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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Fifteenth periodic reports of States parties due in 1998

Addendum

Costa Rica*

[20 April 1998]

* This document contains the twelfth, thirteenth, fourteenth and fifteenth periodic reports, submitted in one document, due on 4 January 1992, 1994, 1996 and 1998, respectively. For the tenth and eleventh periodic reports of Costa Rica and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/197/Add.8 and CERD/C/SR.941-942.

The annex to the report submitted by the Government of Costa Rica may be consulted in the Secretariat's files.

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I. INTRODUCTION

1. Costa Rica, as a State party to the International Convention on the Elimination of All Forms of Racial Discrimination, submits for consideration by the Committee its twelfth to fifteenth periodic reports, covering the period from 1992 to 1998, in one consolidated document. The Government of the Republic of Costa Rica provides a study which details the thorough-going reforms carried out in the country's legal system, in conformity with article 9 of the Convention.

II. INFORMATION IN RELATION TO THE IMPLEMENTATION OF THE CONVENTION

Article 1

2. The Costa Rican State is based on equality before the law, with no discrimination whatsoever on grounds of origin, race, sex, language, religion, opinion, economic or other status.

3. Costa Rica has repeatedly expressed its absolute rejection of all practices of racial discrimination and its unreserved support for all initiatives aimed at the elimination of any form of discrimination in various forums, both national and international.

Article 2

4. The Constitution of the Republic of Costa Rica states in article 33 that “all persons are equal before the law and no discrimination whatsoever may be practised contrary to human dignity”. This means that any difference of treatment in law must be rational and consistent with the fundamental value of human dignity. By virtue of this constitutional provision, we can affirm that the issuance of norms founded upon racial criteria is strictly prohibited in Costa Rica.

5. It is an absolute imperative in the Costa Rican legal system that persons who are in similar situations must receive equal treatment. The rule is to be understood as making it a requirement to treat equally all persons who belong to a particular category and are in an equivalent situation. In this regard, the Constitutional Court, a division of the Supreme Court of Justice, has stated that “the categories must not be arbitrary, nor must the criteria for belonging to or being excluded from them be arbitrary” (Judgement No. 526-93, rendered at 2.27 p.m. on 3 February 1993).

6. In this same connection, the Constitutional Court has set criteria for determining the constitutionality of a difference of treatment in law. It has, however, stated that for any such discrimination to be allowed, there must be a rational element which operates to resolve a situation of real inequality. It may be held that, as long as the discrimination does not affect the equality of human beings and the creation of categories which grant the persons different treatment is reasonable, legal equality is respected.

7. The legislator has also considered that objective distinctions need to be established in some cases for the purpose of counteracting unacceptable discriminatory practices which violate the principle of equality between the

inhabitants of the Republic and which have customarily been manifested in Costa Rican society. An example of legislation to this end is the Act for the Promotion of the Social Equality of Women (popularly known as the Real Equality Act), which was promulgated on 8 March 1990 (and published in the official gazette, La Gaceta, on 26 March 1990, the day of its entry into force). This Act is designed to achieve the goal of eliminating the traditional attitudes subsisting in Costa Rica which discriminate against women.

8. An organ of the Costa Rican State which has developed successfully in the last decade is the Office of the Ombudsman (Defensoría de los Habitantes). This institution enables alleged human rights violations to be reported and examined and has proven essential in defending the basic human rights of the individual and the community as set forth in the Constitution, in the international human rights treaties to which Costa Rica is a party, and in other provisions of national law. Its activities notably include supervising the fulfilment of the duties of the State administration and the provision of public services for all the inhabitants of the Republic - nationals and aliens - without discrimination of any kind.

Refugees

9. The situation concerning refugees in Costa Rica is quite complex. There are still approximately 40,000 refugees in the national territory, some of whom have opted for their migratory status to be changed to that of temporary or permanent residents. In addition, there are around 500,000 externally displaced persons living in our country, of whom only about 210,000 entered legally, and these are to be found among the poorest segments of our society.

10. A large majority of those persons who have sought refuge in Costa Rica in the last two decades did so for economic reasons. Almost all of these persons are nationals of other Central American republics, especially Nicaragua and El Salvador. The refugee problem is compounded by the problem of racism. Traditionally there has been a popular belief among the Costa Rican population in an “ethnic difference” between Costa Ricans and other Central Americans. This has given rise in our history to acts of discrimination against citizens from other nations of the Central American isthmus.

11. The flow of economic migrants is continuing to increase and although their arrival constitutes a substantial economic burden for a poor country like Costa Rica, the Government of the Republic has not prevented these people from entering the country in search of a better life. Since 1988 the Governments of the Central American region have been addressing the need to make progress in finding lasting solutions to the problem of illegal migration. However, for the time being there is no appropriate mechanism for preventing emigration from one country to another in the region.

12. Costa Rica has always supported the undertakings made in the Concerted Plan of Action adopted at the International Conference on Central American Refugees (CIREFCA) and is at the same time continuing its efforts to deal with the issue of externally displaced persons. Given that the problems affecting such aliens who have moved to our country are similar to those of native

Costa Ricans who also live in the areas where these persons have settled, the Government of the Republic is endeavouring to cater equally for those needy nationals living alongside the refugees and displaced persons in the host communities.

13. The strategies being implemented include a programme which enables members of the refugee population of Central American origin to change their migratory status voluntarily for temporary or permanent resident status. Also to be noted are the dispensations applied in respect of other foreigners (undocumented migrants) with the object of making it easier for them to regularize their migratory status. In addition, these people have been catered for through programmes offering credit facilities for housing and productive activities as a means of integrating them effectively into national life.

14. The phenomenon of migration of Central American nationals, who are entering Costa Rica across its northern border strip or using the country as a stepping stone to the United States of America, cannot be treated as merely a population transfer. Nor can the problem be viewed from a limited perspective as deriving solely from economic causes, since it is influenced by other interacting political and social factors that vary with time and according to the circumstances.

15. The migrants arriving in Costa Rica from other countries of Central America (mostly from Nicaragua) have various aims. Some undertake the journey for temporary work in Costa Rica, as in the case of the Nicaraguans who are employed in coffee or sugar harvesting. Others come on a more permanent basis, like those who immigrate with their whole families in search of opportunities not to be found in their countries of origin.

16. The defencelessness of the undocumented immigrants means that they may be subject to abuses by the rest of the population, including the authorities, and may suffer from violations of their human rights. This same state of defencelessness means that the persons affected may not report such violations in a great many cases. Nevertheless, there are channels - diplomatic, governmental and private (non-governmental organizations) - for lodging complaints against the public or private persons allegedly responsible for the abuses.

17. The Government of Costa Rica is aware that the situation of the Central American immigrants - especially those entering illegally - constitutes a major challenge. It also recognizes that this problem could worsen in the years ahead if Costa Rica does not prepare itself to deal with the phenomenon of migrations in a comprehensive manner. For this reason, the Government of the Republic of Costa Rica is now undertaking a thorough evaluation and review of current migration policy with the aim of making it more responsive to the real situation nationally and in Central America as a whole.

Situation of indigenous people

18. The experience of the violation of the human rights of indigenous people witnessed by our country in recent years has led us to attach greater

importance to basic human rights and their legal consolidation, as well as to mechanisms and remedies for the protection of such persons in the event of an infringement, regardless of their status, sex, race or beliefs.

19. As a result, various segments of society are affirming the right to their own separate identity and specific status, transforming their self-affirmation into demands and claims against the rest of society. Settlers, youths, women and indigenous people, among others, are looking for new forms of expression and calling for treatment consistent with human dignity.

20. In the agrarian reforms pursued by our country in the 1960s and early 1970s, indigenous people were considered as smallholders to be incorporated into the production process. Despite this reductionist approach, the legislation of the time (Act No. 17729 of 1972) and the policies implemented contained expressions of indigenous people's own concerns. For example, their organizations took an active part in the drafting of the proposed law, legislation was enacted for the first time for indigenous people and the law defined them in terms that emphasized their intrinsic value; it was then that a public institution, called the “Institute for Indigenous Development”, was created with responsibility for all social and educational policies, including grants and students' hostels, as well as the promotion of handicrafts, and its most important aspect was the establishment of streamlined administrative and judicial mechanisms to broaden the sphere of action of the communities.

21. The National Indigenous Affairs Commission (CONAI) was subsequently created in response to the need to revive indigenous culture and ensure that attention was paid to the Indians with a view to enhancing their human, cultural and economic potential.

22. The problem of indigenous land tenure in our country arose with the expansion of the process of agricultural colonization. Taking over the land was made easier by the lack of legal support for tenure, the penetrative force of the non-indigenous people and the internal weakness of the indigenous communities, which were unable to defend themselves on their own.

23. Legally, the lands which they had occupied from the birth and establishment of their culture were considered as unused land. This made it necessary to create a reservation of community property, the system that would ensure a permanent and definitive territory. The reservation is an area that is assigned in property and in an inalienable manner to an indigenous community, so that the land can always belong to this community, while forming part of the total national land area. It is a territory demarcated on maps entered in the Property Register in the name of the respective indigenous community.

24. Within the reservation, each family has its own holding, which may have been in its possession since former times or else has been made available recently with official assistance. These holdings can be sold only between indigenous people, the object being to prevent the land from being lost and to avoid real-estate speculation. The reservations are a typical example of

successful physical planning and it may also be seen that indigenous people have the same rights as other citizens, without distinction of any kind.

25. In this regard, it should be pointed out that where land within the indigenous reservation belongs to non-indigenous people, the latter are given the possibility of being compensated for possession thereof.

26. As provided by the law, “the entitlement to compensation that private individuals might have for the value of land declared to be an indigenous reservation would be valid if they were able to prove continuous possession, arising from a time preceding the law which declared the said land to be indigenous, for purposes of agriculture or habitation, exercised originally by and transferred successively thereafter to non-indigenous persons”. (Judgement No. 592-35, Higher Administrative Court, Section II, No. 791, rendered at 3 p.m. on 6 April 1983. Second Administrative and Civil Court for Landed Property)

27. Likewise, private individuals could be eligible for compensation by virtue of their occupation of such land, in which respect it is stated that “if the principals or their transferors have been legally able to convert to their private estate the land of the indigenous reservation occupied by them, as being merely unused national land, through acquisitive prescription and by possessory action, they could be entitled to be compensated for the value of the land insofar as it represents bare ownership, by reason of the removal ordered and enforced by a public body”. (Judgement No. 591-35. Higher Administrative Court, Section II, No. 791, rendered at 3 p.m. on 6 April 1983)

Domestic legislation on indigenous affairs

28. For an appreciation of national law since the establishment of the National Indigenous Affairs Commission (CONAI), it is necessary to refer back to the developments which have taken place in the legislative field during this century:

(a) Act No. 13 of 10 January 1939 (Unused Land Act) declared a zone which was to be defined at the discretion of the executive branch, in places where indigenous tribes existed, as inalienable and the exclusive property of the indigenous people. The said lands were not delimited at that time, but by 15 November 1956 (Executive Decree No. 34) three areas had been delimited in the Southern Pacific coast region: Boruca-Térraba, Salitre-Cabagra and China Kicha;

(b) Act No. 2885 of 14 October 1961 (arts. 75 et seq.) entrusted the Institute for Agrarian Development (IDA) with the task of bringing the indigenous communities together and handing over parcels of land to them in ownership and free of charge. Executive Decree No. 11 of 2 April 1966 ordered the lands as delimited by the above-mentioned Executive Decree No. 34 to be registered in the name of the State and later of IDA;

(c) Act No. 5251 of 11 July 1973 established the National Indigenous Affairs Commission as a State body enjoying autonomy and charged with the administration of the country's indigenous affairs. Act No. 5651 of 13 November 1974, a transitional instrument following up on the earlier

Act, declared the indigenous reservations registered in the name of IDA to be inalienable. These were to be used exclusively for the settlement of indigenous communities. Only the reservations in the Southern Pacific coast region were registered in the name of IDA as of that date, being the only ones that had by then been established;

(d) Further progress was made in 1976 through the issuance of several decrees whereby the State recognized and delimited the rest of the indigenous reservations. In 1977 an ad hoc commission was set up to implement the process of recovery of land in the indigenous communities. This was the National Emergency Commission on Indigenous Reservations (CENRI);

(e) The Indigenous Act, No. 6172, promulgated on 29 November 1977, was the outcome of all the efforts made on indigenous matters up to that time. The Act included a series of fundamental provisions for the indigenous communities, above all concerning land tenure. It was regulated by Executive Decree No. 8487-G of 26 April 1978; and

(f) The Indigenous Act recognized the indigenous reservations and declared them to be the property of the indigenous communities; it defined them as being inalienable, imprescriptible, non-transferable and exclusively for the indigenous communities inhabiting them, the indigenous people not being able to lease, purchase or otherwise acquire land or holdings situated within these reservations (indigenous people can trade their lands among themselves). This Act has been the most important piece of legislation concerning indigenous communities' tenure of land.

29. In connection with the declaration of an indigenous reservation and the possibility that possession by non-aboriginal persons may be protected, it is indicated: “Whereas the Land and Colonization Act establishes that unless the State determines the lands which must be kept within its domain, all land which by earlier legal provisions has been declared non-denunciable or inalienable remains inalienable and cannot be acquired by denunciation or possession, save land which by lawful title is under private ownership, where the lawful title originates in possession covered by article 2 of Decree No. 34 of 1956, that is to say, in occupation by non-aboriginal persons of unused land which this decree declared to be an indigenous reservation, since only such occupation can have constituted legal grounds for land located within a geographical zone declared inalienable to be subject to private ownership” (Judgement No. 589-35, Higher Administrative Court, Section II, No. 791, rendered at 3 p.m. on 6 April).

30. The Office of the Procurator-General of the Republic, in accordance with Indigenous Act No. 6172 of 29 November 1977, article 5, paragraphs 1 and 9, viz. article 5, paragraph 1: “Where non-indigenous persons are bona fide proprietors or possessors of land within the indigenous reservations, ITCO shall relocate them to other similar land if they so wish; where it is not possible to relocate them or they do not agree, it shall expropriate them and compensate them in conformity with the procedures laid down in Act No. 2825 of 14 October 1961, as amended. The studies and proceedings for expropriation and compensation shall be carried out by ITCO in coordination with CONAI”; article 9: “Land belonging to ITCO included in the demarcation of the indigenous reservations and the reservations of Boruca-Térraba and

Ujarrás-Salitre-Cabagra shall be ceded by that institution to the indigenous communities", indicates that it clearly follows from the provisions transcribed that the body competent to acquire immovable property owned by private individuals in indigenous reservations is the Institute for Agrarian Development and not the State (Office of the Procurator-General of the Republic, Pronouncement C-116-95).

31. The Constitution in articles 25, 33, 45 and 50 provides for general treatment with no distinction, as do the following instruments: Act No. 7426 of 21 September 1994 proclaiming the Day of Cultures; Act No. 7416 of 10 June 1994, Convention on Biological Diversity (relevant sections); Act No. 6797 of 23 August 1982 referring to the Mining Code; Official List of Indigenous Reservations, Decree No. 20645-G; Protection of Indigenous Reservations, Decree No. 13590-G; Prohibition of Indigenous Land Sales, Decree No. 1656-G; establishment of the National Emergency Commission for Indigenous Land Affairs, Declaration of National Emergency Zones, Decree No. 8001-G; Declaration of National Emergency Zones in Indigenous Territories, Decree No. 5902-T; Functions of the Emergency Commission for Indigenous Affairs, Decree No. 9306-G; Procedures for Deeds, National Emergency Commission, Executive Decree No. 10035-G; Membership of the National Emergency Commission, Decree No. 12830-G; Ministry of Public Education, Division for Curriculum Development - Commission on the Indigenous Education Subsystem, Decree No. 22612-MEP; Indigenous Registration and Identification Act, Legislative Decree No. 7225; Regulations for the Utilization of the Forestry Resources in the Indigenous Reservations, Decree No. 26511-MINAE.

32. At the international level, Costa Rica has signed a large number of international instruments which directly or indirectly protect the rights of minorities in general and especially the rights of indigenous people. With regard to the latter, our country signed the International Labour Organization (ILO) Indigenous and Tribal Populations Convention, 1957 (No. 107), which was approved in 1959 by the Legislative Assembly of Costa Rica through Act No. 2330, as a first step towards the protection of indigenous populations, entrusting the Government with the main responsibility for the process. This Convention, now amended by Convention No. 169, which has been sent by the Legislative Assembly for consultation, strengthens this protection and respect, with a more universal conception of material and legal equality.

33. The opinion rendered by the Constitutional Court states that "far from conflicting with the Constitution of our country, the Convention reflects the dearest values of our democratic nationhood, developing the human rights of indigenous Costa Ricans, and may be a starting point for undertaking a revision of the secondary legislation to adapt it to these needs" (Judgement No. 3003-92).

34. The bill for the autonomous development of the indigenous peoples is currently before the Legislative Assembly.

35. The situation of indigenous people in Costa Rica is analysed in the light of the rights and interests which these people are recognized as having and which by the action or omission of the State they cannot enjoy. It should be pointed out that complaints by indigenous persons to the Office of the

Ombudsman are principally concerned with their systematic exclusion from decision-making directly concerning them, such participation being recognized as their right by the law in force.

36. Further to reports received, the Ombudsman is, in particular, looking into a complaint about the Indigenous Affairs Commission's denial of a social benefit to an indigenous person because the latter had a conjugal relationship with a non-indigenous person. Regardless of whether or not the person concerned qualified for the benefit, that person was excluded a priori on account of a particular circumstance, with no account being taken of whether the person retained the cultural identity of the community concerned or was considered by it to be indigenous. The cultural tenets of a matriarchy or communities in which miscegenation is castigated are thus irrelevant in this case, but it is the indigenous community itself which must determine membership of a group and it is not within the authority of a public institution to lay down the requirements for membership. (Office of the Ombudsman, Annual Report, 1996)

37. In this connection, it may be noted that the Constitutional Court has found that “it is the indigenous communities themselves which determine who are their members, applying their own criteria and not those followed by statute law”. (Judgement No. 1786-93)

38. Reference was made in the Ombudsman's previous report to the fact that the National Indigenous Affairs Commission (CONAI) has not achieved the goals set out in the act establishing it, namely Act No. 5251 of 20 July 1973. This situation continued to obtain in the course of 1995. The Act defines the aims of the institution as being: to promote the social, economic and cultural advancement of the indigenous population with a view to improving their conditions of life; to serve as an instrument of coordination between the various public institutions responsible for carrying out work and providing services for the benefit of indigenous people; and to ensure respect for the rights of the indigenous minorities and encourage action by the State to guarantee the Indians their land.

39. However, because of this failing of the above-mentioned institution, the indigenous community is confronted with a State apparatus that does not provide it with assistance, neglecting its obligation to coordinate and represent the rights and interests of the indigenous people. (Opinion of the Office of the Ombudsman)

40. Finally, recognition by the Costa Rican State is essential and must be coupled with a change in the relations with the indigenous people. Without the political will to carry on a permanent dialogue with them to determine their priority needs and aspirations, little progress will be made in promoting the development of these people.

41. As to the question of what happened in the Boruca area regarding the deforestation carried out by the Costa Rican Petroleum Refining Company (RECOPE), it should be pointed out that the indigenous communities have full legal capacity to acquire rights and to contract obligations of all kinds, and therefore RECOPE did in fact duly consult the Association for Integrated Development, which is establishing suitable mechanisms for coordination with

the institutions responsible for safeguarding the natural resource in order to guarantee its proper utilization and management. The State did not exercise its imperium to carry out the project in question.

42. To ensure proper redress for the communities concerned, the State is making judicial remedies and means available to them so that they can proceed with the matter and obtain due compensation.

43. It should be pointed out that the proposed objectives have not been fully accomplished and it has therefore been necessary to examine the participation of this agency with respect to the indigenous people.

Case of Talamanca

44. A drilling project was to be undertaken to prospect for oil in this region, and here too consultations were held with the Association for Integrated Development, which gave its approval. Another development of note that occurred in the same area was the intervention of the Cobra Commando group, which unlawfully engaged in acts of vandalism and killed several indigenous people. The persons in question were later arrested and brought before the courts to be tried in full compliance with the law.

45. Another example of projects which have been implemented is the Programme of Institutional Support for the Guaymi Indigenous Reservation of Conte Burica (PAIRI).

46. This indigenous reservation is located in the extreme south of the country, in the Pacific region bordering on the Republic of Panama, in the region known as Punta Burica. The reservation extends over a total area of 12,000 hectares, of which about 8,000 hectares are estimated to be covered with primary natural forest, manipulated forest and secondary forest, as well as scrubland and brush, which urgently need to be protected against the felling and burning that is taking place in the area.

47. The State, through the Ministry of the Environment and Energy, plans to protect 500 hectares of natural forest in the reservation by providing financial assistance in the form of so-called “forest protection certificates” (CPBs). These are grants made to the owners, to a value of $50 per hectare each year, against an undertaking to conserve the wooded areas on their estates for a period of at least five years. The State's input would amount to US$ 25,000 per annum, representing a total investment of $125,000 by the end of the five-year period.

48. The goals to be achieved in this project complement the efforts being made by the State to conserve the biodiversity of the region, with the active participation of the indigenous community in providing manpower and through other forms of cooperation in the project.

49. It is appropriate to mention that the support requested from the Small Grants Programme of the United Nations Development Programme (UNDP) is of the utmost importance for financing the relevant studies on the estates selected in order to prepare an individual forest management plan for each owner, a technical document which must be drawn up by a forestry professional duly

registered with the Association of Agronomic Engineers of Costa Rica (Ministry of the Environment and Energy project: see annex).

50. The people of the Guaymi indigenous reservation of Conte Burica are represented by the Association for Integrated Indigenous Development. The reservation has approximately 3,000 inhabitants distributed in eight communities or sectors, the main ones being Alto Conte, El Progreso, Las Vegas, Río Claro, La Peña and La Peñita. There will be individual participation from the indigenous people involved in the biodiversity conservation programme, supported by other members of the community and the indigenous associations and groups of the region, including the Association of Indigenous Women.

Health

51. The Costa Rican Social Security Fund has, in particular, developed a series of programmes to cover this population's needs, including the following:

(a) Investment budget for the construction of clinics in the various regions: Conte, 50 million colones; Baltimore, 17.6 million colones; Margarita, 31 million colones; Suretka, 48 million colones. In Amubri, the clinic operates in a building made available by the Catholic Church.

(b) Operating budget

Clinic	1996 budget	1997 budget
	(in colones)	
Baltimore	8 136 110.62	9 193 805.31
Margarita	850 000.00	1 112 242.00
Suretka	10 356 189.54	13 415 498.21
Amubri	12 415 703.47	15 808 109.40

Brunca region

52. In the Golfito health district, where the Conte clinic operates, medical care is provided for the communities of Altos de Conte, Progreso and Brazos de Oro by means of community visits. For 1998, 26 rounds have been planned. The Conte clinic, with two basic integrated health-care teams, covers the population of the Conte and Punta Burica sectors.

53. In the Buenos Aires health district, which comprises the communities of Salitre, Boruca, Brisas and Térraba, medical care is provided through rounds carried out by two doctors, a nursing aid, a pharmacist, a network technician and a primary health-care worker. For 1998, 120 rounds have been planned.

54. In the Coto Brus health district, which includes the communities of Copey, Betania, Caño Bravo, Alto Unión, La Casona, Brus Malis and Villa Palacios, medical care is provided through community visits. The health teams' centres have been renovated and extended in this district.

Southern Central region

55. In the Turrialba health district, a special team has been set up for the indigenous areas of Chirripo Cabécar. In 1997 it treated a total of 1,146 inhabitants and applied the Polio-DPT-MMR-DT-BCG-Hepatitis B immunization schedule to a total of 1,475 people in the following communities: Snoly, Xiquialy, Jaquiñak, Alto Pacuare, Xuquebach, Alto Boyey and Cerro Tobosi. A programme of visits has already been scheduled for 1998.

Huetar Atlántica region

56. The indigenous populations of the Chirripo and Talamanca mountain regions have access to the health services network operated from the Baltimore, Margarita, Suretka and Amubri clinics, which rely on their respective basic health-care teams to cater for those communities.

Drug consumption

57. The Prevention Department's Alcoholism and Drug Dependence Institute has launched a pilot project for comprehensive prevention in the Talamanca indigenous reservation, which involves raising public awareness of this problem.

58. The aim is to create a methodological strategy that facilitates the development of programmes for meeting the indigenous populations' needs, and to determine which social problems affect them, with the final objective of providing an appropriate response to reduce or eliminate alcohol and drug consumption.

59. The plan will be implemented initially in the Talamanca indigenous reservation, consisting of 28 communities, of which 21 are in the mountains of the Talamanca range and the seven others are located in the Talamanca valley.

60. In order to involve indigenous people in the development of the comprehensive prevention programme, coverage will extend to the 21 communities in the reservation which are most accessible and where it will be easiest to coordinate with indigenous leaders.

61. The first community chosen was Watsi, which is uniquely well-suited for the introduction of a new strategy under the prevention programme. In addition, it can serve as a link with other indigenous communities which are more isolated in terms of infrastructure, roads and other services, and help overcome the mistrust and suspicion which outside institutions, and all the more so ones directed by Whites, may encounter. To facilitate training, the programme is being coordinated with a number of non-governmental organizations (NGOs).

62. The project consists of two general phases, with the first five stages scheduled for the first year, and the implementation and follow-up of work plans drawn up with organized indigenous groups to be carried out during the second year.

Education: background to indigenous education in Costa Rica

63. According to the diagnostic text prepared by the United Nations Children's Fund (UNICEF) jointly with the Ministry of Public Education and School District No. 7 (1994), the pioneers of indigenous education in Costa Rica were the missionaries, including Franciscans, Augustinian Recollects and Lazarists, who came to preach the gospel to the Indians. In 1886, the Pauline Mission was established, and the first primary school was set up in the Sipurio Alta Talamanca plain: the 26 February 1886 school, in Matambú, at the centre of the Chorotega cultural area.

64. The Yis Ma Ishó ("I will say") text reads as follows: "As the national language of Costa Rica is Spanish, it is considered of the utmost importance to teach that language to each and every citizen; it is therefore proposed to teach all indigenous population groups to speak, read and write in Spanish." The text established the need for distinct and bilingual education for the country's indigenous population that would respond to existing sociocultural realities. Education is a right guaranteed by article 78 of the Constitution for all citizens without distinction as to race, creed or political views, and it is also set forth in ILO Convention No. 169. Yet those efforts failed.

65. As from the mid-1950s, the first free and compulsory State-funded schools appeared in various regions. Most of the teachers had no knowledge of the cultural realities within their districts and ignored the fact that the country was made up of a cultural mosaic of various ethnic groups, each with its own language, traditions and customs, and each with its own "vision" and interpretation of the world and the way it was organized.

66. This education, imparted in good faith according to a national and vertical curriculum, seemed to produce negative stereotypes in regard to indigenous people, resulting in a loss of their cultural identity.

67. In the 1960s, more schools were opened in indigenous areas. However, there was a reaction on the part of indigenous leaders, parents, teachers and students, who were concerned about the low level of academic achievement, the high drop-out rates and absenteeism, and the lack of interest and motivation among the schoolchildren. This situation led all those involved to review and analyse the teaching and learning process, so that formal education meets at least part of the expectations of the country's indigenous young people, adapting the national curriculum to their vision of the world and sociocultural needs.

68. It had to be borne in mind, as García pointed out, that "the characteristics of an educative process are defined when the particularities of the development of the Indians as compared with non-indigenous peoples are identified, and the similarities and differences in each case are brought out".

69. In this situation, it became necessary to issue a series of decrees to assist indigenous people. These included:

- Decree No. 16619-MEP (Ministry of Public Education) of 1985, entitled "Return to the Land", which states in article 1,

referring to the country's indigenous communities, that “the Ministry of Public Education, through its Division for Curriculum Development, shall establish a model curriculum appropriate to the unique conditions of the country's indigenous populations”;

- Decree No. 1803-C of 1971, declaring 19 April as the Day of Indigenous People;

- Decree No. 18967 of 1989, which in article 1 stipulates that “the autonomous mother tongues shall be considered part of the Costa Rican cultural heritage and, within their spheres of influence, shall be considered as local languages”;

- Decree No. 22612-MEP Ministry of Public Education, Division for Curriculum Development, Commission on the Indigenous Education Subsystem;

- Decree No. 22072-MEP of 1993, article 1: “An indigenous education subsystem shall be established with the general objective of progressively developing bilingual and bicultural education in officially recognized indigenous reservations”;

- Decree No. 7426 of 1994 concerning the Day of Cultures Act; and

- Decree No. 7316 ratifying the Convention concerning Indigenous and Tribal Peoples in Independent Countries.

70. The considerations mentioned above led to the immediate opening, pursuant to Decree 23489/23490 of 1995, of the Department of Indigenous Education (DEI), headquartered at the National Teaching Centre (CENADI), with a technical team of six professionals specialized in teaching, linguistics, sociology, environmental education and anthropology.

71. This centralized technical team has created five codes for indigenous education advisers in the five major regions where the country's indigenous population is concentrated: province of Limón: Talamanca and Valle Estrecha; province of Puntarenas: Coto Brus, Buenos Aires and Pérez Zeledón; and province of Cartago: Turrialba and Chirripó. These five educational regions account for 77 per cent of the country's indigenous population.

72. The remaining 23 per cent are distributed as follows: province of Alajuela: in San Carlos, the Malekus; province of San José: in Puriscal (Quitirrisí, Zapatón), the Huetares; and province of Guanacaste: in Matambú and Matabuguito, the Chorotegas. These three regions are covered directly from San José by the Department of Indigenous Education (DEI), as the Department still has specialists in this field.

1995-1997 achievements

73. There were a number of achievements in the policy-making field, including the establishment of DEI; official and permanent representation with the Indigenous Bureau, which acts as an agency of the Office of the First Lady for implementing programmes and projects of the executive branch in

Costa Rica's indigenous territories; and a draft law for the development of indigenous peoples, a legal instrument that would ensure the sustained operation of DEI. The proposed changes are as follows: "The Ministry of Public Education, as the body administering the national public education system, shall be responsible, through the Department of Indigenous Education, for providing formal and informal education for the indigenous peoples of Costa Rica and for the training and professionalization of teaching staff working in indigenous areas"; the establishment and funding of 11 new national budget items for education to cover the needs of indigenous education; the lending by UNICEF of one four-wheel-drive vehicle and three motorcycles for work in indigenous regions (international cooperation); the donation, by IRIRIA and SEJEK, of two computers for the production of teaching material (domestic indigenous cooperation plan); the construction of the Amubri-Talamanca college with funds provided by the Spanish Government (international cooperation); and the construction of the Boruca-Buenos Aires de Pérez Zeledón college, with funds from the Japanese Government, among others.

74. Under an agreement for the training of indigenous teachers concluded between the Ministry of Public Education's Department of Indigenous Education (MEP-DEI) and the National University's Education, Teaching and Research Centre (UNA-CIDE), 80 new teachers from the communities of Talamanca and Buenos Aires will receive instruction in 1999, which means that as from graduation in 1999, the MEP Indigenous Education Programme will be run almost entirely by professionals with education diplomas specialized in indigenous education (National University-Ministry of Public Education programme).

75. The curricula are being drawn up by the National University, and the approach has been warmly welcomed by the communities in the Association for Integrated Development; attendance has risen at classes, which are conducted in the community's own language, inasmuch as this is not against its customs. The indigenous population in Costa Rica accounts for 1 per cent of the national population (see annex). There are currently 119 indigenous schools attended by 5,123 pupils in Costa Rica. The communities have, however, pointed out the need for further improvement in the coverage and quality of the education service, and various efforts have been made to ensure that the education strengthens indigenous culture on the basis of the sociocultural reality of the respective regions.

76. The Ministry of Public Education, aware of the need to coordinate and provide support and advice for these local efforts, has created, pursuant to Decree 23489-89-MEP, an area dedicated to indigenous education with the task of providing education for this population and a forum for meetings and educational exchanges between people from indigenous and other regions of the country. It should be added once again that the country has not established any form of discrimination.

Article 3

77. Costa Rica has on numerous occasions condemned all forms of racism and racial discrimination, whether institutional or derived from official doctrines, as constituting crimes against humanity.

78. At the same time, Costa Rica has voted in favour of numerous resolutions and provisions adopted by the United Nations. It has also resolutely condemned policies and ideologies aimed at fomenting all forms of racial hatred and "ethnic cleansing", which are incompatible with universally recognized human rights and fundamental freedoms.

Article 4

79. As mentioned above, and in keeping with subparagraph (c) of this article of the Convention, the Constitution establishes the equality of all persons before the law, thus demonstrating the country's interest in ensuring that no person or national public institution promotes or incites any form of discrimination.

80. In this respect, the Criminal Code, in article 371, stipulates: "Any person, manager or director of an official or private institution or administrator of an industrial or commercial establishment who applies any prejudicial discriminatory measure based on considerations of race, sex, age, religion, marital status, political opinion, social origin or economic situation shall be liable to 20 to 60 days' fine. In the event of a repeat offence, the judge may, in addition and as an accessory penalty, suspend a public official from his duties or post for a period of no less than 15 and no more than 60 days". This provision is in accordance with article 33 of the Constitution, articles 57, 58 and 78 of the Criminal Code and article 11 of the Juvenile Criminal Justice Act.

81. Equality is one of the fundamental values of the country's legal and political system. The laws established under the Constitution must be in keeping with that principle, thus ensuring that they contain no discriminatory provisions, and above all none which would establish systematic racial discrimination. Respect for this principle in the country's legal system is ensured by means of constitutional controls.

82. Based on the above considerations, any legal norm which violates the principle of equality in matters relating to races or groups is legally invalid. Costa Rica also has other norms which are aimed at eliminating any system of racial discrimination that might exist in society.

83. The Constitution requires the State and its institutions to guarantee "free access of citizens to work, through the implementation of policies to be conducted by State institutions, and hence any legislative or executive provision which is at variance with the constitutional protection of this fundamental right is manifestly unconstitutional since the right to work is considered a natural right of man, the exercise of which permits him to secure a dignified existence, and it should not be considered as a concession to be granted by the State, but rather as a right whose observance the State must watch over, defend, foster and realize by taking the appropriate measures, making sure that in all official and private bodies, no discriminatory employment policies are applied during the hiring, training, promotion or retention of employees, since all workers have the right of equal access to public office and employment if they fulfil the reasonable requirements established by law" (Judgement 3467-94 of the Constitutional Court).

84. In keeping with the values and principles of the country's constitutional order, Costa Rican law penalizes any form of racial discrimination, thus at the same time guaranteeing the equality of the country's citizens. In this respect, it cannot fail to be noted that the population includes representatives of most of the world's ethnic groups.

85. Costa Rica has always been open, with no discrimination whatsoever, to visits and stays by foreigners, regardless of their origin or ethnic group. Act No. 5360 of 11 October 1973 prohibits any entry restriction based on racial criteria; under article 1, “all immigration restrictions based on racial considerations are prohibited”.

86. The Act directly repeals the provisions of Decree No. 4 of 4 April 1942, which imposed restrictions on the immigration of people of Chinese descent. Thus, Costa Rica makes no distinction of any kind with regard to immigration or visits by people of any ethnic group or background.

87. As with all differences of treatment in law, the distinction between aliens and nationals must be based on rational criteria. In this regard, the constitutional case law states as follows: “Thus, only arbitrary inequalities, i.e. those devoid of any reasonable character, will be unconstitutional. It is not for judges to decide whether a particular distinction made in a rule is correct or advisable, but rather to ascertain whether or not the criterion of discrimination is reasonable, as it is the judgement concerning reasonableness that enables us to decide whether or not an inequality is a breach of the Constitution”.

88. In concrete terms, the Constitution makes it possible to distinguish between nationals and aliens, insofar as it indicates in article 19 that “aliens have the same duties and rights, both individual and social, as Costa Ricans, subject to the exceptions and limitations established by this Constitution and by law. They may not take part in the political affairs of the country and are subject to the jurisdiction of the courts of justice and of the authorities of the Republic; they may not have recourse to diplomatic protection save as provided in international agreements.” Of course, such exceptions “must be logical and must derive from the very nature of the difference between these two categories, so that no distinctions may be made which would imply a departure from the constitutional principle of equality, as would be the case if an act were to state that foreigners do not have the right to life, to health or to a fundamental right, since such distinctions would be irrational” (Judgement No. 1440-92 of 2 June 1992).

89. Act No. 4430 of 21 May 1968 is aimed at discouraging any racial segregation with regard to the admission of people of different races to public or private places. However, the offence of segregation was made punishable by a fine which has since become insignificant because of monetary fluctuations. The Act, which was amended by Act No. 4466 of 19 November 1969, reads as follows: Article 1: “Refusing to allow persons entry or membership in associations, recreational centres, hotels and similar establishments, clubs and private places of learning for reasons of racial discrimination shall be considered an offence.” Article 2: “The penalty applicable for such

an offence shall be a fine of 1,000 to 3,000 colones. A first repeat offence shall entail the closure of the establishment for six months, and a second shall lead to the definitive closure thereof."

90. The Criminal Code also penalizes conduct aimed at racial discrimination. Article 371 stipulates: "Any person, manager or director of an official or private institution or administrator of an industrial or commercial establishment who applies any prejudicial discriminatory measure based on considerations of race, sex, age, religion, marital status, political opinion, social origin or economic situation shall be liable to 20 to 60 days' fine." Article 33 of the Constitution states that "all persons are equal before the law and no discrimination whatsoever may be practised contrary to human dignity". The Criminal Code, in article 57, refers to "a general disqualification for 6 to 12 years ..." and in article 58 establishes that "a special disqualification, the duration of which shall be the same as the general disqualification, shall consist in the deprivation or restriction of one or more of the rights or functions referred to in the previous article". In a recent incident at an establishment known as the "Coyote Bar" in San Pedro, a group of Blacks was apparently refused entry; the court found that there had been no discrimination of any kind.

91. In another case, Carolyn Markland Francis v. José Tabora, "the serious charge of racial discrimination made by the plaintiff has not been proven ... The alleged discrimination is hardly in keeping with the previous behaviour of the defendant, which is not consistent with the charge. The complainant had worked as a model for the defendant ... and there is no reason to suppose a sudden change of attitude ... Evidence has been provided that another young black woman had worked for "Aplomo Model", the agency run by the defendant ... Finally, the complainant does not deny that part of her preparation was assigned to a black instructor ..." (Judgement No. 3204-95).

92. The offence is defined in very broad terms, as it covers not only segregation based on ethnic background, but also that based on other factors, such as marital status, economic situation or political views. The perpetrator may be a person in a position of authority which makes it possible for him or her to take measures, either publicly or in private, that are contrary to the general principle of equality and are based on abnormal discriminatory criteria, such as the injured party's membership of a particular ethnic group.

93. Regarding measures to guarantee equality in dignity and rights for the population groups most disadvantaged in economic and social terms, the Constitution stipulates in article 50: "The State shall ensure the greatest possible welfare for all the country's inhabitants, organizing and stimulating production and the most appropriate distribution of wealth".

94. Under this constitutional provision, it is the duty of the State to cater for the most disadvantaged groups in the distribution of wealth, by providing them with access to better living conditions, and this entails the elimination of factors contributing to social and economic discrimination.

95. In this connection, there are various social programmes in Costa Rica designed to improve income distribution for the benefit of the most deprived,

mainly in the fields of health, education and finance. These programmes are implemented by institutions with a long tradition in the country. They include the Costa Rican Social Security Fund (art. 73 of the Constitution), the Ministry of Public Education, which provides education free of charge (art. 78), and the Banco Popular y Desarrollo Comunal, which administers a mandatory savings scheme for all workers. Under this scheme, a worker's fund is established by means of compulsory deductions from wages and employers' contributions. The savings are then periodically returned to the workers.

96. Other institutions also promote socio-economic equality providing the opportunity for the most disadvantaged to cover their basic needs. Still, it is very clear that the various social programmes run by public institutions are not enough to meet the needs of the most disadvantaged classes; the Government's choice of economic and financial policies also has an impact in this respect.

97. With regard to programmes targeting specific population groups, we may cite the situation of women. Some 70 per cent of the people living in poverty in the world are women, and the situation is no different in Costa Rica. While the country is ranked 26th, and has some of the best social indicators in Latin America, in terms of the socio-economic advancement of women it is ranked 42nd. Women, regardless of their ethnic group, are the most vulnerable to the hardships brought about by the current economic order and extensive Government action is thus required to provide them with direct assistance, taking into consideration the specific situations encountered (for example, single mothers, women unable to work because of motherhood, women who work at home and in the street). One such programme provides economic support to women raising families in the more disadvantaged classes (conference given on 3 November 1995 at the auditorium of the University of Costa Rica).

Gender discrimination

98. Gender equality is an important aspect which involves the participation of women and men on equal terms (opportunities and rights) in both productive and reproductive life, taking into consideration the division of labour and women's responsibilities in child rearing, and especially as regards work in the home.

99. Women face many adverse conditions in the various sociocultural, economic and political fields. There is therefore a need to encourage affirmative action to place them on an equal footing with men as regards opportunities in education, employment and health.

100. Costa Rica has a modern legal system well-adapted to promoting the advancement of women. It has, for example, ratified various international conventions on the subject and has adopted a number of laws at the domestic level.

101. We should take into account the fact that the concept of human rights, like many other concepts, is neither static nor the property of a particular country or group, so its meaning is broadened and redefined as people and nations rethink their needs and aspirations regarding human rights.

102. Thus, the particular experiences of discriminated sectors should be constantly evaluated and incorporated into traditional human rights approaches. This is the case with women, who represent half the world's population, but whose human rights are constantly being violated in all spheres. Many of their rights are not even classified as human rights, and therefore are not fully guaranteed in international and regional treaties.

103. Although Costa Rica is a party to the majority of anti-discrimination treaties, which therefore form part of its internal legislation, this is not enough in itself. The National Centre for the Advancement of Women and the Family (CMF) has thus been given responsibility for directing and coordinating public policies in this domain, incorporating the gender perspective into all State institutions. This institutional development is in the process of being consolidated, with the issue of gender defined as a major axis of public sector action, supplanting the welfare approach which predominated in the past.

104. Discrimination and violence against women result from subordination caused by a political structure shaped by patriarchal, ideological and institutional interests. Thus, discrimination and violence are neither inevitable nor natural, since a political system can be changed with a view, as in this case, to redefining the terms of the relationship between the sexes and building an egalitarian society (Laura Guzmán Stein, “Conceptual and Methodological Elements for Human Rights Research with a Gender Perspective”).

105. Furthermore, the Convention on the Elimination of All Forms of Discrimination against Women defines discrimination against women. However, it is limited to the discrimination practised against women because of their gender. Understood in this way, any law, policy, study or action is discriminatory if it results in discrimination against women, even when this law, policy, study or action has been promulgated or planned without that intention or with the intention of “protecting” women and elevating them to the same “status” as men.

106. Within the framework of the Convention, all restrictions which women encounter in the cultural and domestic spheres are discriminatory, and not only those which occur in the so-called “public sphere”. Moreover, once the Convention has been ratified, this definition becomes the accepted legal understanding of discrimination in that country.

107. Not all women suffer to the same degree from sexism and gender discrimination. Structural problems and resistance still persist, but this has promoted, and in some cases consolidated, areas of inter-agency coordination which allow for the better use of resources and a sharing of the responsibility for gender equality. Significant support has been given to legal reforms pending in the Legislative Assembly and to the drawing up of new laws aimed at eliminating gender-based discrimination and providing for equal opportunities, to replacing sexist laws and to creating legal instruments which fully promote and protect the human rights covered in international treaties. Important advances have also been made regarding criteria for the disaggregation of national statistics by gender and for the development of gender-sensitive statistics.

108. An important part of the work pursued by the State, within the framework of the Plan for Equal Opportunities between Women and Men 1996-1998, has been directed at eliminating any gender-based discrimination which exists in the laws currently in force and in other social and economic spheres. Working for the equality of women before the law has involved reforms in the main codes and general laws, introducing the gender perspective into each one, and providing the relevant training for personnel in the main government bodies of the Republic and in the administration of justice. These actions and many others are being carried out to meet the need to eradicate, not just decrease, any instance of violence, injustice or discrimination against women.

109. Another important aspect to be considered is that of the rights of sex workers. The policies adopted by the Ministry of Health have led to a transformation of the National Commission against AIDS and the Department for the Control of AIDS and Sexually-Transmitted Diseases. This body is responsible for action taken with regard to sex workers in the metropolitan area aimed at safeguarding the health of these women.

110. The adoption of these new policies is producing an important change in the way the problem of prostitution of both adults and minors is being addressed, since greater attention is being paid to sex workers, including improvements in medical services, the handling of complaints about ill-treatment and the distribution of contraceptives, as well as the holding of training workshops dealing with such varied topics as prevention of sexually-transmitted diseases and HIV, sexual negotiation, identity and self-esteem, human sexuality, gender and violence against women. The programme starts from the recognition that adult women are involved and therefore the goals set are not aimed at convincing them to abandon their profession, unlike the work carried out with minors.

111. Calculations put the number of adult sex workers in the metropolitan area at around 3,000, with ages ranging between 18 and 45 years. It is estimated that around 1 per cent of all sex workers are HIV carriers. According to studies carried out in the San José metropolitan area, around 200 minors, of between 12 and 18 years of age, are engaged in prostitution.

112. The Permanent Commission for the Prevention of the Commercial Sexual Exploitation of Persons Below 18 Years of Age was created in 1977 and is made up of representatives of governmental organizations such as the National Centre for the Advancement of Women and the Family and the National Children's Foundation (PANI), as well as NGOs working in this sphere, such as PROCAL and PANIAMOR, which have joined forces to deal with the problem of the prostitution of minors.

113. There is now an office near Morazán Park, in the city of San José, which is concerned with the so-called integration stage. Its main aim is to bring into the project those young sex workers who offer their services around that area. The project seeks to provide the young persons with opportunities for training, education and literacy, in coordination with institutions such as the National Apprenticeship Institute and the Ministry of Public Education.

114. There is also a proposal for a project to be implemented jointly with ILO. This involves broadening the opportunities for training, and for

the integration of young people within private enterprises after they are trained in various fields, in an attempt to offer the youngsters alternatives which will help them to give up prostitution.

115. The National Centre for the Advancement of Women and the Family has submitted various suggestions concerning sexual offences to the Criminal Affairs Commission for incorporation into the proposed comprehensive reform of the Criminal Code.

116. There is a subcommission which has been given the task of examining the existing legislation to identify any gaps, particularly in the laws penalizing those who promote or profit from prostitution.

117. With regard to indigenous groups, the clearest case of discrimination in the majority of Latin American countries is that practised against indigenous people, who, despite being the original settlers of these territories, have long been deprived of their fundamental rights, including that of proportionality. Costa Rica is continuing its efforts to promote the equality of these groups with the rest of the population, bearing in mind first of all the need to preserve their customs.

118. The ratification, by Act No. 7316 of 3 November 1992, of the Convention concerning Indigenous and Tribal Peoples in Independent Countries, adopted by the ILO General Conference, indicates in its article 2 the attitude that the State should have towards the problems of discrimination against indigenous peoples; this obliges the State to seek the material equivalence of the rights of indigenous groups relative to those of the rest of the population, above all as regards the provision of services, in order to place each of the parties on an equal footing.

119. The Convention includes provisions on education and information through the mass media, the aim being to use these instruments of information to create an attitude of respect for and equality between the various inhabitants of the country.

120. Finally, the proposed Act for the Autonomous Development of the Indigenous Peoples goes well beyond a simple recognition of the right of equality of indigenous peoples, as it seeks to give the indigenous communities enough autonomy to take real control of their destiny; to this end, there are plans to establish bodies for political representation with enough authority to impose certain normative provisions within the communities (internal rules which must, of course, be compatible with national legislation), and to give the indigenous territories autonomy, providing security of land tenure to their inhabitants. It is, moreover, proposed to create financial and economic development institutes that would permit effective social growth of the indigenous peoples, in harmony with their customs.

121. Costa Rica has called in the various international forums for greater equality in international economic relations, and has subscribed to the various initiatives directed towards that end.

Article 5

122. Regarding the Government's plan to issue identity cards, the Supreme Electoral Tribunal has indicated in the first instance that it makes no distinction of any kind as to race in its voting register, and hence it is not possible to give the percentages of the minorities.

123. Mr. Rodolfo Villalobos, Chief of the Coordinating Section of Regional Offices and Peripatetic Census-Taking, has provided detailed information on the issuance of identity cards to indigenous people over the past few years (see annex, statistical section).

124. With regard to the question of how the Civil Registry Office handles cases of indigenous persons without documents, it should be pointed out that with the amendment to the Civil Registry Office Regulations, article 21, paragraph 3, now reads: "With regard to the declaration of the birth of an indigenous child under 10 years of age, the evidence to be produced for the purpose of registration is: (a) a sworn declaration by the parents, indicating who assisted the mother at the child's birth; (b) if the child's mother received assistance, the person who assisted must make a sworn statement providing all particulars; (c) an attestation from the Coordinating Section of the Civil Registry Office to the effect that the parents of the declared child - or at least one of them - are registered in the indigenous family group census, which this section keeps up to date; (d) if, despite being indigenous, they do not figure in the census mentioned in the previous subparagraph, the persons concerned may bring an official letter from the indigenous community's Association for Integrated Development, signed by its President, confirming that the parents of the declared child are indigenous members of that community and explaining the reasons why their names are not listed in the census.

125. If none of the requirements indicated in the present article is fulfilled, the Civil Registry Office will have to suspend registration of the birth until such time as the stipulated requirements are met.

126. Article 24, paragraph 3, of the same regulations states that "the declaration of the birth of an indigenous person over 10 years of age shall require the following documentary evidence: (a) an official letter from the Association for Integrated Development of the indigenous community to which the declared person belongs, signed by its President and vouching for the person's indigenous origins; (b) a report from the Operations and Naturalizations Section, and from the Migrant Registry Department of the Directorate General for Migrants and Aliens, to determine that the person whose birth is to be registered has not become Costa Rican by naturalization and, moreover, does not figure as a foreign national in the Department's records. These documents will be requested by the Civil Registry Office (statistics are provided in the annex.)

127. In Costa Rica, equality in fundamental rights is guaranteed for all citizens without discrimination of any kind. As regards equal treatment before the courts, the Constitution establishes that everyone has the right to

equality before the law, and that discrimination on grounds of origin, race, sex, language, religion, opinion, economic status, or on any other basis, is prohibited.

128. With regard to security of person and protection by the State against any act of violence or attack on personal integrity, articles 20, 24, 25, 27 and 28 of the Constitution protect and guarantee these rights.

129. The competent body for the acquisition of real property owned by private individuals in the indigenous reservations is the Institute for Agrarian Development (IDA) and not the State.

130. Article 5, paragraphs 1 and 9, of the Indigenous Act No. 6172 of 29 November 1977 states: "Where non-indigenous persons are bona fide proprietors or possessors of land within the reservations, IDA shall relocate them or, if they do not agree to be relocated, shall expropriate them and compensate them in conformity with the procedures laid down in Act No. 2825 of 14 October 1961, as amended. The studies and proceedings for expropriation and compensation shall be carried out by IDA in coordination with CONAI. The land belonging to IDA included in the demarcation of the indigenous reservations, and the reservations of Boruca-Terraba and Ujarrás-Salitre-Cabagra shall be ceded by IDA to the indigenous communities" (Opinion of the Office of the Procurator-General of the Republic).

Article 6

131. Concerning the remedies which are made available by the State to the individual and which can be exercised before the competent national courts in the event of an act of discrimination, any person claiming rights can have recourse himself or herself or through another person to the Constitutional Court, at any time, through the remedies of habeas corpus and amparo; only for unconstitutionality proceedings is the authentication of a lawyer required. A judicial review can be instituted only by the authorities, and a legislative review only by deputies.

The remedy of amparo

132. The institution of amparo proceedings, the body with constitutional jurisdiction is asked to grant a request for protection arising in connection with the threat or commission of a breach of fundamental rights or constitutional guarantees, not including personal liberty and integrity. Thus, article 29 of the Constitutional Jurisdiction Act (LJC) states: "The remedy of amparo guarantees the fundamental rights and freedoms covered in this Act, with the exception of those protected by the remedy of habeas corpus. The remedy of amparo applies against any provision, agreement or decision, and in general any action, omission or simple physical act not based on a valid administrative act, by public servants and public bodies, that has violated, violates or threatens to violate any of those rights. Amparo is applicable not only against arbitrary acts, but also against actions or omissions based on erroneously interpreted or improperly applied rules."

133. The remedy of amparo is also applicable "... against actions or omissions of subjects of private law, if they act or are required to act in a

public capacity or if they are in a position, either de jure or de facto, that makes ordinary legal remedies clearly inadequate or too dilatory to guarantee fundamental rights or freedoms ...” (art. 57, LJC).

134. In accordance with article 38 of the Constitutional Jurisdiction Act, “the application for amparo shall state as clearly as possible the act or omission which gave rise to it, the right which is considered to have been violated or threatened, the name of the public servant or body responsible for the threat or offence, and the supporting evidence. It shall not be essential to cite the constitutional norm infringed, provided that the right affected is clearly defined, except when an international instrument is invoked. The remedy is not subject to other formalities, nor does it require authentication. The application may be filed in a petition, telegramme or other means of written communication, and shall for that purpose be exempt from telegraphic charges.”

135. Moreover, anyone can file an application for amparo (art. 33, LJC), and may do so at any time while the violation, threat, interference or restriction persists, or for up to two months after it ceases to have direct effects (art. 35, LJC).

136. Thus, as stated in article 1 of the Constitutional Jurisdiction Act, “The purpose of this Act is to regulate constitutional jurisdiction, the aim being to ensure the supremacy of constitutional norms and principles and of international or community law applicable in the Republic, so that it is uniformly interpreted and applied, and to safeguard the fundamental rights and freedoms set out in the Constitution or in the international human rights instruments that apply in Costa Rica.”

137. Amparo in Costa Rica is in fact a direct action which does not require any case, either judicial or administrative, to be already pending. The Constitutional Jurisdiction Act sets a time limit of two months for bringing the action, dating from the time that the violation occurred or became known to the injured party, or from the time that it ceased, in the case of acts with continuous effect and not involving “purely patrimonial rights” (art. 35).

138. Article 27 of the Constitution establishes the right or freedom to petition “any public servant or official body and the right to obtain prompt resolution”. Article 32 limits itself simply to defining what constitutes “prompt resolution”: this should be given within the statutory time limit, or otherwise within 10 working days.

139. Amparo does not only protect simple petitions (applications without a statutory time limit). Any petition not resolved in time is protected through amparo, as neither the administration nor any public servant has the right to remain silent, that being also a breach of the principle of administrative justice.

140. It should be said that amparo is a special as well as optional action. Practically all amparo cases could be reviewed under ordinary process, which means that there is no impediment to simultaneous legal recourse by both

means. Also, the establishment of amparo does not suspend or interrupt the period of prescription or the lapsing of actions in ordinary proceedings.

141. The Constitutional Court has ruled that the administrative courts are competent to consider acts which violate fundamental rights and freedoms (vote No. 3035-96) and protection can be given not only through ordinary procedures but also by a prohibition against "simple physical acts" (art. 357, LGAP). Obviously, a favourable amparo decision takes precedence over ordinary jurisdiction.

Judgement

142. The favourable decision restores or guarantees the enjoyment of the right violated (art. 49, LJC). This constitutes res judicata. The judgement in this case will award damages and costs "in the abstract", the amounts being settled before the respective ordinary court. It should be noted that the judgement is rendered without a plenary proceeding and there is no possibility of appeal (art. 51, LJC).

143. If the Court considers that the offending public servant acted with malice or gross negligence, it will find against him jointly with the public body (art. 51, LJC), if he was given a personal hearing at the appropriate time. This means that the lack of a decision against the person does not prejudge the question of whether he might actually be liable under articles 203 et seq. of the General Public Administration Act (LGAP).

144. Damages will thus be awarded even in the case of a settlement out of court, subsequent to notification of the remedy to the public servant (art. 52, LJC). A decision dismissing an amparo appeal does not constitute res judicata on the merits (art. 55, LJC).

145. This judgement cannot order payment of damages on account of the suspension of the effects, as stated above; only costs can be awarded if the appeal is considered "reckless". The Constitutional Jurisdiction Act does not set a time limit for passing judgement in amparo proceedings. Nevertheless, the general principles of taking action ex officio and promptly (art. 8) apply and, in addition, amparo applications must be given "preferential" treatment, having priority after habeas corpus proceedings (art. 39).

146. Only an addition to or clarification of the judgement may be requested (art. 121, LJC). Despite the absolute clarity of the law on this point, the Court does allow "remedies" intended to correct flagrant errors of fact or of law, in truly exceptional cases. The Court enforces its own judgement except as stated with regard to matters of financial liability (art. 56).

Habeas corpus

147. In view of the nature of the rights subject to protection, habeas corpus is the most important constitutional procedure of our day, so much so that it is impossible to imagine a "constitutional State" which does not provide adequate procedural arrangements to facilitate the exercise thereof in an expeditious and effective manner.

148. Habeas corpus is intended to protect two fundamental rights of the first order, namely personal liberty and freedom of movement. Depriving a person of either of these rights would impede the exercise of his other recognized rights. Hence the purpose of habeas corpus is to prevent and suppress any unlawful restriction of the freedom of the individual, regardless of origin.

149. For this reason it is considered to be the core procedural safeguard of fundamental rights.

150. Habeas corpus is the specialized procedure for applying to the body with constitutional jurisdiction to grant a request for protection arising in connection with a case of illegal detention. In this respect, article 15 of the Constitutional Jurisdiction Act states that “habeas corpus is available to guarantee personal liberty and integrity against the acts or omissions of an authority of any kind, including a judicial authority, against threats to this liberty and breaches or restrictions unduly established in respect thereof by the authorities, as well as against unlawful restrictions on the right of movement from one place to another in the Republic and the freedom to stay in, leave or enter its territory”.

151. Moreover, article 16 of the same Act adds that “when, in a habeas corpus action, other violations relating to personal liberty in any of its forms are alleged and these acts were connected with the act deemed unlawful, as constituting the cause or purpose thereof, the same proceeding shall also deal with these violations”.

152. Anyone can file a habeas corpus application, either by telegram or by any other means of written communication, without the need for its authentication. No charge is made if telegraphic means are used, in conformity with article 18 of the act in question.

153. This remedy, which does not require formalities, shall lie with the Constitutional Court and the President or an examining magistrate shall take charge of the proceedings (art. 17, LJD). For such purposes the Court is available 24 hours a day.

154. The remedy of habeas corpus is simply a consequence of the State's obligation to provide an effective remedy for any violation of internationally recognized human rights. This guarantee is also enshrined in article 8 of the Universal Declaration, which recognizes that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him”.

155. It should be pointed out that the contribution of international human rights law has prompted and created a great political will to ensure a reappraisal of the procedural safeguards in internal law, among them habeas corpus. This has raised awareness of the facts that it is not enough to enshrine human rights in the constitutional texts for them to be respected both by the public authorities and in general. Hence, in actual practice, the procedural action should be the most appropriate means by which to require their protection.

156. This internal development is, however, basically conditioned by two factors: the value that each State - within the hierarchy of legal sources and in accordance with its own constitutional system - places on human rights instruments, and the essential conditions for the proper functioning of the judiciary.

157. In conformity with article 7 of the Constitution, international instruments are among the parameters used in Costa Rica to judge constitutionality; thus, any legislative provision which attempts to suppress or restrict the remedy would, in the terms of the Constitutional Jurisdiction Act (Act No. 7135 of 11 October 1989), be found to be unconstitutional because it violates this rule.

Unconstitutionality proceedings

158. These are genuine independent steps taken against laws or other general provisions which, by action or omission, infringe a constitutional norm or principle, or against the inertia, omissions or failure to act of the public authorities (art. 73, LJC).

159. Article 75 of the Constitutional Jurisdiction Act states: “For the purpose of instituting an unconstitutionality action it is necessary for there to be a case pending before the courts, which may involve a habeas corpus or amparo proceeding, or a proceeding to use the available administrative remedies, in which this issue of unconstitutionality is invoked as reasonable grounds for protecting the right or interest which is considered to be infringed. There shall be no need for a prior case to be pending when the matter does not by its nature involve an individual and direct injury or when it relates to the protection of broad interests, or affects the community as a whole. Nor shall this be required by the Comptroller-General of the Republic, the Procurator-General of the Republic, the Attorney-General of the Republic or the Ombudsman.”
