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### Committee on Economic, Social and Cultural Rights

## Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights

**Fifth periodic reports of States parties due in 2012**

**Costa Rica\* \*\***

[Date received: 24 October 2014]


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\* The present document is being issued without formal editing.  
\*\* The annexes are on file with the Committee secretariat.

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## I. Introduction

1. The Committee on Economic, Social and Cultural Rights considered the combined second, third and fourth periodic reports of Costa Rica on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/CRI/4) in November 2007 and issued its concluding observations (E/C.12/CRI/CO/4 and Corr.1).

2. The Committee set 30 June 2012 as the deadline for Costa Rica to submit its fifth periodic report on the implementation of the Covenant. Costa Rica was unable to meet that deadline, owing mainly to the lack of an appropriate institutional platform. Moreover, once it was able to begin the task of gathering information for the report — with a new institutional platform in place — it had to work in parallel on reports to other treaty-monitoring bodies, including the report on the Convention on the Elimination of All Forms of Racial Discrimination, which should have been submitted prior to the present report (in January 2010). This is important, because the focus of the Committee's recommendations is very similar to that of the recommendations made by the Committee on the Elimination of Racial Discrimination. Furthermore, as explained in the following paragraphs, efforts have been under way since 2011 to improve the report drafting process and to combat racial discrimination. The latter has been widely identified as an obstacle to the enjoyment of economic, social and cultural rights by one sector of the population.

3. The State party's follow-up to the Committee's 2007 recommendations has been gradual and has made more sustained progress since 2011, thanks to the establishment of the Inter-Agency Commission for the Monitoring and Implementation of International Human Rights Obligations. The submission in 2014 of the report due in 2012 is thus a good opportunity to provide new information. Thanks to efforts undertaken between 2007 and 2011, including the preparation of the first national report on the universal periodic review, it was possible to follow and improve on the model used for the combined report submitted to the Committee in 2007. There was, however, no institutional platform to provide sustained inter-agency coordination and systematic work on the implementation of human rights obligations until the creation of the Inter-Agency Commission in December 2011, which will be discussed in greater detail below.

4. Costa Rica also wishes to point out that it must update its common core document, but that this is a process to be undertaken with the institutional platform created for that purpose. The preparation of reports for treaty-monitoring bodies has been an ongoing process and coincides with the preparation of the second national report of Costa Rica for its universal periodic review.<sup>1</sup> As a result, the common core document for the treaty bodies will be updated at a later date, ideally before the dialogues are held with those bodies.

5. The combined second, third and fourth reports of Costa Rica did, however, provide quite a comprehensive, well-reasoned and critical overview of the country's situation. The idea was to put the situation in a context that would contribute to the Committee's understanding and subsequent analysis of the country. Nonetheless, Costa Rica recognizes that circumstances have changed over the six years since its dialogue with the Committee, and will comment on some of those circumstances at the appropriate time.

6. The previous periodic report of Costa Rica, and the process leading up to it, had a major impact on how the country addressed its international human rights obligations. More specifically, the experience of preparing the report (2004–2006), and the dialogue with the

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<sup>1</sup> The second national report (A/HRC/WG.6/19/CRI/1) was submitted in writing on 25 January 2014, and the dialogue with the Working Group on the Universal Periodic Review was held on 5 May 2014.

Committee in 2007, made national institutions, and the Ministry of Foreign Relations in particular, more aware of the need for a platform to address this responsibility systematically. In 2006 the Inter-Agency Commission and the unit coordinating the preparation of the report recommended using the existing inter-agency platform in order to continue with the implementation of human rights obligations. They also recommended that the new authorities work on a human rights indicators system based on a joint approach with civil society, and an official presentation was made to the then-Vice President of the Republic and the Minister of Planning to introduce these ideas.

7. As the Committee may know, the realization of human rights and related processes involves sustained efforts of awareness-raising, training and coordination of State machinery. Particularly where economic, social and cultural rights are concerned, such processes are even more complex and must be undertaken in both the medium and long term. This is why, as will be seen below, the State party, in addition to having continued to carry out policies and actions to implement economic, social and cultural rights, has concentrated on developing institutional practices that are consistent with the understanding and obligations of human rights.

8. As a result, not all of the progress made in recent years is reflected in indicators or specific statistics concerning the overall implementation of economic, social and cultural rights. Some of that progress, which has been gradual, is reflected in processes and platforms created to promote more effective implementation of the respective obligations. As will be seen in the relevant sections, Costa Rica today has important new practical tools at its disposal for the implementation of economic, social and cultural rights, most of which were adopted in 2013. The country also has a National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia (2014–2025) and its First Plan of Action; a National Housing and Human Settlements Policy (2013–2030) and its Plan of Action; and a National Culture Policy and National Migration Policy. All of these instruments are milestones towards the most effective and efficient fulfilment of the country's human rights obligations.

9. The challenge is to ensure that current efforts speed up the execution of measures and actions to guarantee, in practice, the real and effective enjoyment of human rights by all persons in Costa Rica. As is evident from recent data, including household surveys and various indicators, Costa Rica must find more efficient mechanisms for reducing social inequality, halting the growth of inequity and providing more balanced access for all inhabitants to decent living conditions.

10. Among the challenges encountered in the previous stage of implementing the Committee's recommendations (which were pointed out by the State party itself, and noted in the State of the Nation Programme<sup>2</sup>) are greater inter-agency coordination, better utilization of resources, optimization of existing initiatives and streamlining of joint State actions.

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<sup>2</sup> The text reads as follows:

"In 1994 the State of the Nation Project, today called the State of the Nation Programme, was created as an independent initiative for enhancing citizens' access to full, timely and truthful information on all matters of public interest, through the publication of an annual report that facilitates more in-depth study and discussion of the sustainable human development of Costa Rica. (...)

Beginning in 2003, the report was restructured and acquired the status of an institutional programme based in Costa Rica, with regional capacities and activities. Thus, as part of a strictly national institutional framework, the National Council of Rectors, under an agreement with the Ombudsman's Office, establishes the State of the Nation Programme, providing the continual support of the state university higher education system."

See [www.estadonacion.or.cr/quienes-somos/historia-pen](http://www.estadonacion.or.cr/quienes-somos/historia-pen).

11. The work that has been undertaken since the creation of the Inter-Agency Commission in 2011 is thus of the utmost importance and necessity. The Commission helps strengthen institutional synergies to rationalize and optimize efforts, thereby generating better inter-agency coordination. In parallel with this, it has been necessary to promote closer relations and more sustained, systematic work by means of dialogue with civil society, which is another of the Commission's key actions. Reference will be made to this issue in the section on methodology.

12. Bearing in mind the scope and openness with which the previous periodic report was prepared, this report will focus on the follow-up to the Committee's recommendations of 2007 and will summarize some of the highlights of the progress made by Costa Rica, as well as the challenges it faces, with respect to economic, social and cultural rights.

13. This report is organized as far as possible in accordance with the guidelines on the specific documents that must be submitted by States parties under articles 16 and 17 of the Covenant (E/C.12/2008/2). It is structured as follows: an introduction, including a section on methodology and a subsection on aspects relating to the general provisions of the Covenant, followed by a section on the implementation of specific rights of the Covenant. The recommendations will be dealt with by subject, and not according to the paragraph numbers of the Committee's previous concluding observations.

## Methodology

14. A new process was undertaken at the national level to prepare the replies to the Committee's recommendations. The establishment of the Inter-Agency Commission has resulted in better and more fluid coordination among government institutions in ensuring the fulfilment of obligations under international human rights conventions, including the International Covenant on Economic, Social and Cultural Rights.

15. The Inter-Agency Commission was established in 2011 as a permanent advisory body of the executive branch, attached to the Ministry of Foreign Affairs and Religion,<sup>3</sup> to coordinate and implement international human rights obligations at the national level and coordinate relevant actions at the international level with a view to enhancing the promotion and defence of human rights.

16. Since its establishment, the Commission has held regular meetings and its efforts have focused chiefly on preparing the National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia. It has also undertaken to prepare the reports on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the universal periodic review. The Commission held eight meetings in its first year (2012), including two workshops on the National Policy, and nine meetings in 2013.

17. The executive decree establishing the Commission also established a Standing Body for Civil Society Consultation, which has regulated and lent institutional legitimacy to the necessary dialogue with civil society for the preparation of reports and the definition of actions, among other human rights-related activities. The process has led to greater interaction with and feedback from civil society. However, this is an ongoing challenge for the Commission, and although more permanent and fluid channels and mechanisms for

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<sup>3</sup> Executive Decree No. 36776-RE of 9 August 2011, published in Official Gazette No. 188 of 30 September 2011. See annex.

dialogue have been established with civil society, much remains to be done and methods need to be refined.

18. The new institutional platform facilitates both the systematic work of ministries and autonomous institutions and coordination with other public authorities in line with the approach and leadership of the Ministry of Foreign Affairs and Religion and with its commitment to international human rights obligations. In the years to come, the existence and consolidation of this platform, whose core principles and components are dialogue and collaboration with civil society, make it the ideal mechanism for the appropriate dissemination of the recommendations of the Committee and of human rights bodies in general. The dissemination has taken place gradually over the past two years, particularly by means of the above-mentioned processes, but much remains to be done to create broader dissemination systems that go beyond organized civil society to target other segments of the population.

19. The recommendations contained in paragraphs 53–54 of the Committee’s previous concluding observations (on the dissemination of the recommendations to State entities and civil society) have been addressed in this manner in recent years, but consolidation of the platform for developing more effective dissemination is still under way. Nevertheless, the recommendations have been widely disseminated, particularly to officials of public institutions, by the Inter-Agency Commission.

20. The ultimate objective of all these efforts, including dissemination of the recommendations, is to raise awareness of the importance of international human rights obligations. This awareness-raising goes beyond formal compliance with the preparation of periodic reports and promotes measures to help the country develop tools and processes for more effective enjoyment of its inhabitants’ human rights. Public officials appear to be more receptive to fulfilling human rights obligations, and national institutions appear to have a better understanding of the direct relationship between institutional duties and services and the human rights of all persons in Costa Rica. The culture and mindset of the country’s public institutions have changed significantly over the past decade. Although much remains to be done to ensure that the efforts of public officials have a greater impact on the enjoyment of human rights by all, the knowledge, experience, understanding and receptiveness of those responsible for the institutional apparatus represent a step in the right direction.

21. This report was circulated to organizations, associations and representatives of civil society so as to acquaint them with its contents prior to its submission to the Committee.

## **II. Aspects relating to the general provisions of the Covenant; indicators and statistics**

22. One of the cross-cutting issues of regular reporting and human rights accountability concerns the indicators and statistics to be maintained and developed by the country. Given that this is one of the topics of interest to the Committee, it should be noted that, by and large, Costa Rica is making significant efforts to establish a system that better reflects the realities of the population in respect of gender, age, ethnicity and, in general, from a human rights standpoint.

23. The most recent national census (2011) made considerable progress on the inclusion of a broader human rights perspective. The National Statistics and Census Institute revised its methodology for the Tenth National Population Census and Sixth Housing Census in order to measure progress on the recognition and enjoyment of the human rights of the indigenous, Afro-descendant and migrant population.

24. In keeping with the recommendations of the United Nations, the Latin American and Caribbean Demographic Centre and the Economic Commission for Latin America and the Caribbean (ECLAC), and with the international treaties to which Costa Rica is a party, especially those on human rights, the principle of self-identification, i.e. every person's right to self-identify with a given ethnic or racial group based on cultural traditions, ancestry or phenotypic traits that can define identity, has been implemented.

25. The proposed census form was submitted to an expert panel consisting of leaders and representatives of indigenous groups, Afro-descendant and Chinese organizations, the School of Anthropology, the School of Statistics, the Central American Centre for Population Studies, the Office of the Vice-Rector for Research of the University of Costa Rica, the United Nations Development Programme (UNDP) and the United Nations Population Fund (UNFPA).

26. As a result, the statistics from the 2011 census include more information on populations from a human rights standpoint, particularly from the ethnic perspective, and also on persons with disabilities, than the data obtained from the previous census, conducted 11 years earlier.

27. As noted in the previous combined report, Costa Rica has a State of the Nation Programme on Sustainable Human Development,<sup>4</sup> which each year provides a series of statistics compiled under macro-headings for the country's indicators on poverty, social equity, access to education and work, the labour conditions of some segments of the population, access to health and social security, and access to decent housing, among others. Programme data are made available to the general public and enjoy considerable credibility because they are disseminated by the Programme, which is directed by the National Council of Rectors of state universities. Because the Programme uses data and statistics produced by public institutions on the basis of a more systematic mechanism, its data provide much of the analytical input for public policy decision-making and actions.

28. As reflected in the State of the Nation Report and other studies conducted by such entities as the National Statistics and Census Institute, it has become apparent that although a significant amount of data and statistics are being produced in Costa Rica on a broad range of issues relating to the enjoyment of human rights, the data are not gathered or systematized in a consistent manner by public institutions. Some of the data deriving from the information systems of each ministry or autonomous institution have been individually designed, while others are based on censuses or surveys conducted by the Institute as the lead agency on the subject, such as household surveys and censuses (either the general censuses conducted every 10 years, or specialized censuses like the agrarian census of 2014). The State must thus develop more, and better coordinated, initiatives if it is to have a consistent human rights indicators and statistics system.

29. The Inter-Agency Commission has accordingly decided that the Institute will set up a cross-cutting inter-agency system for producing the statistics and data needed to provide indicators from a human rights standpoint. As may be seen in the First Plan of Action of the National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia

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<sup>4</sup> See note 2 *supra*.

(see annexes), the compilation of human rights indicators on the indigenous, Afro-descendant, migrant and refugee populations is being initiated to that end.<sup>5</sup>

## A. Laws and judicial implementation

### Follow-up to paragraph 32 of the concluding observations

30. Costa Rica has a solid legal and institutional framework, with economic, social and cultural rights enshrined in many provisions of the Constitution, including laws on the general well-being of the population, the right to a healthy environment, protection of the family, protection of linguistic diversity, the right to decent work, and the right to health, education and culture.

31. Article 7 of the Constitution stipulates that international treaties ratified by Costa Rica take precedence over the country's laws. Nonetheless, the Constitutional Chamber has established that as long as such conventions or treaties are of greater benefit to persons, or grant greater protection to their human rights, they take precedence over the Constitution itself.<sup>6</sup> This exception in the legal hierarchy means that any law or practice contrary to such instruments will automatically be without effect from the moment it enters into force; that any law or measure subsequently adopted that is contrary to their provisions will be absolutely null; and that all available judicial and administrative channels may be used to remedy violations of international human rights instruments.

32. It is precisely in line with this approach that all international human rights treaties may be directly invoked and implemented in the national legal system. Such is the case of the International Covenant on Economic, Social and Cultural Rights. The jurisprudence of the Constitutional Chamber (the country's constitutional court, which tries human rights violations) continually refers to the direct applicability of the Covenant to the national legal system.<sup>7</sup>

33. Costa Rica has in fact stood out from other countries because its system is open to the international human rights instruments under which the State party can be held directly responsible in domestic courts (particularly through the remedy of amparo established by the Constitutional Chamber) for any violation of the rights enshrined, for example, in the Covenant. Clearly, therefore, Costa Rica has established an appropriate system of judicial access that is particularly solid with regard to economic, social and cultural rights.

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<sup>5</sup> In the First Plan of Action, Strategic Action Line 1, "Institutional strengthening", Action 2, reads as follows: "To create an information system for evaluation that covers demographic aspects, vital statistics and statistics on education, health, production, access to justice, among others, which reflects the reality of the indigenous, Afro-descendant and migrant (and refugee) population." In addition, a footnote states that: "The system will make it possible to disaggregate the information by sex, age, ethnic group, disability and place of residence, in order to provide parameters and criteria for implementation in data subsystems by all relevant national institutions and to monitor and evaluate policies, legislation and measures to prevent and combat racism, racial discrimination and xenophobia."

<sup>6</sup> Decisions Nos. 3435-92, 5759-93 and particularly 2323-95 of the Constitutional Chamber.

<sup>7</sup> It is particularly with respect to the right to health that the Covenant has been directly applied by the Constitutional Chamber, as exemplified by recent decisions Nos. 01183-14 and 00782-14. The Constitutional Chamber has also applied not only the provisions of the Covenant but also the observations of the Committee in its resolutions Nos. 00743-14 and 00891-14 (the right to water, General Observation No. 15). Furthermore, individuals are able directly to invoke the Covenant as part of the rationale for applications for constitutional review. One example concerns the right to a healthy environment (case file No. 13-005444-0007-CO, resolution No. 2014004239).



## **B. Articles 1 and 2: Self-determination, equality and non-discrimination**

### **Efforts to combat racial discrimination (Committee recommendations Nos. 33–36)**

34. As previously mentioned, many of the efforts of the Inter-Agency Commission have been devoted to preparing reports and formulating the National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia. The formulation process in particular marks a significant step in the development of national institutional capacity to better understand and approach the struggle against racism, racial discrimination and xenophobia in Costa Rica. Efforts may be ongoing, but noteworthy steps have been taken that will lead to greater, more definite and more tangible progress in this domain.

35. The formulation process also laid the foundations for the preparation of two reports in particular: the report on the International Convention on the Elimination of All Forms of Racial Discrimination, and the present report.

36. Combating racism, racial discrimination and xenophobia was the main focus of the Inter-Agency Commission's first two years. There has been growing awareness and broader understanding among government institutions of the need to tailor policies and actions to indigenous, Afro-descendant, migrant and refugee populations.

37. In addition, many of the efforts made by ministries and independent institutions over the past few years have been focused on working with these groups. As will be seen in the section on the implementation of specific rights of the Covenant, the Ministry of Education, the Ministry of Culture and Youth, the Ministry of Health, the Social Insurance Fund of Costa Rica, the Ministry of Housing and Human Settlements, the Directorate-General for Migration and Alien Affairs, the Costa Rican Electricity Institute and the Ministry of Foreign Affairs have all been working with and holding discussions with one or all of these groups at various levels.

38. Although government institutions have not yet formulated broad policies that focus specifically on these population groups, considerable and varied efforts are being made, specialized bodies have been set up and programmes benefiting mainly indigenous communities and some groups of migrants and refugees have been implemented. As a result of the National Policy, the authorities are striving better to meet the needs of the groups, including Afro-descendants, by taking integrated action, decided upon jointly with the groups concerned, and to shift from isolated efforts to a National Policy. The aim is also to increase the groups' visibility and to demonstrate that, unlike in the past when indigenous peoples and Afro-descendants in particular were not included in long-term institutional policies, the time has come for targeted actions that take their specificities into account and adequately serve their needs, in keeping with the Government's commitment to its international human rights obligations.

39. It should be noted that, through dialogue with civil society, there has been more open and wider interaction with indigenous peoples, Afro-descendants and relevant groups of migrants and refugees. This is important for all human rights reports, but for economic, social and cultural rights in particular, especially considering that many of the country's challenges to the enjoyment of human rights, as identified both by government institutions and the Committee, concern these groups.

40. The formulation of the National Policy set in motion a crucial dialogue and exchange process with civil society. Between May and December 2012, six regional workshops were held with indigenous persons, Afro-descendants and representatives or associations of migrants and refugees, as well as a national interactive workshop and other forms of informal exchange with individuals and small groups. The purpose was to collect

background information, which the Inter-Agency Commission used to prepare and substantiate the draft National Policy during the first half of 2013.

41. One of the key outcomes of the input-gathering process and of understanding the stakeholders' positions and formulating the National Policy over the course of 2012 was the considerable contribution of civil society (especially indigenous persons and Afro-descendants) to the realization that the Government should improve, and ideally refocus, its methodology. Based on the comments received, in early 2013 the Government made a concerted effort through the Inter-Agency Commission to work with the institutions involved to redirect the process.

42. The National Policy (see annex) contains a more detailed explanation of the process and of the Commission's activities. As a result of the discussions and efforts of the Commission and the specially established Subcommission, additional exchanges took place and various participatory mechanisms were set up in the first half of 2013 in an effort to take as full account as possible of the requests, concerns and interests of civil society in the formulation process. During this period, civil society continued to contribute in various ways to drafting a document to help the Government incorporate the interests and concerns of rights holders and potential victims of racism and racial discrimination into its initiatives.

43. Costa Rica believes that it is essential for the Committee to become familiar with both the National Policy and its First Plan of Action, which have already been adopted by the State, as the process used by the Commission in formulating the policy. As seen in the foregoing paragraphs, the Policy is the first legal-political framework for Costa Rican institutions to recognize the challenges and define the actions for developing best practices for the realization of the human rights of indigenous, Afro-descendant, migrant and refugee populations. As a result, since the Policy came into existence in January 2014, the remaining obstacles to these populations' economic, social and cultural rights, on which the Committee has issued several recommendations, are now being dealt with more systematically, based on the State party's candid recognition.<sup>8</sup>

44. Significant efforts have been made in recent years, particularly with regard to indigenous peoples' access to decent housing, health care and education, which will be discussed in detail below. The Policy will make these efforts even more systematic and permanent, but even more important is that in taking these actions, the State must respect the right of these peoples to consultation.

45. By way of example, it should also be noted that, since Act No. 8764 on Migration came into force in 2010, the State has taken an unequivocal human rights approach to the treatment of migrants and refugees. It has set up a mechanism, which is evaluated on an ongoing basis, to ensure more effective access by migrants to social security. In addition, civil society organizations working with migrants and refugees have direct representation and voting rights in the National Migration Council. The first rights-based migration policy was adopted in 2013.

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<sup>8</sup> The National Policy and its First Plan of Action were launched on 17 December 2013 during observances of International Human Rights Day and the twentieth anniversary of the Vienna Declaration and Programme of Action. The executive decree on the official and legal adoption of the Policy and Plan was published in the Official Gazette (digital edition) of 20 February 2014 (Executive Decree No. 38140-RE-PLAN) (see annex).

46. The Committee's recommendation in paragraph 35 of its previous concluding observations<sup>9</sup> is included among the actions to be taken by the State in keeping with the First Plan of Action. The recommendation is clearly broad in scope, and covers the need for actions concerning the right to an adequate standard of living, the right to work and the right to education for indigenous and Afro-descendant populations, as well as the right to health for indigenous peoples.

47. The First Plan of Action is annexed to this report. It contains numerous actions to achieve the goals proposed in the Committee's recommendation. By way of illustration, the actions outlined in Sub-Action Line 2 (Drinking water, sanitation, electricity, communications, telephones) of Action Line VI (Right to an adequate standard of living) include the design and execution of integrated plans and projects for the holistic inter-agency implementation of the right to an adequate standard of living. The Plan of Action, divided into six action lines, follows the human rights approach: Action Line I, Institutional strengthening; Action Line II, Civil and political rights; Action Line III, Right to education and culture; Action Line IV, Right to health and social security; Action Line V, Right to work and economic rights; Action Line VI, Right to an adequate standard of living; and Action Line VII, Right to a quality environment and to territoriality. The human rights approach is taken into account with the groups' own perspective on their rights, which is why the right to territoriality is included alongside the right to a quality environment.

48. With regard to the recommendation in paragraph 36 of the Committee's concluding observations, on the participation of "minorities" in high-ranking government posts, the Plan of Action also includes strategic actions to develop mechanisms for the empowerment of the target populations. Sub-Action Line 3, Citizen participation, of Action Line II includes the design of mechanisms for the effective and ongoing participation of indigenous and Afro-descendant populations, as well as measures to develop their decision-making skills.

49. Definition of the crime of racism: Under paragraph 33 of the recommendation, the Committee states that "racial discrimination should be criminalized as a specific offence and punished according to the seriousness of the crime".

50. At present, there is no bill before the legislature in Costa Rica that criminalizes the behaviours referred to in article 4 of the Convention. However, one specific area of activity identified as part of the Policy and Plan is "1.2. The drafting of a bill which criminalizes racism and sets forth sanctions for various types of racial discrimination".

51. The Costa Rican State intends in this manner to comply with the recommendations of both the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination on the definition of offences contained in article 4 of the Convention.

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<sup>9</sup> "The Committee urges the State party to take all appropriate measures to ensure that the levels of poverty, illiteracy and unemployment of indigenous communities and Afro-descendants are reduced and that the indigenous communities have proper access to water, housing, health and education."

## C. Laws and institutions benefiting indigenous peoples

### Follow-up to paragraph 34 of the concluding observations

*The Committee recommends that “the State party should take all appropriate measures to ensure that the interests of all indigenous communities are fully represented on the board of the National Commission on Indigenous Affairs and that this institution receives sufficient financial and institutional State support necessary for its functioning”.*

52. Since 2011, and in response to several events, Costa Rica has stepped up its analysis, collaboration and dialogue with indigenous peoples. One of these events was the visit of the Rapporteur on the Rights of Indigenous Peoples in April 2011.

53. The Rapporteur visited the country at the Government’s direct invitation to ascertain in situ the situation of indigenous peoples in the area affected by the El Diquís hydroelectric project. The Government accepted the Rapporteur’s recommendations, including the recommendations on a better process for consulting indigenous peoples on the development of the project; adoption of the Autonomous Development of Indigenous Peoples Bill; recovery of indigenous lands; and government and representation of indigenous peoples. The latter recommendation concerns the functioning of the National Commission on Indigenous Affairs.

54. Costa Rica communicated to the Human Rights Council in September 2011 its determination to find avenues for dialogue with the indigenous peoples in order to discuss issues of particular relevance to them. It is important to emphasize this because fostering an atmosphere of trust that leads to satisfactory consultations and relationship-building is one of the fundamental areas in which the Government has sought to work closely with these peoples.

55. In the wake of the Special Rapporteur’s visit and the early warning procedure initiated by the Committee on the Elimination of Racial Discrimination, the Government has begun to foster closer ties with, and greater awareness of, the indigenous peoples. A discussion forum has been set up under the leadership of the Office of the President and the coordination of the Ministry of Social Welfare and the Family. It consists of representatives of indigenous peoples, especially from the southern part of the country, and government representatives.

56. The discussion forum is being assisted by the United Nations system and the Ombudsman’s Office, in their capacity as observers and guarantors of the dialogue and consultation process with the indigenous peoples. Both entities are impartial and boost confidence in the process.

57. The dialogue between southern indigenous representatives and the Government, now embodied in the discussion forum, stemmed from the concerns raised by the Special Rapporteur and the United Nations system regarding the El Diquís hydroelectric project and from their monitoring of the situation. The parties have agreed to add to the agenda for discussion more structural aspects and more general concerns than those that have arisen from the hydroelectric project.

58. The discussion forum has addressed the concerns of indigenous peoples about their rights, especially with regard to their own forms of government and their representation, and has sought solutions to problems arising from the lack of recognition in law of indigenous forms of government.

59. The goal of the ongoing open dialogue is not only to resolve historical problems with government treatment of indigenous peoples but also to pave the way for the regulation of the right to prior consultation, which is not currently provided for as such.

In May 2013, international experts attended various meetings and training sessions on the right to prior consultation held with the authorities, civil servants, independent experts, parliamentarians and civil society, thanks to the support of the United Nations.

60. Although there are a number of laws protecting indigenous rights, including the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the Indigenous Peoples Act of 1977 and its regulations, the Government acknowledges that the law alone cannot fully protect indigenous rights without government policies and action to ensure that the standards to which it has committed itself are actually enforced and observed.

61. The National Commission on Indigenous Affairs is one of the mechanisms established by the State in the 1970s for the well-being of indigenous peoples. Under the Act establishing the Commission,<sup>10</sup> the Commission is an institution of public law comprising various public bodies and representatives of indigenous communities. Although some of its objectives are institutional or public, one of its main purposes is to ensure that indigenous interests are clearly considered by public institutions and that indigenous territories and communities can benefit.

62. In keeping with the recommendation of the Committee on Economic, Social and Cultural Rights and the related recommendations of the Committee on the Elimination of Racial Discrimination with respect to the concerns expressed by the indigenous peoples themselves, it has been concluded that the National Commission is ineffective in its work.

63. The Costa Rican oversight body that determines whether public bodies are complying with their legal mandates, primarily from the administrative and financial standpoint, has examined the case of the National Commission. In December 2011, the Office of the Comptroller-General issued report No. DFOE-PG-IF-11-2011, which analyses the Commission's substantive efforts and financial management.

64. The Office of the Comptroller-General found that the relationship between the Government and the National Commission has not been conducive to the formulation of public policies that address indigenous issues in a meaningful way. This is due to a lack of political will on the part of the various government departments, which have failed to include indigenous peoples in their development plans and to guarantee the stability of the lead agency for social programmes, making it difficult for the Commission to keep communication channels open at all times.

65. Furthermore, the Commission's internal regulations do not allow for a long-term mission and vision; in fact, these change every two years, along with the members of the governing board. The Comptroller-General's audit also indicates that the Commission has failed to persuade the Government to focus on developing public policies that benefit indigenous peoples.

66. The Comptroller-General further found that "the needs of the indigenous communities may be clear, but the National Commission has not succeeded in determining how to coordinate between the authorities and the various development associations in order to improve the quality of life for these communities" (p. 9).

67. Government obligations as set out in the National Policy include consulting with the authorities and indigenous peoples to identify the best strategy for overcoming the National Commission's ineffectiveness and inefficiency. A permanent mechanism must be set up

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<sup>10</sup> Act No. 5251 of 1973.

that not only facilitates the representation of indigenous peoples but also takes action designed to meet their real needs and interests and duly address their rights.<sup>11</sup>

### III. Economic, social and cultural rights

#### Article 6

#### The right to work

##### Follow-up to paragraph 37 of the concluding observations

*The Committee “recommends that the State party should strengthen its efforts to promote effectively greater participation of women in the labour market and to ensure equal working conditions, including equal pay for work of equal value”.*

68. Recent years have seen a significant increase in women’s participation in the labour market. In 1980, women in the workforce represented just 17.2 per cent of the female population; 32 years later, the proportion has risen to 45.2 per cent. This has, however, been accompanied by tensions and imbalances. Between 2011 and 2012, for example, women’s net participation rate in the workforce fell by 0.5 per cent. And although in 2012 women represented a slightly greater proportion of the population (51.0 per cent), they accounted for only 38.8 per cent of the workforce and 37.8 per cent of the employed.

Table 1  
Net participation rate 2010–2012

Sex	2010	2011	2012
<b>Total</b>	<b>59.1</b>	<b>60.7</b>	<b>60.1</b>
Men	75.9	76.8	76.0
Women	43.5	45.7	45.2

*Source:* National Statistics and Census Institute, National Household Survey, 2010–2012.

69. In 2012, 759,953 women and 1,252,302 men were employed in the Costa Rican labour market. Women worked in the service sector, particularly in trade, domestic service, education and industry, while men worked in agriculture, trade and industry.

70. Underemployment due to insufficient working hours mainly affects women. In 2011, 136,340 women who wished to work longer hours and were available to do so could not, placing them at a greater disadvantage with regard to entering the labour market.

71. In relative terms, this was the case of 18.1 per cent of women and 10.6 per cent of men in 2011. Both sexes showed an increase in the percentage of employed who were underemployed in terms of working hours when compared to 2010, although most of those affected were women.

<sup>11</sup> The Policy’s Plan of Action calls for the creation of a mechanism which, although not intended solely for indigenous peoples, would follow up on actions to guarantee the human rights of the groups targeted by the Policy. Strategic action 6 of Action Line I of the Plan states as follows: “To set up a forum, developed jointly with the target populations, responsible for the follow-up and implementation of the specific rights of these groups and for the long-term implementation of the Policy’s Plan in the public sector.”

72. In the crafts industry, construction, mechanics, graphic arts and manufacturing, women account for 46.4 per cent of the underemployed due to insufficient working hours. They are also more numerous among the self-employed, accounting for 39.7 per cent.

73. The following table shows the income gap for the main branches of activity employing women in 2011. On average, the greatest gaps are to be found in trade, where men earn 42 per cent more than women. This is followed by industry (36 per cent) and private households with domestic service (8 per cent).

Table 2

**Average income of the employed by number of hours worked per week, by sex and branch of activity, 2011 (figures in columns)**

Branch of activity of the primary job		Hours worked per week				Total
		Less than 30 hours	30–39 hours	40–46 hours	47 hours or more	
<b>Total</b>	<b>Men</b>	<b>193 505.9</b>	<b>310 040.5</b>	<b>508 884.6</b>	<b>419 435.0</b>	<b>401 663.9</b>
	<b>Women</b>	<b>131 506.6</b>	<b>320 885.5</b>	<b>527 210.4</b>	<b>391 938.2</b>	<b>346 039.6</b>
	<b>Gap<sup>1</sup></b>	<b>32</b>	<b>-3</b>	<b>-4</b>	<b>7</b>	<b>14</b>
Trade	Men	150 140.7	316 509.7	411 906.5	430 455.3	<b>392 064.6</b>
	Women	102 866.9	257 331.8	341 594.1	286 667.9	<b>229 343.8</b>
	Gap <sup>1</sup>	32	19	17	33	<b>42</b>
Private households with domestic service	Men	79 241.0	111 178.9	230 624.3	195 869.8	<b>142 427.4</b>
	Women	73 109.5	137 790.8	172 126.7	194 626.5	<b>131 204.7</b>
	Gap <sup>1</sup>	8	-24	25	1	<b>8</b>
Education	Men	362 412.2	627 491.0	733 306.3	574 185.6	<b>601 720.3</b>
	Women	371 410.2	571 829.8	672 359.7	639 968.5	<b>599 279.6</b>
	Gap <sup>1</sup>	-3	9	8	1	<b>0</b>
Industry	Men	473 193.9	204 027.1	394 229.9	396 767.9	<b>392 021.0</b>
	Women	69 049.5	152 928.2	351 206.8	347 314.5	<b>249 781.1</b>
	Gap <sup>1</sup>	85	25	11	13	<b>36</b>

<sup>1</sup> The gap is calculated as 1 – women's income/men's income.

Source: Ministry of Labour and Social Security, Directorate-General for Labour Planning, Labour Market Observatory, based on the National Household Survey, July 2011.

74. As indicated in the table, in industry the gap is greater for those working less than 30 hours. The gap narrows as the number of hours worked increases. In trade, the gap narrows for working weeks of 30-to-39 hours and for working weeks of 40-to-46 hours (19 per cent and 17 per cent, respectively). The gap remains the same, at just over 30 per cent, at the two extremes of working weeks (less than 30 hours, and 47 hours or more). In households with domestic service involving working weeks of 30-to-39 hours, women earn 24 per cent more than men.

75. With respect to the wage gap between men and women, the Ministry of Labour and Social Security has focused on ensuring that labour law is respected, particularly where economic rights are concerned. The authorities continue to concentrate on promoting employment and equal opportunities so as to reduce this type of inequity and inequality in the labour market.

76. The EMPLEATE Public-Private Labour Plan 2013 was presented to representatives of some 20 affiliated enterprises on 10 May 2013. The presentation was made by the

Minister of Labour and Social Security, Mr. Olman Segura Bonilla; the Deputy Director of the Subregional Office of the International Labour Organization (ILO), Mr. Leonardo Ferreira; and Mrs. Silvia Lara, Executive Director of the Business Association for Development (AED).

77. The Labour Plan contains six action lines in which each of the affiliated enterprises and organizations has identified the areas of work in which their main objective would be to improve the quality of life of thousands of families, through the promotion of decent work for young beneficiaries. These areas are training, volunteering, visits to enterprises, participation in EMPLEATE group events, employment and communication.

78. The gender equality and equity management system of the National Institute for Women has been fostering women's entry into the labour market as well as the improvement of the quality of their employment with respect to equal pay; shared social, family and work responsibilities; comprehensive health care (including sexual and reproductive health); and staff recruitment and selection, among others. Two large enterprises have been certified by this model (Banco Popular y de Desarrollo Comunal, and Scotiabank). However, the system has been reorganizing since 2011 and is not being applied as such; it is expected to resume operating in 2014.

79. Work is also under way to bring the gender perspective into the job placement service. Such institutions as municipalities, the Ministry of Labour and Social Security, and the National Training Institute participate, in conjunction with the National Institute for Women. The idea is to ensure that employment offices show greater awareness and make better use of guidance and tools in their job placements for women.

80. The gender equality board was created in the business sector in 2012 to lay the foundations for non-discrimination and the advancement of women in the labour market and in decent work. Some eight enterprises took part in 2012, and six are participating in 2013.

81. With respect to encouraging and supporting women's entrepreneurship, coordination continued in 2012 between the National Institute for Women and the Ministry of the Economy, Industry and Trade on recognizing microenterprises as another stage in national economic development, in which women represent a very high proportion of managers. The idea is to have cross-cutting policies and programmes in place for microenterprises from a gender perspective by late 2016. The framework for these efforts is the comprehensive model for strengthening women's entrepreneurship for the economic autonomy of women in Costa Rica, a public policy mechanism that compiles the collective experience of women entrepreneurs and businesswomen in order to develop an approach to self-employment and income generation through self-employment. The model is a tool for encouraging women's economic autonomy — an objective pursued, among others, by the National Policy on Gender Equality and Equity of the National Institute for Women.

82. In addition, a scheme for recognizing best labour practices applicable to micro and small enterprises is being developed in order to reward the enterprises that apply such practices, given that the firms employ 90 per cent of the active population. A pilot project will be undertaken with various enterprises in 2014.

83. In rural areas, the National Institute for Women is encouraging the development of micro and small enterprises headed by women as a special sector in which women can become part of the local economy, by developing and promoting such enterprises' access to support services and productive resources. Thus, as part of the European Union-funded project on "Emprende: Strengthening women's entrepreneurship to reinforce their economic autonomy", the National Institute for Women, the Ministry of Agriculture and Livestock and the Ministry of the Economy, Industry and Trade are working to enhance the development of women's microenterprises in rural areas by strengthening, counselling and



training them on successful entry into local and competitive markets. This project is only just beginning, and it is hoped that by late 2016 there will be a national support policy in place for women's micro and small enterprises, giving them greater access to productive resources at the local level.

84. As part of the promotion of women's economic rights, annual employability and entrepreneurship fairs, as well as business workshops, are held in different parts of the country to foster women's economic production initiatives.

#### **Follow-up to paragraph 39 of the concluding observations**

*“The Committee urges the State party to strengthen its efforts to reduce unemployment among marginalized and disadvantaged groups and individuals through specifically targeted measures, including by ensuring the strict application of anti-discrimination legislation by the judiciary, local governments and labour offices; introducing and effectively enforcing legal provisions requiring an ethnically balanced workforce in the public and private sectors; and enhancing professional training and sustainable employment opportunities in the remote areas where the indigenous population resides.”*

85. The Ministry of Labour and Social Security held a human rights workshop on institutional actions to combat racial discrimination on 4 December 2012. It targeted Ministry officials in order to raise awareness of relevant issues concerning the Ministry's participation in the Inter-Agency Human Rights Commission spearheaded by the Ministry of Foreign Affairs with respect to the formulation of the National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia.

86. The workshop was attended by representatives of the Ministry of Foreign Affairs and Religion, the National Statistics and Census Institute, the Supreme Electoral Tribunal, the Justice Unit of the judiciary and the Office of the Vice-Rector for Social Action of the University of Costa Rica.

87. The workshop was intended to publicize the process of outlining institutional actions for the indigenous, Afro-descendant and migrant population — a process that has been spearheaded by the Department of International Labour Affairs — among department officials (most of them labour inspectors from regional offices) and to include such actions in the Department's routine tasks.

### **Article 7**

#### **The right to just and favourable conditions of work**

88. The national campaign for compliance with minimum wage regulations has been an essential part of securing just conditions of work. It has drawn on dialogue, advisory services, the dissemination of information and direct inspection of firms in order to have a positive impact on workers' income, particularly those with the lowest levels of skills.

89. The data produced by the campaign and household surveys have been very encouraging, not only because they make it possible to determine whether failure to pay the minimum wage to private-sector employees has been reduced, but also to determine whether preventive inspections are working.

90. The electronic case file system of the National Labour Inspection Directorate has been operating since mid-2010 to facilitate inspections. It enables inspectors to access the electronic case files of each company visited, and of each person whose rights have been violated, in real time and anywhere in the country.

91. This work has been conducted jointly with the Social Insurance Fund of Costa Rica, which has made important information available to the Ministry of Labour and Social Security from the centralized data collection system. This has been crucial in identifying non-compliant employers and in implementing the new document inspection process, which allows labour inspectors to verify the payment of the minimum wage and the observance of other rights, by reviewing social security lists, occupational hazards insurance, internal lists and other documents of the firms under investigation.

92. Since the national campaign was launched in 2010, the most-inspected economic sectors are trade, repair work, hotels and restaurants. Some 11,655 initial visits, and 6,344 follow-up visits, have been made to establishments in both these sectors.

*Under recommendation No. 38, the Committee “recommends that the State party should take effective measures to improve the situation of domestic workers, in accordance with article 7 of the Covenant”.*

93. The economic and social value of domestic work, and the need to improve the working and living conditions of domestic workers, has been increasingly recognized at both the national and international level.

94. Significant progress was made in 2009 with the adoption and passage of Act No. 8726 amending Chapter 8 of Title 2 of the Labour Code. The amendment put the labour rights of domestic workers on the same footing as those of other workers and improved their working conditions. Restrictions on the working day and working week, and the right to weekly rest and holidays, are the same as those applying to the rest of the national workforce. In addition, the amendment expressly established the age of 15 as the minimum age for domestic work so as to eradicate child labour in this sector, as called for in the ILO Minimum Age Convention, 1973 (No. 138) and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), which have both been ratified by Costa Rica.

95. The 100th session of the International Labour Conference was held in June 2011 and adopted international labour standards — specifically, the ILO Decent Work for Domestic Workers Convention, 2011 (No. 189) and Recommendation No. 201 concerning Decent Work for Domestic Workers (2011) — aimed at improving the working conditions of domestic workers worldwide.

96. The new ILO provisions establish that domestic workers shall have the same fundamental rights as other workers, including the number of hours of work and how long they must work; weekly rest of at least 24 consecutive hours; when and how they shall be paid, and a limit on cash payments; clear information on the terms and conditions of employment; and observance of the core labour principles and rights. The Convention further stipulates special measures to address the vulnerabilities of specific groups of domestic workers, namely: young workers, domestic workers residing in the household, and migrant domestic workers.

97. States must also take steps to offer minimal social security protection, including maternity benefits, under conditions no less favourable than those applicable to other categories of workers. The Convention further recognizes the specific context of domestic work, regardless of whether this is the employer’s household, and calls for a balance between the right of workers to protection and the right of members of the household to respect for their private life.

98. In conformity with ILO procedures, all member States must submit the international instruments adopted at the International Labour Conference to the competent national authorities for analysis in the national context and for possible adoption as domestic law.

99. The Ministry of Labour and Social Security proceeded in due time and form to submit the draft Convention for adoption by the Legislative Assembly in keeping with the requirements, along with a statement of the Government's opinion on how the text should be implemented. This was preceded by consultations with the competent institutions and with the organizations most representative of workers and employers, in keeping with the ILO Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

100. The Act ratifying the Convention and incorporating it into the national legal system was signed in October 2013.

## **Article 8**

### **The right to form trade unions and associated freedoms**

*Under recommendation No. 41, the Committee "urges the State party to expedite the adoption process of currently proposed reforms of article 60 of the Constitution and to ensure that the right of everyone to form and join trade unions and to take part in trade union activities is respected, in conformity with article 8, paragraph 1 (a), of the Covenant".*

101. The reforms of article 60 of the Constitution, eliminating the prohibition established in paragraph 2 of that article on the participation of foreigners in high-level trade union posts, are before the Legislative Assembly in legislative file No. 17804.

## **Article 9**

### **The right to social security**

*Under recommendation No. 42, the Committee "calls upon the State party to ensure that social security assistance is provided to all workers, in particular to persons belonging to disadvantaged and marginalized groups. The Committee also encourages the State party to ratify the ILO Maternity Protection Convention (Revised, 1952), No. 103, and the ILO Equality of Treatment (Social Security) Convention, 1962 (No. 108)".*

102. The Ministry of Labour and Social Security has submitted the two Conventions to the Legislative Assembly, where they are currently under consideration.

## **Article 10**

### **The right to a family**

103. With regard to compliance with the Committee's guidelines on the right to a family, reference is made to the paragraphs contained under the heading on the right to an adequate standard of living (paras. 117 *et seq.* below), concerning a State programme (Care Network) to provide for the care of children and adults, in particular for socially vulnerable families.

*Under recommendation No. 44, "the Committee encourages the State party to expedite the adoption of currently existing proposals to amend article 143 of the Family Code and the law providing for an explicit prohibition of all corporal punishment that is currently under consideration".*

104. The use of corporal punishment as a form of disciplining minors in the family, schools and care centres for children is prohibited under Act No. 8654 of September 2008. This Act amended article 143 of the Family Code and added a new article 19 *bis* to the Code on Children and Adolescents, which prohibits corporal punishment.

*With respect to protection of the rights of minors, under recommendation No. 45 “the Committee urges the State party to address effectively sexual and commercial exploitation, sex tourism and human trafficking and recommends the adoption of an amendment to the Act against Commercial Sexual Exploitation for that purpose”.*

105. Act No. 9095, on trafficking in persons and the establishment of the National Coalition against Smuggling of Migrants and Trafficking in Persons, provides the relevant framework legislation.

106. This Act amends some of the offences covered by the Penal Code and establishes some new ones, as follows:

- It amends article 376 of the Penal Code, establishing prison sentences of 8 to 20 years for trafficking in minors;  
It adds article 377 *bis* to the Penal Code, establishing prison sentences of 8 to 16 years for illicit trade in human organs, tissues and/or fluids;
- It adds article 175 *bis* to the Penal Code, punishing the owners, landlords, administrators or holders of establishments\* with prison sentences of 3 to 5 years;
- It adds article 162 *bis* to the Penal Code, establishing prison sentences of 4 to 8 years for sex tourism;
- It adds article 189 *bis* to the Penal Code, establishing prison sentences of 4 to 8 years for labour exploitation.

*Under the same recommendation, the Committee “further urges the State party closely to monitor the number of women and children trafficked to, from and through its territory each year and to provide mandatory training on trafficking for the police, prosecutors and judges”.*

107. The Anti-trafficking Unit of the Section on Offences against Physical Integrity and Trafficking, the Assistance and Protection Office for Crime Victims and the Human Trafficking Management Office of the Directorate-General for Migration maintain confidential databases on victims, both those whose cases have been brought to trial and those who have not wished to take part in legal proceedings.

108. Statistics on minors who have been victims of trafficking are maintained by the technical secretariat of the rapid response team, established under the leadership of the Directorate-General for Migration, which includes officials from other institutions who are involved in the comprehensive care of such cases.

109. The Commission on Information, Analysis and Investigation of the National Coalition against Smuggling of Migrants and Trafficking in Persons is assembling the tools for data collection.

110. Since 2010 the rapid response team has verified 100 victims of trafficking, who have been referred both by public bodies and by non-governmental and international organizations. Four other cases have been investigated but not verified as they did not meet the minimum requirements. There have been five convictions to date.

111. Verified victims may be classified as follows.

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\* *Translator’s note:* The complete text of the article reads as follows in translation, and is added for the sake of clarity: “Punishment of owners, landlords, administrators or holders of establishments or places intended or used for trafficking in persons, smuggling of migrants or related activities.”

Table 3  
Victims of trafficking

<i>Nationality</i>	<i>Women</i>	<i>Men</i>	<i>Purpose</i>	<i>Adults</i>	<i>Minors</i>
China	1	0	Labour	0	1
Colombia	1	0	Sexual	1	0
Costa Rica	3	0	Sexual	0	3
Honduras	1	0	Sexual	1	0
Nicaragua	8	0	Sexual/Labour	8	0
Dominican Republic	6	1	Sexual/Labour	7	0
South Africa	1	0	Criminal	1	0
<b>Total</b>	<b>21</b>	<b>1</b>		<b>18</b>	<b>4</b>

112. All of these persons received the necessary support from the relevant governmental and non-governmental organizations.

113. State institutions are making efforts to create complete databases on this subject, thereby complying progressively with the Committee's recommendation that the State party "should include in its next periodic report updated and disaggregated data on an annual basis on reported trafficking cases, convictions and sentences imposed on perpetrators, and on the assistance and rehabilitation programmes provided to victims".

*Under recommendation No. 43, "the Committee recommends that the State party should undertake effective measures to implement existing legislation on domestic violence; that the police, other law enforcement officers and judges should be given training to this end; and that information should be provided in the next periodic report on the number and outcome of court cases related to domestic violence".*

114. The National Institute for Women, as the governing body for policies on violence against women, follows up on the implementation of existing legislation through the following mechanisms: the Monitoring Committee of the National System for the Treatment and Prevention of Violence against Women, the High-level Commission for monitoring implementation of the Act on the Criminalization of Violence against Women, and active participation in the Monitoring Committee on the Domestic Violence Act of the judiciary.

115. Police officer training is an ongoing activity of the Gender Violence Section of the National Institute for Women and is conducted through special courses for police officers, methodological training of officials enabling the police to conduct the courses themselves, and the participation of police officials in basic courses offered by the National Institute for Women for the local care networks on addressing and preventing violence against women and domestic violence.

116. The judiciary has its own programmes for training judicial officials, offered by the Judicial Training College, and the National Institute for Women supports these processes when asked to do so as part of inter-agency coordination. Judicial officials also take part in the basic courses organized by the local care networks.

## **Article 11**

### **The right to an adequate standard of living**

117. The right to an adequate standard of living is one of the rights enshrined in the Covenant whose implementation presents perhaps the greatest challenges in many countries, including Costa Rica. Nonetheless, precisely because it is one of the greatest overall challenges, Costa Rica has taken major steps to combat poverty as one of its foremost objectives.

118. The methodology in use since 1987 for calculating official poverty indicators is the poverty line or income method, the parameters of which are updated based on information from the 2004 national survey of income and expenditure and on income data from the national household survey. According to this method, poverty occurs when income is below the cost of a basket of essential goods and services that allow basic needs to be met. The quantitative threshold applied for measuring poverty in Costa Rica in 2013 was 100,943 colones (about US\$ 200) per person in urban areas and 77,401 colones (about US\$ 160) in rural areas.

119. Based on the most recent national statistics, derived from the latest (2013) national household survey, the percentage of poor households has held steady over the past two years, at about 20 per cent of all households, which is equivalent to 285,467 households (or about 1 million persons). This percentage includes the 6 per cent of all households living in extreme poverty, and has not increased in recent years. However, it has proven difficult for the State to eradicate poverty, and extreme poverty in particular; inequality has proven difficult to reduce as well. The Gini index has held steady at about 0.52 in recent times.

120. The State has acted resolutely and concretely to deal with this situation, particularly over the past decade. Its programmes and initiatives adopted are designed to support the integration into education or the labour market of the sector of the most socially vulnerable population. The most recent actions to combat poverty include such State programmes as the following:

- “Avancemos” (“Let’s move forward”), a government social programme involving various institutions and executed by the Inter-Agency Institute for Social Assistance. Its objective is to support adolescents and young people from families who for economic reasons find it difficult to keep or reintegrate their children into the formal education system. It is a conditional cash transfer programme under which the family signs a contract committing itself to meeting the obligations defined by the Institute. The programme helps to increase families’ incomes, encourage access to education and universal secondary education, reduce poverty, undo the dynamics leading to students being left behind, prevent school failure and deter child labour.
- The National Network of Childcare and Development, which was created in 2010 and given constitutional status in 2014. In addition to the Comprehensive Childcare Centres, it comprises various social, public and private actors with a legal mandate for or legitimate interest in the integrated support, protection and development of children, and includes children themselves; parents’ or childminders’ organizations; staff, directors and supervisors of childcare services; professional groups from various disciplines; and governmental and non-governmental bodies.
- During the four-year period 2010–2014, the social programme has endeavoured to double the coverage of the childcare services offered by the Education and Nutrition Centres and the Comprehensive Childcare Centres for 10-hour days or longer. The goal is to provide at least 8,000 children with access to the services by the end of the period, as compared to the 4,000 children covered in 2010. Efforts have also been

made to increase the programme's coverage of reduced 4-hour days by 25 per cent, so as to reach 25,000 children in all in 2014.

- Some 31,407 children are thus benefiting from the childcare and development services offered by the Network's members: childcare centres for children subsidized by the Institute; the National Child Welfare Agency; the Education and Nutrition Centres; and the Comprehensive Childcare Centres.
- Programmes are also under way to encourage the private sector to provide childcare services for employees.
- The Care Network for the Elderly. The strength of this programme lies in the development and promotion of local capacities to address the care needs of the elderly. There are 41 local care centres for the elderly to date, which execute the programme in 41 localities, 20 of which are in communities that the Government has identified as priorities.
- The 41 local networks involve 245 social actors. representatives of such institutions as the Social Insurance Fund of Costa Rica, the Inter-Agency Institute for Social Assistance, the Ministry of Health, local governments, non-governmental organizations (primarily old people's homes, day-care centres and special development associations), community groups, churches and the elderly.
- Benefits were granted to 3,528 persons in 2011, primarily in the form of basic food support, while 4,961 persons were assisted in 2012, thereby doubling the goal set in the National Development Plan.

121. One of the main accomplishments of the National Network of Childcare and Development was to provide socially vulnerable women heads of households with greater opportunities for training and entering the labour market.

122. The State is engaged in other initiatives to provide better living conditions for persons and families living in poverty. These include the school canteens, where thousands of children are fed. Similarly, in recent decades the family housing allowance has provided access to housing for thousands of families. In addition, the non-contributory pension scheme provides subsistence income to those without any income who have not contributed to the pension scheme. Destitute persons are among the beneficiaries.

123. Costa Rica has one of the highest gross domestic product investments in social programmes (2.5 per cent). In 2013 alone, 491,221,000 colones (about US\$ 900,000,000) was earmarked for anti-poverty programmes and initiatives. The country's social investment increased by an estimated 21.3 per cent.

124. Costa Rica recognizes that economic investment is not in itself sufficient to combat poverty. Based on information provided by the institutions themselves, and on analyses undertaken by public universities and the State of the Nation Programme, existing programmes and initiatives in the social sector apparently require greater inter-agency coordination, avoiding duplication and deploying more consistent and focused efforts. One way of optimizing these efforts would be to produce more systematized statistics and collaborate with the State apparatus, which should also result in better action plans for work with non-State sectors.

*Under recommendation No. 35, “the Committee urges the State party to take all appropriate measures to ensure that the levels of poverty, illiteracy and unemployment of indigenous communities and Afro-descendants are reduced and that the indigenous communities have proper access to water, housing, health and education”.*

125. As discussed in the section on aspects relating to the general provisions of the Covenant, institutional efforts may have been made to comply with the recommendation, but more systematic and permanent institutional measures are being initiated in keeping with the First Plan of Action of the National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia.

126. As concerns education, health and work, reference is made to the respective sections below.

#### **Access to water**

127. Access to water in Costa Rica is for the most part regulated by the health sector under the coordination of the Ministry of Health. However, in reply to the above-mentioned Committee recommendation, and given that access to water is closely linked to the enjoyment of an adequate standard of living, this issue will be dealt with in the following paragraphs. More extensive reference is made to the right to health in the section on article 12 of the Covenant.

128. Costa Rica considers access to water to be a human right in keeping with the case law developed by the Constitutional Chamber of the Supreme Court of Justice. Access to water is part of the constitutional right to health and to a healthy and ecologically balanced environment, both of which are enshrined under article 50 of the Constitution and enforceable by court action. Furthermore, the new Water Resources Act was adopted on first reading in March 2014 and is currently before the Constitutional Chamber to ensure that the measures it envisages are not unconstitutional. The bill was submitted by popular initiative in May 2010, accompanied by 150,000 signatures, or 5 per cent of the electorate. The new law is expected to enter into force in the coming months.

129. The Costa Rican Water Supply and Sewerage Institute has installed drinking water systems in the country’s indigenous territories, supplying water to about 1,700 inhabitants. The following projects have been completed:

Paso Marcos de Turrialba;

- Alto Ñari de Turrialba;
- Ñari Ñak de Turrialba;
- Roca Quemada;
- Jameikari No. 1;
- Jameikari No. 2;
- Cerere de Salamanca;
- Ujarrás de Buenos Aires;
- Booqueri de No. 1;
- Booqueri de No. 2;
- Karku No. 1;
- Karku No. 2;
- Tolot Satku de Matina;



- Bajo Bley Talamanca;
- Boca Cohen.

130. Construction of the Alto Chirripó aqueduct is expected to begin in 2013; the aqueduct will meet the demand for water of 160 inhabitants.

131. The Binational Basin Programme will remedy the total lack of drinking water or improve the supply. The localities covered by the programme are in the canton of Talamanca:

- Sibuju;
- San Vicente and San Miguel;
- Sibudi;
- Suretka;
- Watsi (Uatsi or Volio);
- Akverie, Chase and Batallón;
- Coroma, Cohen and Wawet Shiroles.

132. Technical studies are also under way to assess the feasibility of water supply projects in the following communities:

- San Rafael de Cabagra;
- Zapatón de Puriscal;
- Térraba de Buenos Aires (second stage).

133. The Costa Rican Water Supply and Sewerage Institute has determined that the construction projects have improved the population's quality of life, since they had previously suffered from a partial or total lack of drinking water. The beneficiary communities have also participated in the construction. The work has been carried out under the UNDP project to develop and implement a methodology for integrating and training indigenous communities to manage water resources effectively and efficiently at the local level.

134. The Institute emphasizes that the population is fully aware of the need for piped water connections to all homes as part of the development and management of projects.

135. These actions were facilitated by the beneficiaries' participation in the projects, which helped to establish cooperative links between the institution and the community.

136. The construction of the systems has also involved the occasional hiring of workers from the beneficiary community, creating seasonal employment and income-generating opportunities for the families concerned.

137. The Community Systems Management Unit builds drinking water systems with technology that is accessible to indigenous communities and advises them on their management. During the construction phase community leaders were trained in operating the systems by leading project technical staff.

138. The main challenges faced by the Institute are the difficult access to many indigenous communities; the fact that these communities are dispersed and removed from other population centres, with unconventional access roads that are even impassable by land; and the fact that they have to depend on air transport for the delivery and transport of aqueduct construction materials.

139. Nevertheless, the Institute is committed to meeting the drinking water needs of these communities so as to give them a better quality of life and reduce the gap between them and the rest of the population.

#### **Access to housing**

140. In recent years the Ministry of Housing and Human Settlements has been carrying out specific projects in indigenous territories to provide their inhabitants with access to housing. However, although they receive housing allowances and have had their own houses built, the conditions of such housing have not been appropriate to the situation or world view of indigenous peoples in Costa Rica.

141. For this reason, prior to the entry into force of the National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia, the Ministry was endeavouring to respond better to the needs and interests of indigenous peoples and to their definition of decent housing. The Policy's First Plan of Action will contribute to inter-agency and Ministry efforts by providing specific understanding of indigenous peoples and also of Afro-descendant populations.

142. With respect to the latter, before the Policy came into force, the Ministry did not see a need to tailor its institutional approaches to a specific population. Now, however, it has developed initiatives to promote discussion and analysis of the subject within the institution, at the very least.

143. With regard to access to decent housing more generally, the National Housing and Human Settlements Policy 2013–2030 has been in place in Costa Rica since 2013, along with a corresponding Plan of Action. The Policy grew out of a participatory process of reflection and analysis, based on the current national situation and recent trends in housing and human settlements.

144. The perceptions and opinions of persons responsible for sectoral public policies, Ministry officials, and representatives of various social sectors and of international cooperation, but above all those of the beneficiary families of the housing programmes, were taken into account during the formulation of the Policy.

145. The Policy prioritizes lines of action to provide access to decent housing for persons and households at all socioeconomic levels, with special attention to populations living in poverty, at risk, or in situations of vulnerability and social exclusion. Forums for participation and structured actions are proposed as part of a scheme for coordinating joint projects among public institutions, civil society organizations and the private sector.

146. The Policy covers such topics as how to deal with the housing shortage, the role of the housing and human settlements sector in climate change mitigation and adaptation, and how to strengthen the national housing finance system and make it sustainable.

147. The Policy is also designed to strengthen the coordination and management capacity of the institutions in the housing and human settlements sector, through the creation of the national human habitat system, which promotes the active, coordinated participation of the key actors and simplifies administrative management and the management of information flows.

148. The Policy is based on the principles of human rights, sustainable development, equality and gender equity. It focuses on promoting decent, multifunctional housing and human settlements that foster integration, social cohesion and a participatory, inclusive and sustainable habitat. It observes the principles of universality, integrity, transparency, solidarity and social participation.

## Article 12

### The right to the highest attainable standard of physical and mental health

#### Follow-up to the recommendation contained in paragraph 35 of the concluding observations

149. The Ministry of Health is spearheading the development of the National Health Plan for Indigenous Peoples and Migrant Indigenous Peoples, which will be ready in late 2014, as a national undertaking. The Plan will represent the first-ever compliance with the obligation under the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) concerning the participation of and consultations with indigenous peoples, thereby complying as well with the call for social participation outlined in the Ministry's conceptual strategic model. According to the model, if social participation is to be effective, the community must be closely involved in the economic, social, cultural and political processes affecting their lives, by means of a collective, deliberate, democratic and concerted action of individuals, social groups and their organizations in:

- (a) The identification and expression of their needs, concerns and expectations;
- (b) Priority-setting;
- (c) The design and negotiation of development strategies and proposals;
- (d) The implementation and execution of viable actions in the economic and logistics fields.<sup>12</sup>

150. The Plan will serve as a working guide for the health sector and as the basis for institutional plans on indigenous questions.

151. In keeping with existing legislation governing the legal and political framework for health care for indigenous populations at the international, national and institutional levels, the Social Insurance Fund of Costa Rica has sought progressively to provide them with social security and appropriate, coordinated health-care services. A number of actions to address Committee recommendation No. 35 can be cited in this regard.

152. For example, the Fund's Policy 2007–2012, adopted by the executive board, clearly expresses the Fund's interest in and willingness to address the needs of these populations. It states that "health-care services should be provided on the basis of planning and research, taking into account the populations' main health problems and changes in the demographic profiles and factors affecting health, with an emphasis on socially disadvantaged groups and indigenous communities, in coordination with different social actors".

153. Current installed capacity for health care for indigenous populations in the various regions, including highly nomadic populations, is aimed at covering the 24 indigenous territories and 8 indigenous peoples or any other indigenous population on Costa Rican territory. As at 31 December 2012, there were:

- 19 health districts;
- 48 basic health-care teams;
- 5 district headquarters;

<sup>12</sup> Ministry of Health. *Modelo Conceptual y Estratégico de la Rectoría de la Producción Social de la Salud*, pp. 39-40. Available at [www.ministeriodesalud.go.cr/index.php/sobre-ministerio-modelo-conceptual-estrategico-ms/doc\\_view/310-modelo-conceptual-y-estrategico-de-la-rectoria-de-la-produccion-social-de-la-salud-](http://www.ministeriodesalud.go.cr/index.php/sobre-ministerio-modelo-conceptual-estrategico-ms/doc_view/310-modelo-conceptual-y-estrategico-de-la-rectoria-de-la-produccion-social-de-la-salud-).

- 36 headquarters for basic health-care teams and 82 regular health posts for indigenous populations.

154. The teams visit the country's indigenous areas to undertake promotion and prevention and make referrals for care and rehabilitation should they be required. They deal with priority health needs and problems encountered in the indigenous population, such as malnutrition in children under 6 and psychosocial problems, including violence, addictions and sexual abuse, and make referrals to the competent bodies.

155. Information on medications is delivered through pictogrammes that have been designed based on the population's culture and world view in order to make it easier for them to understand the instructions and to continue the treatment.

156. With respect to maternity, illness and health-care coverage, the State provides the population with insurance, renewable every five years, based on the universal coverage policies, the Code on Children and Adolescents and the international conventions on the rights of the indigenous population.

157. With respect to equitable access by indigenous children to health-care services, the San Pablo health-care team makes monthly community visits. Personnel are also sent out to provide medical care to the more remote communities. Children are referred to paediatric specialists and given short-term care from Level I onwards. There is also a 24-hour emergency service as well as vaccination campaigns. Care is provided in the schools to the migrant population wherever they live and work. These children are also offered consultations at the health-care team headquarters whether or not they are insured.

158. Vaccination campaigns are conducted for the indigenous population in the border region, where there are also three health-care team headquarters and five regular health posts to ensure access to health-care services.

159. Coverage is provided for vaccination, prenatal care, and children's growth and development. Vaccination coverage for children reached 90 per cent over the past two years. However, coverage of children's growth and development is low, since despite the fact that indigenous communities are visited each month, there are still isolated areas that are difficult to reach, which means that parents take their children for consultations only when they are very sick, and this has an impact on vaccination coverage. Coverage of adolescents and of adults has fluctuated between 65 per cent and 70 per cent, respectively, in the past two years.

160. The Fund is currently working with State insurance campaigns to cover this population, but much remains to be done.

161. The Santa Cruz health district airs a weekly radio programme on "Health for All".

162. The coordinating community of the La Cruz health district, in conjunction with the Inter-Agency Institute for Social Assistance, carries out health promotion projects on healthy lifestyles. Five groups are currently operating.

163. The Fund's executing units ensure that disadvantaged groups have access to social security and health-care services. The actions and outcomes in each region are outlined below.

Table 4  
**Actions of the Social Insurance Fund of Costa Rica**  
**Brunca Region, Coto Brus Zone**

<i>Action</i>	<i>Outcome</i>
Creation of a friendly service unit in the Ngobere language, adapted to cultural needs, in the community of de La Casona	Use of the intercultural human rights approach in the creation of health infrastructure and health care for this population
Establishment of a basic health-care team that travels to the farms where the highly nomadic population is working	The “Finca Sana” (“Healthy Farm”) Project sends prevention and health-care service personnel out to wherever the population is working, resulting in broader coverage
Ngobere language instruction and training of cultural advisers	Mediation between health personnel and the indigenous population to overcome the language and cultural barrier and offer better health care in such areas as disease prevention and mother and childcare
Training of Ngobe young people based on the coordination and protection of local systems	Indigenous teacher training and training of young people on the promotion of rights
Development of a database for each endemic corridor and strictly supervised treatment	Registration and monitoring of cases
Health promotion and disease prevention campaigns	Training on hygiene for the hands and mouth and on nutrition and food security
Training of Ngobe midwives	Priority care for these midwives and improvement of maternal and child health; development of a kit for midwives that reduces the risk of infection
Creation of the “bolsas semáforo” (“traffic signal bags”) initiative	Pregnant mothers show up regularly for their appointments, resulting in better maternal and child health
House visits to the newborn	House visits to the newborn
Implementation of the “abuelos y abuelas cuentacuentos” (“storytelling grandparents”) strategy	Transmission of knowledge and support of cultural democracy
Talks on sexual and reproductive health for Ngobe adolescents	Prevention of teenage pregnancies
The existence of joint commissions and projects with international organizations for the benefit of the indigenous population and foreigners, whose purpose is to provide comprehensive health care to all indigenous persons in the canton; they include the Commission for Continuous Education, the Commission for Comprehensive Health Care for the Indigenous Population and the Commission for Health Promotion.	Reduction of the number of indigenous persons being treated by the emergency services, being admitted to hospital and consulting the basic health-care teams
Support for a social worker whose responsibilities include developing a health promotion and disease prevention plan in collaboration with nurses, dentists and doctors to improve the quality of life of the Ngobe population. Monthly visits are used to conduct dissemination campaigns, including on Pap smear testing, prenatal care, vaccination and sex education, in schools and high schools.	The population’s level of education is improving and such unhealthy habits as smoking, alcoholism and domestic violence are being eradicated; sports and the prevention of drug addiction are being promoted (since this is a border region, there are problems with drug trafficking).

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**Huetar Atlántica region**


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<i>Action</i>	<i>Outcome</i>
Community fountain in the Boca Cohen indigenous community	A community drinking water fountain is already operating in the Boca Cohen community.
Rural aqueduct in the Cerere indigenous community	An aqueduct with water distribution to households has now been built, providing drinking water to the Cerere indigenous community.
Electricity for the Gavilán, Jabuy and Boca Cohen communities	These communities have had electricity since 2012.
Ballasted street in the indigenous community	Ballasting for Cerere, Gavilán, Jabuy and Boca Cohen is now completed, and ballasting for Alto Cohen will continue in keeping with the timetable.
Basic health-care team in Gavilán	The team is providing medical consultations outside the indigenous territory in the Vecina de Vesta community, but the consultations must also be offered in indigenous territories. Arrangements have accordingly been made with the Catholic Church to turn a church centre in Gavilán into a health-care facility.
Construction of health-care posts in indigenous territories	More members of the indigenous population are using the Fund's health-care services in their immediate surroundings, which has helped ease the congestion of facilities in urban areas.
Construction of regular health posts in remote indigenous communities	Easier access to health-care services has been provided for high-risk populations.
Establishment of regular health posts in remote indigenous communities	Clear overview provided of the specific care needs to be covered by the inter-agency mechanism.
Creation of the care unit for indigenous and vulnerable populations in the Huetar Atlántica region	The unit operates as a regional focal point.
Construction of regular health posts in Palmera, Chumico and Espabel Arriba	Construction of regular health posts in Palmera, Chumico and Espabel Arriba
Yawalá Senacia Bay Project to help children live in peace	Teaching manual for use in indigenous communities by various social actors
Adapting the Bajo Chirripó-Cabecar indigenous territory for adequate housing	A better environment for indigenous housing in Bajo Chirripó
Ojo de Agua Health Fair resulting from the agreement between the Fund and the Ministry of Finance	Active agreement, support to the Nairi-Awari community
Bilateral treaty between Costa Rica and Panama	Agreements reached on mechanisms for accessing health-care services, thereby ensuring bilateral epidemiological surveillance and the transport of medicines, material, equipment, personnel and patients between the two countries in the border region

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164. The Social Insurance Fund of Costa Rica has been committed since 2012 to including specific initiatives for indigenous and Afro-descendant populations in its institutional policies. On 14 November 2012, the Unit for the Comprehensive Care of

Persons of the Directorate for the Development of Health Services was asked to undertake a technical process for differentiated health care for the indigenous peoples and highly nomadic indigenous peoples under the Fund's responsibilities. The Unit then drew up a proposal for a programme, as well as a corresponding institutional plan for 2013–2017, which is now being examined by the medical board. The main points of the Plan can be found in annex 1.

165. Furthermore, through official letter No. DJ-00751-2013 of 13 March 2013, entitled "Report on the good practices and initiatives being undertaken by the Social Insurance Fund of Costa Rica to combat racial discrimination", the institution's Legal Department recommended the following initiatives to the Executive Presidency in order to begin raising institutional awareness about Afro-descendants, indigenous peoples and migrants:

“1. Promote training workshops to raise awareness among the institution's staff so as to eliminate all types of discrimination when dealing with users. To that end, shared spaces should be created with civil society (Afro-descendants, indigenous peoples and migrants) to obtain first-hand information on how these persons suffer discrimination, with a view to holding workshops with the staff of the Social Insurance Fund in order to discourage such behaviour.

2. Disseminate the institution's existing information on the initiatives being undertaken to assist these groups.”

166. Through official letter No. PE-24677-13 of 17 April 2013, the Executive Presidency instructed the administrative and medical boards to draw up a joint plan of action and dissemination in line with the Legal Department's proposals.

*Under recommendation No. 49, the Committee “recommends that the provision of health-care facilities, goods and services in remote and rural areas should be improved and that disaggregated annual data in this respect should be provided in the next periodic report”.*

167. The Fund maintains current installations and also executes health-care improvement projects.

168. The Fund carries out the appropriate maintenance of the 40 regular health posts and the 8 team headquarters in the Coto Brus health district. It has also begun building a new facility in the Coto Brus indigenous territory (now completed) and a health-care team border post. Lastly, the project for the highly nomadic indigenous population has been strengthened.

169. The Golfito health district currently has one regular health post in Progreso de Comte indigenous territory, Alto Comte. It also uses facilities that are provided by the indigenous health centres which, with the help of non-governmental organizations, have enabled the community to put up a building that meets health-care requirements. Multifunctional community service modules have been built in Alto Carona and offer health care every month. Similarly, in Rancho Quemado, the community is providing facilities for health care.

170. In the Corredores health district, the Fund and the Ministry of Health are in the midst of a planning process for building a doctor's office at the Paso Canoas Customs post.

171. The Huetar Norte region has health posts in Veracruz and la Virgem, which were put up by the Central American Bank for Economic Integration in the Los Chiles health district. The Saino health-care team headquarters were built as well. Community visits are also conducted in Boca Cureña, in the Pital health district and, thanks to a donation from the Embassy of Japan, the headquarters of the People's Vanguard Party (PVP) were built in Río Celeste.

172. Health-care team headquarters were built in the Huetar Atlántica region on the Amubri, Sambú, Katsi and China Kichá indigenous territories. Construction of the Sepecue headquarters is under way as well, on Bribri indigenous territory. Lastly, a care unit was created for vulnerable indigenous populations in the same region.

173. The following regular health posts have been built on indigenous territories:

- The Palmera, Pozo Azul, Espabel Arriba and Chumico posts were built on Bajo Chirripó indigenous territory, and construction of the Namaldi post is under way;
- The Las Brias de Pacuarito post was built on Nairi Awari indigenous territory;
- There are posts at Alto Cohen, Gavilán, Jabuí and Boca Cohen in Tauni indigenous territory, in the Valle La Estrella health district;
- The Kekoldi and Corriente grande de Yorking post was constructed on Bribri Talamanca indigenous territory;
- There are also regular health posts in remote indigenous communities, including Bajo Biey and Alto Telire.

174. Health-care team headquarters were constructed on the coast of Las Barras de Parismina, Tortuguero, Colorado Norte and Colorado Sur, which links users, basic teams, health districts, institutions and the Regional Directorate. The objective is to contribute to improved health conditions and quality of life for the indigenous and vulnerable populations by ensuring respect for their cultural identity.

175. The infrastructure has been remodelled and adapted in order to provide care in keeping with the regulatory technical specifications (ramps, handrails, visual and tactile signage) and to comply with the security, comfort and privacy measures required of priority care facilities.

*With regard to access to medicines, under recommendation No. 48 the Committee “recommends that the State party should undertake the measures necessary to assess the potential adverse impact of its commitments under the Central American Free Trade Agreement on economic, social and cultural rights and to ensure that Covenant rights, in particular... access to health, social security and generic medicines..., are not adversely affected”.*

176. Costa Rica decided to establish an Essential Medicines Policy in 1982. By 2012, the policy had been in force for 30 years; it guarantees the medicines needed to address the principal causes of disease and mortality affecting the population.

177. Since the negotiation of the Agreement there have been no reasons to suppose that in the event of its adoption, the Social Insurance Fund would have to modify its Essential Medicines Policy. On the contrary, the policy was expected to remain intact, based on the same selection criteria, structure and legal basis for dealing with the country’s pattern of morbidity and mortality, and based on the gradual addition of about 10 products per year to the official list of medicines. The following should be noted in this regard:

- The provisions on State institutions’ procurement practices, governed by Chapter 9 of the Agreement concerning public procurement, are consistent with those currently contained in domestic legislation on administrative procurement.
- The clause on national treatment for enterprises domiciled in another country that is a party to the Agreement could lead to an increase in the number of sources of essential medicines and a reduction in their price, which would benefit the Fund and its beneficiaries.



- The Agreement does not tighten the country's commitments under the Agreement on Trade-Related Aspects of Intellectual Property Rights, as it does not make it compulsory to patent methods of treatment, diagnosis and/or surgery or to grant second-use patents. It also does not restrict the granting of compulsory licences, does not prohibit parallel imports and maintains the Bolar Clause.
- The provision granting five years of protection to test data would not be retroactive, and would thus not affect medicines already on the list.
- The five-year period for the protection of test data is consistent with that observed internationally. The Agreement also allows Costa Rica to opt for an automatic, evidence-based system for the registration of medicines such that, once a medicine is registered in a country (in North America, Europe or Asia), and meets the appropriate health protection requirements, it is automatically and simultaneously registered in Costa Rica.
- The majority of the medicines included in the official list of medicines have been on the international market for more than five years. Automatic registration becomes relevant for all other medicines, since medicines that do not reach the country in five years would lose their protection.
- The automatic, evidence-based registration of medicines would not only eliminate with the risk of being liable to pay compensation for unjustified delays in processing registration requests, it would also guarantee that the delays experienced by innovative pharmaceutical laboratories in bringing their products to the country would not be used as a pretext for extending their protection.
- The Agreement aside, the Fund faces other major challenges with respect to medicines. These include: (a) the relative shortage of supplies of some drugs and dosage forms included in the official list of medicines; (b) the lack of generic medicines for some costly diseases, such as cancer; and (c) internal gaps in the medicine supply chain. All of these are part of the institutional agenda, with or without the Agreement.

178. Accordingly, and based on studies conducted by the Fund, it is clear that with or without the Agreement, current challenges will remain, and that the ability to continue to supply the population with medicines while also ensuring the system's sustainability will involve guaranteeing essential medicines. Balancing public health needs against the availability of medicines in the national health system is the guiding principle for the Fund in choosing which medicines it provides to the population.

179. The following achievements since the implementation of the Fund's essential medicines policy may be noted:

(a) Universal coverage of diseases. The official list of medicines currently includes 638 dosage forms for 449 drugs, which have been rigorously selected by a committee of experts — the Central Drug Therapy Committee — composed of 13 medical experts from various national hospitals, and technicians from the Pharmacoepidemiology Directorate, based on the country's pattern of morbidity and mortality and on the criteria of the World Health Organization (WHO). The official list of medicines facilitates the treatment of 98 per cent of all the diseases affecting the population,<sup>13</sup> which places Costa Rica among the most developed countries in this field. The medicines included in the

<sup>13</sup> In practice, there is 100 per cent coverage, although medicines for the remaining 2 per cent of diseases have also been covered since the creation of the open treatment form system, which allows medicines to be acquired individually in special cases.

list are classified by drug action, therapeutic action, the specialities of each programme unit, and cumulatively. User levels are designated by the letters A-B-C-D (with A being the most complex) and the numbers I, II and III, which correspond to the level of care.

(b) In keeping with UNDP standards, the sustained access to essential medicines which the Fund provides to the population is considered “optimal” (population coverage ranging from 95 per cent to 100 per cent), comparable to the rate in such developed countries as Germany, Australia, Canada, Korea, France and Sweden.

(c) Relative stability in expenditures on medicines. The Fund’s robust structure for selecting essential medicines has resulted in relatively stable annual expenditures on the procurement of essential medicines, at about 8 per cent of the total health-care budget. Detailed studies by the Pharmacoepidemiology Directorate of the Fund’s Medical Management Section indicate that this is largely due to the effect of including new medicines in the official list of medicines (see below).

(d) Quantitative impact. As has already been explained, the selection of drugs and/or dosage forms for the list of official medicines is based strictly on the list’s own criteria, including the country’s morbidity and mortality profile. Since the criteria have remained unchanged since the 1970s, and since the profile does not change abruptly from one year to the next, the addition of new drugs and/or dosage forms to the list each year is very gradual.

180. Since the Free Trade Agreement entered into force, the Fund has thus continued to guarantee access to medicines based on epidemiological, pharmacological and system sustainability criteria, as demonstrated by the following:

(a) The share of expenditures on medicines in all health-care expenditures, which demonstrates the stability of the medicines budget and expenditures:

- In 2008, 8.5 per cent;
- In 2009, 7.1 per cent;
- In 2010, 7.0 per cent;
- In 2011, 7.9 per cent;
- In 2012, 7.5 per cent.

(b) Selection of medicines. Some 13 drugs were added to the official list of medicines between 2008 and 2012, for an average of 2.6 medicines per year. Only one of those medicines — tenofovir fumarate 300 mg — is covered by data protection. Some 26 dosage forms were included over the same period, for an average of 5 new dosage forms per year.

(c) Accessibility of essential medicines:

- Average number of medicines taken per hospital patient:
  - 2008: 11.91;
  - 2009: 10.44;
  - 2010: 11.12;
  - 2011: 12.29.
- Outpatient care. Average number of medicines distributed per patient:
  - 2008: 3.35;
  - 2009: 3.60;

- 2010: 4.84;
- 2011: 5.06.
- Emergency consultations. Average number of medicines distributed per patient:
  - 2008: 1.96;
  - 2009: 2.08;
  - 2010: 2.12;
  - 2011: 2.05.

(d) A study of the Fund's 59 most-used medicines, and of the economic resources necessary for their procurement, shows that:

- In 2008, 20,741,830 units were procured, for outlays of US\$ 77,827,406 and an average cost per unit of US\$ 3.71;
- In 2011, 18,203,352 units were procured, for outlays of US\$ 58,361,114 and an average cost per unit of US\$ 3.21.

181. This demonstrates the importance of having an essential medicines policy, based on the selection of medicines that meet epidemiological, clinical pharmacology and system sustainability criteria. Thanks to the policy, it is now possible to continue to guarantee the population's access to medicines through the medicines budget allocation of the overall health budget.

## **Article 13**

### **The right to education**

*Under recommendation No. 35, "the Committee urges the State party to take all appropriate measures to reduce the levels of... illiteracy of indigenous communities and Afro-descendants". The Committee also issued recommendation No. 50, encouraging the State party to "continue to improve the effective implementation of currently existing legislation, policies and programmes to eliminate illiteracy among indigenous communities".*

182. The most significant advancement in access to education for indigenous populations was the promulgation of Decree No. 37801-MEP, published in Official Gazette No. 135 of 15 July 2013. The decree lays down the reform of the indigenous education subsystem and defines "the specificities of indigenous education in terms of aims, languages, focus, administrative and territorial organization and human resources. Equally, it defines the consultation procedures and participation mechanisms of indigenous peoples in the educational decision-making processes for which they are responsible".

183. The decree was the result of dialogue and shared efforts, based on the parameters of indigenous peoples' right to consultation. The process involved almost three years of work by the Ministry of Education and indigenous peoples nationwide.

184. With respect to infrastructure, the Ministry of Education is implementing a project in the indigenous territories of Talamanca de Limón, Buenos Aires de Puntarenas, Coto de Ciudad Neily and Chirripó de Turrialba. The project, which is being funded by a loan from the World Bank and executed by the Education Quality Improvement Programme, involves building 84 schools in indigenous territories and outfitting them with furniture, sports equipment and art supplies.

185. Some 50 schools have already been built; 31 are under construction and construction is pending on another 3.

186. The Directorate of Equity Programmes of the Ministry of Education is taking steps to guarantee access to education for the indigenous or rural population, including economic transfers to students to cover transportation costs and ensure their school attendance, and economic transfers to education boards to improve school canteens. The latter transfers cover the purchase of prepared food and services in the amount of approximately 1,110,273,547 colones (between 2010 and 2012); equipment (the cost of which increased from 27,996,204 colones in 2010 to 58,700,567 colones in 2012); and the planting of school orchards and the salaries of skilled canteen staff, for an average annual amount of 158,906,878 colones (also between 2010 and 2012).

187. Food-per-student investment in the indigenous areas is the highest in the country. Arrangements have also been made with regional offices of the National Training Institute to conduct the necessary training on food handling for cooks in the indigenous centres.

188. With respect to curricula, the Department of Intercultural Education, created under Decree No. 37801-MEP, is spearheading the educational reform mandated by the Department. It has created a mechanism for participation in accordance with ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples. Implementation of the decree has involved a series of consultations in indigenous territories. The process is now in its final phase, with the outcome of the consultations under study.

189. The State party recognizes that education is a priority for the integral development of the human being and the well-being of society as a whole, as well as the main instrument for combating poverty, inequality and social exclusion. It also recognizes that the global knowledge society requires a flexible, dynamic and integrated education system that can address the challenges and exploit the opportunities inherent in social, economic, cultural, scientific and technological development at the local, national and international level.

*Under recommendation No. 51, the Committee “recommends that the State party should intensify its efforts to combat the rising secondary school drop-out rate. The State party should also implement existing programmes to improve the quality of teaching in secondary schools”.*

190. The Ministry of Education has been working on various aspects of the drop-out problem and on increasing coverage in secondary schooling. These efforts are reflected in a reduction in the secondary school drop-out rate, which fell from 13.2 per cent in 2006 to 11.1 per cent in 2011, and in an increase in coverage, which rose from 66.9 per cent in 2006 to 86.4 per cent in 2012.

191. The strategic actions undertaken to achieve these results include the following:

- Ensuring that students learn what is relevant, and learn it well, by revamping the teaching of mathematics, Spanish and scientific thinking and by turning 15 per cent of school libraries into learning resource centres in 2012. One of the main tasks of these centres is to introduce digital technologies into Costa Rican education and help spur schools to become “high-quality educational establishments” that create meaningful learning experiences for students and teachers alike. Such experiences should encourage students to remain in school and complete their training by assuming new and better roles with regard to learning.
- Ensuring that students learn to live and co-exist by developing their knowledge through the updating of secondary school curricula on the household (daily life) and industrial arts, the inclusion of sex education in the science curricula and the

strengthening of such student activities as arts festivals, student governments and sports.

- Creation of the National Programme for Harmonious Relations at School under Executive Decree No. 36779, in order to direct and coordinate school activities that help students learn about community values: respect for diversity, active participation in the community, collaboration, autonomy and solidarity. The programme operates in all schools nationwide.
- Programmes to strengthen education on sustainable development and a healthy life: 30 per cent of all schools took part in the Blue Flag Ecological Programme in 2012 and the School Baths Programme.
- Actions to reduce inequalities in effective access to the right to education: 157,828 National Scholarship Fund scholarships were awarded to low-income students in 2012, representing 37 per cent of primary school students; 619,715 students received food aid in 2012, covering 76.23 per cent of the total of 812,926 students; and 99,849 students received transportation service, covering 12.8 per cent of students, with most of the benefits going to the rural areas.
  - The teacher quality improvement programme, which increased the proportion of teachers trained in new curricula.
  - The educational infrastructure and equipment improvement plan, which in 2013 will invest US\$ 90.3 million in buildings, land and furniture.
  - Development of the productive and entrepreneurial capacity of adolescents through the creation of 90 new technical education centres, in order to increase the availability of technical education, including the development of optimum work skills. Between 2011 and 2013, 96 such centres were opened.

*Under recommendation No. 48, the Committee recommends “that the State party should undertake the measures necessary to assess the potential adverse impact of its commitments under the Free Trade Agreement of Central America (CAFTA) on economic, social and cultural rights and to ensure that Covenant rights, in particular labour rights, access to health, social security and generic medicines and the intellectual property regimes, are not adversely affected”.*

192. With regard to the rights of workers, it is difficult to determine whether some of the situations being reported have arisen since the entry into force of the Agreement. That would require an investigation into the impact of the Agreement on the domestic economy.

193. Nonetheless, it should be noted that Costa Rica has intensified its aspirations for development, social inclusion and equity through economic development and effective integration into the international economy.

194. The main thrust of the country’s foreign trade policy is to promote the integration of its economy into international markets so as to generate economic growth and ensure further development. The outcome has been positive.

## **Article 15**

### **The right to culture**

195. The Government of Costa Rica has an obligation to guarantee and promote the right to culture, based on national legislation and the international legal instruments ratified by

the country. Major efforts have been under way to enable all inhabitants to enjoy cultural life, as reflected in the diversity of initiatives and activities taking place year-round.<sup>14</sup>

196. One of the most important efforts in recent years has been the development of a General Culture Act and a National Culture Policy.<sup>15</sup> Other major efforts in the cultural field have concerned the realization of the right to culture of indigenous and Afro-descendant peoples.

197. There are three levels of action with respect to culture:

- Activities carried out by agencies of the Ministry of Culture and Youth, targeting the indigenous, Afro-descendant and migrant populations;
- Activities to empower the community to take control of its culture and take over its management with Ministry support;
- Activities in which the art or culture of these populations is seen as part of the country's overall cultural diversity, and is valued by and disseminated among the rest of national society.

198. With respect to level 1, and bearing in mind the conclusions of an analysis, the Ministry, together with the indigenous and Afro-descendant populations, has begun to develop working protocols that are respectful of, and tailored to, the legislation in force and the specificities of these groups. The Ministry's various internal agencies have also initiated a coordination process in accordance with the new protocols. It is important to emphasize that they are designed to ensure that all of the Ministry's activities and investments affecting these population groups are defined through dialogue and participation of the groups and their representative bodies.

199. With regard to level 2, the need arose for forums for dialogue and the joint drafting of workplans, in such a way as to allow for activities to be coordinated not only by the Ministry but also with other institutions, as part of a strategic and political action plan with a participatory approach adopted in view of the needs, interests and expectations of indigenous peoples, and in accordance with their rights and various world views.

200. During this process, it must be the indigenous peoples themselves who bring their needs to the Government's attention. The Ministry therefore works actively to consolidate mechanisms to protect and foster the indigenous peoples' enjoyment of their cultural rights. To that end, in 2011 and 2012, an indigenous professional was hired to devise a workplan in the various indigenous communities. In 2013, an indigenous sociologist was employed to organize workshops in three indigenous communities in the canton of Buenos Aires, with the aim of creating a joint working strategy among community representatives and government institutions (the Ministry of Culture and Youth, the National Training Institute and the Inter-Agency Institute for Social Assistance). The idea was to propose cultural projects appropriate to the current situation and demands of each of these communities.

201. A Caribbean Cultural Corridor programme has been developed specifically for the Afro-descendant population. It is designed to boost their cultural legacy in the Caribbean regions of Central America and to recognize their cultural specificity, and has been supranational from the outset.

202. The programme was presented by the Ministry of Culture and Youth in November 2010 at the Meeting of Ministers of Central American Educational and Cultural

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<sup>14</sup> These initiatives include the International Festival of the Arts, which provides a forum for numerous and varied cultural expressions for all publics and which is completely accessible to the population.

<sup>15</sup> Adopted in December 2013.

Coordination, which was held in El Salvador with the support of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

203. The programme is intended to promote ventures, communication, cooperation, research, training and cultural dialogue; strengthen the historical heritage and multicultural legacy; and contribute to the integration and socioeconomic and cultural development of the peoples of Central America and the Dominican Republic.

204. All the countries that signed the Declaration set up national commissions to develop the programme, with the participation of the Ministry of Culture or its counterpart and of such strategic allies as the Organization of Ibero-American States for Education, Science and Culture, UNESCO and the Spanish Agency for International Development Cooperation (AECID). The countries gear their efforts towards strengthening the programme in the cities that they themselves define as emblematic of Caribbean culture.

205. The Costa Rican communities defined as emblematic are Tortuguero, Limón Centro and Cahuita, covering the northern, central and southern areas of the Caribbean region of Limón province.

### **General Culture Act and National Culture Policy**

206. In recent years the Ministry of Culture and Youth developed a process for drafting the General Culture Act and the National Culture Policy as strategies to create tools for the development of activities to protect and promote the diversity of cultural expressions in Costa Rica.

207. Following the diagnostic phase conducted by the Minister's Office, the Culture Directorate and the Planning and Legal Counselling Secretariat, it was decided that, although various agencies undertake activities for indigenous, Afro-descendant and migrant populations, such activities are limited in scope and are not consistent with clear, specific guidelines; and, in the case of indigenous peoples, there is no legislation that addresses their specificities.

208. Moreover, the Ministry has not thus far maintained direct, fluent communication with the indigenous communities, which is why, during the drafting of the General Culture Act and the National Culture Policy, it has maintained continuous dialogue with the target communities.

209. When the General Culture Act and National Culture Policy were first being drafted, it was not possible to implement appropriate mechanisms to guarantee indigenous participation, in accordance with ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous and Tribal Peoples. The Ministry is, however, aware of the importance of working together to develop culturally pertinent mechanisms. A transparent, honest dialogue was thus initiated between the State and indigenous representatives, making it possible to outline the consultation process for the participatory drafting of the General Culture Act and National Culture Policy.

210. In recognition of the importance of indigenous participation, the first step was to determine, together with indigenous populations, how to conduct consultations on the General Culture Act and National Culture Policy, by means of:

- National briefings on the General Culture Act and National Culture Policy in indigenous communities between June and December 2012, in order to develop a strategy for informing indigenous peoples about the drafting process for the General Culture Act and National Culture Policy. Several meetings were held with indigenous leaders in various territories, grouped in blocs that they established (RIBCA (Bribri-Cabécar Indigenous Network) bloc), Ngäbe Union, Huetar bloc, Maleku territories and indigenous territories of Buenos Aires).

- Consultations with indigenous representatives from the territories to agree on a proposed methodology for the consultation process. During this second phase, which took place in February and March 2013, five meetings were held with leaders of the following indigenous organizations and organizational blocs: the National Indigenous Committee, the Bribri-Cabécar Indigenous Network, the indigenous territories of Buenos Aires, the Ngäbe Regional Union and the territories of the North Central bloc. The consultation team and the Ministry of Culture and Youth were in attendance.

211. These meetings were viewed as joint drafting sessions involving the consultation team, the Ministry and indigenous leaders, and served as forums for honest, respectful dialogue. The outcomes of these meetings can be summarized as follows:

- Consent to begin the joint drafting of a proposed methodology for the consultation;
- Inviting other actors to be involved in the process;
- Creation of a coordinating committee for the consultation process;
- Holding of the consultation in three stages:
  - Prior information stage;
  - Pre-consultation stage;
  - Consultation stage (including the National Consultation Forum).

212. These stages were subject to continuous review and could be modified by consensus of the parties, as long as this did not contravene the rights of indigenous peoples. They were part of a Ministry effort to develop an inclusive and participatory process that addresses the sociocultural specificities of indigenous peoples without prejudice to their rights as recognized in national and international legislation.