDP. Over 398 million colones were invested in the public health sector in 2003.

TABLE 30

**Infant, neonatal and post-natal mortality rates**

**Percentage contribution of components, Costa Rica. 1990-2004 –Rates per thousand live births**

<i>Year</i>	<i>Infant (rate)</i>	<i>Neonatal</i>		<i>Post-natal</i>	
		<i>Rate</i>	<i>%</i>	<i>Rate</i>	<i>%</i>
1990	14.78	8.78	59.4	6.1	41.3
1991	13.90	8.61	61.9	5.2	37.4
1992	13.70	8.69	63.4	5.01	36.6
1993	13.70	8.94	65.3	4.73	34.5
1994	13.00	8.94	68.8	4.06	31.2
1995	13.25	8.53	64.4	4.72	35.6
1996	11.83	7.76	64.6	4.07	34.4
1997	14.20	9.15	64.4	5.05	35.6
1998	12.60	8.14	64.6	4.46	35.4
1999	11.78	8.09	68.7	3.69	31.3
2000	10.21	7.06	69.1	3.15	30.9
2001	10.82	7.49	69.2	3.34	30.9
2002	11.15	7.66	68.7	3.49	31.3
2003	10.10	6.98	69.1	3.12	30.9
2004	9.25	6.73	72.8	2.52	27.2

*Source:* INEC/DSS, Ministry of Health.

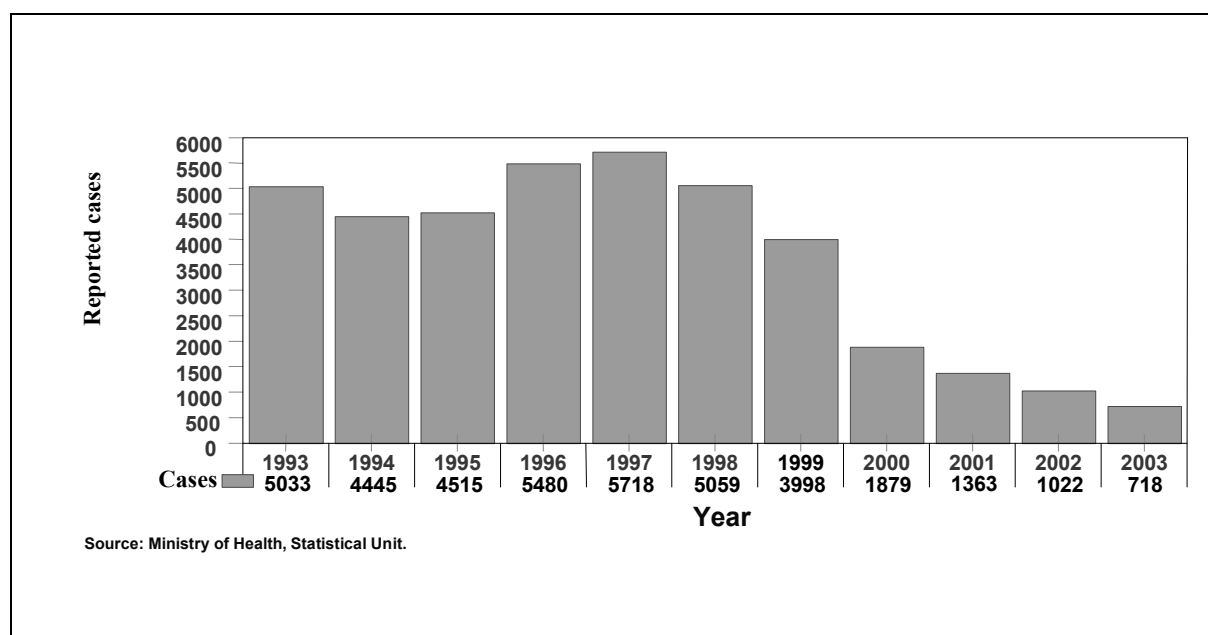
855. With regard to human resources, there are on average 16.9 doctors, 19.6 nurses and 6.0 dentists per 10,000 inhabitants. The country has 1.45 hospital beds per 1,000 inhabitants and the occupancy rate in hospitals was 81.65% (2003 data).

856. The country's infant mortality rate in the period 1990-2004 dropped from 14.78 to 9.25 per thousand live births. By component, neonatal mortality dropped from 8.78 to 6.73, with a total reduction of 2.05, accounting for 72.8% of infant deaths in the past year. During the same period, the post-natal mortality rate dropped by 3.58 points, accounting for 27.2% of total juvenile deaths in 2004.

857. Infant deaths are predominantly neonatal. During the period 1990-2004, neonatal mortality increased in relation to infant mortality from 69% to 73% in 2004, thus indicating that more preventive measures must be taken.

FIGURE 11

Reported cases of malaria, by year. Costa Rica. 1993-2003 (absolute figures)



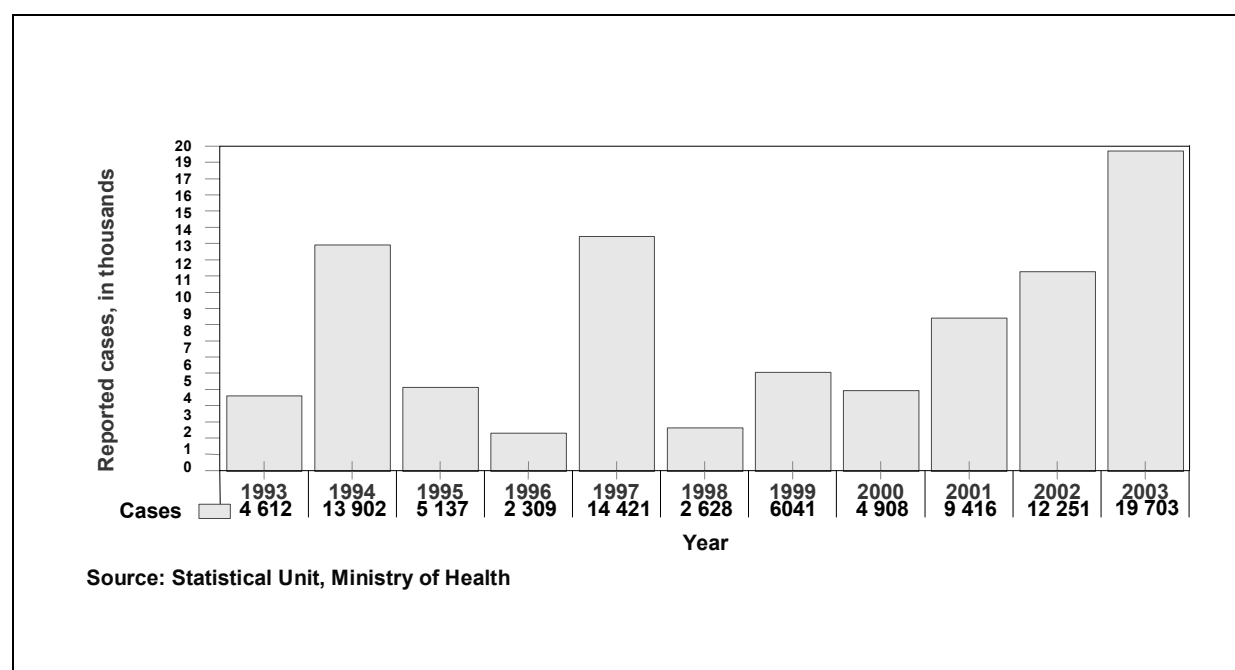
858. An analysis of malaria cases in the last five years and in 2005 shows that, in 2002-2003, there was a drop in the number of cases throughout the country, but, in 2004, the number increased again, from 718 cases to 1,289, causing the mobilization of various sectors in the context of health policies and regional projects supported by PAHO/WHO and the Mexican Commission for Cooperation with Central America.

859. In the past six years (2005) dengue has demonstrated seasonal behaviour, since the number of cases begins to increase at the beginning of the rainy season (May-June) and rises sharply in July. According to data from the National Meteorology Institute, this promotes an increase in the density of the dengue-fever-transmitting mosquito and hence an increase in the transmission of the disease.

860. In 2004, 9,408 cases of dengue were reported, with the Central Pacific, North Central and Atlantic Huetar regions having the largest percentage (83.2), a 52.2% reduction compared to 2003. In 2002, six reported deaths from hemorrhagic dengue accounted for a 2.4% mortality rate. No deaths from this cause were reported in the last year.

FIGURE 12

Reported cases of dengue, by year. Costa Rica, 1993-2004 (absolute figures)



861. Costa Rica has been introducing new vaccines in order to continue reducing morbidity and mortality from immunopreventable diseases, thus maintaining adequate levels of coverage through the immunization programme that began in the 1950s. The basic framework of the Expanded Programme of Immunization has vaccines for the following diseases: diphtheria, tetanus, whooping cough, poliomyelitis, tuberculosis, measles, rubella, mumps, hepatitis B and haemophilus influenzae b.

862. As a result of this decades-long work, immunization coverage has been maintained at high levels and some of these diseases have been eradicated, but such work has continued to be one of the priorities of health policies during the period 1990-2006.

863. Coverage for tracer vaccines in the official system, OPV3, DPT3, measles and BCG, was on the increase during the period 1998-2002. The increase in coverage was greater in cantons in border areas and on the coasts, something which reflects a narrowing of the gap for the benefit of less developed areas. There has been a gradual increase in the number of cantons where population coverage is 95%, which is regarded as ideal. With regard to levels of immunization coverage, the following table indicates national levels in 2003:

<i>Immunization coverage DPT3 (infants under age 1)</i>	<i>Immunization coverage OPV3 (infants under age 1)</i>	<i>Immunization coverage BCG (infants under age 1)</i>	<i>Immunization coverage Measles (infants under age 1 and 3 months)</i>
87.94	87.94	88.18	89.88

Source: Basic indicators, 2004. Health situation in Costa Rica, 10th edition.

### Access to drinking water and sewerage systems

864. In Costa Rica, drinking water and sewerage services, including treatment, are supplied by organizations of various kinds headed by the Costa Rican Water Supply and Sewerage Institute (A&A), whose responsibilities are to adopt and implement policies; set and apply standards; carry out and promote planning, financing and development; and deal with all matters relating to drinking water supply, domestic and industrial waste collection and disposal and the normative aspects of storm sewers in urban areas and throughout the national territory (ASAPS, 2002).

865. In 1991, the National Water Laboratory (LNA) published reports and articles on changes in coverage of the quality of water for human consumption (ACH)<sup>142</sup> in Costa Rica, since its main function is to monitor the quality of water supplied by water supply systems operated directly by the Costa Rican Water Supply and Sewerage Institute (A&A) and by other operators in the country.<sup>143</sup> It is also responsible for monitoring the quality of water supply systems.

866. In 2000, LNA identified a total of 2,033 water supply systems. ASADAS operated 79.7% of the total, ESPH and municipalities operated 11.9% and A&A operated 8.4%. In that year, A&A supplied 37.9% of the urban population and 11.6% of the rural population, for a total of 49.5%; the remaining 50.5% was served by municipal water supply systems, ESPH, ASADAS, CAARS and private companies (ASAPS, 2002).<sup>144</sup>

TABLE 31

#### Percentage of water supply systems providing drinking water, by operator and province, 2000

Province	Municipalities and ESPH		Rural (ASADAS)		A&A		Total	
	Total	Drinking water (%)	Total	Drinking water (%)	Total	Drinking water (%)	Total	Drinking water (%)
San José	25	40	367	44	58	64	450	46
Alajuela	67	51	366	55	24	54	457	54
Cartago	87	60	208	50	(b)	---	295	53
Heredia	48	69	35	37	2	100	85	56
Puntarenas	13	23	245	38	31	55	289	39
Guanacaste	2	50	281	57	36	97	319	61
Limón	(a)	---	118	52	20	55	138	53
Total	242	55.00%	1 620	49.00%	171	67.00%	2 033	51.00%

Source: Sectoral analysis of drinking water and sanitation, 2002.

(a) In the province of Cartago, A&A does not administer any drinking water supply system.

(b) In the province of Limón, there are no municipally administered drinking water supply systems.

<sup>142</sup> Water for human consumption: water used for drinking, food preparation, personal hygiene, washing utensils, sanitation services and other domestic needs; it may be potable or non-potable.

<sup>143</sup> Municipalities, the Heredia Public Services Company (ESPH) and water supply systems administered and operated by the Rural Water Supply Committees (CAARs) and Water Supply and Sewerage Administration Associations (ASADAS).

<sup>144</sup> The water supply systems thus identified are distributed throughout the national territory, as described in table 27.

867. Of the 2,033 water supply systems identified that year, 51% supplied drinking water and 70.8% of the population received drinking water, according to the water quality classification defined by the National Water Laboratory.<sup>145</sup>

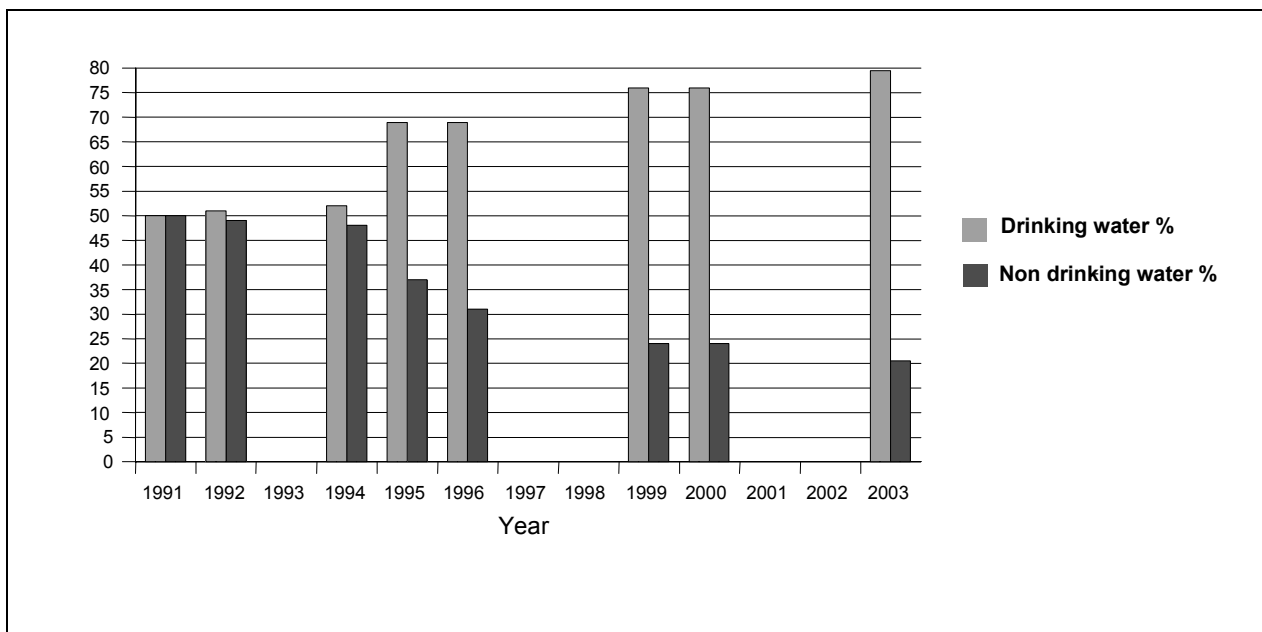
868. Another analysis of the situation with regard to coverage, monitoring, control and quality of water for human consumption supplied by the above-mentioned operators was carried out by LNA in 2003, when it identified 2,122 water supply systems

(89 more than in 2000), 49% of which continued to supply drinking water. The population coverage level increased in 2003 to 79.5% and was higher than in 2000.<sup>146</sup> In 1991, 50% of the population was covered, as shown in figure 13.

869. Although there has been a positive trend in the supply of drinking water to the population, approximately 739,580 inhabitants did not receive water that was fit to drink in 2003 (Mora and Portuguez, 2003). Rather, the greatest progress in the improvement of water quality throughout the country was made in the 1990s, when the systems which took the biggest step forward were those operated directly by A&A and ESPH (ASAPS, 2002).

FIGURE 13

**Drinking water supply, by year, 1991-2003**



Source: Report of the Ministry of Health for the DESC report, July 2005.

870. This situation, together with the availability of the service at the national level and in accordance with the proposed 2020 objective (96%), showed that it is a top priority for the country to make the necessary investments and for each operator to take the necessary action in

<sup>145</sup> Drinking water: water which, when drunk, does not does not endanger the user's health and which must therefore meet the physical, chemical and microbiological requirements indicated in the Regulations for the Quality of Drinking Water.

<sup>146</sup> The level of coverage of the population with drinking water was distributed among operators.



respect of the operation and maintenance of water supply systems so that the population of the country may have access to services which supply drinking water.

871. The analysis carried out by LNA in 2003 indicates that 97.5% of the 4,120,000 inhabitants of the national territory received water for human consumption and 92.7% (3,817,500 inhabitants) received service from one of the following operators: A&A covered 46.5%; CAARs/ASADAS, 24%; municipalities, 17.3%; and ESPH, the remaining 4.7%.

872. With regard to access to sewerage systems, it should be indicated that collection and disposal are available only for one quarter of the population (24.8%). In addition, most of such systems cannot treat the waste collected.

TABLE 32

**City sewage treatment coverage by canton and operator, 2003**

<i>Province</i>	<i>Canton</i>	<i>Operator</i>	<i>Total population</i>	<i>Coverage <sup>a</sup></i>	<i>Type of treatment</i>
San José	Pérez Zeledón	A & A	122 187	8.00	Lakes
Alajuela	Alajuela	Municipality	222 853	11.00	Imhoff tank
Cartago	Cartago	Municipality	132 057	24.00	Imhoff tank
Heredia	Heredia	ESPH	103 894	37.00	Imhoff tank
Puntarenas	Puntarenas	A & A	102 504	25.00	Conventional, activated sludge
Guanacaste	Liberia	A & A	46 703	27.00	Lakes
	Nicoya	A & A	42 189	10.00	Lakes
	Santa Cruz	A & A	40 821	11.00	Lakes
	Cañas	A & A	24 076	20.00	Lakes
<b>Total</b>			<b>837 284</b>	<b>19.00</b>	

*Source:* Study of the situation of ordinary waste-water treatment technology in Costa Rica, 2003.

<sup>a</sup> Coverage is calculated on the basis of the number of such services times the number of persons in a household, according to the 2000 census (INEC). It does not include the population living on housing estates which have sewage treatment.

**Health situation of specific groups**

873. As was stated in the general comments on article 12, a series of special laws have been adopted in Costa Rica concerning the particular attention required by certain specific groups. In practice there has in fact been an improvement in the care of minorities. The main developments in care for minority groups are the following.

874. **Women:** The Ministry of Health has formulated national health promotion policies with emphasis on rights and gender that have led to the development of a series of initiatives such as the Maternal and Infant Mortality Plan and the creation of the National System of Infant Mortality Analysis (SINAMI), which since 1996 has acted as a means of checking the quality of health services, the distribution of such services and the social reaction in the health field.

875. From that perspective, this local indicator has been transformed into an important source of inputs to guide decision-making and prioritize interventions and population groups, through interdisciplinary and inter-organizational team action guided by concepts of comprehensive attention to health, citizenship, rights and participation.

876. In 1999, Executive Decree 27913-S established the Inter-Institutional Commission for Health and Sexual and Reproductive Rights, chaired by the Ministry of Health, with other institutions as members. On the basis of that decree, men and women can on a voluntary basis request surgical sterilization from Social Security. According to an investigation carried out by the Office of the Ombudsman (final report and recommendations, August 2003), 90.92% of total sterilizations were of women and 9.08% of men. Of the hospitals consulted, 95% provide counselling by interdisciplinary groups prior to surgery, which represents important progress in the implementation of the decree.

877. The prevalence of contraception increased from 75% to 80% between 1992 and 1999, the increase relating particularly to young women and to hormonal contraceptives. The use of condoms declined from 16% to 11%. Contraception is substantially less prevalent among single women, especially those under 30 (22%), whereas among the over-30s it is 43% and among married women 80%.

878. The CCSS Comprehensive Care Programme for Adolescents made an exploratory study of unsafe conduct in a group of adolescents (585 of 10-12 years, 1161 of 13-17 years), which showed that 30% of sexually active adolescents had never used any protection in their sexual relations, the percentage being greatest among the females (43%).

879. Where necessary, the Basic All-Round Health Care Teams (EBAIS) refer cases to other levels through the family planning services and the pregnancy care and control they provide. SINAMI found that in 1999, 84% of all mothers had prenatal check-ups, while for adolescent mothers the figure was 75%. Out of all pregnant women, 62% had five or more check-ups and 45% had four or fewer (less than the five prescribed). In the under-20s group, the percentage of those who underwent fewer check-ups than prescribed was 71%.

880. **Indigenous peoples:** The 2000 census identified 63,876 persons as indigenous, of whom 42.3% were to be found in the 22 indigenous territories existing in the country. Those are known in Costa Rican legislation as “indigenous reservations”. A considerable proportion – 18.2% - live around the edges of those territories, while 39.5% are to be found in the rest of the country.

881. Among the territories with the largest populations are Talamanca Bribri, 20.7%, Alto Chirripo or Duchi, 14.2%, Boruca, 8.9%, and Cabagra, 7.1%. The remaining 49% are scattered throughout the less populated territories: Osa (0.4%), and Bajo Chirripo, Nairi Awari, Abrojo Montezuma, Kekoldi Cocles and Zapaton, each of the last-named having less than 1.5% of the total population. Most of the territories have a larger proportion of men than women, with the exception of the Bribri people in the territory of Kekoldi Cocles and the Guaimi people in Coto Brus where the majority are women (99 men to every 100 women). In general, the differences are more marked in the case of non-indigenous inhabitants.

882. A study of age structure shows that in some territories there is a large component of young persons, especially among the Guaimi, Cabécar and Bribri peoples, with percentages of 53, 51 and 47, respectively. On the other hand, in five territories the average over-65 population exceeds the national average of 5.6%. This situation may be explained by the migration of young

people to other areas of the country. In contrast, the Guaimi (2.6%), Cabécar (2.7%) and Bribri (3.3%) peoples have low percentages of older persons.

883. In regard to the demographic dependency variable, there are important differences. Territories such as Quitirrisi, Zapaton, Térraba, Guatuso, Matambu and Rey Curre have a ratio of 82 dependent persons to every 100 active, while in territories like Coto Brus, Bajo Chirripo, Abrojo Montezuma and Telire, there is a larger number of dependants to active population. Where the average number of children per woman is concerned, all the territories exceed the national average of 1.9.<sup>147</sup>

884. This population's access to health services varies according to region, health problem and sector. There are two types of consultation: the first requires the indigenous person to go to regular surgeries or to the nearest health centre; then there are the consultations that the Primary Health Care Technical Assistants (ATAP) hold in the indigenous areas. The medical team visits the different indigenous communities once or twice a month, backed up by support services (nurses, social workers, microbiologists and pharmacists). Often, work is hindered by the poor or inadequate infrastructure and the limited economic resources of the EBAIS and in many cases there is not enough staff.

885. Moreover, one of the difficulties regarding the evaluation of health problems derives from the management commitment standard. Hence, the South Central Region is submitting a proposal which recognises the specificity of the needs of the indigenous population, as set forth in ILO Convention No. 69 on Indigenous and Tribal Peoples, of which Costa Rica is a signatory.

886. The programmes in the Chirripo-Cabécar and Talamanca areas have been outstanding. In the first case, there has been reinforced action for the promotion and protection of health through the Chirripo-Cabécar Indigenous Reservation Comprehensive Care Programme. The areas of Chirripo-Cabécar and the reservation and community of Grano de Oro have nine consultation posts and 10 sites for periodic visits to treat the local population. At present these places are staffed by three EBAIS, headquartered in Grano de Oro and Alto Quetzal, with the participation of eight indigenous persons trained by the Fund (ATAP).

887. The Talamanca health area, for its part, is carrying out a successful experiment with indigenous persons acting as intermediaries during some medical visits, so as to achieve better communication with the patients. Seven EBAIS and two emergency services are involved, operating on a 24-hour basis at the Home Creek and Daytonia Clinic; the support team gives dental, microbiological, social and pharmaceutical care. Efforts to expand the scope of medical care in the reservation are concentrated on such projects as: i) communication links with indigenous communities that are hard to get to; ii) the strategic health plan for Alta Talamanca; and iii) a full vaccination scheme for indigenous children in hard-to-reach communities.

888. The complaints received by the Office of the Ombudsman concern matters such as coverage, equipment and surgery hours in the EBAIS, since, according to the complaints, people have to travel for days to keep an appointment and when they arrive they are told there are no

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<sup>147</sup> University of Costa Rica, *Development Observatory*, San José, 2004.

more slots. It is striking that, according to the Ombudsman, these unforeseen problems are attributable to administrative staff policies rather than to the doctor concerned.<sup>148</sup>

889. Indigenous communities' access to drinking water and sanitation is restricted and greater efforts have to be made to provide drinking water and dry-pit latrines. The Office of the Ombudsman has also detected deficiencies in public works provision: often such works reach the edge of the indigenous territory without going farther, as is the case with the "laying of water-pipes to bring drinking water to the Ujarras community. The source that supplies the canton of Buenos Aires with water is located in that area and that canton has its own aqueduct; however, in Ujarras there is no aqueduct and so they have no supply of drinking water". (Report, p.92)

890. **Disabled:** According to figures from the National Population and Housing Census of the year 2000, 5.3% of the total population has some kind of disability,<sup>149</sup> of whom 52% are men and the rest women. In the legal field, the Constitution of Costa Rica ensures equality of opportunity and integral development for persons with disabilities. There are in addition other laws and policies, among which we should mention: 1. The Act creating the National Council on Rehabilitation and Special Education (CNREE); 2. Public policies concerning disabilities; 3. The Occupational Hazards Act; and 4. Law No. 600, the "Equal Opportunity for Disabled Persons Act" of May 1996, which is a compilation of all the efforts made to meet the needs of this group of persons.

891. Despite the opportunities for disabled people and their families to obtain medication in the clinics or EBAIS and the house calls made by the ATAPs, several complaints have been made to the Ombudsman about the CCSS, whether because the infrastructure of a given health centre rendered its facilities inaccessible or because of obstructionism on the part of the staff who do not know how to communicate in the LESCO language (sign language).

892. As a result, CCSS formulated a plan of action for the period 2000-2006. The most important progress made up to 2004 is as follows:

- Ten workshops have been held in the regions, national hospitals, major clinics and central offices on the conceptual, political and legal framework for equalizing opportunities in the CCSS health services, the aim of which is to bring the scope and implications of the implementation of Act No. 600 to the attention of the authorities.
- Preparation and guidance has been given to 150,000 family members of 300,000 persons with disabilities; 375 persons from all regions of the country have

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<sup>148</sup> The Ombudsman has recognised that the health-care model for indigenous areas is severely criticised by their inhabitants, inter alia because "the indigenous communities have the highest rates of infant mortality and malnutrition" vis-à-vis the rest of the country. "Account has to be taken of the fact that the EBAIS health-care model is a general one common to both indigenous and non-indigenous communities; in other words, the model offered is not one that is adapted to the geographical situation of the communities' settlements, or to their culture and customs, as indicated in ILO Convention No. 69" (Work report, 2001-2002, p.329). The Ombudsman maintains that a basic service such as that of health "must take account of the context in which it is being provided and the specificity of the population to which it is offered". This relates especially to surgery hours and the need for staff who speak indigenous languages and have knowledge of traditional medicines.

<sup>149</sup> According to the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, the term disability refers to "a physical, mental or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and which can be caused or aggravated by the economic and social environment".

been trained in the use of LESCO; 11 workshops have been held at the national level to train facilitators in the promotion of accessible health services. Those teams have prepared for their units the Institutional Plan to Equalize Opportunities (PIEO) and it is hoped that they will have a strategic multiplier effect on educational activities.

- Architectural barriers have been eliminated in 93 of the 250 CCSS buildings; folic acid has been supplied to 100% of the priority cantons to prevent malformation of the neural tube in children and 100% of those receiving pensions by reason of acute cerebral palsy are covered by Social Security.

893. At present there is a problem of staff trained by the public sector in different specialized areas going over to the private sector, with the resulting decline in timely care for these people.

894. **Population with HIV/AIDS:** Since the appearance of the first cases of HIV/AIDS in Costa Rica in the 1980s, the State has, through institutions such as the Ministry of Health and CCSS played a major role in the development of policies for the prevention and treatment of this disease.<sup>150</sup> There have been two main achievements in regard to the rights of persons with HIV/AIDS:

1. The enactment of the General HIV/AIDS Act, No. 771, of April 1998;
2. The establishment of comprehensive health care clinics for HIV/AIDS patients.

895. The purpose of Law No. 771 is to set general guidelines for adaptation, health promotion, prevention, diagnosis, epidemiological monitoring and care and research concerning HIV and AIDS, as well as promoting the rights and duties of persons with HIV/AIDS.

896. According to that law, anyone with HIV/AIDS has the right to medical, surgical and psychological assistance and counselling, as well as to any treatment that can guarantee to reduce his or her suffering and alleviate, in so far as possible, the complications caused by the disease.

TABLE 33

**Spending on HIV/AIDS, 1998-2003 (millions of dollars)**

<i>Type of care</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>
Personal health	7.5	6.5	8.4	7.5	7.0	5.6
Public health	0.4	0.3	0.6	0.7	0.7	0.7
Administration	0.4	0.3	0.1	0.1	0.2	0.2
Non-health activities	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>8.3</b>	<b>7.2</b>	<b>9.1</b>	<b>8.4</b>	<b>7.8</b>	<b>6.5</b>

*Source:* National Accounts for HIV/AIDS. HIV/AIDS expenditure and financing flows, 1998-2002.

897. To ensure the foregoing, CCSS has to i) import, buy, maintain stocks of specific anti-retroviral medication for the treatment of HIV/AIDS and supply it direct to patients; and ii) preserve the necessary confidentiality regarding the results of diagnoses and consultations and the evolution of the disease.

<sup>150</sup> See graph in annex 1 on recorded cases of AIDS.

898. The Ministry of Health and CCSS are stepping up education campaigns to promote the use of condoms, since they are a means of preventing HIV contagion; they must also ensure that health facilities offer condoms and make them available in appropriate places under optimal conditions and in quantities sufficient to meet demand..

899. Comprehensive health care clinics for HIV/AIDS patients are to be found in four national hospitals (Calderon Guardia, San Juan de Dios, Nacional de Niños and México) and one regional one (Monseñor Sanabria). In their work they seek to provide quality care for patients, relying on an interdisciplinary team which, while not neglecting the health treatment, gives personal and family counselling, studies patients' socio-economic situation and gives guidance and helps with relocation in cases of family rejection. The results achieved are outstanding, both in terms of treatment and of consciousness-raising on the issue. Many of their promotional and preventive activities are carried out in conjunction with the University of Costa Rica (UCR) and NGOs.<sup>151</sup>

900. Other achievements are: i) the compulsory screening of all blood donations to the country's blood banks; ii) comprehensive non-discriminatory treatment of all children and adolescents diagnosed with HIV/AIDS; iii) HIV testing of pregnant women as part of the tests carried out in prenatal check-ups; iv) follow-up, from pregnancy, of cases considered at risk or detected as being HIV-positive, and the purchase of condoms and medication subsequently distributed in the HIV/AIDS comprehensive health care clinics. Among other actions taken are: v) the establishment of the National Prison Commission on AIDS (1987); vi) the drafting of a Protocol for Preventing Infection in Dental Surgeries (1996); vii) the preparation of the National Strategic Plan for a Comprehensive Attack on HIV/AIDS, 2001-2004; and viii) prevention campaigns in the mass media.

901. It is not possible to establish what economic, human and physical resources have been allocated to combating the disease, since we do not have accounting information systems or data bases that contain such information; hence we speak only of expenditure. Thus, in the period 1998-2003, the main outlays have been for medicines and hospitalizations, 37.97% and 31.46% respectively.

TABLE 33 A

**State insurance coverage, 1990, 1994, 1998, 2002, 2004**

<i>Year</i>	<i>Nacional population</i>	<i>State insured family</i>	<i>Coverage (%)</i>	<i>Year-on-year increase</i>
1990	3 032 394	280 496	9.25	-1.80
1994	3 370 672	242 688	7.20	-23.40
1998	3 710 567	404 452	10.90	-9.17
2002	4 046 507	521 999	12.90	4.03
2004	4 211 692	539 097	12.80	4.07

*Source:* Actuarial and Economic Planning Board, Demographic Analysis Section.

<sup>151</sup> They include external courses, and talks with patients, families and the public in general. In addition training is given to medical students, volunteers, nursing staff and administrators, thus creating a network of communication among government institutions and NGOs.

902. Finally, although the role of institutions like the Ministry of Health and CCSS has been crucial in HIV/AIDS prevention, this should not detract from the merit of the work done by NGOs, which in the case of Costa Rica have formed the Network of NGOs Combating AIDS. They concentrate their activities on sexual guidance, promotion, prevention, care and treatment, according to sex and age, and also provide centres or homes for those who have been abandoned by their families or rejected by society.

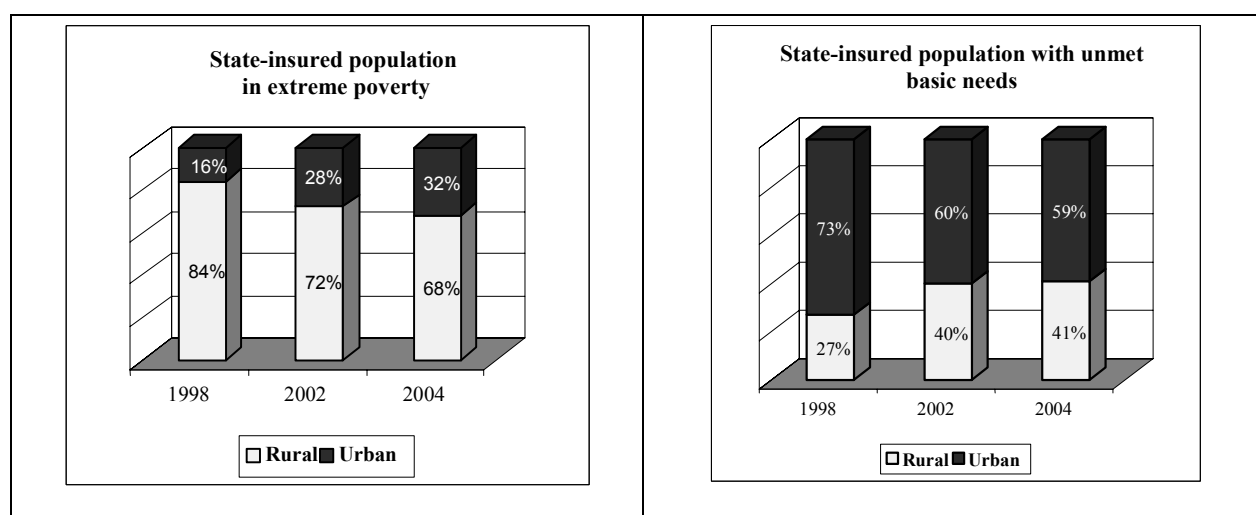
903. **The indigent:** Article 2 of Act No. 349 of 1973 states that “the Fund shall offer medical and hospital care to the uninsured population unable to pay the costs of its medical services and to meet those obligations the Fund shall be accorded the specific sums required ...”. Executive Decree No. 7898-S, for its part, defines “those insured by the State” as “health-service beneficiaries who are not covered by any of the Fund’s schemes, categories or agreements and who are unable to pay ...”. Under this legislation, persons living in poverty, who work independently or who do not work, are not obliged to contribute to their insurance (since, if they did, they would further jeopardize their chances of survival), but may benefit under the category of State-insured persons, this protection being also extended to their families.

904. This form of insurance is applicable to all those who can demonstrate their insolvency to the appropriate social security authorities, thus becoming eligible for health insurance protection. It may then be said that this is insurance coverage that targets the whole of the population living in poverty, which can enjoy the benefit of insurance at no cost.

905. The State-insured population broken down by geographic area of residence, represented 23% in urban areas in 1998, increasing by 2004 to 37%. In contrast, in the rural areas that population declined from 77% in 1998 to 63% in 2004; this may be explained as a result of migration and the expansion of peripheral urban areas.

GRAPH 14

**State-insured population in extreme poverty vs State-insured population with unmet basic needs 1998, 2002, 2004**



Source: CCSS, Actuarial Board.

906. The same phenomenon may be observed within the poverty category: the percentage of persons living in extreme poverty in urban areas and insured by the State doubled between 1998 and 2004. On the other hand, in the same six-year period, the percentage of persons unable to

satisfy their basic needs (food, clothing, housing and health), living in extreme poverty in urban areas and insured by the State, declined from 73% to 59%.

907. Medical and hospital care for these beneficiaries has been increasing, which is why external visits, emergencies, discharges and hospital stays form a major part of the costs for the CCSS in providing coverage for this population, since in almost a decade total costs have risen from 17,314,179 to 93,283,459 thousand colones. Thus, in 1995, of all external visits, 14% concerned persons insured by the State, including indigent persons and foreigners, at an approximate cost of 4,361,005 thousand colones. And for 2004 the cost was 29,166,327 thousand colones (18% of all such visits).

TABLE 34

**Health insurance. Visits, emergencies, discharges and hospitalizations, 1995-2004**

<i>Visits, discharges and frequency (as %)</i>	<i>1995</i>	<i>1998</i>	<i>2002</i>	<i>2004</i>
Total external visits	7 590 165	9 191 046	10 576 974	11 580 373
Number of State-insured (1)	1 038 335	1 257 335	1 902 798	2 083 309
Frequency (%)	13.68	13.68	17.99	17.99
Total emergencies (2)	2 191 058	2 795 162	3 545 384	3 987 111
Number of State-insured (1)	483 128	616 333	912 227	1 025 884
Frequency (%)	22.05	22.05	25.73	25.73
Total discharges	296 976	305 317	333 013	338 686
Number of State-insured (1)	74 779	76 879	97 040	89 278
Porcentaje de ocurrencia	25.18	25.18	29.14	26.36
Total hospitalizations	1 735 351	1 679 057	1 737 279	1 792 507
Number of State-insured (1)	436 961	422 787	506 243	472 505
Frequency (%)	25.18	25.18	29.14	26.36

(1) 'State-insured' includes the indigent and foreign population.

(2) Includes those cases not considered as emergencies but treated by that service.

*Sources:* Actuarial and Economic Planning Board, Statistics Department, *Statistical Yearbook, 2001-2004*. Actuarial and Economic Planning Board, Financial Analysis Section, *Cost of care and State-insurance system for the indigent population*. Department of Statistical Information on Health Services, *General health-care service statistics, 2001-2004*.

908. The same is true of emergency consultations, whose frequency over the same period rose from 22% to nearly 26% (at a cost rising from 2,029,139 to 14,362,371 thousand colones). Here the exact total of emergencies cannot be given, since the number includes cases that are not considered as emergencies, but are treated by the emergency service. Hospitalizations are what absorb the greater part of the health-care costs, even though the percentage fell slightly between 2002 and 2004. The costs show a directly inverse relation, since by the end of 2004 they had risen to about 50,000,000 thousand colones.

909. **Those deprived of their freedom:** Those deprived of their freedom, as a group at risk with regard to the right to health, which is part and parcel of the primordial right to life itself, are



protected by many international agreements and conventions, a fact which points to the latent vulnerability of prisoners. At the national level, the prison system is governed by the General Social Adaptation Board of the Ministry of Justice and Pardons. That ministry has agreed with CCSS to develop special care models with the aim of respecting the right to health of those deprived of their freedom, as recognised in international conventions, the Constitution and the laws.

910. The first step in that agreement consists in recognising those deprived of their freedom as being insured, whether under voluntary schemes, as pensioners, as employees of private firms (those who have the opportunity to work for such firms) or finally as insured by the Ministry of Justice and Pardons, with all corresponding rights. To receive health services, the insured person may be hospitalized in the CCSS hospital system, while ambulatory care may be given in one of three possible ways: i) by transfer of health personnel to the prison centre; ii) by transfer of insured person to the health centre; iii) by prison doctor.

911. The first solution implies ambulatory care in purpose-built facilities in the prison centre. This is provided by a health-care team composed of a doctor, a nurse, a dentist and any necessary personnel available at the clinic of the district to which the prison belongs. The necessary medicines are provided and tests carried out by the clinic and, in accordance with the agreement, the team is transferred at least once a week. This is the solution adopted by the Institutional Care Centres, situated outside the metropolitan area, as well as by the Juvenile Training Centre.

912. The second solution is exactly like that adopted by any other insured person, since when not in custody the person attends the clinic, where any necessary ambulatory care is given, medicines prescribed and samples taken for tests. This solution is used exclusively in the Semi-institutional Care Centres, since there those who enjoy flexible custodial arrangements may freely come and go.

913. The last solution requires a doctor to be engaged by the Ministry of Justice and Pardons to provide services in locations equipped by that Ministry. He can refer to the Central District Clinic to obtain medications, dispatch samples and use medical resources. This solution is adopted for the care of those deprived of their freedom in institutional care centres located in the metropolitan area.

914. A special case is that of the La Reforma Clinic, located in the prison complex of the same name, which can draw on the basic services of the prison doctors and has the facilities of the Fund's clinics. In other words, it is a district clinic located within the prison itself. In general the quality of health-care premises is constrained by the planning decisions of the justice authorities concerning prison centres and their design and so the limitations of the country in this regard show up in health-care problems and difficulties regarding decisions to improve the quality of health care.

915. The number of complaints referred to the Office of the Ombudsman regarding the health of the prison population for the period June 2003 to June 2004 was 76. The most frequent complaints concerned failure to transfer a prisoner for a medical appointment or poor health services. The main focus of the complaints was the La Reforma prison complex (where about 40% of those deprived of their freedom in the country are held). The problems of prisoners not being transferred for appointments were due to failure to co-ordinate the medical appointment lists of the prison system administration with those of the relevant health services and the solution, according to the Ombudsman, is to improve administrative procedures.

916. Another source of complaints is the inadequacy of the conditions in which health services are provided, a lack of cleanliness, space, privacy or furniture. Diets are often not sufficiently specialized for those prisoners whose health problems require particular dietary regimes and there are no health centres adapted for mentally disturbed persons in conflict with the law.

917. **Migrants:** In Costa Rica the migrant population, especially Nicaraguans, is estimated at over 300,000 persons. In the summer harvest periods the number rises considerably and many remain in the national territory, both in urban and in rural areas, without legalizing their migrant status. This represents a large part of the population living in the country and requiring health services. In accordance with the political and institutional framework existing in Costa Rica, health services are available for all who need them. However, for immigrants access to such services depends on three things: their migrant status, the terms of their contract and the level of health care.

918. Under present legislation, illegal aliens cannot obtain insurance by any means (direct, indirect or voluntary) since among the formal requirements for obtaining insurance are a certificate of residence and a work permit. Thus, on occasion, their irregular situation limits their access to services and hinders speedy and appropriate treatment.

919. The terms of contract are another limitation, since most migrants are involved in work where labour relations are very lax. This means that many bosses neglect their rights and disregard the compulsory employer and employee contribution to the CCSS. Many migrant workers have to reckon with both the avoidance of employer-employee contributions and their bosses' delinquency in payments to the State.

920. For sugar-cane workers, for example, payments are not made to the CCSS and the policy on the minimum wage in force in the country is not observed. There is also a high turnover among workers, so that employers may avoid compliance with social rights, such as access to health, medical care and healthy working conditions.

921. First aid is provided to communities by the EBAIS; immigrants' access is made easier by the fact that there are no requirements of any kind, although sometimes these people make a voluntary contribution.

922. In the emergency service, treatment is given without regard to the patient's migrant status; for doctor's visits or hospitalizations the person has to be insured. It is in general at the primary health-care level that migrants find alleviation for their suffering, since in terms of access and proximity to where they can find work, the EBAIS offer a solution that they would not have found otherwise.

923. On the basis of an estimate for the year 2001, percentage use of the Fund's health services by foreigners can be broken down as follows: hospitalization, 6.27%; external consultations and emergencies, 4%. The proportion of foreign patients using the external consultation services rose from 1.3% in 1992 to 4.34% in 1997 and in the Household Survey it was estimated at 4%. One may assume that there has been a similar increase in resort to hospitalization. Investigation is needed to see whether, apart from Nicaraguan or Colombian refugees, some are insured either directly or by the State.

924. According to the 2001 Household Survey, the percentage of foreigners going for check-ups (34.66%) or referrals (3.10%) was estimated at 38%, whereas 60% of foreigners made

appointments because they felt ill. Regarding the type of consultation, 69% of foreigners consulted a general practitioner, but that percentage was practically halved where foreigners from the Central American region were concerned, since a majority of them consulted specialists.

925. The per capita rate of consultations, both public and private, by foreigners was 1.75 visits per year, while per capita rate of private appointments was 0.25 per year. Both rates represent a third of the per capita rates for the population as a whole. Foreign patients, particularly those from Nicaragua and Central America, use the services of the EBAIS or Health Areas nearly 30% more than do Costa Ricans. It is to be hoped that foreigners coming from other regions of the world mainly use private consultation services and the social security clinics when they need specialized medical attention.

926. Of the emergency cases treated by the Fund, 4% involve persons born abroad, of whom 83% were born in Nicaragua. The proportion of foreigners treated in the external consultation and emergency services increases in the health-care centres nearest to the borders and in those places where larger numbers of them live because they work in agriculture, domestic service and trade.

927. In the first semester of 2001, 3.27% of the foreign population required hospitalization, and 82% of those cases occurred in CCSS hospitals. Most hospitalizations were in the gynaecological and obstetrics service, whereas in external consultations there were more general appointments and prenatal check-ups. That is consistent with the national register of births, since about 11% of these concern children of foreign fathers.

928. According to articles 23 and 24 of the Convention relating to the Status of Refugees, ratified by Costa Rica in 1977 by Act No. 079, the Costa Rican State shall accord to refugees the same treatment as is accorded to nationals in respect of assistance, public relief and social security. From 1999, when refugee flows began to increase again, this population has had access to the health services at various levels.

929. According to the survey carried out in 2002 among men and women heads of refugee households, more than 71% of those interviewed had social security coverage and more than 80% had a favourable opinion of the services they had received that year. In the survey of Colombian refugees done in 2003, 66% said they had access to public health services, but only 46% of the men and 40% of the women stated directly that they had Social Security. In those years, the general medical services were used by 74%, the emergency services by 54%, paediatric services by more than 20% and maternity services by more than 13%. Refugees receive temporary help in obtaining refugee insurance and the formalities for obtaining voluntary insurance are made easier for them. Both refugee children and refugee pregnant women are treated in the clinics and hospitals of the health system, with or without social security coverage.<sup>152</sup>

### **Special measures adopted to ensure the right to health**

930. Ensuring that the majority of the population has sufficiently good health to exercise their physical and mental faculties is a basic aspiration of human development. Over the last 15 years (1990-2004), during which the health sector has been undergoing a process of reform, there have

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<sup>152</sup> UNHCR, *Diagnosis of the degree of local integration of refugees in Costa Rica (2002)*, UNHCR/UCR, San José, Editorama, 2003, 104 pp., p.93: Diagnosis of the degree of local integration of the Colombian refugee population in Costa Rica, 2003.

been some general trends concerning the right of everyone effectively to enjoy the highest possible level of physical and mental health, which we shall comment on now.

931. The chief progress made derives from the adoption in 1993 of Act No. 441, “Reform of the health sector”, which allowed the establishment of “comprehensive care” as the new paradigm in the provision of health services, by which is understood the whole range of actions for prevention, promotion, cure and rehabilitation of the individual, the family and the community; with a holistic approach to the health-sickness process, giving special emphasis to primary care and to providing universal services.

932. The most striking institutional reforms in this process are, first, the distribution of functions between the Ministry of Health and the CCSS, in an effort to redefine and strengthen governance of the sector, and secondly, the changes in the provision of services.

933. Significant among the changes in the provision of services are the formation of the EBAIS and the Health Areas; the launching of a process of decentralization of health facilities by the enactment of a specific law;<sup>153</sup> the creation of Management Commitments as an instrument for assessing the quality of services; and the extension of the purchase of services to health co-operatives and the private sector.

934. Other important institutional changes were the creation of the General Superintendence of Health Services; the General Audit of Health Services; the Quality Guarantee Programme and the Health Boards. Most of these changes took place as a result of reforms in the legislation governing the sector.

### **New model of comprehensive health care**

935. Beginning in 1995, services at the first level of care were reorganized, with the creation of the “Health Areas”, which are basic administrative units headed by an area director backed by a technical and administrative team responsible for the local services network. In obedience to the principle of equity, the process of reorganization began in the rural areas and in the most socio-economically depressed cantons. The process was concluded in 2003 with the constitution of 103 health areas throughout the country covering the entire population.

936. The health areas are in turn divided into “sectors”, which are geographical divisions with, on average, 4,000 inhabitants. Each sector is under the care of an EBAIS composed of a general practitioner, a nursing assistant and a primary health-care technical assistant (ATAP). Subsequently, a health registrar and a pharmaceutical technician were added to the team. There are “support teams” linked to the EBAIS and made up of a doctor, a professional nurse, a dentist, a social worker, a nutritionist, a microbiologist, a pharmacist and a networks technician.

937. The services provided by the EBAIS and the support teams are defined in the “Basic supply of comprehensive services”, which specifies the holistic approach incorporating prevention, promotion, cure and rehabilitation for each population group according to its stage in the life cycle: comprehensive care for children, adolescents, women, adults and older persons. The provision of these services is based on the relevant “rules for comprehensive care”, the implementation of which requires systematic and co-ordinated work with the community.

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<sup>153</sup> Act No. 852, The Decentralization of the Costa Rican Social Security Fund Hospitals and Clinics Act of 24 December 1998, guarantees Costa Ricans better medical care.

938. For that reason, the core of the new model is a detailed knowledge of the health situation of the population group concerned, the identification of their principal problems and the preparation of a “local plan” to alleviate the problems identified. The increase of the EBAIS made it possible to achieve primary health care coverage of 100% of the population by 2004, although we recognise that we still face important challenges in improving infrastructure and staffing, as can be seen from the Ministry of Health’s assessments for various years.

TABLE 34 A

**Health insurance – Functioning EBAIS**

<i>Year</i>	<i>1995-2004 New EBAIS</i>	<i>Accumulated EBAIS</i>
1995	242	242
1996	105	347
1997	80	427
1998	127	554
1999	71	625
2000	45	670
2001	111	781
2002	38	819
2003	21	840
2004	15	855

*Source* :Memoirs of the CCSS.

939. Regarding the implementation of the Management Commitments, which have introduced a change in the way the results of service provision are measured, though not yet in budget allocations, the assessments indicate that the comprehensive care programmes have been improving their coverage and furthermore that the gaps are being reduced between total basic coverage and coverage where quality standards are met.

940. However, the achievement is still modest in key areas such as programmes for young people, diabetics and older persons, where the average national coverage is very low and only half provide quality care. There are also gaps, depending on where the health areas are located: for example, in the 2002 assessment, in four out of the five programmes considered, 10 health areas fell into the category of highest quality.<sup>154</sup>

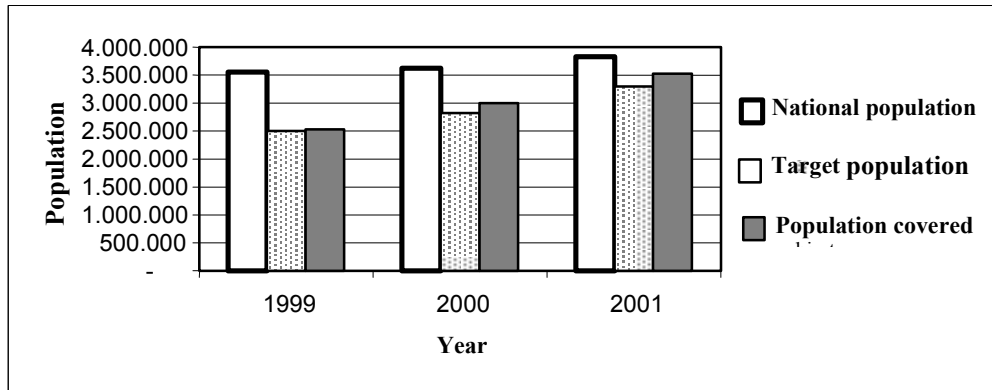
941. Other sectors are affected by a lack of minimal cleanliness, for example in some indigenous territories, which creates problems, particularly among children, of diarrhoea, parasites,

<sup>154</sup> The localities of Barva (Coopesiba), Chacarita, Coralillo-La Sierra, Esparza, Los Santos, Montes de Oro, Nandayure, Peninsular, Puriscal-Turrubares and Santa Ana (Coopesana). Likewise, there were seven areas which in all the programmes were placed in the lowest category (Ciudad Quesada, Garabito, Grecia, Hatillo, Heredia-Cubujuqui, Limon and Marcial Rodriguez).

malnutrition and other illnesses.<sup>155</sup> This shows that it is necessary to continue to concentrate certain measures and resources on specific geographical areas.

GRAPH 15

**Population covered by functioning EBAIS, 1999-2001**



Source : CCSS, Corporate Planning Board, National Institute for Statistics and the Census.

942. Health care for the elderly requires measures that facilitate the enjoyment of that right. This has been set forth in the section on the implementation of the right to social security and social insurance (article 9 in the present report). Since 1999, they have enjoyed a special regime thanks to the adoption of the Comprehensive Older Persons Act (Act No. 935). There are specialized hospital centres and priority care for them, but work is being done to guarantee that there are health services responding to the specific needs of this population group which will be increasing in the coming years.

943. Other important achievements relate to the consolidation of ambulatory care, strengthening the emergency services and implementing a telemedical project. As the emergency services improved, 124 emergency services started operation in the year 2001, treating 3,518,486 cases that same year.

944. There has been an increase in the purchase of health services from various suppliers: co-operatives, private firms and the University of Costa Rica. Although evaluations of these outside suppliers have in general given good indications of quality coverage and satisfied users, there are no mechanisms within the CCSS to compare these solutions with the traditional system administered directly by the CCSS, which is crucial particularly where the cost-effectiveness of the interventions is concerned.

945. One feature that has troubled the government authorities and, of course, the population in general is the long waiting lists for specialized medical treatment, which have grown and multiplied over the years. The State has attempted to create mechanisms to resolve this problem.

946. In 1998, a plan developed to tackle the problem was carried out to the full and with great success. In 1999, we continued to reduce the waiting time for appointments and for special critical surgery, when it was over three months, and reached that goal in 82% and 74% of cases,

<sup>155</sup> Office of the Ombudsman, *Report on the work for 2000-2001*.

respectively. This effort was supported by the Office of the President and the CCSS Medical Division Management, with greater financial resources being allocated to the different establishments where there were waiting lists.

947. With the aim of consolidating the reduction of the waiting lists, both for surgery and for specialist appointments (in critical cases over three months), in 2001 the Waiting List Technical Unit (UTLE) was set up, under the Medical Division Management. The programme began with surgery, where when the situation was examined there were found to be 9,599 patients.

948. The rules for the operation of UTLE were adopted by the governing board of the institution in 2001, once the applicable criteria were established on the basis of research and similar experiences elsewhere in the world. A publicity campaign subsequently encouraged other patients awaiting treatment to join the list and 1,152 cases were treated.

949. In the case of specialist appointments, during that same year 48,508 patients were identified as having waited for more than three months; nevertheless, priority was given to surgical cases. A total of 4,814 million colones was earmarked for the work of UTLE and human resources were allocated to the different health facilities.

### **Improvements in drinking water supply and environmental hygiene**

950. A series of measures is carried out by the health sector in connection with drinking water and sanitation. As regards the technical management of each operating entity, there are various programmes, projects and specific actions undertaken in the drinking water and sanitation sector to guarantee the availability of drinking water and sewage systems and access to them, as well as to ensure that they contribute to the protection, conservation and use of hydrological resources and in general to environmental education.

951. The information available comes particularly from A & A and ESPH. The following is especially relevant:

- Strengthening of the supervisory function of A & A by the creation, in 2004, of the Governing Board and Technical Secretariat and action to supervise the provision of drinking water and sanitation services in the national territory.<sup>156</sup> Part of that action was a National Plan for Water Supply and Sewage Systems Operators and a system of information about the conditions in which the systems and services administered by the different operating entities function.
- The formation of a National Water Laboratory, as a national reference centre for the physical, chemical and biological testing of water and to give technical advice to the Ministry of Health as required; to co-ordinate the National Programme for Water Quality Control and Supervision, jointly with the Sanitation Division of the Ministry of Health (Decree No. 6066-S of 9 June 1997) and to do research in the environmental field, since the 1980s, and the field of hygiene and sanitation, since the 1990s.

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<sup>156</sup> These two achievements were brought about by Agreement No. 004-211 of 23 March 2004 and Agreement No. 004-570 of 31 August of the same year.

- The creation, in 1996, of the Blue Flag Ecological Programme (by Agreement No. 6,160 of 1 July), as an incentive to hoteliers and coastal associations and communities for the over-all protection of Costa Rica's beaches. From 2004, this was extended to education centres in a quest for excellence in hygiene and sanitation on the part of participating schools and colleges and, above all, to ensure that the programme would be carried on by future generations. That same year, the programme was declared to be of national public interest as an instrument to encourage communal organization, excellent hygiene and sanitation and the protection of the hydrological and natural resources in general in participating areas.<sup>157</sup>
- The creation, in 2002, of the Seal of Quality Public Health Programme, as an incentive for operators of water-pipes and aqueducts, including those operating within hospitals (Agreement No. AN-2002-150 of 16 April 2002).
- The creation of the National Programme to Improve the Quality of Water for Human Consumption, which modifies the methodology proposed by OPS/WHO in the framework of reference for the Regional Plan to Improve Water Quality in the period 2002-2006.
- In February 2003, Agreement No. 003-070 was issued with the aim of defining the country's environmental policies and, in August of the same year, the Directorate for Environmental Management was created to oversee the execution of policies, plans, projects and actions associated with the preservation and sustainable management of hydrological resources and their immediate environment in general and the establishment and execution of an institutional environment strategy.
- The establishment of an institutional environment strategy which would, *inter alia*, strengthen the presence of regional and local institutions; act at three levels to ensure: surveillance of catchment areas, and areas of aquifer replenishment, pinpointing of variations in water quantity and verification of water use; ensure protection by rapid reaction in situations of danger or actual or potential impact and interface with the competent institutions; and improve hydrological conditions either directly or through local or regional co-ordinating bodies.
- The promotion of research through specific projects such as:
  - Environmental improvement of the San José metropolitan area
  - Estimation of the demand for hydrological resources for various purposes in an area in the Costa Rican Central Valley
  - The foundations for a strategy of hydrological resource management with emphasis on supplying the population and on sanitation

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<sup>157</sup> By Decree No. 1610-S-MINAE-TUR of 9 March 2004 and Decree No. 1978-MEP-MINAE-S-TUR of 8 September 2004.



- Educational input in the environmental field through specific programmes such as: the Children’s club “In Defence of Water and the Environment” (1992-2002)
- The inter-institutional A & A-MEP project “Creating a Culture of Water” (1999-2002)
- The “Older Adults” programme (1998-2002)
- Yearly celebrations: World Day for Water, World Environment Day, Day of the Tree and Inter-American Water Day
- Composition of the “Hymn to Water” (Agreement No. 003-401 of 7 October 2003).
- On the subject of improvements in environmental health, reference should be made also to what is stated under article 15 concerning the application of scientific progress to the preservation of our natural heritage.

### **Co-operation**

953. In the context of international co-operation, the strengthening of institutions and improvement in the provision of services has led to the execution of the following projects:

- i) “Repair and extension of aqueducts and sewage systems in Puntarenas” (IDB, 1992), financed with resources from the IDB 501/OC-CR and 764/SF-CR loans.
- ii) “Provision of drinking water in urban centres and for the repair of the sanitation infrastructure in Limon province” (IDB, 2004), financed with funds from loans IDB 636/OC-CR, IDB 637/OC-CR, CR-P2 JBIC (OEFC) and 254 FCIE.
- iii) “Tanks and networks in San José metropolitan aqueduct and the acquisition of hydrometers” (A & A, 2003), financed with funds from loan No. 46 FCIE.
- iv) “Second drinking water and sewage system project” (World Bank, 2004), financed with funds from World Bank loan 3625-CR (IBRD).

954. As part of its loan execution strategy with the World Bank, in April 1994 A & A signed Specific Agreement No. with the Pan-American Health Organization/World Health Organization – PAHO/WHO, whereby A & A would receive assistance and technical co-operation for the execution of relevant activities, namely “the development and implantation of commercial, financial-input, human-resources and operational-control systems; studies of sectoral policies, planning, sewage systems, the vulnerability of Orosi and a programme to strengthen institutions” (A & A-PAHO/WHO, 2004).

### **Specific measures for the implementation of the right to enjoy the best possible health**

955. Finally, the following is a review of the main commitments, achievements and outstanding challenges in the health sector over the period 1990-2004, which demonstrate the special measures taken to ensure the right to health.

TABLE 35

**Main commitments, achievements and outstanding challenges in the health sector**

<i>Commitments</i>	<i>Main achievements</i>	<i>Main challenges</i>
1) To strengthen and improve action to maintain or increase achievements regarding infant and maternal mortality, infectious diseases and malnutrition	<p>Infant mortality, 1990: 15.3 (1990) to 9.2 (2004) per 1000 live births</p> <p>Maternal mortality: improved capacity for analysis: 3.6 (2000) to 3 (2004) per 10,000 births</p> <p>Infectious diseases: under the basic vaccination scheme for children up to 1 yr., coverage has reached 90% (2004)</p> <p>Nutritional deficiencies: a) in the last 10 yrs., via Executive Decree and in negotiation with business sectors, mass-consumption foods (rice, milk, sugar, salt, wheat flour and maize flour) have been fortified with iron, folic acid, iodine and vitamin A; b) folic acid has been administered to all women over 15 years. attending health services</p>	<p>Ensuring greater fairness with regard to most backward areas</p> <p>Expanding percentage of analysis for both maternal and infant mortality.</p> <p>Implementing the recommendations of the Maternal and Infant Mortality Commissions</p> <p>Making periodical evaluations of nutritional deficiencies to measure impact of action taken in recent years</p>
2) To promote the creation of a culture of health, with emphasis on health promotion and fostering healthy life individually and collectively	<p>Since 2002, the Costa Rican Institute for Sport and Recreation (ICODER), the Alcoholism and Drug Addiction Institute (IAFA) and the Ministry of Health have together developed a national programme entitled "Costa Rica on the move gives life to the heart"</p>	<p>Enhancing health promotion as an important part of investment in society.</p>
3) To prevent and treat non-infectious diseases and their risk factors	<p>Circulatory diseases: 139.9 (1995) to 104 (2004) per 100,000 inhabitants</p> <p>Traffic deaths: 17.6 (2000) to 13.2 (2004) per 100,000 accidents.</p>	<p>Reducing death rates from violent causes (homicide, suicide, traffic)</p> <p>Improving capacity for cancer prevention, diagnosis and treatment.</p>
4) To promote mental health and treat mental illness comprehensively, with emphasis on social violence	<p>On 17 March 2005, the President of the Republic, Dr. Abel Pacheco officially announced the National Mental Health Plan, 2004-2010 and the National Children's Mental Health Programme, 2004-2010, both of which are at present being executed</p> <p>Work has been done on various projects since the programme "Costa Rica on the move gives life to the heart": recreational trails, "golden games", communal games, supervised play areas in child-nutrition and health-care centres (CEN-CINAI), developing life skills in education centres ("making my way and learning self-esteem") and including healthy nutrition, mental health and physical activity in the Health theme that runs through the curricula of the first and second cycle of the Ministry of Education's basic general education</p> <p>From healthy, ecological cantons, projects are being developed on, inter alia, food and nutritional security, environmental safety, road safety and healthy surroundings (smoke-free zones)</p>	<p>Strengthening human resources training at care level 1 in the area of mental health</p>

<i>Commitments</i>	<i>Main achievements</i>	<i>Main challenges</i>
5) To improve the fairness, quality and ethics of health care services and access to them, with emphasis on primary care	<p>With guidance, annual assessments of care level 1 have been made, whereby the quality of services provided by EBAIS can be ascertained and shortcomings pinpointed and corrected</p> <p>With regard to the indigenous and migrant population, the following has been achieved: a) the active participation of organizations representing those populations in the formulation of the National Health Policy; b) intercultural training for health-care personnel working in indigenous areas</p> <p>In indigenous areas, in some services, the hours and tours of duty of specialists (paediatricians) have been extended.</p>	Achieving fairness and quality access for the most vulnerable population groups (migrants, indigenous peoples, women, children, adolescents, the disabled and older persons)
6) To improve environmental health, with emphasis on basic clean-up and integral management of water resources. .	<p>Under the General Health Act, the following regulations have been adopted: Buildings Regulations, Industrial Hygiene Regulations, General Regulations for Operating Permits, Regulations on Waste Water Re-use and Disposal, Rubbish Regulations, Regulations for Treatment of Sludge from Septic Tanks, Regulations on Sanitary Landfill</p> <p>In 2002, the functions and status of the National Water Board (created in 1969) were updated, making it answerable to the Ministry of Health, with the task of harmonizing legislation relating to water, as well as co-ordinating water research, use, development, exploitation and conservation by the different State departments and institutions concerned</p>	<p>Lack of a data base to monitor implementation of regulations.</p> <p>Improving the education of the population regarding water-resources protection and waste management.</p>
7) To further action to reduce vulnerability to disaster	Training of health personnel in local planning for emergencies and disasters	Consolidating diagnosis and strengthening the health sector's response capacity in risk management and disaster prevention
8) To consolidate the structure and operation of the health sector	By decree, the National Political Secretariat for Food and Nutrition (SEPAN), the Water Board and the Technical Commission for the Development of Health RRHH have been strengthened, as part of the strategic action to fulfil this commitment	Strengthening the Sectoral Health Board as part of the Ministry of Health's oversight function
9) To adapt investment, expenditure and funding in line with the values and principles governing health sector policies and priorities	MIDEPLAN approved the creation of an Expenditure and Funding Unit as a formal part of the Ministry of Health, for high-level preparation of information and advice for decision making on health investment and expenditure	Consolidating the Expenditure and Funding Unit
10) To consolidate the national system of health monitoring.	In 2002, an executive decree established regulations for the organization and operation of the National System of Health Monitoring, whose purpose is to provide systematic and timely information on the pattern of events in the health field, with explanations, stressing those that affect or may affect the health of the population. The monitoring system is directed and conducted by the Ministry of Health	

<i>Commitments</i>	<i>Main achievements</i>	<i>Main challenges</i>
	<p>That system is responsible for liaison and co-ordination with institutions in the health and other sectors, by means of inter-institutional health monitoring committees at the three management levels (local, regional and national)</p> <p>The guidelines for the organization and operation of the National System of Health Monitoring are made public, to standardize technical procedures and to differentiate the responsibilities and spheres of competence of each of the institutions involved in this work</p>	

## Conclusions

956. In general, the State has endeavoured to comply fully with the right of every person to enjoy the best possible physical and mental health, as can be seen from the organs established for that purpose and the action taken to provide health services to the population.

957. The most significant progress made in recent years in the country is the result of the reform of the health sector which has made possible the establishment of comprehensive care as the new paradigm for the provision of services. Comprehensive care is understood as the whole range of actions of prevention, promotion, and cure and rehabilitation of the individual, the family and the community, with special emphasis on primary care in the health-sickness process. However, it is essential constantly to evaluate the effectiveness and efficiency of primary health care, especially the need for it to reach populations that as yet have no easy access to it. It is also necessary to note the waiting lists in the CCSS and work to reduce them.

958. In the reform process certain achievements stand out, such as the creation of the EBAIS, whose work is based on comprehensive health care and incorporates prevention, promotion, and cure and rehabilitation for each population group according to its stage in the life cycle – children, adolescents, women, adults and older persons; the adoption of Management Commitments, as an instrument for assessing the quality of services; and the creation of the General Superintendence of Health Services, the General Audit of Health Services, the Quality Guarantee Programme and the Health Boards, among others.

959. As part of the reform, great efforts have been made to offer specific population groups and groups of special interest the greatest possible access to the right to health and ways and means have indeed been found to focus attention on such cases.

960. One must highlight the response to cases of HIV/AIDS, since, in addition to the adoption in 1998 of the General HIV/AIDS Act, comprehensive care clinics have been set up for patients with this disease, where as well as health care and treatment, personal and family counselling is offered, studies are done of their socio-economic situations and guidance and relocation provided for in cases of family rejection.

961. Great importance is also attached to the services and care that are increasingly necessary for population groups such as the disabled, the indigenous, migrants, those deprived of their freedom and the indigent. As has been noted throughout the presentation on this article, many different

specific means have been devised for these groups, pointing to a valuable institutional determination that is demonstrating progress, while at the same time one may infer considerable challenges to the aim of improving the gradual application of their right to health.

962. The indigenous population's access to this right is constrained mainly by their geographical and cultural circumstances. In some indigenous territories, minimal sanitary conditions are lacking with the resulting problems of diarrhoea, parasites, malnutrition and other diseases, especially among children. Likewise, greater and better efforts must be made to provide this whole population access to drinking water and dry-pit latrines.

963. In regard to the disabled, although a service infrastructure has been put in place, it is vital to upgrade its quality, since there are still some obstacles of a physical or attitudinal nature to this considerable group's access to the right to health.

964. Where particular aspects of health are concerned, infant mortality has shown a continued decline from 1990 to 2004, as a result of the measures taken by the Costa Rican State in the 1960s and 1970s. Nevertheless, one cannot lose sight of the fact that the infants that do die are predominantly newborns and the proportion of such deaths in over-all infant mortality increased in the last year (2004).

965. In view of the foregoing, it should be pointed out that impetus has been given to the promotion of health through the formulation of national policies with a rights and gender emphasis that has led to a series of initiatives such as the Maternal and Infant Mortality Plan and the creation of the National System of Infant Mortality Analysis (SINAMI).

966. To deal with diseases that can be prevented by immunization, the country has significantly increased levels of coverage and has in fact managed to eradicate many of them, while maintaining the priority of immunization in its health policies. The increase in coverage between the years 1998 and 2002 was greatest in the cantons of the most backward areas.

967. Cases of malaria are on the decrease; however, in 2004, there was an upsurge which mobilized the sectors concerned. The incidence of dengue fever has been of concern to the authorities, since its occurrence is seasonal and so work has to be done each year to prevent deaths. In fact, no deaths occurred from that cause in 2004.

968. Finally we have to continue to create the means whereby the Costa Rican population as a whole can have access not only to drinking water but also to more efficient sewage systems, as well as extending them to the majority, since only a quarter of the population enjoys this benefit. However, the service provided by the Costa Rican State or through different kinds of organizations is evolving positively with similarly good results: for example, in 2003, the percentage of inhabitants receiving water for human consumption reached a striking 97.5%, while in 2000 the availability of water services at the national level was 89.4% and the goal for the year 2020 is to reach 96%.

## ARTICLE 13 (The right to education)}

### General framework

969. All the actions undertaken by the State of Costa Rica derive from a clear awareness that education is a right and an essential instrument for economic growth and social mobility. In other words, education is seen as the main social mobility mechanism for doing away with conditions of inequality, exclusion and poverty and, therefore, offering an increasingly diversified education adapted to the needs and idiosyncrasies of the students and to national, regional and local development, is a priority.

970. For that reason, free compulsory primary education has been established in Costa Rica for over a century and secondary education has been open and accessible to the entire population since the 1970s. Likewise efforts have been made to gear higher education and technical training to serve the majority of the population, with consideration given to groups deserving special attention.

971. On the subject of the importance accorded to education, the Constitution of Costa Rica in article 77 states that “Public education shall be organized as a comprehensive process correlated in its various phases, from preschool to university education.” And in article 78 it specifies that “Preschool education and general basic education are compulsory. These levels and the diversified education level are, in the public system, free and supported by the Nation.” The percentage is established in relation to the gross domestic product.

972. Further, in the Constitution, articles 79 to 83 guarantee freedom of teaching, both public and private, and propose specific measures to eradicate illiteracy, to organize adult education and to give special protection to the neediest students.

973. There is also a series of provisions (laws, regulations etc.) for various parameters, organs and mechanisms to ensure that the right to education is effective and the quality high.<sup>158</sup> For their part, the resolutions of the Constitutional Chamber and the complementary legislation guarantee equality of opportunity in general and in particular with regard to the right to education.

974. This is the case with the Children and Adolescents Code, Act No. 739 which, in articles 56, 57 and 59, states that education must aim at developing the potential of young people and the State must guarantee that they can remain in the education system. The right to education shall be free, compulsory and State-supported, in reinforcement of the precepts of the Constitution.

975. The Code also sets forth, in chapter V, article 68, the prohibition against promoting or practising in educational establishments any form of discrimination by reason of gender, age, race or ethnic or national origin, socio-economic status or any other consideration in violation of human dignity. Nevertheless, socio-economic, cultural, linguistic, environmental, geographical and topographical factors do hinder the full exercise of these rights.

976. In this overarching task, the guiding body is the Ministry of Public Education (MEP), which co-ordinates its action with the National Apprenticeship Institute (INA), the National Children’s Trust and the Ministry of Health, among other public and private institutions.

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<sup>158</sup> See annex II, Legislation, article 13.

**Costa Rican education system***Situation of education*

977. According to data from the latest national census, held in 2000, the level of literacy in the country is 95.2% or a total of 2,877,599 persons, of whom 49.5% (1,424,353) are men and 50.5% (1,453,546) women.

978. The Costa Rican education system showed high levels of coverage by the formal traditional teaching system in 2004: at the primary level (103.7%) and in the preschool transition cycle (90.3%). However, problems of coverage arise at the secondary level (72.6%) and in the preschool interactive cycle II (37%). When other options such as open education are taken into account, these rates are higher. It should be pointed out that the group with the highest level of school attendance is the seven to nine year-olds, with 98.2% coverage, followed by the 10 to 12 year-old group. The group with the lowest level is the 16 and 17 year-olds, with 56.9%. In table 36, attendance rates by age group for the year 2004 can be seen.

TABLE 36

**Specific attendance rates by age group in the Costa Rican education system, 2004**

<i>Age group</i>	<i>Population</i>	<i>Enrolment</i>	<i>Rate</i>
4	79 988	21 597	27.2
5	79 926	58 057	72.7
6	79 951	70 556	88.3
7 – 9	249 635	244 765	98.2
10 – 12	255 848	244 920	95.7
13 – 15	263 368	212 966	80.5
16 – 17	173 769	98 930	56.9

*Source:* MEP, Department of Statistics.

979. To the foregoing data should be added the fact that initial enrolment for the year 2004 was approximately 991,623 students at all levels of education (from preschool to secondary, including Education for Work and special education). Under the heading Education for Work, it should be noted that 84%, that is 23,107, of those who enrolled were female. Relatively, the greatest number of males enrolled were in Special Education, with 61.1%.

TABLE 36 A

**Initial enrolment by sex, 2004**

<i>Level of education</i>	<i>Total</i>	<i>Males</i>	<i>Females</i>	<i>Percentage of females enrolled</i>	<i>Percentage of females in population</i>
Preschool	107 895	55 067	52 828	49.0	48.6
Primary	524 308	271 116	253 192	48.3	44.6
Secondary	317 539	157 882	159 657	50.3	54.0
Higher	223 585	110 195	113 390	50.7	n.a.
Technical	57 414	28 422	28 992	50.5	n.a.
Education for work	27 489	4 382	23 107	84.0	n.a.
Special education	14 392	8 793	5 599	38.9	n.a.

*Source:* MEP, own preparation using data from Department of Statistics.

980. Initial general enrolment has been on the increase over the last 10 years covered by this report. Although it is clear that this coincides with demographic growth, it does show that a considerable number of inhabitants are being drawn into the education system. In 1993, a total of 756,859 persons were enrolled in the system, a figure which rose to 1,061,375 in 2004, as can be seen from table 37. A significant increase can thus be noted, in proportion to the total population in the system, at the secondary level, the number of young people entering having risen by 180,739 between 1993 and 2004.

981. For 2004,<sup>159</sup> the initial enrolment, by educational level and branch and even by regional board, can be seen in the tables in annex 1 concerning this article.

TABLE 37

**Initial enrolment by level and type of education (public, private and subsidized private), 1993-2004**

<i>Level</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>
TOTAL	756 859	784 162	810 675	830 636	861 932	903 968	933 680	959 303	989 458	1 027 737	1 050 881	1 061 375
Preschool education	61 780	62 692	65 955	68 198	71 104	75 042	77 967	77 875	92 935	99 932	106 675	107 895
Traditional education	61 780	62 692	65 955	68 198	71 104	75 042	77 967	77 875	92 935	97 921	104 066	105 891
Special education	-	-	-	-	-	-	-	-	-	2 011	2 609	2 004
Primary education	492 656	504 806	516 714	529 996	537 636	560 478	566 768	568 204	565 270	569 822	567 021	557 865
Cycles I & II (traditional)	484 958	495 879	507 037	518 603	525 273	529 637	535 057	538 996	538 216	536 104	532 852	524 308
Night schools	1 931	1 966	1 886	1 792	1 504	1 357	1 433	1 161	1 303	1 087	1 006	1 002
Open education-MEP	-	-	-	-	-	16 584	18 749	15 759	15 910	18 715	19 283	18 483
Open classroom	-	-	-	-	-	-	-	-	-	4 493	5 041	5 954
CINDEA (level I)	-	-	-	-	338	681	849	980	1 071	1 105	1 087	1 693
Special education	5 767	6 961	7 791	9 601	10 521	12 219	10 680	11 308	8 770	8 318	7 752	6 425
Secondary education	187 387	198 148	209 026	210 588	226 254	245 452	258 676	283 989	298 889	327 042	346 870	368 126
Cycle III-Diver. Educ. (traditional)	186 043	196 553	207 231	208 233	220 151	227 328	235 425	252 828	266 058	284 841	301 300	317 539
Daytime	159 508	168 980	178 674	182 489	192 678	202 415	212 945	229 449	242 425	257 193	270 003	281 936
Academic	125 192	133 564	139 918	143 774	149 844	158 771	167 220	181 089	192 465	204 250	214 090	224 522
Technical	34 316	35 416	38 756	38 715	42 834	43 644	45 725	48 360	49 960	52 943	55 913	57 414
Evening	26 535	27 573	28 557	25 744	27 473	24 913	22 480	23 379	23 633	27 648	31 297	35 603
Academic	25 752	26 776	27 791	25 071	26 715	24 165	21 877	22 847	23 059	26 782	30 281	34 534
Technical	783	797	766	673	758	748	603	532	574	866	1 016	1 069
Open education-MEP	-	-	-	-	-	8 947	11 927	9 144	8 698	12 189	12 305	12 655
New opportunities	-	-	-	-	-	-	-	10 414	10 457	14 377	15 853	16 152
IPEC (Plan 125)	475	594	779	1 047	1 127	798	1 102	396	803	511	547	694

<sup>159</sup> Annex 1, Tables (Initial enrolment in regular education by educational type and sex and initial enrolment in regular education by educational level, according to regional board).



<i>Level</i>	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
CINDEA (levels II & III)	-	-	-	-	2 964	5 982	7 455	8 392	9 780	11 000	12 225	15 903
Special education	869	1 001	1 016	1 308	2 012	2 397	2 767	2 815	3 093	4 124	4 640	5 183
Special education centres	3 337	3 765	3 982	4 114	4 242	4 396	5 110	4 989	5 721	<i>a</i>	<i>a</i>	<i>a</i>
Education for work	11 699	14 751	14 998	17 740	22 696	18 600	25 159	24 246	26 643	30 941	30 315	27 489
IPEC	11 699	14 751	14 998	17 740	20 767	14 708	20 309	21 576	21 070	23 249	22 037	21 143
Vocational education	10 436	12 012	8 085	9 065	9 784	6 929	9 568	2 305	1 866	2 223	779	1 649
Social education	1 263	2 739	6 913	8 675	10 983	7 779	10 741	19 271	19 204	21 026	21 258	19 494
CINDEA (emerging education)	-	-	-	-	1 929	3 892	4 850	2 670	5 573	6 697	7 542	5 566
Comprehensive Care Centres for Disabled Adults (CAIPAD)	-	-	-	-	-	-	-	-	-	995	736	780

<sup>a</sup> Figure included at each educational level.

1) The information from 2003 includes only the 1<sup>st</sup> semester.

Source: Department of Statistics.

982. With regard to the variations over the last five years (1999-2004) in gross rates of school attendance, table 38 shows that they have increased, in particular in secondary education, both in cycle III and in diversified education. In primary education they have declined.

TABLE 38

**Gross attendance rates (public, private and subsidized private), 1999-2004**

<i>Level</i>	<i>Gross</i>						<i>Net</i>					
	1999	2000	2001	2002	2003	2004	1999	2000	2001	2002	2003	2004
INTERACTIVE II	<b>5.9</b>	<b>6.9</b>	<b>19.8</b>	<b>26.8</b>	<b>33.2</b>	<b>37.1</b>	<b>5.8</b>	<b>6.6</b>	<b>19.8</b>	<b>26.6</b>	<b>33.2</b>	<b>37.0</b>
Traditional education	5.9	6.9	19.8	26.4	32.7	36.7	5.8	6.6	19.8	26.1	32.7	36.7
Special education	...	...	...	0.5	0.5	0.4	...	...	...	0.5	0.5	0.3
TRANSITION CYCLE	<b>83.6</b>	<b>82.4</b>	<b>87.5</b>	<b>88.2</b>	<b>91.6</b>	<b>90.8</b>	<b>82.9</b>	<b>81.6</b>	<b>86.9</b>	<b>87.3</b>	<b>90.9</b>	<b>90.0</b>
Traditional education	83.6	82.4	87.5	87.8	90.9	90.3	82.9	81.6	86.9	86.9	90.2	89.7
Special education	...	...	...	0.4	0.7	0.5	...	...	...	0.4	0.7	0.3
PRIMARY EDUCATION	<b>111.1</b>	<b>111.0</b>	<b>110.3</b>	<b>111.5</b>	<b>111.5</b>	<b>109.9</b>	<b>100.7</b>	<b>101.2</b>	<b>100.6</b>	<b>100.6</b>	<b>100.2</b>	<b>99.5</b>
Cycles I & II traditional	104.8	105.3	105.0	104.9	104.8	103.7	99.0	99.4	99.2	99.2	99.0	98.5
Night schools	0.3	0.2	0.3	0.2	0.2	0.2	0.0	0.0	0.0	0.0	0.0	0.0
Open education <sup>1</sup>	3.7	3.1	3.1	3.7	3.8	3.5	...	...	...	...	...	...
Open classroom	...	...	...	0.9	1.0	1.2	...	...	...	...	...	...
CINDEA (level I)	0.2	0.2	0.2	0.2	0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Special education	2.1	2.2	1.7	1.6	1.5	1.3	1.7	1.8	1.4	1.3	1.2	1.0

<i>Level</i>	<i>Gross</i>						<i>Net</i>					
	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>
SECONDARY EDUCATION	<b>63.9</b>	<b>68.4</b>	<b>70.4</b>	<b>75.4</b>	<b>79.2</b>	<b>84.0</b>	<b>55.0</b>	<b>59.5</b>	<b>60.8</b>	<b>63.8</b>	<b>66.2</b>	<b>69.3</b>
Cycle III & Diver. Educ. (traditional)	58.2	60.9	62.6	65.6	68.8	72.6	52.4	55.3	56.7	58.7	60.9	63.8
Open education <sup>1</sup>	2.9	2.2	2.0	2.8	2.8	2.9	1.0	0.7	0.7	0.9	0.9	1.0
New opportunities	...	2.5	2.5	3.3	3.6	3.7	...	1.8	1.7	2.3	2.3	2.3
IPEC (Plan 125)	0.3	0.1	0.2	0.1	0.1	0.2	0.0	0.0	0.0	0.0	0.0	0.0
CINDEA (levels II-III)	1.8	2.0	2.3	2.5	2.8	3.6	1.0	1.2	1.1	1.1	1.1	1.3
Special education	0.7	0.7	0.7	1.0	1.1	1.2	0.6	0.6	0.6	0.8	0.9	0.9
CYCLE III IN SECONDARY	<b>75.5</b>	<b>80.8</b>	<b>82.9</b>	<b>90.2</b>	<b>94.7</b>	<b>100.3</b>	<b>60.5</b>	<b>63.6</b>	<b>64.9</b>	<b>68.2</b>	<b>71.1</b>	<b>73.8</b>
Cycle III (traditional)	68.2	70.9	72.6	77.5	81.3	85.5	58.6	60.9	62.1	64.9	67.9	70.5
Open education <sup>1</sup>	3.7	2.7	2.5	3.8	3.5	3.7	0.5	0.4	0.3	0.5	0.6	0.3
New opportunities	...	3.6	3.5	4.4	5.1	5.1	...	0.9	0.9	1.1	1.0	1.1
IPEC (Plan 125)	0.4	0.2	0.3	0.2	0.2	0.3	0.1	0.1	0.0	0.0	0.0	0.1
CINDEA (level II)	2.4	2.6	2.9	3.1	3.3	4.4	0.8	0.9	0.8	0.8	0.7	0.9
Special education	0.8	0.8	1.1	1.2	1.3	1.4	0.5	0.5	0.7	0.8	0.9	0.8
DIVERSIFIED SECONDARY EDUCATION	<b>45.1</b>	<b>48.0</b>	<b>50.8</b>	<b>53.3</b>	<b>56.0</b>	<b>59.8</b>	<b>31.3</b>	<b>34.6</b>	<b>37.3</b>	<b>37.6</b>	<b>38.1</b>	<b>39.7</b>
Diversified education (traditional)	41.9	44.4	47.1	48.0	50.2	53.1	30.7	33.6	36.4	36.0	36.6	38.4
Open education <sup>1</sup>	1.8	1.4	1.3	1.4	1.7	1.7	0.1	0.1	0.1	0.1	0.1	0.1
New opportunities	...	0.7	0.9	1.8	1.4	1.6	...	0.3	0.4	0.8	0.5	0.5
CINDEA (level III)	0.9	1.1	1.3	1.6	2.0	2.5	0.2	0.4	0.3	0.5	0.6	0.4
Special education	0.5	0.5	0.1	0.5	0.6	0.8	0.2	0.2	0.1	0.2	0.3	0.3

<sup>1</sup> Includes open education projects financed by MEP.

Ages concerned are as follows: Interactive II – 5 years; Transition cycle – 6 years; Primary – 7-12 years; Secondary – 13-17 years.

Sources: 1. MEP, Department of Statistics. 2. Central American Population Centre.

983. In regard to the total drop-out rate during the school year in regular education in Costa Rica, it can be seen that, although this has increased over the last 15 years from 43,117 students in 1990 to 58,420 in 2004, the relative figures indicate that there has been a decline in the percentage of the total population dropping out, from 7.3% in 1990 to 6.2% in 2004, when one takes into account all children and young people enrolled in the education system. However, in cycles I and II the absolute and the relative figures indicate that drop-out rates declined from 20,275 to 17,441 over the same period. In night school, drop-outs increased, going from 19% in 1990 to 31% in 2004, although that did not happen in the vocational night schools, where there was a 1.3 decline in that period.<sup>160</sup>

<sup>160</sup> Annex 1, Table: Drop-outs in regular education in the course of the year, 1990-2004.

TABLE 39

**Final results from regular education (public, private and subsidized private)  
by education level, 1990-2004 (relative statistics)**

<i>Education level and result</i>	<i>1990</i>	<i>1995</i>	<i>1998</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>
<i>Cycles I &amp; II</i>								
Final graduation	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Passed	87.3	86.6	88.3	90.6	90.9	91.2	90.7	90.5
Failed	12.7	13.4	11.7	9.4	9.1	8.8	9.3	9.5
<i>Night schools</i>								
Final graduation	...	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Passed	...	85.8	82.2	88.4	88.2	86.6	91.3	87.1
Failed	...	14.2	17.8	11.6	11.8	13.4	8.7	12.9
<i>Cycle III and diversified education</i>								
Final graduation	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Passed	81.6	76.0	78.0	82.7	82.2	81.1	81.9	80.0
Failed	18.4	24.0	22.0	17.3	17.8	18.9	18.1	20.0
<i>Daytime academic</i>								
Final graduation	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Passed	80.8	75.4	77.2	82.5	81.6	80.5	81.3	79.6
Failed	19.2	24.6	22.8	17.5	18.4	19.5	18.7	20.4
<i>Technical day and night</i>								
Final graduation	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Passed	84.5	78.0	81.0	83.4	84.3	83.2	84.0	81.4
Failed	15.5	22.0	19.0	16.6	15.7	16.8	16.0	18.6

*Note:* From 1997 to 2001, the technical branch only includes daytime education.

*Source:* Department of Statistics.

984. Finally it is essential to examine how the final results in regular education had evolved by 2004 relative to the 15 previous years. Cycles I and II stand out with a pass rate of 90.5%, while cycle III and diversified education show 80%.

985. In the latter case, a slight decline in results can be seen from 1990 to 2004, from 81.6% to 80%, while in cycles I and II the trend in the period under study has rather been upwards, since in 1990 it was 87.3%, while in 2004 the pass rate was 90.5% of the total.

986. On the subject of access to higher education, it is important to mention that the country has four public universities: The University of Costa Rica, UCR; The National University, UNA; The Technological Institute of Costa Rica, TEC; and The State Open University, UNED. According to the report on the state of education in 2005, "During the last half of the 20<sup>th</sup> century, a broad range of higher studies came on offer, expanding significantly from the 1990s, thanks to the growth in the number of private universities."<sup>161</sup>

987. In fact in 2003, there were around 170,000 persons in higher studies, an almost threefold increase over 1985. Between 1990 and 2005, the university population in public institutions of higher education increased by around 30%, while in the private sector it is estimated that the population covered was about half the former in recent years, whereas in 1990 it had been little more than a fifth. Between 1990 and 2005 the number of university diplomas awarded tripled.

988. However, it must be recognised that the public universities are performing less well as a mechanism for social mobility and the education system faces the challenge of reviewing this task. It is likewise essential to improve the monitoring and control of the quality of university teaching, particularly in the private sector.<sup>162</sup>

989. According to article 78 of the Constitution, "Public spending on State education, including higher education, shall not be less than six% (6%) per annum of the gross domestic product, in accordance with the law, without detriment to the provisions of Articles 84 and 85 of this Constitution." That percentage can be seen in table 39, which shows the evolution over 15 years. The table includes information on gross domestic product, central government spending, the education sector and spending by the Ministry of Public Education, as well as the relative percentages in the different cases. In 1999, education sector spending reached the highest proportion of GDP, 7.15%, quite close to that of three years earlier, 1996, and that of 2003, in which year data on what was actually spent are included.

990. With regard to the proportion of education sector spending relative to central government spending, the highest was recorded in 1997 at 34.66%, even though three years earlier it had gone down to 20.74%, the lowest level in the decade. However, in 2000 the proportion was 23.60% and three years later, 19.61%. Similar ratios can be seen between Ministry of Public Education spending and that of the central government, which show the highest proportion also in the year 1997, 24.91%, while in 2000 it was a little over 22.3% and in 2003 had gone down to 19.52%.

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<sup>161</sup> Op.cit., *State of Education*, p.18.

<sup>162</sup> Idem.

TABLE 39 A

## Percentage of public spending devoted to education, 1989-2005

Year	Gross domestic product (GDP)	Central government spending (CGS)	Education sector (ESS) <sup>a</sup>	Min. of Public Education spending (MPES) <sup>b</sup>	Proportions				
					ESS/GDP	MPES/GDP	MPES/CGS	CGS/GDP	ESS/CGS
1989	428 071	85 649	-	17 662	0.00	4.13	20.62	20.01	0.00
1990	522 925	107 070	27 868	21 773	5.33	4.16	20.33	20.48	26.03
1991	689 848	131 207	35 363	28 601	5.13	4.15	21.80	19.02	26.95
1992	906 440	180 479	44 487	36 806	4.91	4.06	20.39	19.91	24.65
1993	1 069 400	249 679	55 185	46 659	5.16	4.36	18.69	23.35	22.10
1994	1 305 796	306 194	63 495	56 690	4.86	4.34	18.51	23.45	20.74
1995	1 621 644	370 384	99 056	70 738	6.11	4.36	19.10	22.84	26.74
1996	1 904 566	405 449	135 999	96 280	7.14	5.06	23.75	21.29	33.54
1997	2 260 479	449 978	155 977	112 070	6.90	4.96	24.91	19.91	34.66
1998	2 729 735	635 176	194 761	145 617	7.13	5.33	22.93	23.27	30.66
1999	3 228 429	755 083	230 848	177 567	7.15	5.50	23.52	23.39	30.57
2000	3 648 418	963 916	227 499	215 179	6.24	5.90	22.32	26.42	23.60
2001	4 167 780	1 119 208	282 775	250 499	6.78	6.01	22.38	26.85	25.27
2002	4 680 417	1 370 752	321 661	290 325	6.87	6.20	21.18	29.29	23.47
2003	4 977 886	1 813 640	355 667	353 949	7.14	7.11	19.52	36.43	19.61
2004*	5 703 851	2 150 673	437 287	405 347	7.67	7.11	18.85	37.71	20.33
2005*	6 735 335	2 309 635	473 188	471 229	7.03	7.00	20.40	34.29	20.49

Source: Central Bank of Costa Rica, Budget Act 1990-2005, Department of Budget Studies and Planning, Educational Finances Area.

\* Budgeted figures.

<sup>a</sup> The education sector comprises the Ministry of Education, the National Apprenticeship Institute, the University Colleges of Alajuela, Puntarenas and Cartago, the Central American School of Stockbreeding, the University College of the Dry Tropics, the Special Fund for Higher Education and the Programme to Improve the Quality of General Basic Education.

<sup>b</sup> In the MPEE column the data given do not include external resources.

### Difficulties in implementing the right to education

991. Some of the difficulties indicated in meeting the needs of the State education centres and furthering the creation of others are the result of limited economic resources, the way in which budgetary allocations are made and funds used, and the excessive concentration of certain functions, despite encouragement of regionalization.

992. Although the MEP provides students with some teaching materials, the budget allocation is not sufficient to cover costs over and above enrolment in public centres of education and it is their families who pay for their uniforms and school supplies.

993. Where private education is concerned, according to the March 2005 list, the percentage of centres not administered by the State at the preschool level is 13.52%; in cycles I and II of general basic education it is 7.40%; and in cycle III of general basic education and in diversified education it is a third of the total, namely 29.82%.

994. The difficulties facing those who wish to attend private education centres are inherent in the actual administrative model:

- Applying for and passing an admissions test; in some cases priority is given to family members of students already registered in the centre;
- Signing and complying with certain internal regulations or contracts;
- Some institutions have higher academic requirements than those of the national examination system;
- Paying a fee for enrolment, monthly attendance and teaching materials.

995. The MEP's Division for Curricular Development is in charge of preparing programmes of study that provide a platform on which teachers can build planned, consistent courses of teaching and apprenticeship. The Quality Control Division supervises the execution of the work and the implementation of the programme plans by the staff of the educational institutions, as well as the directives issued by the Ministry authorities.

996. The private centres are subject to inspection by the Ministry of Education by means of frequent visits to establishments of private education in general, particular attention being paid to teachers' classroom work, in order to determine the quality of teaching on offer.

997. One of the major difficulties and constraints faced by those who want to set up education centres is obtaining approval of their construction plans. A shortage of staff at the National Centre for Educational Infrastructure (CENIFE) is a hindrance to the inspection procedures that have to be carried out periodically. Foreigners who wish to open a private institution can do so regardless of nationality, provided they comply with all the requirements set forth in the relevant regulations.

998. Private education may offer inducements such as better infrastructure, fewer students per level, the availability of technological aids, study plans that incorporate reinforced teaching of a second language, basically English, and computers.

999. It is important to point out that, although indicators such as the numbers of young people retained in the education system are better in the private centres, nonetheless improved results from public institutions have been observed in national tests, many of them exceeding the averages of students in private centres. However, not many qualitative studies have been done in the country to allow us to compare and pinpoint the differences between public and private education, because quality criteria and standards have not been established to permit such comparison.

## **Measures adopted by the State to further the right to education**

### *Literacy*

1000. To promote literacy, the National Literacy Plan and the Strategic Literacy Plan have been implemented and educational services established for young people and adults mainly in those regions where the illiteracy rate is high, in rural, indigenous and marginal urban areas for example, as well as for immigrants living in poverty and socially at risk.

1001. By way of encouragement to this population, the Department of Adult Education provides all materials free and grants certificates of progress. The women living in poverty who have signed up for the programme “Growing Together” receive a monthly economic incentive and are exempt from payment for national tests.

1002. A challenge for the State of Costa Rica is the fact that in the indigenous communities the levels of illiteracy are higher than “the national average of 4.8%. The averages were below 10% in communities such as Quitirrisi (9.4%) and the Boruca peoples (9.6%), but reached high levels in communities such as Telire with 95%. In general the Cabécar people, to whom the last-named territory belongs, show the worst levels.”<sup>163</sup>

1003. Positive results have enabled many persons to succeed and join society and the country’s work force in better conditions. A lack of funds, high drop-out rates in some cases and poor academic results are a continuing difficulty, since some adults show little interest in studying. Nevertheless, literacy training continues to be offered to a broad segment of the population throughout the country.

### *Improving quality and increasing educational coverage*

1004. From 1990, there have been four government programmes directly linked to the education sector, each running for four years: 1. “The future belongs to everyone”, 1990-1994; 1. “Education: the basis for equal opportunities”, 1994-1998; 3. “Excellence in education for all”, 1998-2002; and in the final period, “The National Development Plan”, 2002-2006. Each of these has aimed to implement and develop programmes to improve the quality of the education system and increase its coverage.

1005. Among the most important programmes are:

- The Programme to Form Moral Values
- The National Programme to Prevent Violence
- Integrated education programmes for young people and adults who have not completed their education, in open education programmes and primary and secondary evening classes
- The Programme of New Educational Opportunities for the Young.

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<sup>163</sup> Initial basic report (January) 2006, op.cit., p.14.

1006. Among the main actions taken to enhance educational and social coverage are:

- Strengthening single-teacher schools through the appointment of a second teacher
- Giving priority to education centres in marginal urban communities
- Establishing a 200-day minimum for school classes
- Strengthening technical education by offering opportunities for technical training in conditions of equality and regardless of gender
- Strengthening various forms of social assistance in schools, such as canteens, grants, education vouchers and free transport for students.

1007. New challenges in improving the quality of education and the use of technology are:

- Including a foreign language, beginning in primary school, to prepare the population for the challenges of the new millennium
- Including the teaching of computer skills in the education system to facilitate the exchange of information and knowledge management
- Creating and expanding the programme of “telesecondary” schools and “telebaccalaureate” courses to reach a larger number of students.

1008. The figures given by Costa Rica in preceding pages<sup>164</sup> demonstrate that the State has accepted that investing in education means aiming for the development of its people, but investment in education is affected by restrictions on public spending. Despite the fact that the greater part of the central government budget goes to service the public debt, there are specific budget lines and openings for negotiation that can benefit the education sector, taking into consideration variables such as:

- Setting deadlines for increasing educational coverage
- Increasing the budget for education centres’ operating expenses
- Including resources for programmes of equalization (grants, infrastructure, desks, student transport etc.)

### ***Equality of access to education***

1009. Equality of opportunities, in particular with regard to the right to education, is limited by socio-economic, cultural, linguistic, environmental, geographical and topographical factors that hinder the full exercise of the right to education without discrimination.

1010. In connection with measures or provisions to promote equality between men and women, boys and girls, especially in the full enjoyment of the right to education, one may mention:

- The preparation of a policy of gender equity for the Costa Rican education system

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<sup>164</sup> We refer to figures on school attendance, enrolment and results given in the section on the situation in education under this article.



- The preparation of educational modules for the application of a gender viewpoint to MEP programmes and training in their use
- Technical and administrative assistance days for the programmes “Growing Together” and “Building Opportunities”, geared towards adolescent mothers
- Specific actions for the education and technical training of the indigenous, Afro-Costa Rican and disabled populations
- Expansion of education programmes for the migrant population
- HIV/AIDS prevention and awareness-raising

1011. It should be pointed out that from the earliest school levels women generally display greater or very similar participation in formal education systems. Men have lower attendance, lower coverage and higher drop-out rates. The literacy indicator, estimated by an individual’s number of years of schooling, reveals no significant differences between men and women and this undoubtedly reflects conditions of equity.

1012. Women’s access to tertiary (higher) education displays significant progress, with 12 women enrolled for every 10 men in State universities. Nonetheless, participation differences remain across educational institutions and in terms of study areas.

1013. **Young people and adolescents.** Educational programmes have been elaborated specifically for women:

- The programme “Growing Together” which is directed to women living in poverty and provides them with a monthly economic incentive
- The programme “Building Opportunities” is addressed to young pregnant women and single mothers.

1014. **Indigenous peoples.** To guarantee genuine and effective cultural development for the indigenous population and in order to comply with the international agreements signed by the country (notably ILO Convention No. 69 on Indigenous Peoples) and with the legislation in force, the MEP’s Department of Indigenous Education has undertaken the following activities:

- The promotion and teaching of indigenous languages
- The academic and technical training of the teaching staff who work in indigenous communities
- The opening of indigenous schools, CINDEAs and colleges, using study programmes from the national curriculum, but incorporating as essential features the mother tongue, indigenous culture, indigenous environmental education and indigenous music

1015. In some of these institutes of indigenous education the older adults are permitted to teach these subjects. Moreover, at least 75% of the indigenous students eat in canteens, have grants and vouchers and enjoy free transport.

1016. Despite the foregoing, the Ombudsman says that “the educational authorities are far from managing to consolidate the process that has begun and been widely accepted by the indigenous

communities and one sees contradictory action taken within the MEP itself, with the appointment of indigenous language teachers being subjected to standardized criteria, whereby the same academic requirements are asked of them as of the other teachers, no account being taken of the fact that the teaching and apprenticeship of indigenous languages, at least at its level of development in our country, falls outside the academic sphere and is part of the customs, culture and traditions of a people. It is thus difficult for those who speak the language to have university degrees that would prove their competence”.<sup>165</sup>

1017. What is more, in the area of education, the complaints made to the Ombudsman call for professionals who speak the indigenous language or, in their absence, interpreters, so as to prevent the centres being abandoned and to respect their cultural specificity.

1018. It is important to note that at present “there are 224 centres of indigenous education, 210 of them being for primary schooling and 14 for secondary schooling”.<sup>166</sup> However, these centres have problems of infrastructure, of teaching materials supply and of the resources needed to allow them to function adequately. “Many of these schools do not even have drinking water, much less electricity and so the possibility of using new technological tools (computers or televised programmes) cannot be entertained.”<sup>167</sup>

1019. As for Costa Rica’s black population, they have the same rights to education as any other students and are incorporated into the education system without any kind of discrimination. However, it is essential to make it clear that, although their relative percentages of school enrolment are higher than the national ones, when considered in absolute terms they reflect a less fortunate reality and a critical situation where drop-out rates of persons of African descent in the formal education system are concerned. In this regard, Afro-Costa Rican women may become the most seriously affected, unless we manage to consolidate “policies and initiatives aimed at taking account of the threefold discrimination against them: because they are women, because they are black and because a large number of them belong to an impoverished and marginalized social class”.<sup>168</sup>

1020. Despite the foregoing, it should be noted that “as a result of their taking advantage of access to the education system, a generational change is taking place among Afro-Costa Ricans, with new professionals representing a new business group of up to 25% in liberal professions in the province of Limon, and they are tending to move mainly into the medical sciences and education”.<sup>169</sup>

1021. **Disabled.** In 1993, as a means of guaranteeing disabled persons’ enjoyment of the right to education, the Higher Board of Education adopted study plans for the special education services of cycle III and diversified education, in technical and academic colleges, and in 2000 it adopted study plans for integrated classrooms and centres of special education.

1022. In 1997, the Board by Agreement No. 8-97 adopted “policies for access to education for students with special educational needs”, with the specific aim of making the provisions of Act

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<sup>165</sup> Office of the Ombudsman, *Report on work, 1998-1999*, p.cxlv.

<sup>166</sup> *Basic report*, op.cit., quoting the MEP, Department of Indigenous Education, 2006, p.16.

<sup>167</sup> Office of the Ombudsman, *ibidem*, p.cxlv.

<sup>168</sup> Minott, op.cit., p.11.

<sup>169</sup> *Ibidem*, p.12.

No. 7600 and its regulations operational in the field of education. In the same vein, it has developed programmes for the deaf, both young persons and adults.

1023. It is important to mention the development of laboratories and support teams for training disabled students enrolled in cycles III and IV of special education (prevocational workshops).<sup>170</sup> In this regard, the possibility is emerging that productive work projects may be developed in keeping with the specific features of each region and technical speciality, as well as micro-businesses and co-operative work. Furthermore, to equalize opportunities, adjustments are being made to the educational infrastructure so as to facilitate access for all (mainly ramps).

1024. At its session No. 61-2000 of December 2000, the Higher Board of Education adopted the Study Plan for Comprehensive Centres for Disabled Adults (CAIPAD), which aims to give such persons technical training. To respond to the present needs and demands of the disabled population, the MEP offers the following:

- *Direct services*: These are services offered in specialized centres to those disabled persons who by reason of their handicap need longer-term or permanent assistance;
- *Specific special education services*: These are offered in ordinary institutions of general basic or diversified education. Specific groups of students with disabilities are taken care of by professionals qualified in special education, but placed in technical or academic day schools or colleges;
- *Fixed or itinerant support services*: To meet the needs of disabled students attending regular schools, fixed or itinerant support teachers are available. They are professionals with different specialities who give support to a given group of students within the same educational establishment (fixed) or in several different ones (itinerant), so that the educational needs resulting from their disabilities will be met.

1025. **Migrants.** The profile of students, particularly Nicaraguan students, shows certain features, given their low levels of school enrolment compared to the national average. According to the 2000 national census, 44.3% of migrants did not complete primary school or any level of formal instruction; there are important differences according to sex, since while 47.1% of men failed to complete primary education, the figure for women is 41.5%.

TABLE 39 B

**Migrant status of total population, by age and sex (absolute and relative figures), 2002**

<i>Age and sex</i>	<i>Total</i>	<i>Per cent</i>	<i>Migrants</i>	<i>Non-migrants</i>
Males	1 983 715	49.6	3.9	45.7
Under 18	755 071	18.9	0.8	18.1
Over 18	1 228 644	30.7	3.1	27.7
Females	2 014 168	50.4	3.9	46.5
Under 18	711 535	17.8	0.8	17.0
Over 18	1 302 633	32.6	3.1	29.4
<b>TOTAL</b>	<b>3 997 883</b>	<b>100.0</b>	<b>7.8</b>	<b>92.2</b>

<sup>170</sup> Financing for the laboratories is granted in accordance with Act No. 283.

1026. The Open Classrooms programme pays particular attention to education centres concentrating on the migrant population and persons with problems because they are foreign. Thanks to the MEP/IOM/USAID and CR-USA convention, a process of training of teachers, technicians and administrators has been launched, from a perspective of intercultural education and social integration, to contribute to the enhancement of the values of solidarity, respect and tolerance for socio-cultural diversity.

1027. In sum, the State of Costa Rica has endeavoured to develop strategies to respond to the needs of specific groups, thereby offering equality of access to education at the same time as it supervises the teaching and learning process and the quality of education.<sup>171</sup> So as to guarantee equality of conditions for the students, Rules for Assessment have been established in Executive Decree No. 1635-MEP, whose aim is to set forth the basic rules for not only the assessment of all branches of learning, but also the conduct of the students in the different types and levels of education offered in the Costa Rican formal education system.

1028. However, the budget allocated to the MEP is insufficient for the required investment in infrastructure,<sup>172</sup> inputs for the education centres and teaching materials for the students. For that reason, many parents pay the cost of uniforms and school equipment. This situation is linked to the fact that a high proportion of the MEP budget goes on salaries, especially of the teaching staff working in the different educational establishments.

#### *The National Apprenticeship Institute*

1029. Another body closely involved with the right to education is the National Apprenticeship Institute (INA) which, under the National Development Plan (2002-2006) is linked to the following programmes:

- “New Life” social plan
- “Closing Gaps among Youth” programme
- Law No. 600, The Equal Opportunity for Disabled Persons Act
- Retraining for Work in the Agriculture and Livestock Sector programme
- Participation in activities concerning the Children and Adolescents Code
- Specific programmes addressed to women
- Programme for Indigenous Communities
- Care for those deprived of their freedom
- “Building Opportunities” (care for adolescent mothers and pregnant women)
- “Growing Together” programme.

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<sup>171</sup> The Quality Control Division must ensure that the work is carried out and the programme plans implemented by the staff working in educational institutions, as well as ensuring compliance with the directives of Ministry authorities.

<sup>172</sup> Control and supervision of the infrastructure is the work of supervisory counsellors and the National Centre for Educational Infrastructure.

1030. In the section devoted to the right to work, article 6, a series of measures are described in which INA has been involved and which concern training that will provide the population with the tools it needs to meet the demands of the workplace, since the right to education is intimately linked to the right to find work of one's own free choice.

### *Situation of teaching staff*

1031. In the area of personnel administration, the Directorate of Personnel of the MEP has heeded the Civil Service directives regarding staff rights:

- *Security of employment:* In Costa Rica access to permanent posts in the Civil Service requires the co-ordination or direct supervision of the General Directorate of the Civil Service. Each year a competitive examination is held for teachers to obtain permanent or interim posts, so that the necessary human resources are at hand for posts where a replacement is needed.
- *General relations between educators and education services:* In accordance with instructions issued by the General Directorate of the Civil Service during the year, the General Directorate of Personnel complies with all changes or increases in salaries and therefore categories. Needless to say, however, there are several trade-union bodies that fight for the rights of their members and so constant negotiations and agreements are needed, which are mostly dealt with by the offices of the deputy ministers or the Minister himself.
- *Teaching materials:* There is room to mention only the Teaching Incentive (8.33% of salary) given to the teacher each month by way of economic assistance for the purchase of materials for class work. CENADI distributes various teaching materials to centres of education to facilitate the process of teaching and learning.
- *Working hours:* These are organized according to the number of lessons, which is established according to the student register and the particular needs of each centre. This means that all teachers have different working hours and their distribution is the task of the relevant directorate.
- *Remuneration of teaching staff:* This is worked out on the basis of the salary scales established by the General Directorate of the Civil Service. Every six months the Directorate may determine by a resolution the percentage increase to be accorded by the State, popular associations and trade unions and, in co-ordination with the Computer Management Division, proceed to apply them.

1032. For most civil servants their salary depends on the number of lessons they are assigned, either permanently or temporarily, as well as any surcharges or incentives, and so to allow some kind of comparison an academic degree has been considered a minimum requisite.<sup>173</sup>

1033. In accordance with the salary scale resolutions, salary increase trends are proportional, the posts being of the administrator-teacher type, which have a larger base, followed by posts of

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<sup>173</sup> See tables, annex 1, Salary categories in accordance with Resolution DG-005-2005. Based on the academic degree of university baccalaureate and on the bachelor's degree.

single-subject teaching professors (PT5 and PT6) and, in the final analysis, the teaching and the administrative categories have similar bases.

1034. It should be recalled that, in the case of Title II teaching posts, the salary base is in line with the academic grade of the civil servant, whereas in the Title I professional series (administrative), the salary base does not vary according to the degree obtained; it being in the percentage of 'Exclusive Dedication or Prohibition' [translator's note: rules to prevent conflict of interests, forbidding the accumulation of posts], as also in the number of points earned towards the Professional Career (incentives), that the academic grade is taken into consideration for a higher remuneration.

### *Changes in the legislation*

1035. To ensure respect for the principle of equality and non-discrimination in centres of education, the MEP applies the Children and Adolescents Code, which in article 68, chapter V prohibits the promotion or practice in centres of education of all forms of discrimination by gender, age, race or ethnic origin, socio-economic status or for any other reason that violate human dignity.

1036. In accordance with Law No. 769, the Services for Women Living in Poverty Act, the INA promotes conditions of equality and equity for women in vocational training and employment, ensuring their inclusion in different subsectors and thus allowing them to achieve professional levels with better remuneration. The INA also gives training for population groups at risk in society (the elderly, those deprived of their freedom and the duly legalized migrant population), offering them the means of rehabilitation and integration into the country's labour force. In the case of duly legalized migrants, this is done in compliance with the instructions of the Constitutional Chamber of the Supreme Court of Justice in vote no.10314-2000. Subsequently, by Law No. 283, financing was granted for the development of laboratories and support equipment for the training of disabled students enrolled in cycles III and IV of special education, which task was co-ordinated by the Ministry of Education.

1037. With regard to technical education and the education of adults, Law No. 886, "Creation of MEP education courses for adults", of 14 November 1961, and Law No. 868, "Act establishing the National Apprenticeship Institute", of 6 May 1983 complement each other and allow for very close inter-institutional co-ordination.

1038. Community participation in the Costa Rican education system takes concrete form in the Education Boards and Administrative Boards, set up by the General Regulation, in Decree No. 7763-E, of 3 September 1987. In 1996, to reconfirm their importance in the Costa Rican education system, the Constitutional Chamber, by vote no.1581-96, affirmed that "it appears that these Boards are called on to give support to the education centres so as to improve the quality of teaching in public education and to provide for their needs and so they must look after the centres' physical plant, their material resources and their economic management and serve as the co-ordinating body with other educational authorities and community officials".

1039. Access to university education has been ensured first by articles 84 and 85 of the Constitution, which guide the State in facilitating "the pursuit of higher studies by persons who lack monetary resources. The Ministry of Public Education, through the organization established by law, shall be in charge of awarding scholarships and assistance." This constitutional provision is complemented by Law No. 041, "Creation of the National Commission on Loans for

Education, CONAPE”, of 18 January 1977, and Law No. 658, “Creation of the National Grants Fund”, of 11 February 1997.

1040. The Constitutional Chamber has also developed jurisprudence in connection with the contents of this article, as expressed in votes such as 2667-94 and 142-90, along the following lines: “It is a principle of solidarity proper to a democratic regime such as ours that those who have most should contribute to support public institutions in favour of the needy; in this case, those who cannot meet their university costs must have access to the system of university grants, but those who do not meet the requirements for that must pay their tuition and in this way a larger group of citizens will be able to attend centres of higher education. It is an obligation on the State, established in article 78 of the Constitution, to facilitate the pursuit of higher studies by persons who lack monetary resources; for them there are the scholarship programmes, for the rest a disproportionate increase in enrolment expenses cannot in any way represent a violation of the provision cited.”

1041. As part of the development plan for Communal Virtual Centres (CCV), by Executive Decree No. 2083-MICIT of 5 November 2004, the Costa Rican Internet Commission (CI-CR) was set up, attached to the Ministry of Science and Technology (MICIT). It recommends strategic policies and guidelines in relation to the use and development of the Internet in the country. At present several public institutions such as CEDETI, INA and UCR and some university foundations are carrying out training in the use of the Internet. Also as part of this plan, the National Advanced Research Network Board (CR2Net) was set up by Executive Decree No. 31531-MICIT.

### **Co-operation**

1042. Costa Rica has benefited from international co-operation in several fields mainly related to technical education, the teaching of a second language, the building of infrastructure for secondary and for preschool education and the strengthening of secondary education, among other things. All these programmes and projects contribute to creating better educational services.

### **Conclusions**

1043. The Costa Rican education system has shown some outstanding strengths over the years, especially in educational coverage, through the elaboration of mechanisms to tackle the problems from preschool through to university level, thus offering the means of access for the majority of the population.

1044. The right to education is of overriding importance to the State of Costa Rica, since knowledge is a fundamental tool for economic growth and social mobility and even more to allow our inhabitants to enjoy a good quality of life. Education in Costa Rica has therefore been considered as the chief means of eliminating inequality, exclusion and poverty.

1045. This desire on the part of the State has been fulfilled in the high rates of coverage in the formal, traditional system and also in the trend towards an increase in initial general enrolment in recent years; we particularly note as a great achievement the significant increase in the rate of coverage of secondary education.

1046. Nonetheless, it is essential to find a solution to the drop-out rates that have been observed at some levels of education, as well as the final results from the system, since, although in general the number of passes has tended to rise, it is necessary to improve the monitoring of this item in cycle III and diversified education, as the percentage of passes is 80% (in 2004).

1047. The literacy strategy is noteworthy, since over the last 15 years it has produced important results and consolidated the relative number of approximately 95% of the population who are literate (2,877,599). Likewise, one should highlight the fact that striking efforts have been made to ensure equal access to the right to education.

1048. In the same vein, we should point to the focus on marginal-urban and remote communities, since over the years more education centres have been built particularly to serve such geographical areas and means, such as single-teacher schools, telesecondary schooling and telebaccalaureate courses, have been created and strengthened to reach the population living in those circumstances.

1049. Education in Costa Rica has created structures that focus on certain population segments, such as women, girls and adolescents, who require in addition special solutions because their circumstances differ on occasion from those of the rest. One can also observe a series of strategies, programmes and actions to deal with other groups with special needs, such as the indigenous population, the disabled and immigrants, for whom education must be provided taking account of particular elements and factors.

1050. However, the mechanisms still need substantial improvement, particularly where indigenous peoples are concerned, because, although in a considerable number of these peoples literacy is around 90%, there is one specific region where the percentage of illiterate persons is very high (95%). Work needs to be done also on continuing improvement of the conditions of access to education, since, while a process has been begun that is widely accepted by this population group, as action is introduced to promote indigenous culture and teaching in general on the basis of that culture, the peoples ask that the teachers and professors be really knowledgeable about this speciality.

1051. While more progress must be made towards quality and sustainability in education and the means and measures already designed and implemented by the State need to be improved, we must endeavour to ensure that they are developed with greater awareness and on the basis of a comprehensive and systematic policy; consequently, greater efforts have to be generated to overcome the obstacle of shortcomings – caused among other things by budget limitations – in the monitoring, control and continuity of specific programmes and actions such as the award of scholarships and assistance to students with few resources and the establishment and development of school canteens and free transport, so that the conditions will really exist for students to stay in the school system.

1052. Likewise, as some social activists have warned, in “The state of education” for example, it is crucial to assess the need for a reform of education, to ensure that the process of training has quality content and is really geared to the new global and national requirements, as well as to the particular circumstances of the country and its potential.

1053. In this vein one should recall that, with the aim of giving students the tools that are indispensable in society, the State of Costa Rica must be more concerned to create and develop such activities as the teaching of computer skills and of a second language. Although these are



being introduced, they are still more evident in private education, which is incidentally pointed out as one of the advantages of private as opposed to public education, in addition to the better state of its infrastructure, the smaller numbers of students per group and the more frequent use of technology.

1054. In university education, one can on the whole deduce that there is progress, but there are still four public institutions and dozens of private universities. It is a fact that in 2003 the number of university students was practically three times that in 1985. However, the role of public universities as agents of social mobility needs to be reviewed, since it has been declining, and greater vigilance has to be exercised regarding the quality of higher, especially private, education.

### **ARTICLE 15 (The right to culture and to scientific and technological progress)**

#### **Conventions**

1080. By Law No. 980, Costa Rica adopted the Convention Concerning the Protection of the World Cultural and Natural Heritage, of 16 November 1976.

1081. On the subject of indigenous peoples, ILO Convention 169 states in article 5a) that “the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected ...” and in b) of the same article that “the integrity of the values, practices and institutions of these peoples shall be respected.”

#### **General framework**

1082. Article 89 of the Constitution provides that “The cultural aims of the Republic include: to protect its natural beauty, to preserve and develop the historic and artistic wealth of the Nation, and to support private initiative directed to scientific and artistic progress.”

1083. The Ministry of Culture, Youth and Sport (MCJD)<sup>174</sup> is the guiding body for policy in the fields of culture, sport and youth, in the areas within its competence: it co-ordinates, organizes and promotes culture through artistic and cultural creations and through the conservation of the cultural, historical and architectural heritage.

1084. Noteworthy among the institutional goals in this sector, particularly centred in the Ministry of Culture, are: promoting and encouraging the production and dissemination of culture and art in their various forms nationally, regionally and locally; promoting the creation of areas, opportunities and mechanisms for encouraging citizen participation, so as to enable communities to gain access to and enjoy cultural, sporting and recreational goods and services; fostering and preserving the different forms of cultural expression in all regions of the country and among the groups that co-exist in our land; promoting and supporting artists’ groups, cultural organizations and young talent from all regions of the country through sponsorship, the loan of premises and other forms of help; supporting creative talent and research by the award of a workshop grant, thus providing economic assistance to allow recipients to develop their own proposals and projects in literature, music, theatre, dance, visual arts and crafts.

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<sup>174</sup> Created by Law No. 788 of June 1971, which provides for the functions enumerated.

1085. In the scientific and technological field there are two key institutions: the Ministry of Science and Technology (MICIT) and the Costa Rican Electrical Institute (ICE). There also exists framework legislation, namely the Promotion of Scientific and Technological Development Act, Law No. 7169 of 26 June 1990, which reaffirms the government backing for supporting and modernizing Costa Rican legal instruments to make science and technology factors for development.

1086. It is also important to cite article 47 of the Constitution which provides that every author, inventor, producer or merchant shall temporarily enjoy exclusive ownership of his work, invention, trademark or trade name, in accordance with the law. The task of monitoring this falls to the National Property Register, which is a decentralized body of the Ministry of Justice and Pardons; implementation of the law on Procedures for Compliance with Intellectual Property Rights, Law No. 039 of 12 October 2000 complements that work.

### **Measures adopted to ensure the right to participate in cultural life**

#### *Funds and infrastructure*

1087. In Costa Rica, in contrast to the other sectors of public administration, the cultural sector virtually consists of the Ministry of Culture, which embraces nearly all centralized and decentralized organs concerned, with the exception of the national cultural radio and television system, Costa Rican publishing, the Historical Commemorations Commission, the Academy of Genealogical Sciences and the Academy of History and Geography, which are private, non-profit institutions financed out of the Ministry of Culture budget without that implying dependency within the formal institutional structure.

1088. To achieve its institutional aims, the Directorate of Culture has formed two areas: the area of culture and art and the area of culture and identity, which constitute the basis on which are built the programmes to promote and disseminate culture nationally, regionally and locally and to stimulate and acknowledge creative talent by awarding national cultural prizes, workshop grants and declarations of cultural and public interest. Thus those aims are achieved through the allocation of the appropriate human and budgetary resources for the implementation of those programmes.

1089. The budget of the Ministry of Culture represented 0.81% of the national budget in 1990 and 1.09% in 1996. It is important to note that this ministry's budget has been shrinking over recent years, from 1.07% to 0.85%, to 0.61%, to 0.53% in 1997, 1998, 1999 and 2000, respectively. In the case of the budget for 2000, if one eliminates the items included by members of the Legislative Assembly, which the Ministry of Finance does not usually allow to be spent, the percentage is only 0.53%.

TABLE 40

#### **Budget of the Ministry of Culture, 2001-2005**

2001		2002		2003		2004		2005	
<i>Amount</i>	<i>%</i>	<i>Amount</i>	<i>%</i>	<i>Amount</i>	<i>%</i>	<i>Amount</i>	<i>%</i>	<i>Amount</i>	<i>%</i>
7 501 090 734	0.62	7 579 393 856	0.55	7 127 062 113	0.55	8 927 710 000	0.42	8 503 336 000	0.37

*Source:* Report of the Ministry of Culture, Youth and Sport for the DESC report, January 2006

1090. The Ministry's budget has been declining in the last five years, as can be seen from the table: whereas in 2001 it was allocated 7,501,090,734 million colones, that is 0.62% of the national budget, in 2005 it received 8,503,336,000 million colones, or merely 0.37%.

1091. This means that the Ministry's component bodies have to assign fewer funds each year for the execution of projects and programmes, especially since around 59% of the budget has to cover payroll expenditure and, while that is essential for the sector to carry out its activities, this leaves only 41% to meet operating costs.

1092. The ministry has channelled co-operation and the promotion of cultural and artistic activities to the various local governments through the regional directorates of culture and the decentralized organs that the ministry has throughout the national territory.

1093. With regard to its support of private initiative, the Ministry of Culture draws on its scarce resources to offer important assistance to many different forms of cultural activity through productions and co-productions of the dramatic arts, making available the infrastructure at its disposal and organizing contests, festivals and forums, to which independent artistic organizations and groups are specially invited, such as the National and International Festival of the Arts, literature and painting contests, the National Festival of Young Choreographers, the National Theatre Festival and exhibitions of Costa Rican cinema and video.

1094. With regard to the infrastructure for policies to promote popular participation in culture, the ministry has made striking efforts through houses of culture and other cultural centres to provide the infrastructure to assist in promoting creativity locally and regionally in compliance with the principle whereby communities administer their own cultural activities.

1095. Another significant contribution worthy of note is the creation of another branch of the Artists' House School, in Alajuela (August 2000) and the remodelling in 2005 of the School's building in Guadalupe. Since 2000 there has been a yearly average of 2,000 students enrolled in the branches, consultancies and courses in the area covered.

1096. In the period under consideration a great achievement has been made: the present headquarters of the Ministry of Culture has been restored by the Centre for Research and Preservation of the Cultural Heritage. It comprises a museum, two theatres, an amphitheatre, an auditorium, an administrative building and the aforementioned centre, among other buildings. Where new infrastructure is concerned, one should note the construction and equipment of a special archives building.

1097. Other edifices of great historical value, such as the José Figueres Ferrer Historical and Cultural Centre, the National Museum and the Juan Santamaria Historical and Cultural Museum, have been used for the promotion of culture.

1098. As part of the Ministry's policies to enhance communal participation and decentralize the production and dissemination of culture, houses of culture have been created in different regions of the country, whose task is to promote communal organization and the comprehensive development of communities. In the 1970s, the first four houses of culture were established in Heredia, Puntarenas, Limon and Cartago, but it was in the 1980s and 1990s that a considerable increase took place with the creation of a total of 30 houses of culture. The municipalities, communal organizations and centres of higher education showed great interest in their establishment and administration.

1099. Later, between 2000 and 2004, eight more houses of culture were established, so that by 2004 the total was 42 houses, of which the majority (42.8%) belong to the municipalities. In sum, 18 houses of culture are the responsibility of the municipality, 15 are in the hands of communal or cultural associations and there are 6 cantonal committees of culture and sport that belong to the Ministry of Culture and 3 cantonal committees that belong to other institutions.

1100. Furthermore, with the idea of decentralizing activities to the four corners of the city of San José, the Eastern Cultural Centre was set up. That centre, located in Guadalupe, serves the cantons of Goicoechea, Coronado and Moravia. It has facilities for rehearsals by State and private artistic groups, a cultural gallery and classrooms for training. In addition, this cultural complex is the headquarters of the Artists' House and the offices of the Regional Directorates of San José and Limón.

1101. To bring art and cultural creativity to the communities, the Museum of Costa Rican Art has a programme of travelling exhibitions known as "Itinerant Art", set up in the 1980s. There are about 12 exhibitions on offer, that can go to libraries, houses of culture, the regional branches of the universities, regional museums etc., with the aim of ensuring that Costa Rican art is diffused to other regions of the country.

### ***Promotion of cultural identity***

1102. Through the regional directorates of culture the Ministry tries to ensure that cultural and artistic programmes reach the farthest corners of the country and rural populations, albeit in limited form because of the lack of resources. However, it should be noted that Executive Decree No. 4359-C of 16 May 1995 initiated Regional Festivals of Culture whose activities promote the expression of art and culture and its enjoyment in all the provinces of the country, thus ensuring that the work of this Ministry reaches the remotest rural areas and communities in the land.

1103. With regard to indigenous populations, the celebration of a Day of Cultures<sup>175</sup> was proclaimed, out of respect for the cultural identity of the different ethnic groups that make up the population of Costa Rica.<sup>176</sup>

1104. The Biodiversity Act, No. 788 of 30 April 1998, contains variations on the right to property that favour indigenous communities, not in regard to the property as such, but as a source of natural, cultural, spiritual, economic and social wealth (article 10, no.6). This law also establishes "sui generis community rights" (article 82) and the definition and recording of sui generis intellectual rights.

1105. Support has been given to crafts through workshops aimed at improving techniques and at innovation, drawing on the experience and knowledge of the indigenous communities, while at the same time preserving native designs that recreate symbols and shapes that reflect their view

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<sup>175</sup> By Law No. 426 of 23 August 1994, the Day of Cultures Act (12 October), in force since 21 September of that year.

<sup>176</sup> Mention must also be made of Executive Decree No. 6174-MP-C of 22 April 1997 which set up the Institutional Commission for Follow-Up to the National Indigenous Dialogue and which was published in Gazette No. 39 of 21 July of the same year. That decree seeks to continue the policies of promoting the rights of the indigenous peoples, policies first set forth in Law No. 251 establishing the National Commission for Native Affairs (of 11 July 1973), which was conceived as a channel of communication to provide for the needs of the indigenous peoples who inhabit our country.

of the world and their direct relationship to nature. In addition, to promote and market indigenous crafts and to foster the exchange of experience among the different indigenous peoples, the Indigenous Intercultural Encounter is held in the month of October at the National Centre of Culture (CENAC) with the support of the National Indigenous Committee.<sup>177</sup>

1106. An outstanding event in our work with indigenous youth occurred when the Youth Council included three young indigenous persons in the Assembly of the National Youth Advisory Network and also incorporated them in cultural promotion activities such as the First International Young Expression Festival (March 2004) and in international forums like the “Workshop Seminar: Gender and Indigenous Youth of African Descent in Central America” (June 2004).

1107. Where the Afro-Costa Rican population is concerned, support in the area of legislation has been given by Declarations of Cultural Interest made in the form of executive agreements (between the Ministry of Culture and the President of the Republic) concerning the different activities of groups organized by civil society (for example, Festivals of the African Diaspora which are celebrated in San José with the Afro-Costa Rican population of the province of Limon).<sup>178</sup>

1108. It is important to mention here that Law No. 093 of 20 October 1977 set up the Governing Board of the Limon House of Culture, whose duties are, pursuant to article 1 of the Law, to study the culture of the population of the province of Limon and to administer the House of Culture with a view to putting on cultural events.

1109. In that way, the Ministry offers an opportunity to promote the art and culture of the Afro-Caribbean population of the country and confirms its commitment to the country’s ethno-cultural diversity. The following special activities constitute recognition of the cultural contribution of that population:

- Afro-Central American Youth Encounters
- Celebration of the Day of Black People and Afro-Costa Rican Culture
- Black Culture Festivals in Limon

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<sup>177</sup> During the five-year existence of the programme, assistance has been given to the Cabécar, Bribri, Guaymi, Maleku and Huetar communities with posters, folders and other means of publicizing local cultural festivals and craft fairs and other initiatives of theirs, using resources from an IDB donation. In 2002 and 2003 several workshops were held in the indigenous territories of Ujarras, Salitre, Cabagra, Térraba, Coto Brus, Abrojos, Montezuma and Talamanca. Financing was also provided to print two documents entitled: “Ujarras - A People of Giants” and “Curré -Yesterday, Today and Always”. With funds from the national budget, Cabécar (2003), Bribri (2004) and Guaymi (2006) calendars were published.

<sup>178</sup> Mention should also be made of Executive Decree No. 2338-MEP of 27 April 2005, which set up the National Commission for Afro-Costa Rican Studies. The Commission, whose creation was inspired by the Ministry of Public Education, involves interdisciplinary representation, including a representative of the Ministry of Culture. Pursuant to the Decree, the Ministry of Culture, through its representative on the Commission, furthers knowledge of the cultural and artistic contributions and the intrinsic identity of Afro-Costa Rican culture, so that this can be included in the study programmes of Costa Rican education centres. It is also the task of the Commission to highlight the origins, roots, values and profiles of various personalities of Afro-Costa Rican culture, as a contribution to the national culture.

- Calypso Music Festivals
- Celebration of the International Year to Commemorate the Struggle against Slavery and its Abolition

1110. With regard to immigrants, during the period covered by the present report no provisions of any kind have been adopted to regulate or promote the cultural rights of this sector. While this might be considered a legislative lacuna, nevertheless, just as no distinction is made in the case of persons of different religious beliefs, so the Ministry makes none on grounds of nationality in its artistic and cultural programmes. In some cases it even collaborates in projects of this kind presented by foreign groups, by declaring the activities concerned to be of cultural interest.

1111. Efforts are being made for specific action on the subject of immigrants to Costa Rica, such as the co-production, in 1998, by the Costa Rican Centre for Cinematography and HIVOS of a documentary entitled “Over the border”, dealing with the situation of young migrants coming from Nicaragua to work as domestic servants; and the support given to independent initiatives to create awareness of immigrant problems, like the work entitled “The Nicaraguan”. This is of special relevance in view of the high rates of immigration from Nicaragua.

1112. On the subject of the inhabitants of slum areas, what has been said regarding the Ministry’s mission to rural populations applies, since artistic and cultural programmes have to aim to reach all population groups and social strata in the country, ensuring that events are also accessible to slum dwellers, albeit with the problems already indicated.

1113. Law No. 600, the Equal Opportunities for Disabled Persons Act, contains a specific section on access to culture, sport and recreational activities that makes special mention of the technical requirements and the infrastructural modifications that have to be made to guarantee to persons with disabilities the right to enjoy art and culture and to participate in them.<sup>179</sup>

1114. Regarding senior citizens, one may mention the fact that the Museum of Costa Rican Art has been training its staff to safeguard the cultural rights of such persons and has exempted them from paying an entrance fee.

1115. It is important to mention here that Executive Decree No. 2023-MCJD-MINAE-MEP of 12 March 2004, published in the official bulletin The Gazette No. 68 of 27 August of the same year, created the Museum of Form, Space and Sound, as a programme of the Museum of Costa Rican Art.

## **Dissemination of culture**

### ***Culture and the media***

1116. In the dissemination of culture some progress should be highlighted, for example in the production of promotional material. Such material is sent to the media: for example, the press

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<sup>179</sup> On this point, mention must be made of Law No. 306 of 12 September 2002, a law setting aside exclusive areas for disabled persons at public events, published in the Gazette No. 85 of Thursday 26 September 2002. This law states that in each place where a public event is held a percentage of the area must be reserved for disabled persons. Executive Decree No. 1948-S of 14 September 2004 provides the regulations for that law and aims to guarantee access for disabled persons to events of a public nature.

office of the Ministry of Culture alone prepares weekly, monthly and annual cultural guides, press communiqués, announcements and invitations, as other institutions frequently do also, as well as the monthly Electronic Bulletin and the news section of the Ministry of Culture website.

1117. Cultural listings are generally provided by national television channels and among the chief newspapers in circulation in the country those that give most space to cultural matters are *Semanario Universidad* (13%), *The Tico Times* (12%), *Tiempos del Mundo* (9%) and *La Nacion* (8%).<sup>180</sup>

1118. Another important measure fostering the spread of culture was the establishment, by Law No. 366 of 10 June 1959, of the Publishing House of Costa Rica, whose chief purpose is to disseminate and promote culture by publishing literary, artistic and scientific works by Costa Ricans and foreigners.

### **Measures adopted to implement the right of everyone to enjoy the benefits of scientific progress**

#### *Conservation, development and dissemination of science*

##### *Access to electricity and telecommunications*

1119. Since the provision of electricity is a vital service for national development and something that contributes greatly to the progress of nations, it is essential first to demonstrate what access the inhabitants of the country have to electrical and telecommunications services. These services are provided by the Costa Rican Electrical Institute (ICE), an autonomous institution entrusted with developing productive sources of electrical energy.

TABLE 41

#### **Costa Rican Electrical Institute Operation of national electricity system, 1990-2003**

<i>Item</i>	<i>1990</i>	<i>2003</i>
Electricity coverage (per cent)	89.97	97.06
National electricity demand (GWh)	3 304	7 485
Maximum potential demand (MW)	682.30	1 253.00
Installed capacity (MW)	890	1 926
Electricity generation (GWh)	3 707	7 565
Length of transmission lines (Km)	1 341	1 691
Transformation capacity (MVA)	3 282	6 626
Length of distribution lines (Km)	15 589	27 945
Investment (millions of current colones)	8 100.3	59 550.5

*Source:* Report of the Costa Rican Electrical Institute (ICE) for the DESC report, July 2005.

<sup>180</sup> The other newspapers devote between 5 per cent and 0 per cent of their space to culture. It must be noted that the three first in the list are weeklies with a small circulation and very specific target readers.

1120. The electrification of the whole country was a milestone in our national history. Costa Rica is today one of the highest-ranking countries in Latin America for quality of service and degree of coverage. The latter has reached 97.06%, with 1,169,936 customers throughout the country, served by all the electric companies.<sup>181</sup>

1121. It is essential to add that ICE is presenting the installation of solar panels as an alternative means of bringing electricity to remote areas of the country out of reach of the distribution networks, including indigenous territories. By December 2004, 1,233 panels had been installed at a cost of \$1.8 million in rural areas of the country such as the Osa peninsula, Chirripo National Park, Talamanca, Piedras Blancas, Puriscal and Isla Caballo among others. The installation of mini-power stations is a project that is at the feasibility study stage.

1122. Where the quality of the ICE transmission network is concerned, operational safety criteria are used whereby the inevitable faults that occur should not cause outages or system collapse. The use of operational safety criteria has meant that the system has worked for more than three and a half years without any total breakdown.

1123. The second area of activity for ICE is telecommunications. The chief progress made in implementing business strategies and strategic actions can be seen in three specific programmes: 1. Fixed telephones; 2. Mobile telephones; 3. Advanced internet.

1124. Pursuant to the law which set it up and to its mission, in 1992 ICE updated its development strategy to ensure constant, sustained progress in telecommunications. In 2004, the capacity of operational fixed telephone lines increased by 16% over the previous year, to coverage of 32 telephones per 100 inhabitants. This indicator places Costa Rica among the countries with the highest percentage in Latin America.

1125. In addition, ICE has been working on a project of the greatest importance for the development of its international telecommunications network and thus of the country's economic and social development. Costa Rica has a modern terminal station of the Maya 1 cable, which allows the best and most reliable interconnection with the national ICE network.

1126. In 1995, the public telephone system earned credit by offering the CHIP card public telephone service, whereby international calls could be made by those who had no telephone at home. Important improvements were also made to the system and personalized service was introduced for customers, organizations (both businesses and institutions), working especially with penitentiaries and major tourist ports. The year 1998 began with 2,255 CHIP public telephones and 442 telephones using Colibri 197 virtual cards. The expansion and improvement of these services is continuing.

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<sup>181</sup> For years ICE has played a predominant role in energy supply, permitting its distribution throughout the national territory and marketing it through 67 electricity agencies which deal with approximately 50,000 requests a year, for new services, transfers, replacement of electricity meters, disconnections or line extensions etc.. The above-mentioned operations are part of the System of Commercial Administration (SACE), which relies essentially on a data base containing information about 495,236 customers connected to the 16,369 kilometres of ICE's distribution network, as well as on a network of 435 work stations located in the various regional agencies which allows for advance consultation, updating and modification of the data in the above-mentioned base. Over time, SACE has made possible further decentralization of customer service by means of online connection to the central computer: a transaction with any given customer can be checked on any computer connected to the system.



1127. With regard to mobile telephones, installed capacity at the end of 2004 was 945,000 lines, considerably increasing the quantity of services in operation, which rose to 923,084. The Costa Rican Electrical Institute offers the population coverage of 21.73 mobile services per 100 inhabitants, with its two technologies: GSM and TDMA.<sup>182</sup>

### **Specific measures for the conservation, development and diffusion of science and technology**

1128. The National Programme of Science and Technology<sup>183</sup> is the instrument for planning scientific and technological development over the short, medium and long term. It ensures continuity and gives protection to the efforts of the public, private and higher education sectors to facilitate scientific research and technological innovation, thus conducing to greater economic and social progress and guaranteeing a better quality of life for Costa Ricans.

1129. The National Programmes of Science and Technology (1990-2004) have fostered and supported the increase in national capacity to absorb and use science and technology, encouraging the transfer of technology and scientific and technological infrastructure, which has increased competitiveness, and assisting the modernization of the public sector to make it more efficient and effective.

1130. The Ministry of Science and Technology (MICIT) participates in and carries out a range of activities to ensure effective access to science and technology for all Costa Ricans. The following are the most important policies and programmes:

- Mobile Classroom Programme, set up in 1999 to democratize knowledge of science and technology and aimed at marginalized communities throughout the country.
- Ibero-American Programme of Science and Technology for Development (CYTED). Among the main achievements are the participation of around 77 Costa Rican research groups, participation in about 50 research networks and projects, 15 publications, the initiation of research workers at the international level, the improvement of national research centres and the training of a large number of research workers and managers. A large number of publications have been issued. The country in general has benefited from the transfer of technology in fields such as aquaculture, fine chemistry, biomass, computer sciences and automation, biodiversity, new materials, alternative energy sources and food technology.
- Programme of National Prizes for Science and Technology, awarded for the best original research
- Programmes to promote science and technology. A series of activities were begun in 1999 to popularize science and technology and to improve their teaching, which joined those already in existence such as the National Centre for Science and Culture, known as the Children's Museum. (Examples are: the National Science Congress for primary and secondary education, a Scientific Essay Competition, the Chemistry

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<sup>182</sup> In annex I, on the subject of article 15, there are two graphs showing the growth in fixed and mobile telephone services.

<sup>183</sup> Created by Law No. 169.

- Olympics, the Astronomy in the Park Programme, the National Day of Science and Technology and a Portable Planetarium.)
- National Programme of Science and Technology: an instrument for planning scientific and technological development over the short, medium and long term. It ensures continuity and gives protection to the efforts of the public, private and higher education sectors to facilitate scientific research and technological innovation, thus conducting to greater economic and social progress and guaranteeing a better quality of life for Costa Ricans.
  - Programme of Science and Technology Fairs (It is estimated that the total number of projects participating in the different institutional fairs is 120,000 and the number of educational institutions 2,400.)
  - Regional CORECIT Science and Technology Boards, which constitute a new approach by the Ministry of Science and Technology to supporting regional scientific and technological development. The aim of this programme is to further popularize science, technology and technical skills in a manner specially geared to future generations. (From 1990 to 2004, CORECIT boards have been set up in the following regions: Central Pacific, Huetar Atlantic, Chorotega and Brunca. These boards provide training, define projects and hold negotiating rounds.)
  - Incentives Commission, whose purpose is to give financial backing to the plans, programmes and projects developed in pursuit of scientific and technological objectives and policies, mainly in biology, materials and information technology.<sup>184</sup> In 2001, with resources from the Incentives Fund for scientific and technological development 27 partial post-graduate grants were awarded for 17 doctorates and 10 master's degrees in different fields such as animal sciences, communications, industrial engineering, after-harvest technology, waste water treatment, species conservation and management, materials sciences, mathematics, organic physics and chemistry, structural engineering, marine sciences, biodiversity and electrical engineering. The studies took place in Costa Rica, the United States of America, Canada, Hungary, Spain, France, Brazil, the Republic of China (Taiwan), Mexico, Switzerland and Germany. A total of 8 research projects with national impact received complementary financing amounting to 23.7 million colones during this period, some of the most significant being related to the improvement of biotechnology, biodiversity, information technology and the development of environmental studies.
  - The Pro PYME Fund, which is a transfer made by the Government to the Ministry of Science and Technology budget for the provision of additional economic assistance to meet the technological requirements of small and medium-sized enterprises.
  - Technology Encounters for Productive Sectors, which are a means whereby a significant number of businesses and producers are physically brought together for purposes of exchange with the country's public and private technological research and development centres, thus furthermore enhancing human resources training.

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<sup>184</sup> Annex 1 shows the financing provided by the Incentives Commission.

- Within the National System of Science and Technology, the Atomic Energy Commission (CEA) has given impetus to the Peaceful Atomic Revolution. Thus, in 2004, the National and Regional Technical Co-operation Programme continued to receive support through the Commission in such areas as agriculture, health, physics and nuclear instrumentation, the environment, geothermal science, human resources, nuclear information and industry to bring about change through the peaceful use of nuclear energy.
- The creation of the National Subsystem of Scientific Indicators and the Technical Commission of Scientific and Technological Indicators had as its main aim to encourage the systemic work of the institutions and organizations that elaborate Costa Rica's different scientific and technological indicators and to recommend policies for the development of indicators in this field.
- System of Science Colleges.

Information and Communications Technologies (e.g. Educational Computer Programme) (Educational Computer Programme : 276,114 students benefited (primary)).

[www.costarricense.cr](http://www.costarricense.cr): State-owned port created during the administration of Dr. Miguel Angel Rodriguez (1998-2002)

- 350,000 postal accounts
- Port with most national traffic. 600,000 hits per month.
- Linked with civil register data bases
- Free reception of personal pages

Action taken: Board of the National Advanced Research Network (CR2Net). Executive Decree No. 1531-MICIT

Advanced Strategic Internet Action and IP Network Project: 82,750 DSL ports have been allocated for households and small and medium-sized enterprises and 1,735 (high capacity) SHDSL ports for the business sector. The internet band width has doubled to 100 Mbps.

1131. The following are some of the activities undertaken:

- Access Programme: the goal of this programme is to make at least 100,000 computers with internet access available to the national population.
- First Worldwide Campaign for Security on the Web: data from the Panda Software company show that 600 new computer viruses are created every month, with the threat of further growth. Faced with this problem, the Association of Internet Users and Panda Software, with the support of the Ministry of Science and Technology, launched, at a local level, the First Worldwide Campaign for Security on the Web, with the slogan "Ridding the world of viruses". The campaign began on 17 June 2004 and ran for two months. It aimed to give internet users free information and solutions by installing an antivirus that can be downloaded free from the web.

- Computer Security Campaign: “Costa Rica free of viruses”. The Ministry of Science and Technology, in association with Microsoft and McAfee and with the sponsorship of other private and public institutions, launched this campaign on 8 November 2004 to run for two weeks.

In addition, important actions have been taken, such as:

- A marketing study of telecommunications tariffs
- The LANIC Assembly
- A meeting of Advanced Research Networks
- A debate on open and proprietary techniques
- A prize for the best ports and web pages.

Digital government (encouraging the use of information technology in the work of the Government in communication with the civil society).

Action taken: to translate this into reality, an inter-institutional group for electronic government was set up to supervise the establishment of information services.

### ***Preservation of the natural heritage***

1132. Since 1994, solutions have been devised for better management of natural resources, mechanisms such as the National System of Sustainable Development (SINADES) which, under the 1994-1998 administration, attempted to consolidate a sectoral planning system with regional ramifications for sustainable development. That initiative did not, however, succeed. In 2001-2002, the Costa Rican Strategy for Sustainability (ECOSOS) was elaborated, but shared the same fate. In 2004, a process was begun to develop a National Environmental Strategy (ENA), which is based on an examination of the range of environment problems, correct solutions to them and mistakes made, and of public environmental management properly so called, within a conceptual framework that will guarantee viability in execution.<sup>185</sup>

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<sup>185</sup> The idea is that ENA will facilitate public management that will :

- Place public management of the environment at the highest level;
- Execute State environment policy on the basis of the Environment Act of 1995;
- Incorporate into the debate on the environment concepts such as inclusion, competitiveness and poverty reduction;
- Envisage and apply the concept of opportunity cost, so as to assume political responsibility and respond to the expectations of civil society;
- Respond to the demands of society by improving concrete conditions for quality of life for individuals and the country as a whole;
- Promote the inclusion of environmental costs and benefits in national accounting systems;
- Foster the development of environmental education and culture.

1133. We have also begun the elaboration of a National System of Environmental Information (SINIA), which will permit the identification of the necessary variables and indicators to guarantee adequate monitoring of national policy objectives and their impact on resources.

1134. In 1996, a new forestry law was adopted (No. 575) providing for an Environmental Services Payment (ESP) which has replaced all existing incentives. This new scheme is inspired by a comprehensive view of the forest and all it provides, not merely limited to timber. Furthermore, it expands the institutional framework underpinning forestry, both with regard to tree planting and to natural forest management. In particular, it has set up in the private sector the National Forest Bureau and, as a public sector body, the National Fund for Forestry Finance.

1135. Costa Rica also has a National System of Conservation Areas (SINAC), whose financial, social and environmental sustainability the State must ensure, as well as increasing industrial timber production to meet national demand, evaluating and including the costs of forest-derived environmental services in national catchment areas (water production), eliminating illegal logging (13% takes place in wooded areas) and increasing the ecological quality of the present and future forest cover. The System of Protected Areas (SAP) comprises half the country's forest cover, which is around 45%, and 60% of the wetland ecosystems, which represent 7% of the national territory (Ministry of the Environment and Energy (MINAE-SINAC))

TABLE 42

**Protected wooded areas in Costa Rica, 2000**

<i>Management category</i>	<i>No.</i>	<i>Area (ha.)</i>	<i>Area (km<sup>2</sup>)</i>	<i>Per cent of country</i>
National parks	33	626 322.00	6 263.22	12.26
Protector zones	8	21 429.00	214.29	0.42
Protection zones	31	157 128.00	1 571.28	3.07
Forest reserves	11	217 730.00	2 177.30	4.26
Woodland wildlife refuges	49	174 971.00	1 749.71	3.42
Wetlands including mangroves	14	92 495.00	924.95	1.81
National monument	1	232 000	2.32	0.0045
Absolute national reserves	2	1 329.00	13.29	0.0260
Other areas (estates and experimental stations)	9	15 668.00	156.68	0.3066
<b>TOTAL</b>	<b>147</b>	<b>1 307 304.00</b>	<b>13 073.04</b>	<b>25.56</b>

*Source:* National Strategy for Conservation and Sustainable Use of Biodiversity, 2000.

1136. At present about 25% of the national territory is under some category of management, which is a high percentage viewed globally, since only 14 countries in the world have more than 23% of their territory protected by some form of management; in Latin America only Panama, Belize, Venezuela and Ecuador have also achieved as much (Obando, 2002).

1137. However, it must be pointed out that while in the 1970s, 524,467 hectares were added to the system of protected areas, in the next decade, the 1980s, it was 436,539 hectares; in the

1990s, 157,058; and in the period 2001-2004, only 5,052 hectares (State of the Nation project, 2004). It is important to mention that there is a two-nation park (Costa Rica-Panama), called La Amistad, the park with the largest surface area in the country, occupying 199,147 hectares or 4% of the national territory (MINAE-SINAC,2003).

1138. In the mid-1990s, the GRUAS project reviewed the aims of creating protected areas and the representative function of the ecosystems within them and suggestions were made regarding the areas themselves, as well as the biological corridors needed to connect them one with another.

1139. In the 1990s, two biosphere reserves were declared, three World Heritage Sites and 11 Ramsar sites or wetlands of international importance (MINAE-SINAC, 2003).

1140. It is also important to note the trend towards reconsideration of the management category of certain protected woodland areas (ASP) rather than the creation of new areas. By this means, there has been an increase in the percentage of land under absolute protection (12.6% of the national total) vis-à-vis land where some exploitation is allowed, above all as a result of a change in category for existing ASP (Carara, Macizo Tapanti-Cerro de la Muerte). This is of particular importance, since for all the lands declared as protected in the public domain to become State-owned, the private lands expropriated within national parks and biological reserves would have to be paid for in full (some US\$55 million – MINAE-SINAC, 2003).

1141. Finally, since the mid-1990s, the State's efforts have been complemented by a tendency to seek new forms of conservation that endeavour to guarantee the viability of ASP, the mobility of species and an ecologically healthy biodiversity by connecting up the ASP either through other ASP or through biological corridors. These efforts are matched by the creation of more than 100 private reserves, which together cover 1% of the national territory and whose activities are co-ordinated by the Network of Private Nature Reserves (MINAE-SINAC, 2003a). Ecotourism, an important source of income for the country, has here also played a key role in the preservation of woodlands, both public and private.

1142. In recent years, efforts have also been made to protect stretches of sea-coast to enhance the protection of coastal species and ecosystems; however, this is a field in which much remains to be done in our country. More accurate measurements of these areas are being sought, but they are estimated at about 328,256 hectares.

1143. Since 1996, with the enactment of the Forestry Law, it is strictly forbidden to cut down mangroves. Over the previous 20 years there had been significant degradation of wetlands as a result either of the practice of drying mangrove swamps to fill them in and construct dikes or other infrastructure for tourism, or of deforestation to create shrimp ponds.

1144. With the aim of improving the general management of marine and coastal resources, the idea was conceived of giving priority to human resources in all action taken, which would involve enhancing and applying the concept of resource conservation. Two of the actions that would have to be taken in that regard are strengthening the organization of fisheries, so as to achieve adequate participation in planning, discussion and decision-making; and obtaining and facilitating access to financial resources and encouraging greater participation by local governments.

1145. According to the ecosystems map of the World Bank and CCAD 2000, Costa Rica is the country with the highest proportion of its territory devoted to agro-ecosystems in Central

America: 70%. Another 27% of the territory is forest cover (including mangrove swamps); it is the most deforested country in the isthmus after El Salvador. Evergreen forests form 92% of the forest cover, with 2% being deciduous or semi-deciduous. Of the 13-14 million species believed to exist in the world, it is estimated that Costa Rica has 4%; there are 9,000 species identified (a little over 5% of all the known species in the world). The best known groups are plants and vertebrates (amphibians, reptiles, birds, mammals and fish) which represent between 83% and 80% respectively of the estimated total of species. About 1.5% of our species are endemic, which places Costa Rica in the category of moderate endemism. About 2% of the known species are endangered or under threat of extinction; among them, it is estimated that all species of freshwater fish (135) are endangered to a greater or lesser degree (ENA, 2004).

1146. Among the chief threats to biodiversity is the degradation of ecosystems due to deforestation, overexploitation for agricultural purposes and use of resources, creeping agriculturalization and pollution of waters, the introduction of exotic species, hunting and illegal extraction. However, our institutional capacity is insufficient to monitor and control the impact of social and productive activities in conservation areas or for the enforcement of existing law. Serious problems persist in the supervision and control of the environment because of the demand for concessions of property in the public domain coupled with insufficient institutional resources. As a result of the political and administrative centralization of the country, conservation and sustainable use are not sufficiently integrated into national, regional and local decision-making processes. In particular, municipalities have no great involvement in the protection and management of biological diversity.

1147. It is of the greatest importance to highlight ICE's environmental management. The Institute has since its inception been committed to the protection and conservation of natural resources. It must be said that 98% of the electrical energy produced in the country comes from renewable sources, namely hydroelectric, geothermic or wind power, and only 2% is produced from fossil fuels. For that reason, ICE has collaborated in the protection of water resources in several ways: through the protection of priority zones, reforestation and the management of catchment areas.

1148. Since the quality of water resources for the production of electricity is directly dependent on the conservation and rehabilitation of the forest cover in catchment areas where water power can be generated, the first action taken by ICE was to ensure the creation of the forest reserves of Rio Macho and Arenal.

1149. The Institute has also encouraged the restoration of natural resources by reforestation and so it has forest nurseries in the areas of Cachi, La Garita and Tilaran, as well as other nurseries located and administered by various electricity-generating projects under construction. By 1997, ICE had grown about 7 million trees, of which approximately 5 million had actually been planted out. From 1995 on, reforestation was carried out using trees purchased from nurseries developed by communal organizations in their respective districts. This proved very effective and in the period 1996-1998 alone 1,830,535 trees were planted in the different river basins concerned, such as those of the Chiquito (Arenal), Sarapiquí (Toro), Reventazon, Térraba, Pacuare, Parrita and Grande de Tarcoles.

1150. The Electrical Institute has also involved itself in the efficient administration of water resources,<sup>186</sup> with the aim of ensuring the quality and quantity of those resources and has implemented energy-conservation programmes as a fundamental component of a sustainable development strategy.

### **Measures adopted for the protection of moral and material interests**

1151. In view of the State's role as guardian and of the need for effective protection of works of the intellect, Costa Rican legislators have enacted the Law on Procedures for Compliance with Intellectual Property Rights, which in article 1 provides that: "the violation of any right to intellectual property established in national legislation or in international conventions shall give rise to administrative action in regard to the Register of Industrial Property or the Register of Royalties and Related Rights ...". In that regard, article 3 and following make stipulations concerning preventive measures, such measures being, among others, and in conformity with article 5 of the Law, the following: "...a)the immediate cessation of the acts constituting the violation; b) an embargo on the counterfeit or illegal merchandise; c)the suspension of the dispatch through customs of the merchandise, materials or media referred to in b); d) a pledge by the alleged violator of bail or other sufficient guarantee."

1152. The Law on Procedures for Compliance with Intellectual Property Rights stipulates, in article 10 and following, the action to be taken at the frontier in the form of preventive measures applied at the moment of dispatch through customs of the counterfeit or illegal merchandise. Article 16 of the Law represents a big step forward for our country, in that customs officials have authority to act when "...they have sufficient reason to believe that an intellectual property right is being violated".

1153. Since 2000, out of a desire to ensure the effective protection of intellectual property rights, royalties and related rights, Costa Rica has developed a government strategy to improve the observance of such rights. "Among the actions seen to have been taken by Costa Rica are: the enactment of the Law on Procedures for Compliance with Intellectual Property Rights, No. 039 of 12 October 2000, ..., the training of officials charged with ensuring compliance with its provisions and the regulation of the computer programmes used in public institutions."<sup>187</sup>

1154. Where preventive measure are concerned, progress has been made in that the possibility exists for the Registers of Industrial Property and of Royalties and Related Rights, as administrative authorities and in the person of their directors, to take measures of a preventive nature, as established both in the Law on Procedures for Compliance with Intellectual Property Rights and in the Agreement on Trade-Related Aspects of Intellectual Property Rights.<sup>188</sup>

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<sup>186</sup> Because of the pressure resulting from the use of water for other purposes, it has been necessary to envisage making plans for catchment area management that take account of the needs of all the users of this resource. The Institute has not been able to avoid this situation and has found itself obliged to become involved as a lead agency in the management of those catchment areas where it has built or intends to build hydroelectric projects.

<sup>187</sup> Official communication no.RDDADC-04-2003 of 24 January 2003, report submitted by the Legal Consultancy Department of the Register of Royalties and Related Rights.

<sup>188</sup> Idem.



1155. Because of a lack of economic resources and trained personnel, the application of the preventive measures may be referred to administrative headquarters, thus rendering futile the aims pursued by the existing legislation.<sup>189</sup>

1156. There are some shortcomings in regard to the protection, enjoyment and effective exercise of intellectual property rights and some confused rules which refer to additional legislation that is in turn insufficient to protect these rights.

1157. There has also been an increase in “piracy”, in the sense of unauthorized reproduction of literary or artistic works (books, music or software). This illegal practice harms the owners of intellectual property rights, since it hampers their exercise of their moral and inherited rights; the State, since this commercial activity clearly by its nature involves tax evasion; and consumers, who may be deceived into buying counterfeit copies that they take for originals.

1158. The administrative department entrusted with the protection of intellectual property rights (the Register of Industrial Property and the Register of Royalties and Related Rights) has met with obstacles mainly connected with the following:

- In regard to preventive measures, the poor training of the relevant officials and the lack of procedural legislation for the application of such measures, as well as the possibility of police collusion under pressure.
- Legal lacunae, especially in regard to enabling the administrative authorities to impose pecuniary sanctions in those cases that involve the commission of an offence rather than a crime.
- A lack of clear definitions of the criminal acts concerned, as well as their inclusion within a single piece of legislation. (This is because some are to be found in special laws and others in the Criminal Code.)
- An absence of centres for mediation and arbitration of the conflicts that may arise in the exercise of intellectual property rights. Although the Directorates of Industrial Property and of Royalties and Related Rights are competent to handle such proceedings, the right training and specialization is needed, as it is for officials of these Directorates or for other persons.

## Challenges

1159. In the first place, it is necessary to combat piracy or the unauthorized reproduction of literary or artistic works. It is thus essential to adopt regulations to accompany the Law on Procedures for Compliance, to ensure the effective implementation of its provisions, particularly concerning preventive measures at administrative headquarters. The Inter-Institutional Commission for the Protection of Intellectual Property is at present in the final stages of drafting such regulations.

1160. Moreover, in connection with preventive measures at administrative headquarters, it is indispensable to offer greater opportunities for specialized teaching and training for the public

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<sup>189</sup> Idem.

officials who need to know about and apply the anticipated measures, guaranteeing the constitutional rights of the parties while also protecting the goods and interests that require it.

### Protection of freedom for scientific research and creative work

1161. By the actions described in the section on the promotion of culture, the Ministry of Culture supports initiatives and works specifically to foster all forms of cultural expression especially among the youth. Nevertheless, the Ministry is still working on ways and means for more effective inclusion of some population groups, such as indigenous peoples.

TABLE 43

#### Financing provided by the Incentives Fund to scientific and technological research projects, 2005

<i>Research project</i>	<i>Area of specialization</i>	<i>Amount approved (colones)</i>
“Genetic variation in a captive population of red limpets ( <i>Ara macao</i> ) and its implications for the conservation of the species in Costa Rica”	Conservation of red limpets in Costa Rica	1 342 000 00
“Delineation of a new virus affecting citrus fruits in Costa Rica”	Agriculture	352 000 00
“Use of organic fertiliser to control disease”	Agronomy	4 000 000 00
“Metabolic analysis of the consequences of abiotic stress in <i>Tagetes foetidissima</i> ”	Natural products	3 000 000 00
“Advanced structural characterisation of nano-structures and surfaces”	Materials science and engineering	10 967 000 00
“Tree germination and initial development in Costa Rica’s dry forest”	Biology	4 400 000 00
“Search for <i>Xylella fastidiosa</i> in commercial plantations of citrus fruits in the north of the country”	Cellular and molecular biology	500 000 00
Health Research Institute (INISA), Human Genetics Section	Health	2 458 530 00
<b>TOTAL AMOUNT</b>		<b>27 019 530 00</b>

Source: MICIT, 2005

1162. The Incentives Fund for Scientific and Technological Development exists for the protection of freedom for scientific research and creative activity. It supports research and creative work in this field and in 2001 allocated from its resources 27 partial post-graduate grants, 17 for doctorates and 10 for master’s degrees in different fields such as animal sciences, communications, industrial engineering, after-harvest technology, waste water treatment, species conservation and management, materials sciences, mathematics, organic physics and chemistry, structural engineering, marine sciences, biodiversity and electrical engineering. The studies took place in Costa Rica, the United States of America, Canada, Hungary, Spain, France, Brazil, the Republic of China (Taiwan), Mexico, Switzerland and Germany.

1163. A total of 8 research projects with national impact received complementary financing amounting to 23.7 million colones during this period, some of the most significant being related

to the improvement of biotechnology, biodiversity, information technology and the development of environmental studies.

### **New measures adopted**

1164. Using an inter-institutional approach, policies and programmes have been adopted in the national education system to promote the conservation, development and diffusion of science and culture. Examples are:

- Creative music and plastic arts festivals
- National Innovation Project
- Chemistry, mathematics, English and physics Olympics
- Oratory and essay competitions
- Student games
- RUTA Quetzal
- National Geography Competition
- Forming moral values
- Environmental education

1165. In the field of the conservation, development and dissemination of science and culture, it should be noted, among other achievements, that the National Archives System Act<sup>190</sup> provides that documents of scientific or cultural value form part of the scientific and cultural heritage of the State, which therefore has an obligation to preserve and protect them.

### **Conclusions**

1166. It is clear that the State is determined faithfully to implement the right of every person to participate in cultural life; to enjoy the benefits of scientific progress and its applications; and to be assured of protection for the moral and material interests deriving from the scientific, literary or artistic works of which he or she is the author. Hence there are several different entities that work specifically to that end, which in absolute terms is not yet fully achieved.

1167. A first feature to be highlighted is the great progress that has been made in the cultural field in promoting and developing mechanisms and actions to regionalize cultural activities, through both the regional directorates and the creation of houses of culture in various cantons. In this way, we aim to cover the whole national territory and spread cultural activities in response to the needs and particular situations of each geographical area, with attention paid to social circumstances.

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<sup>190</sup> Law No. 202 of 24 October 1990.

1168. Nevertheless, the scarcity of economic resources available to the cultural sector as a result of budget allocation by the Government is an obstacle here and the sector therefore has difficulty in ensuring continuity in the activities it undertakes.

1169. With regard to access to scientific and technological progress, there have been great achievements and important efforts have continued, as a result of which it has been possible to enable a vast proportion of the country's inhabitants to enjoy the benefits of electricity and telecommunications. It is, however, necessary to work constantly to improve the quality of such access.

1170. The State evidently desires to encourage scientific research, as can be seen from the incentives it provides and the activities undertaken to that end. International co-operation has been of great support here, as it has with regard to access to scientific and technological progress.

1171. The preservation of our natural heritage has been a matter of special interest for the State of Costa Rica and this has led to the adoption of legislative and administrative measures to ensure the most efficient and rational use of natural resources, as well as a sound application of the results of scientific and technological progress to that end. However, it is becoming vital for the country to assess the means used up to now, to safeguard our natural and environmental resources over the long term.

1172. In that connection, we must point to the proportion of the world's biodiversity contained within Costa Rica: around 5%. That is also the result of the way in which the country has managed the work of conservation, which is reflected in the fact that about 30% of its territory is under forest cover and that among Central American countries it is the one with the greatest proportion of its territory under agro-ecosystems (70%). However, there are important warning signs, such as its rating as the second most deforested country in Central America, that require an appropriate response.

1173. The State has found truly outstanding means to protect creative activities, the result particularly of the adoption of legislative measures. In the progressive implementation of the right to the protection of creativity, we have principally stressed the challenge of fighting piracy or the unauthorized reproduction of literary or artistic works, which is intensified by the paucity of economic and human resources, as well as the existence of a legislative lacuna on the subject.

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