



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Second periodic reports due in 2002**

**Addendum**

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

[30 May 2006]

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\* For the initial report submitted by the Government of Costa Rica, see CAT/C/24/Add.7; for its consideration, see CAT/C/SR.472, 475 and 482 and *Official Records of the General Assembly, fifty sixth session, Supplement No 44 (A/45/44)*, paras. 130-136.

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

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In compiling this report, information was requested from and consultations were held for a process of national validation with the following State institutions and non-governmental organizations:

Supreme Court of Justice

Ministry for the President's Office

Ministry of Governance, Police and Public Security (including the General Directorate for Migration and Aliens)

Ministry of Public Education

National Women's Institute

Office of the Ombudsman

Ministry of Justice

Ministry of Foreign Relations

National Statistics and Census Institute.

Costa Rican Social Security Fund

Legislative Assembly

UNHCR

The procedure followed, in accordance with national practice already established in other reports, consisted of an institutional request from the Chancellery to the institutions and non-governmental organizations for the information on the issue; in some cases this was achieved by sending a questionnaire on the most relevant elements to be included in the information on each of the articles of the Convention.

The information received, along with summaries of interviews, press cuttings and studies by public and private institutions, was processed in an initial report which was submitted for institutional consultation over a period of two months. Comments received were incorporated into the final text.

1. Costa Rica, as a State Party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, presents for the consideration of the Committee Against Torture its second periodic report on measures taken during the period 2002-2006 to give effect to the undertakings arising from the Convention, as required by its article 19.
2. This report has been prepared in accordance with the guidelines laid down by the Committee for the presentation of reports (document HRI/GEN/2/Rev.2 of 7 May 2004).

## **ARTICLE 1**

### **Legal framework**

3. As has been indicated in previous reports, Costa Rica possesses a wide range of legislation guaranteeing to all its inhabitants every form of equality, regardless of their religion, sex, race, language, opinions, ethnic origin or social group.
4. Human rights in general, including the right to physical and moral integrity and the right not to be tortured, are secured for all the country's inhabitants, whether citizens or aliens, men or women, in a broad constitutional and legal framework.

### **Constitution**

5. Article 40 of the Constitution, promulgated on 7 November 1949, states: “No-one may be subjected to cruel or degrading treatment or to life imprisonment, or to the penalty of confiscation. Any statement obtained by violent means shall be null and void.”<sup>1</sup>
6. In order to guarantee that all rights enshrined in the Constitution and international human rights treaties can be applied, article 48 of the Constitution offers all subjects means of protection by establishing the remedies of amparo and habeas corpus.
7. The establishment of the Constitutional Chamber, duly consolidated in the legal system, has been an essential element of the system for protecting human rights in the country. With its rulings and interpretations, the Constitutional Chamber has institutionalized a new approach to interpretation, referring to values, principles and axiological meanings beyond the letter of the written text.

### **International treaties**

8. Article 7 of the Constitution determines the hierarchy of legal instruments, providing that “Public treaties, international agreements and concordats duly approved by the Legislative Assembly shall have a higher authority than the laws upon their enactment or from the day that they designate.”
9. The scope of international legal instruments on human rights within the legal system has been defined by Decisions 3435-92, 5759-93 and 2323-95 of the Constitutional Chamber, which

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<sup>1</sup> Cordoba Ortega (Jorge) et al. Constitution of the Republic of Costa Rica, annotated and brought into line with rulings of the Constitutional Chamber. – Prodel. San José, 1st Edition. 1996.

has decreed in particular in the last-named judgement that “Where international human rights instruments in force in the country are concerned, the provisions of article 7 of the Constitution do not apply, since article 48 of the Constitution contains a special provision relating to human rights giving them legal force on a level with that of the Constitution. Indeed, as has been recognised in the jurisprudence of the Constitutional Court, human rights instruments in force in Costa Rica not only have similar status to the Constitution but also, in so far as they grant greater rights or guarantees to persons, take precedence over the Constitution”.

10. Likewise, the Chamber’s Decision No. 0588-94 states that: “According to article 7 of the Constitution, international treaties and conventions, as a source of rules for our legal system, take precedence over common law. This implies that a rule in a treaty or convention – which for the purposes of international law are equivalent – prevails over a domestic legal rule.

11. Costa Rica has ratified a large number of international instruments that are both universal and regional in nature, mentioned both in the first report and in the basic document. For the present purposes, it is recalled that, under law No. 7351 of 11 November 1993, Costa Rica ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed in New York on 4 February 1985. The approval of the Executive Decree recognizing the Committee’s competence, as provided for in articles 21 and 22 of the Convention, is still pending.

12. This country had the honour of chairing the work that resulted in the approval by the Committee on Human Rights and the United Nations General Assembly of the Optional Protocol to the Convention Against Torture. Costa Rica ratified this instrument on 25 November 2005 under Law No. 8459 and it was deposited at United Nations headquarters in New York on 1 December 2005.

### **Criminal code**

13. One of the most important aspects to be underlined in this report is the approval by the Legislative Assembly of the addition to article 123 bis to the Criminal Code by Law No. 4573 of 4 May 1970; this legislative reform – Law No. 8189 of 6 December 2001 – states:

#### *“Torture:*

- a) Article 123 bis.- The act of inflicting on a person pain or physical or mental suffering, or intimidating or coercing a person by reason of an act which he or she has committed or is suspected of committing, or in order to obtain from him or her or from a third person information or a confession, or on grounds of race, nationality, sex, age, political, religious or sexual preferences, social position, economic situation or civil status, shall be punished by imprisonment of three to ten years.
- b) If the foregoing acts are committed by a public official, the penalty shall be five to twelve years imprisonment and suspension from office for two to eight years”.

## **Legislation on the prison system**

14. The prison system in Costa Rica is governed by Law No. 4762 of 8 May 1971, establishing the Department of Social Adaptation. Since it came into effect, there have been significant changes, and with new legal instruments have been adopted and updated to regulate institutional practice and the operation of the prison system.

15. As indicated in paragraphs 29 to 33 of the initial report, Costa Rica has a comprehensive legal framework in which international instruments ratified by the country interact with laws, regulations, interinstitutional agreements and circulars to provide the appropriate legal framework to ensure that all prisoners can enjoy their rights and fulfil their obligations.

16. In addition to the rules set out in the first report, there are other instruments governing the national prison system. These include the Regulation for the Convention on the Transfer of Sentenced Persons, adopted in Strasbourg on 21 March 1983 – Decree 27259-J of 14 July 1998; the General Regulation on the Prison Police – Decree 26061-J of 15 May 1997; and the Law setting up the Directorate-General for the Prevention of Violence and Crime.

17. Also worthy of note are the Circulars of the National Institute of Criminology, and the Justice Ministry's Regulation on the Programme for the Protection and Promotion of Human Rights. - Decree 23006-J of 23 February 1994 – Law No. 7600 General Law on Equality of Opportunity and its Regulation and Law No. 7771 General Law on HIV AIDS and its Regulation of 29 April 1998.

18. Finally, the following also deserve a mention: Law No. 7786 – Law on Narcotics, Psychotropic Substances, not authorized for use, legitimization of capital and related activities of 30 April 1998; Law No. 7576 Juvenile Criminal Law of 1996; Law No. 7935 entitled Comprehensive Law on Older Persons; Regulation on Visits to Establishments of the Costa Rican Prison System – Decree number 25881-J of 20 February 1997 – and the Interinstitutional Agreement signed between the Caja Costarricense de Seguro Social and the Health Ministry, in April 1993 and later in April 1998 protecting the right to social security, in the event of emergency or illness, whether provided by the Costa Rican Social Security Fund or through the institutions detaining them.

## **ARTICLE 2**

### **Evictions and land ownership**

19. On the issue regarding the right to personal security and the protection of the State against any act of violence, the Costa Rican Government has supplied a comprehensive report to the special United Nations procedures on a series of operations in communities with a large contingent of Nicaraguan migrants.

20. On 3 June 2004 the Special Rapporteur on the human rights of migrants asked the Costa Rican Government for a full explanation of the police operation carried out on 30 January 2004 in the La Carpio tenement block, located on the outskirts of the capital, in which some 600 people were detained. The Rapporteur also expressed her concern regarding information received alleging that the Costa Rican Social Security Fund was sharing with the Department of Migration and Aliens the personal details of the undocumented migrants expected at consultations in public

medical centres. The third allegation she followed up concerned the alleged existence of a telephone service for reporting undocumented immigrants.

21. By letters date 29 July and 9 August 2004, the Costa Rican Government gave the Special Rapporteur a full reply on the alleged events. According to that reply, the Ministry of Public Security, Governance and Police – pursuant to the powers assigned to it by the Constitutional and law – planned a number of law-enforcement operations.

22. In that context, on 30 January 2004 an operation was carried out with a view to detecting and regularizing the irregular situations of persons and commercial establishments located in a conflictual area of the capital, where there were known to be unlicensed businesses, minors at risk, arrest warrants, allegations of domestic violence, reports of escape and migration control, among other things. For the purposes of these operations, an interinstitutional team was assembled of officials of the National Children's Trust (PANI), the Judicial Investigation Body, the Migration Police, competent staff of the Department of Planning and Operations and of the Information and Legal Support Centre of the Ministry of Public Security and the Municipal Police of San José and the Costa Rican Red Cross.

23. The final results of the operation was a total of 580 people investigated, 79 extradition procedures, 25 persons deported after the proper procedure had been followed, 107 people cited as having links with Costa Ricans, 6 false residence cards detected, 2 firearms confiscated, 2 knives confiscated, 6 minors placed under the care of the PANI, 15 persons charged to appear in court and 1 person charged with fraud.

24. The operation was conducted in accordance with proper procedures, strictly observing and respecting human rights, in response to the need to fight the crime, gangs and domestic violence affecting that area of the country. This operation and others conducted over the years have not in any way aimed to persecute immigrants, since this would be contrary to the Costa Rican State's international obligations.

25. According to information from the National Children's Trust, during the operation 40 minors were assisted, and their situation in relation to their parents checked. Each of the minors was duly taken home, accompanied by an administrative official to check the relevant documents, and it should be pointed out that all these actions were conducted taking account of the child's best interests and of the priority of keeping minors with their parents.

26. The Costa Rican Government informed the Special Rapporteur that it was not the job of the Costa Rican Social Security Fund to check compliance with labour and migration legislation and that the information referred to was provided pursuant to article 11 of the General Law on Public Administration.<sup>2</sup> The authorities also made it clear that there was no telephone reporting service.

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<sup>2</sup> Article 11 of the General Law on Public Administration provides that:

“1. The Public Administration shall act in accordance with the law of the land and may carry out only those acts or provide those public services that the law allows, according to the hierarchical level of its sources.

2. Acts shall be authorized that are expressly governed by written rules, at least in terms of reason or content, even if in an imprecise form.”



27. Within the scope of its powers, the Special Migration Police carries out special operations certain weekends beginning on a Thursday and lasting until the Sunday, during which it detects an average of over 15 foreigners of various nationalities every day who, under the rules of due process, are transferred to the detention centre.
28. The report of the Office of the Ombudsman for 2004-2005, like previous annual reports, expresses the institution's concern over "the state of the infrastructure of the detention centre for foreigners in transit, located in the Fifth Commissariat, despite acknowledging improvements made by the Directorate-General for Migration and Aliens in line with the Office's recommendations and the decisions of the Constitutional Chamber".
29. The report goes on to say "the centre does not have the proper conditions to detain aliens subject to administrative procedures aimed at verifying their status as migrants nor to deportation procedures of any length."
30. It concludes that "this situation is worsening since the current legislation does not provide for maximum terms of detention for these persons, premises suitable for housing families including children and adolescents, proper hygiene in the installations, etc."
31. Regarding this concern of the Office, the General Directorate of Migration and Aliens, via the Special Migration Police, stated at the time this report was being prepared that "there is a protocol to be followed when admitting an alien to the Security Centre for Aliens in Transit, consisting of requirements that must be complied with in order to avoid violating people's rights".
32. This procedure includes checking their personal details to avoid handling a minor; in that case the person is transferred to the National Children's Trust; in the case of adults, all their particulars are taken down on a detention sheet and they are provided with a telephone to contact their consulate (right to consular assistance); it should be pointed out that next to the modules there are public telephone accessible to the aliens, who may use them directly at any time.
33. In accordance with due process, a lawyer from the department must interview aliens and have them make a sworn statement in which they are advised of the crime of bearing false witness and of their right to a legal representative. Next, the legal and migratory situation of each alien is assessed, with a view to issuing an administrative decision.
34. The length of time that aliens stay in the centre varies according to their migration status. In this respect, the Constitutional Chamber has stated that "in exceptional circumstances aliens may be detained by the Special Migration Police for more than 24 hours". In this respect, Decision 2002-9395 states that "the migration authorities may restrict the liberty of aliens illegally entering the country, for a length of time that is reasonably necessary for arranging their expulsion or deportation".
35. For reference, in its decision 16143-05, the Constitutional Chamber rejected an application for amparo regarding the holding of a person in the detention centre who was due to be deported, having already spent more than three months in the Cuesta De Moras offices in San José, in the hands of the Migration Service; the appeal also criticized the authorities for the conditions in the centre, which it described as "very poor". The Chamber rejected the application. It nevertheless ordered the Director-General for Migration and Aliens, or whoever might occupy that position in

his place, to give instructions to deport the appellant within no more than fifteen days from the date of the judgment.

36. When a deportation order is carried out, the alien is transferred to Juan Santamaría airport in an official vehicle and guarded by an official; for deportations over land, the transfer takes place in the institution's buses, with two accompanying guards. Regarding the basic care and needs, deportees are fed a diet based on proteins and carbohydrates.

37. Regarding visits, two days per week have been arranged for detained aliens to receive visits; their families can provide them with clothing, food and money. The legal representatives of the prisoners, and any necessary interpreters, have round-the-clock access.

### **Statistics for deaths in the prison system**

38. According to the statistical records of the Costa Rican prison system, during the period 2001-September 2005, a total of 73 prisoners died in the institutions of the national prison system, for various reasons including homicide, suicide and natural causes.

39. The statistical indicators broken down by year and cause are as follows:

<i>Type of incident</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>SEPT/ 2005</i>
Natural causes	8	13	9	7	5
Homicide	4	7	3	1	4
Suicide	1	2	4	2	3
TOTAL	13	22	16	10	12

*Source:* Database of Department of Research and Statistics, National Institute of Crimology.

40. A more detailed statistical indicator, with reference to the death rate among detainees in the institutions of the prison system, for the period 2001 to September 2005 is as follows:

<i>Type of incident and prison</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>Sept 2005</i>
TOTAL DEATHS FROM NATURAL CAUSES	8	13	9	7	5
Reforma	6	6	4	4	3
Gerardo Rodríguez	0	1	1	2	1
San José	0	0	0	1	0
San Rafael	0	1	1	0	0
Buen Pastor	0	1	0	0	0
Older persons	0	2	3	0	0
Heredia	0	1	0	0	0

<i>Type of incident and prison</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>Sept 2005</i>
Pérez Zeledón	1	0	0	0	0
Pococi	1	1	0	0	0
Puntarenas	0	0	0	0	0
TOTAL HOMICIDES	4	7	3	1	4
Reforma	3	7	3	1	3
San José	0	0	0	0	1
Pérez Zeledón	1	0	0	0	0
TOTAL SUICIDES	1	2	4	2	3
Reforma	0	2	2	1	1
San José	0	0	1	0	0
San Rafael	0	0	0	1	1
Buen Pastor	0	0	0	0	1
Pérez Zeledón	1	0	0	0	0
Puntarenas	0	0	1	0	0
TOTAL DEATHS – NATURAL CAUSES, HOMICIDES AND SUICIDES	13	22	16	10	12

*Source:* Database of Department of Research and Statistics, National Institute of Crimology.

### ARTICLE 3

#### Right of asylum

41. As stated in the first report, Costa Rica has a strong commitment to political asylum. Article 31 of the Constitution states that "The territory of Costa Rica shall be an asylum for everyone persecuted for political reasons. If a person is ordered to be expelled on compelling legal grounds, he may not be sent to the country where he was persecuted. Extradition shall be governed by Law or international treaty, and shall not take place for political or related offences, as defined by Costa Rica".

42. During the period 2002-2006 the Ministry of Foreign Affairs considered several applications for political asylum. The following were of most public relevance:

43. Carlos Alfonso Ortega Carvajal (Venezuelan): He applied for diplomatic asylum at the Diplomatic Mission of Costa Rica in the Bolivarian Republic of Venezuela on 13 March 2003,

which was granted in accordance with the 1954 Convention on Diplomatic Asylum.<sup>3</sup> Mr Ortega was granted territorial asylum in exercise of and in conformity with his rights under article 31 of the Costa Rican Constitution and in accordance with the Conventions on Asylum in force in the country.

44. However, on 30 July 2004, Mr Ortega Carvajal left Costa Rica for the country in which he had claimed to be persecuted<sup>4</sup>, so nullifying his grounds for claiming political asylum. Accordingly, on 12 August 2004, by decision No. 084-04 RE of the Executive Council signed by the President of the Republic and the Chancellor, his territorial asylum was revoked.

45. Alberto William Dahik Garzozi (Ecuadorean): The former Ecuadorean Vice-President was granted political asylum by the Costa Rican Government on 29 March 1996 by means of Decision No. 142-96-DJ of 15.00 hours, in accordance with article 31 of the Constitution of the Republic of Costa Rica and the Convention on Diplomatic Asylum. Since Mr Dahik decided to return to the Republic of Ecuador<sup>5</sup> for a few days after nine and a half years of living in Costa Rica as a political refugee, the Executive Branch, by means of Decision No. 106-05-RE of 09.00 hours of 20 April 2005, revoked his political asylum.<sup>6</sup>

46. Nevertheless, on the basis of Mr Garzozi's application for the renewal of his political asylum and since the situation of political instability and the lack of legal security in the country at the moment was public knowledge, the applicant again feared with some justification that he would be the victim of further legal action for political reasons and the Costa Rican Government therefore once again granted territorial asylum to Mr Alberto William Dahik Garzozi by means of Decision No. 026-05-DJR of 11.00 hours of 28 April 2005, signed by the President and Chancellor.

47. Carlos Caballero Hopuy (Cuban): By Decision No. 004-05 DJ of 10.00 hours of 24 January 2005 territorial asylum was granted to Mr Caballero on political grounds. He currently has the status of refugee and is able carry out his activities as a dancer in Costa Rica.

## **Deportation**

48. As for deportations carried out by the General Directorate for Migration and Aliens, during 2002-2005 most of them concerned Nicaraguans in an irregular situation; other significant groups were Colombians, Ecuadoreans and Peruvians. The table below summarizes deportations by year.

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<sup>3</sup> Subsequently, on 14 March 2003, Mr Ortega, once again at the Diplomatic Representation of Costa Rica in Venezuela requested the Costa Rican Government to grant him territorial asylum, alleging that "owing to his political activities, which are fully in the public domain, he is subject to persecution and threats endangering his physical integrity or life." He repeated his request for territorial asylum, expanding it on account of his fear of groups of people who had escaped Government control.

<sup>4</sup> According to his own public statements in the media of the Bolivarian Republic of Venezuela on that country's territory.

<sup>5</sup> Since on 31 March 2005 the President of the Venezuelan Supreme Court of Justice declared the criminal action against him and two former Presidents of that country to be inadmissible.

<sup>6</sup> The decision was taken by the Executive since the de facto and de jure evidence which was considered valid for granting him the status of political asylum was no longer applicable since he had returned to his country in accordance with the 1954 Caracas Convention on Territorial Asylum.

<i>Country</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>
Germany	5	1	2	
Argentina	4	3		1
Belgium		1		
Belize	1			
Bolivia	1			
Brazil	1			
Canada	3	1	2	1
China	7	28	11	
Colombia	258	142	109	103
Cote d'Ivoire	1			
Cuba			1	
Ecuador	18	37	50	6
El Salvador	8	1	3	44
Spain	2		2	
United States	22	14	10	8
Philippines	5			
France	7	1	2	
Greece			1	
Guatemala	2		1	
Guyana			1	1
Haiti	4		8	1
Honduras	22	16	14	5
Hungary	2			
Indonesia	18	5		
United Kingdom	1			
India				1
Iran				1
Israel			1	
Italy	4	1	4	2
Jamaica	2	4	1	3
Kenya		2		
Mali	2			
Mexico	1	4	8	3

<i>Country</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>
Nicaragua	4 012	2 454	680	525
Panama	53	46	25	27
Peru	63	43	35	
Poland	1			
Dominican Republic	68	3	9	5
Czech Republic			1	
Romania	1			
Russia			2	
Saint Vincent	1			
South Africa	2			
Sweden			1	
Switzerland	2		6	
Taiwan		1		
Turkey	1			
Ukraine		1		
Uruguay				1
Venezuela	5	1	2	
Vietnam			9	

*Source:* Table composed of data from the General Directorate of Migration and Aliens, 2006

#### ARTICLE 4

49. Article 40 of the Constitution, as already explained, contains a prohibition against subjecting any person to cruel or degrading treatment or to an indefinite sentence or confiscation of property. Any statement elicited by violent means will be null and void.

50. Costa Rica jealously respects the human rights of all its inhabitants without distinction, and this is reflected in the comprehensive legal framework described in both the first report and the present report.

51. Perhaps the main point to be stressed in this paragraph is Costa Rica's approval and ratification of the Optional Protocol to the Convention Against Torture. For years Costa Rica worked hard with the international community, States and non-governmental organizations to develop an instrument that would enable abuses and violations of human rights in prison systems.

52. Under the guidance of lawyer Carlos Vargas Pizarro in the early days of the working party and from 2000 of the distinguished lawyer and current member of the International Criminal Court, Mrs Elizabeth Odio, Costa Rica chaired the Committee on Human Rights which for nearly 10 years worked to develop a mechanism to help prevent human rights abuses.

53. The system adopted, comprising a national mechanism – which in Costa Rica might be the Office of the Ombudsman which is already carrying out this task – and a committee of experts as an international mechanism, will provide a dual preventive control. For Costa Rica, the focus adopted in the new instrument has an essential role since it is based on regular and periodic monitoring visits to detention centres by bodies of experts responsible for inspecting the installations and the treatment of prisoners.

54. The Protocol also fosters cooperation to prevent torture by maintaining a constructive dialogue with the States, in order to assist the competent authorities to implement any necessary changes to prevent torture and other forms of ill-treatment in the long term.<sup>7</sup>

55. Costa Rica, as established by various reports by States and non-governmental organizations, has no recorded cases of judicial, extra-judicial or political assassinations or disappearances, nor is it Government policy to violate human rights in any of the wide variety of possible ways. On the contrary, Costa Rica is internationally recognized as one of the State in which human rights are most respected in every way.

56. Similarly, in the country no cases of attempted torture as defined in article 1 of the Convention have been reported to the authorities.

57. Regarding the jurisprudence of the Constitutional Chamber, in Decision 11024-04, the Constitutional Chamber partially admitted a habeas corpus appeal for degrading treatment that a minor received in the cells of the Second Judicial Circuit of San José, without ordering the release of the minor; this appeal was lodged as a consequence of his detention, accusing the authorities of “having obliged him to say that was of legal age, being in a cell under very bad conditions and suffering ill-treatment”.

58. In its 2004 report, the Office of the Ombudsman gives an account of a number of complaints received for violations of the liberty and integrity of persons (arbitrary detentions and physical or psychological aggression). The main complaints came from transvestites; the remaining complaints of this type of violation were from persons intercepted by the police while passing along or meeting on a public thoroughfare.

59. Among the actual allegations received, we report the one presented by “an inhabitant who claimed that at the police station of Tuba Creek in Limón, the police stop and enter the buses and ask for passengers’ identification and check their belongings in an intimidating way, even though some take that route daily (Dossier No. 15153-22-2003)”. In its preamble, the Ombudsman’s Office doubts the usefulness and need for such measures, but regarding respect for the sociocultural diversity of the inhabitants of the canton of Talamanca and in the interests of effective police prevention work, the Ministry of Public Security is recommended to assign police officers to the station who are trained in human rights, special legislation and preventive police techniques, and to provide them with the technological facilities to detect any illicit activities, thereby minimizing the disturbance and effects on the public’s rights and interests.<sup>8</sup>

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<sup>7</sup> Inter-American Institute of Human Rights. Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. San José, Costa Rica, 2004, p. 31.

<sup>8</sup> Final report with recommendations, letter No 08810-2004-DHR: 16/09/2004.

60. During 2004 a number of complaints were investigated against the police from transvestites working in the capital and cities of Heredia, Alajuela and Cartago.<sup>9</sup> The report of the Office of the Ombudsman states that “after due investigation and analyzing the way in which the police are alleged to have approached the situation, no specific abuses were found, but the Ministry of Public Security was recommended to instruct the National Police Academy to identify the training needs of police officers of all grades and regions regarding non-discrimination, and to carry out training activities designed to ensure: the theoretical and practical understanding of the tasks and duties of the police and the real respect of the rights of all persons without any kind of discrimination based on age, sex, nationality, sexual orientation, choice of work, socio-economic situation, personal appearance, physical or psychological disability, or on any other condition contrary to the dignity of persons.

61. The Ministry of Public Security has two internal bodies for monitoring and processing complaints: the Department of Legal Discipline and the Comptroller of Services.

62. The Department of Legal Discipline, whose legal basis is Executive Decree No. 28856-SP, is the technical specialist legal body whose sole purpose is to implement disciplinary procedures and liability arising out of misconduct and irregularities by officials of the Ministry of Public Security. It operated as a Governing Body of administrative procedures of first instance and issues a recommendation decision based on its independent judgment to the competent decision-making body.

63. According to the records of the Ministry of Public Security, between 2000 and 2005 a total of 524 allegations were presented to this body, broken down as follows: (2000) 40, (2001) 82, (2002) 94, (2003) 120, (2004) 79 and (2005) 109.

64. The Comptroller of Services, on the other hand, operates in the framework of the comptrollers of services, in order to promote a continuous improvement in the provision of public services. Its work begins with an allegation (even by telephone) of any misconduct, upon which it asks the immediate superior of the officials involved to investigate the allegation and apply the procedural rules for punishing minor offences. In the case of serious misconduct, the case is referred to the Department of Legal Discipline.

65. According to data supplied by the Ministry of Public Security, this body has received 24 complaints for abuse of authority, broken down as follows: (2000) 8, (2001) 3, (2002) 3, (2003) 5, (2004) 1 and (2005) 4.

### **Application of the justice system to indigenous communities**

66. Expanding on what was said in the first report and as reported in the consolidated report 17-18 to the CERD Committee in 2006, the Costa Rican judiciary has set in motion a series of institutional measures to guarantee full access to justice for Costa Rican indigenous people.

67. All persons in Costa Rica, regardless of ethnic, national or social origin, have free access to justice and to exercise all the rights and remedies provided by the legal system to protect their rights.

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<sup>9</sup> (Case Nos 16791-22-2004, 16804-22-2004, 17351-22-2004).



68. In order to give a specific, differentiated treatment to the indigenous issue, the Supreme Court of Justice has set a deadline for the appointment of an inspector specializing in indigenous affairs, who will have jurisdiction over the whole country. A team of interpreters handling aboriginal languages has also been set, who may be summoned as required to the courts hearing the cases.

69. In order to ensure equal access to the courts and in particular to consider the indigenous view on the cases to be resolved, in Circular No. 20-2001, the Supreme Court of Justice instructed the Judges of the Republic, before ruling on disputes, to consult indigenous peoples in all disputes submitted for their consideration.

70. The above-mentioned Circular No. 20-2001 is worded as follows: Subject: Use of an interpreter were necessary and duty to consult the indigenous community on the scope of the conflict submitted for consideration.

**TO THE COUNTRY'S JUDICIAL AUTHORITIES HANDLING CIVIL AND CRIMINAL CASES**

***Be it known that:***

The Higher Council at session No. 5-2001 held on 16 January 2001, article XXXI, decided to inform you that where an interpreter is required, you are to designate one as appropriate to provide the necessary assistance for the effective application of article 339 of the Code of Criminal Procedure.

It also decided to inform you of your duty to consult and enquire with the indigenous community regarding the scope of the conflict submitted for your consideration, especially when that community incorporates Customary Law Tribunals, chiefdoms or Development Associations which resolve issues within the community.

71. The jurisprudence of the jurisdictional bodies concerning disputes, where one of the parties is indigenous, has focused in particular on agricultural issues (sale and transfer of land in indigenous territories) and the mandatory consultation procedures laid down by ILO Convention 169.

**ARTICLE 5**

72. In this section there are no noteworthy changes in relation to the information provided in the initial report. The powers of jurisdiction laid down in the Constitution, international conventions, the Criminal Code and the Law on Extradition delimit the legal framework in which Costa Rican courts can hear cases where the type of crime is torture.

**ARTICLE 6**

73. For the purpose of detention with a view to extradition, Costa Rica relies on the provisions in its Constitution, its Criminal Code and the Law on Extradition, unless there is a bilateral extradition treaty.

74. As stated in the previous report, this country has signed and ratified many bilateral extradition treaties, the common element of which is that they all guarantee the right to life and exclude as a ground of extradition the application of the death penalty.

75. Nearly all the extraditions that have taken place in Costa Rica in recent years, and the reference period is no exception, were linked to homicides, sexual offences, drug trafficking and money laundering. Costa Rican courts are competent only when the offence is committed on Costa Rican soil; however, most of the cases referred to were prisoners attempting to escape justice in their own countries. In this case, if the extradition request satisfies all the formal and substantive requirements, the Costa Rican courts make an extradition order.

76. In the case of the Ukrainian, Bohdan Kosiya, accused of war crimes, the Criminal Court of Cassation of San José ratified the expulsion order in February 2001. However, his lawyers claimed that it was null and void on administrative grounds, and the order was suspended.

77. In November 2003, the Ministry of Foreign Affairs received an extradition request for Mr Kosiya from the Polish Embassy in Costa Rica; however, it was not possible to grant it as Mr Kosiya died of natural causes on 30 November 2003.

#### ARTICLE 7

78. As indicated in paragraphs 377 et seq. of the previous report, the Law on Extradition lays down the grounds on which extradition is not to be granted; in these cases, if the Costa Rican courts decide that they are competent, the defendant has to be tried by a Costa Rican court, with the procedural guarantees and remedies provided for by national law.

79. Regarding extradition, Costa Rica signed the Inter-American Convention on Extradition, in Caracas, Venezuela, on 25 February 1981. It was approved by Law No. 7953 of 21 December 1999 and was deposited on 2 May 2000 with the United States of America, as approved by law No. 7146 of 30 April 1990. The Additional Notes to this Treaty were approved by Law No. 7260 of 9 October 1991.

80. There are also treaties in force with the Republic of China (Taiwan), signed on 12 December 1984 and approved by means of law No. 7186 of 26 July 1990; with the United States of Mexico, approved by means of law No. 7469 of 20 December 1994 and with Italy, signed on 6 May 1873 and approved by the National Congress on 24 July 1874. In accordance with Decree No. 11 of the Executive of 5 April 1966, it remains in force for all domestic and external purposes.

81. Furthermore, treaties have been signed with Colombia, on 5 May 1928 and approved by Law No. 60 of 13 July 1928; Belgium, signed on 25 April 1902 and approved by law No. 78 of 13 August 1902; Spain, signed in Madrid on 23 October 1997 and approved by law No. 7766 of 24 April 1998 and with Nicaragua, signed in San José on 8 November 1893. The ratification instruments were exchanged in Managua on 7 September 1896.

82. Bilateral extradition agreements are under negotiation with Peru and Paraguay.

83. To date, there are no records in the national statistics system of any judgment for acts of torture, although there are sentences for abuses of authority.

## ARTICLE 8

84. On this point, it is recalled that in Costa Rica the extradition procedure is governed by Law No. 4795 of 16 July 1971, entitled the “Law on Extradition”, amended by Laws Nos 5497 of 21 March 1974 and 5591 of 9 November 1976.

85. As explained in the previous report, the Law establishes the grounds, procedure and exceptions that apply in the absence of a bilateral or multilateral treaty. It is once again stressed that the legal procedure is followed in all cases, with full procedural guarantees and respect of human rights.

## ARTICLE 9

86. The two legal assistance treaties, with Central America and Mexico, already reported in the first report are still in force at the time of writing.

87. The Treaty on Extradition and Mutual Legal Assistance with the United States of Mexico was signed in the city of San José, 13 October 1989 and approved through Law No. 7469 of 20 December 1994.

88. The Treaty on Mutual Legal Assistance in Criminal Matters between Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, was signed on 20 October 1993 in San José, Costa Rica, and approved through Law No. 7696 of 3 October 1997.

89. The agreement on judicial assistance in criminal matters between the Republic of Costa Rica and the Republic of Paraguay, registered as number 13,548, is now in the legislative process, along with the Inter-American Convention on Mutual Assistance in Criminal Matters, adopted in Nassau on 23 May 1992.

90. In Costa Rica, with the exception of the reported Kosiya case, there is no knowledge of other cases in which defendants have been detained for acts of torture. In any case, the national authorities are always prepared to act and work to cooperate in the detention and trial of anyone responsible for acts of torture, or cruel, inhuman or degrading treatment.

## ARTICLE 10

### **Training**

#### *Prison training academy*

91. The officers of the Prison Police, in the context of their induction training, receive a course entitled “Constitution and fundamental rights”, which reinforces the idea of observance of prisoners’ fundamental rights.

92. Furthermore, the institutional authorities are constantly reminding prison officials through various circulars of their obligation to respect the fundamental rights of inmates and to use reasonable force only in the exceptional cases and circumstances in which it may be necessary.

93. The following table gives a detailed breakdown of the courses given during the period 2001-2005, showing the number and types of courses given, and the number of trainees.

<i>Number</i>	<i>Course</i>	<i>Trainees</i>
5	Criminological thought	122
7	Human rights and the prison system (administrative staff)	122
2	Human rights and the prison system (technical and professional staff)	49
2	Principles and values in the national prison system	42
1	Technical care in the Costa Rican prison system	24
40	Prison police basics	1400
1	Alternative to violence programme	30
1	Heads of Guard Service	20
1	Departmental Supervisors	20
2	Legal bases of a search	30
TOTAL		1859

*Source:* Prison Training Academy, Ministry of Justice.

### **Training of police force**

86. According to article 75 of the General Law on Police, “the work of coaching and training shall be the responsibility of the Francisco J. Orlich National Police Academy”. Meanwhile, article 76 of the Law states that “police coaching and training shall be based on the following criteria: professional and ongoing, it shall be approved by the Ministry of Public Education and shall not be military in nature; accordingly, its outlook shall be civil, democratic and protective of human rights.

87. The basic technical police course, given in the three centres of the National Police Academy, comprises 1050 hours, divided between the professional technical course (500 hrs), human issues (180 hrs), legal issues (190 hrs) and supervised practice (180 hrs).

88. As for the human rights programme taught to the police forces, the course aims to ensure that the members of the security forces observe human rights, for which it is essential that they understand the importance of human rights at national and international levels, observance and application of them in the exercise of their police duties and the rights that help the responsible official to enforce the law.

89. The subjects taught, covered in the National Police Academy’s human rights manual, are as follows:

- a) Origin and historical development of human rights. Stages and processes
- b) Concept of human rights
- c) Main characteristics of human rights

- d) The human rights of the individual in relation to the rights of the community
- e) Rights are irrenounceable and inalienable.
- f) List the subjects or holders of human rights.
- g) Why human rights are regarded as inherent in the human person and the consequences of this inherent nature of human rights.
- h) Human rights in relation to the public authorities and their application at domestic and international levels.
- i) Classify human rights by their subject or holder, by the nature of the subject they govern and by the historical moment at which they were recognized.
- j) Distinguish between human rights, fundamental rights and public freedoms.
- k) The ordinary, general and extraordinary or exceptional limits to human rights.
- l) Civil, political, economic, social and cultural rights. Respect for and protection of civil and political rights.
- m) The Constitution, laws, international treaties resolutions and declarations protecting human rights in the country; how human rights are protected and safeguarded at national level.
- n) Explain how the State and violate individuals' human rights.
- o) Conditions under which the State may restrict human rights in a state of emergency.
- p) Basic principles on the use of force and firearms.
- q) Knowledge of the code of conduct.

90. The course takes place in the form of lectures, supplemented by group work and practice in the application of the concepts explained in the lessons; there are also round tables to enable the student to take part in a debate on human rights, especially of vulnerable groups.

91. The police forces also receive two courses on legislation, one of 50 hours and another of 60 hours, in which they are taught the legal knowledge required to carry out the function of police officer, in line with the powers, rights and guarantees of the Code of Criminal Procedure and the basic principles of criminal law, the definition and structure of a crime, the difference between an intentional and a culpable offence, the grounds of justification and exculpation and the study of the crimes most commonly handled by the police.

92. Regarding the Children and Adolescents Code and other legislation in force, the police forces have received intensive training on handling sexual exploitation of children, and in particular for the purposes of this report, a policy of "support for the institutional strengthening of the Ministry of Public Security regarding human rights, gender, children, adolescents and young people", has been devised. It is coordinated by the Ministry of Public Security, Governance and

Police, the PANIAMOR Foundation and with financial support from UNFPA. 233 officials have been trained under this project.

93. Institutional policies have also been issued for the treatment of minors, notably the guidelines on arrests involving a minor, which set parameters to be followed based on strict observance of human rights and constitutional guarantees.

94. Guidelines have also been drafted on minors selling illegal products on the public thoroughfare, which stipulate that the authorities must respect the constitutional freedom of movement and the principle enshrined in the Children and Adolescents Code of not revictimizing victims who have to work owing to poverty, lack of opportunity and cultural models.

## **Prison system**

### ***Institutional approach to prisoners***

95. Prisoners must be treated at all times as human beings enjoying all their rights, for whom the principles inherent in their dignity and equality in relation to all human beings must be an essential principle; moreover, principles such as solidarity are key for understanding that in a rights approach, prisoners enjoy full economic, social and cultural rights, subject to certain restrictions of their civil and political liberties.

96. These principles apply fully to men, women and child detainees in the prison environment. Prisoners are viewed as persons brimming with potential rather than diminished and full of pathologies; they are human beings with responsibilities who have to accept their rights and obligations.

97. Being deprived of their liberty does not make them different from other citizens and their rights are therefore recognized as such and they are protected from social stigmatization, both in the environment where they live and in relation to the community they belong to.

98. From the implementation of the Institutional Development Plan, from 1990, the technical approach to the prison population is through the Care Units. Each care unit is a priority area of intervention for and with the prisoner. There is an inter-disciplinary approach to each subject field, with a view to attending to the individual's basic needs, without ignoring their capabilities and potentialities.

99. Each of the established units implement specific plans of action for the population, starting from their physical placement in the prison system. This breaks down into the four following levels: institutional care, semi-institutional care, community care and care for children and adolescents.

### ***Institutional care***

100. At this level of care, all the measures and strategies are aimed at prisoners in closed institutions, whose characteristics require them to be temporarily segregated from society.

101. The centres of this level are known as "Institutional penal centres" and are characterized by their restraint measures. The following institutional penal centres are of this level: Cartago, San Rafael, Gerardo Rodríguez Echeverría, San Carlos, San Ramón, Limón, Pococí, Pérez Zeledón, Liberia, Puntarenas, San José, El Buen Pastor and La Reforma.

### ***Semi-institutional care***

102. At this level, measures and strategies are aimed at prisoners who, owing to their characteristics, are cared for in ways involving the individual's active participation in the community, either with the institution's resources or with resources available in the community.

103. The centres of this level are known as "Semi-Institutional Penal Centres" and are characterized by the individual's active participation in the community and community bodies taking part in the care processes. The following Institutional Centres are of this level: Nicoya, San Luis, San Agustín, San José, Cartago, San Carlos, Sandoval-Limón, Pérez Zeledón and the Women's Semi-Institutional Centre.

### ***Community care***

104. At this level, measures and strategies are aimed at having prisoners cared for by community institutions or in the community itself. This level handles prisoners who are neither institutionalized nor semi-institutionalized.

105. The needs of these prisoners that the community cannot handle, owing to their specific nature, such as "care of violence", are met by officials working at that level.

106. The following community offices are at this level: San José, Alajuela, Cartago, Nicoya, Heredia, Liberia, Zona Sur, San Ramón, San Carlos, Puntarenas and Limón.

### ***Care for children and adolescents***

107. To cater for the specific needs of this population, and the much smaller number of persons to be handled, there are the following four sub-levels: Admission and referral, institutional care, semi-institutional care and community care.

### **Technical care procedure**

108. This is structured as a continuous, coherent, systematic and personalized follow-up process for each person from their admission until they leave the prison centres.

109. There are three phases for follow-up of prisoners at the various levels and centres: admission, technical follow-up and exit.

110. The admission phase consists of the reception and technical supervision of the individual, collection and analysis of information, determination of areas of care, sending of a technical report to the National Criminology Institute pursuant to Article 55 of the Criminal Code, regarding the practice of commuting a sentence, returning the technical plan to prisoners and defining their physical placement.

111. The admission teams draw up a care plan and add the necessary information to the dossier for the monitoring phase of the case.

112. The monitoring phase consists of the care provided by the various units and involves assessment procedures, which may result in the individual being moved to another location.

113. Placement in the communal quarters for prisoners, which implies a change from institutional level to semi-institutional or community level, is the competence of the Assessment Councils, which recommend the location to the National Criminology Institute, the latter approving the change or not.

114. The exit phase, whether intermediate or final, must be a technical phase enabling the technical team to delimit and indicate the new placement possibilities. It is important to plan the final exit during the last three months, thereby helping the inmate to relate to the outside world.

### **Policies for re-entry into society**

115. Policy regarding the treatment of prisoners is adopted by the Ministry of Justice and implemented by the National Criminology Institute, in line with the functions and powers assigned to it by Law 4762 of 8 May 1971; these include:

- a) Treatment of prisoners;
- b) Criminological investigation and statistics;
- c) Advice to judicial authorities.

116. Based on a policy of humanizing the prison institution, basic care for inmates is promoted, without distinction as to legal status, sex or age. The system has also provided for individual and differentiated treatment as required by the individual, following a criminological diagnosis that later evolved into an interdisciplinary approach and specific areas of care.

117. Specific measures in this area since 1989 include the consolidation of the aspects designed to improve observance of the prison population's human rights, with measures such as changes in visiting times, receipt of food, searches and changes in maximum security units. The vocational education area of the system is being promoted, by revising the work, production and training system in the prisons with a view to improving resocialization.

118. Moreover, procedures are being modernized by the digitization of the National Criminology Institute's information flows, so as to keep an up-to-date record of sentence calculations and other important information while the sentence is being served, and periodic reviews of the progressive technical system, and reformulation of the progressive technical system of treatment and care for the sentenced prison population are being carried out, creating new progressive alternatives.

119. A progressive model is currently being promoted that fosters the de-institutionalization process, as part of the Supervised Release on Probation programme. Given the level of success achieved, this is an important step forward in the history of the institution, consolidating the policy of finding successful alternative for the execution of the sentence. A consequence of this is that from 1988, the criminal population involved in the programme has grown considerably, and the institution is making great efforts to find sources of jobs for inmates as part of the re-entry process, while at the same time restructuring this programme known as the Semi-Institutional and Community Care Level, which is undergoing technical upgrades and being allocated more resources.

120. In early 1991 the Costa Rican prison system began a process of transformation aimed at implementing a policy in line with the realities and needs of the institution. A project for a



criminological court is being devised with the policy of de-institutionalizing rather than institutionalizing people, which are based on a clear knowledge of the real situation of Costa Rican prisons, the re-entry of the individual into society and a deep respect for human rights.

121. In this context, the National Criminology Institute (INC) is beginning a process of devising legal instruments (circulars) and general guidelines determining measures to be implemented. The theoretical care model in use is being established, based on an interdisciplinary approach, so as to avoid fragmenting the individual's (social, psychological and legal) history, rethinking it as a more comprehensive working tool.

122. Circular 10-91 defines the powers of the bodies subordinate to the Institute and lays down procedures for reducing bureaucracy in establishing the facts of the case, thereby improving the quality of the service and increasing the number of cases handled.

123. The de-institutionalization policy has directly helped prisoners to return to their families, work and community, taking advantage of the contributions of private and public enterprise for job placement.

124. Owing to the country's migration policies, the illegal immigrants in the prison population represent a segment of the population facing obstacles for the application of the de-institutionalization policies; accordingly coordination links have been established with the Ministry of Governance's Department of Migration and Aliens, thereby obtaining authorization for a work permit for foreigners under articles 55 and 64 of the Criminal Code for the length of time the sentence is commuted.

### **Prison population**

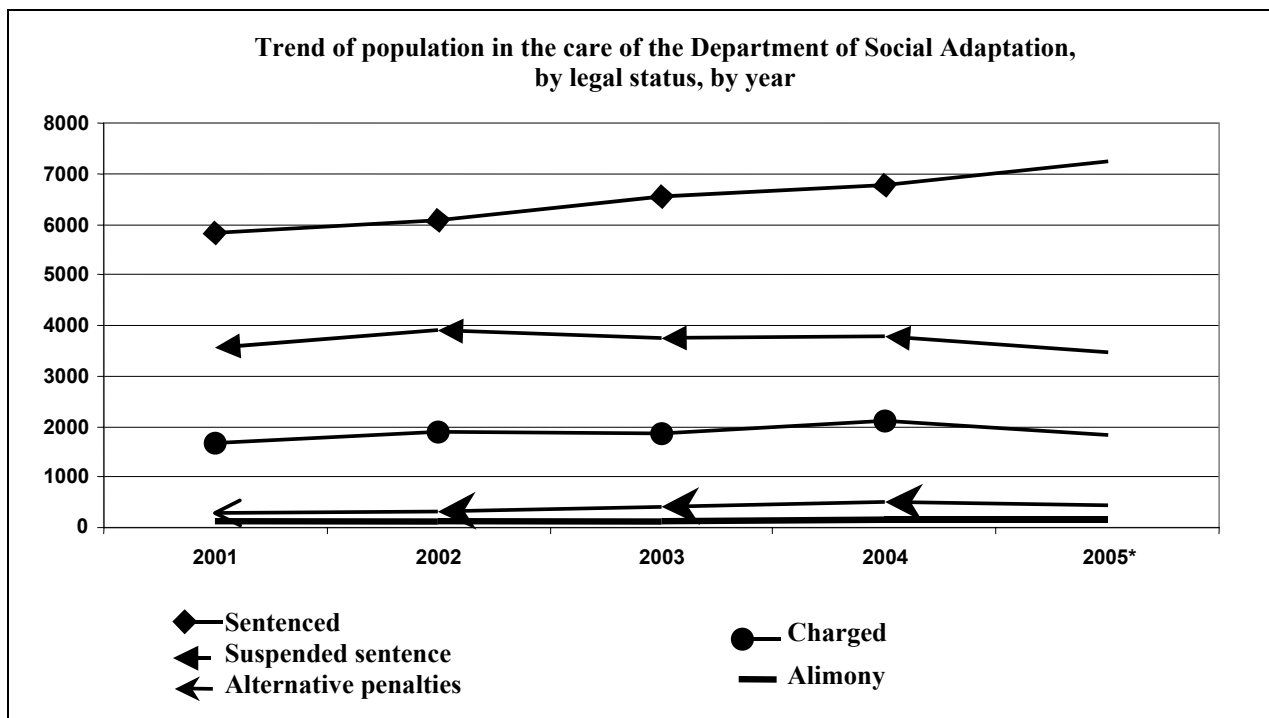
125. In August 2005 the total population in prison centres was 13 143; the total inmates between 2001 and 2005 was increasing and, although low in percentage terms, this growth led to a substantial burden on the Government authorities since it was necessary to extend the prisons and find real solutions to the overcrowding problems in the prisons.

126. The following table shows the evolving prison population by legal status handled by the Department of Social Adaptation during the period 2001-2005.

<i>Legal status</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>
Sentenced	5840	6082	6537	6771	7256
Charged	1682	1896	1870	2119	1813
Stay of proceedings	3545	3917	3739	3779	3480
Alimony	127	135	137	151	160
Alternative penalties	273	320	425	497	434
<b>TOTAL</b>	<b>11467</b>	<b>12350</b>	<b>12708</b>	<b>13317</b>	<b>13143</b>

*Source:* Statistical yearbook 2001, 2002, 2003, 2004. Monthly report on prison population, August 2005, Research and Statistics Department.

127. An important indicator shown in the following table is that there has been a trend of slight increase in sentencing, while inmates with other legal statuses have remained stable.



Source: - Department of Social Adaptation, 2005.

128. The rising total prison population in the late 80s revealed that it was absolutely essential to increase the capacity of the prisons. Accordingly, land was acquired to build the Cartago admission centre, the capacity of the Soledad, San Luis and Sandoval de Limón trust centres were extended and capacities increased, and a donation of land is being processed for the building of the San Carlos and Liberia admission unit. An alternative site is also being sought to locate the population of the San Lucas centre, sited opposite the coast of the port city of Puntarenas.

129. At 9 May 1990 there was an overcrowding problem, in that the prison population totalled 1340, i.e. 262 more than the centres' capacity or 24.3% overpopulation; this was a consequence of almost no investment in prison infrastructure and the closure of major centres such as San Lucas, La Soledad, and Tierra Blanca de Cartago.

130. Given this scenario, the various ministerial authorities began to devise a prison infrastructure plan, with a view to improving the living standards of prisoners, security conditions of prisons and the working conditions of prison officials, within the framework of a commitment to human rights. This task was carried out via the Board for Construction, Installation and Property Acquisition, using resources earmarked for the purpose in the national budget.

131. In the period 1991-1992 the San Lucas prison centre was closed owing to the deplorable condition of its infrastructure and to its past history of human rights abuses in respect of its prisoners<sup>10</sup>. This centre was closed also in response to a change in institutional vision based on the principle that prison does not rehabilitate but merely reinforces the stigma.

<sup>10</sup> In this connection, the novel by the Costa Rican author, José León Sánchez, "La Isla de los Hombres Solos" (The Island of the Single Men) is revealing; a film was also based on it.

132. In the light of that policy, 60% of all prisoners were placed in regional trust centres in various parts of the country, and 40% in closed centres.

133. This momentous event closed a chapter in Costa Rican history that was dominated by torture, violence, disorder and punishment, and heralded a new era with prospects for humanizing the prisons and observing human rights.

### **Prison visits**

134. Prison visits are governed by the Regulation on Visits to Costa Rican Prison Centres. Decree 25881-J of 20 February 1997. It governs visits to minors and adults, stressing the importance of the visit as the form of direct contact with the prisoner.

### **Health care**

135. Regarding access to health, the basic principle is that prisoners have access to health since their only restricted right is freedom of movement; as indicated in article 1 of this report, the law states that medical care is the responsibility of the Costa Rican Social Security Fund (CCSS), however, in view of the special circumstances and levels of demand in prison institutions, a number of agreements have been signed with the CCSS for the provision of suitable medical services.

136. In order to supplement the CCSS services, the Department of Social Adaptation has set up its own organizational structure, known as the health unit, coordinated by a national office which in turn has full representation in the National Criminology Institute.

137. The agreements with the Costa Rican Social Security Fund (CCSS) guarantee availability of sufficient in-house medical staff (of various specializations and services) and, in coordination with other public and private bodies linked to the health sector, prisoners' health problems are treated, either in external hospitals or in those which are being set up in each prison establishment.

138. In March 1980 a cooperation and service agreement was signed between the prison administration and the CCSS, enabling a clinic to be set up at the La Reforma centre, suited to the size and type of the population of that centre. It was set up with coverage on three working days and a weekend standby service. Subsequently, as a result of budget restrictions, the service was restructured; the clinic remains in operation, though in a more limited form than the original one.

139. In the other prisons the rest of the population is treated at the hospitals of the communities where they are located, as are the prisoners at La Reforma when they require specialist medical care.

140. In 1989, the Ministry of Justice renegotiated the draft agreement to be signed with the CCSS, guaranteeing the right to health for all prisoners and their immediate family; the Ministry of Justice pays for part of the service by transferring budget resources to the CCSS from the national budget of the Republic.

141. Also in that year, the Ministry of Justice took over the management and administration of the clinic at La Reforma, setting up health care in important areas (including psychiatry, dentistry and dermatology directly at the Centre.

142. To restore the balance between the institutions, in the new agreement in 1990 the Ministry of Justice succeeded in creating 56 posts for the health unit, for general practitioners and specialists in psychiatry, gynaecology and obstetrics, paediatrics, dentistry, nursing, pharmacy, nutrition and occupational health. These human resources were distributed throughout the prisons with the highest population density, placing the paediatrician in the Minors Centre, the gynaecologist at the Buen Pastor prison for adult women, with and a programme of visits to the Zurquí Juvenile Centre for care of minors, and the psychiatrists and dentists spread over the larger centres, with visits by referral to the smaller centres.

143. In April 1993, under the new agreement, it was extended to new centres, and some further services were implemented relating mainly to secondary and tertiary care, for both prisoners and their immediate blood relatives.

144. In 1996 a 36-bed semi-hospital care unit was added to the clinic at the La Reforma centre, to treat patients recovering from surgery, patients at the most infective phase of infectious and contagious diseases, while providing essential treatment, and beds for prisoners with special ailments requiring assistance with walking, feeding themselves or their normal physiological needs.

145. This unit is now a reference centre receiving prisoners with an ailment or post-operative condition from other prisons; after recovering they are returned to their original prison.

146. In 1998 a post was created for a specialist in infectology, based at the La Reforma centre, who travels periodically to the other centres in order to diagnose and treat infectious diseases, principally TB, STDs and HIV/AIDS.

147. For running the clinic at La Reforma, in coordination with the CCSS, there is currently medical management, an administrator, secretarial services and clinical archives, supplies, a clinical laboratory with a referral process, a casualty department, a class (3) pharmacy with its own management, a semi-hospitalization section with 18 beds, a social assistance service, with a professional social worker and legal advice services with a professional lawyer, a dental clinic and specialist medical care in infectology (1), psychiatry (2) and general practitioners (5).

148. These resources are used to form seven Basic Comprehensive Health Care Teams (EBAIS)<sup>11</sup>, covering the following units attached to the La Reforma clinic:

- a) Gerardo Rodríguez prison clinic,
- b) San Rafael prison clinic,
- c) Older persons' prison clinic,

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<sup>11</sup> The purpose of the basic comprehensive health care teams (EBAIS) is to provide basic comprehensive care to the population at large. They are composed of a general doctor, a nursing auxiliary, a primary care technical assistant, a nurse, a dentist, a laboratory technician and a social worker.

- d) Area B surgery,
- e) Area C surgery,
- f) Area D surgery,
- g) Industrial workshops surgery.

149. The semi-hospital care service has space for 18 prisoners and a casualty department that operates Monday to Friday from 8 a.m. to 10 p.m. in two shifts, a day shift from 8 a.m. to 4 p.m. and an evening shift from 3 p.m. to 10 p.m. If the duty doctor is not available, prisoners requiring medical attention from any of the above-mentioned EBAIS go to this casualty department.

150. At the Buen Pastor Institutional Penal Centre, the health unit comprises a head doctor, who is a general practitioner, a doctor specializing in gynaecology and obstetrics and a psychiatrist for 16 hours a week; there is also a nurse specializing in obstetrics and another general nurse, both full-time professionals, a dental clinic and a secretarial department and clinical archive. There is also an observation service able to handle six patients, and a clinical laboratory and pharmacy. The paediatric service at Casa Cuna (set up for minors aged 0-3 who are children of women prisoners at the Centre), is provided by the general practitioner who makes referrals where necessary to the paediatric service of the Marcial Fallas clinic. It is open Monday to Friday from 8 a.m. to 4 p.m.

151. The San José institutional centre has an outpatients clinic with casualty department, staffed by a head doctor and general practitioner, a professional nurse and two nursing auxiliaries, a secretary who also manages the clinical archives, and a pharmacy technician. There is also a dental clinic. The unit is open Monday to Friday from 8 a.m. to 4 p.m.. Specialist and hospital care are provided by the hospital that the centre is attached to.

152. The Cartago Institutional Penal Centre has an outpatients clinic with casualty department open Monday to Friday from 8 a.m. to 4 p.m. . It is staffed by a head doctor, who is a general practitioner, a psychiatrist for 8 hours a week and an infectologist for 8 hours a week, a professional nurse and a nursing auxiliary; laboratory and pharmacy services are provided by referral.

153. It also has an in-house doctor, a general practitioner, to treat the officials of the institution; this doctor also provides medical care for the adolescents at the Zurquí juvenile training centre one day per week, and on Fridays at the Puntarenas institutional care centre.

154. Health services at the other centres centre around a basic infrastructure with one full-time professional nurse, with visits from the CCSS doctor once or twice a week, except at the Pococí and Limón institutional penal centres, where a seconded doctor and professional nurse provide cover for both centres.

155. For all the other establishments, specialist or hospital care is provided at the clinic or hospital to which each penal centre is attached.

156. A mobile dental unit (UMO) began operating in 1988, with the function of carrying out two-day tours (Thursdays and Fridays) every fortnight to serve the centres where CCSS clinics to which they are attached do not provide an adequate service.

157. In this way, in one tour the UMO solves dental health problems for an average of 60-80 prisoners, quite a substantial number of treatments in relation to the two appointments a week offered by the CCSS clinics.

158. Health is perhaps one of the issues on which the monitoring work of the Office of the Ombudsman focuses most; its annual reports contain a special section devoted to prisoners' health and each of them indicates that the greatest number of complaints it receives relate to deficiencies in the provision of health services.

159. In its latest report, the Office of the Ombudsman states that a number of administrative practices persist that should be corrected to ensure full access by prisoners to a prompt and effective medical care service. The practices to be looked into by the authorities include delegation of administrative functions to security officials, which on occasion has led to "violation of the right to health to the detriment of this population".<sup>12</sup>

160. The Institution also reports that "prisoners repeatedly complain that their right to health is being violated due to lack of institutional transport"<sup>13</sup>, leading to appointments at various hospitals being missed".

161. A third issue to be tackled, according to the Ombudsman, is the delay in supplying medicines. On this point, however, it acknowledges that "at the Gerardo Rodríguez institutional penal centre, the health authorities have already made changes to this task, assigning it to the health officials themselves, and introducing a logbook".

### **AIDS in the Costa Rican prison system**

162. Regarding care for AIDS in the penitentiary centres, in 1986, when four cases of HIV/AIDS were detected at the San José institutional penal centre, the Department of Social Adaptation and the Ministry of Justice launched initiatives for the care and prevention of this disease in prisons, despite the high profile of the issue at the time.

163. In the first instance the institution produced a comprehensive presentation of measures to inform people about the disease and its consequences, and an explanation of prevention measures, so as to minimize the spread of HIV/AIDS in the Costa Rican prison system.

164. To offer an appropriate response and approach, the National Prison HIV/AIDS Care Committee (COPESI), an interdisciplinary body, which has the task of implementing measures designed to tackle the problem in the 29 prisons that existed at the time.

165. Based on COPESI's institutional role, workshops were held in the prisons for the staff and prisoners, involving talks, showing of videos, and making the population aware of the use of condoms. These measures were disseminated to the whole prison population. They are still ongoing.

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<sup>12</sup> Office of the Ombudsman, Annual Report 2004-2005, 6. Prison Population, b.- Health care.

<sup>13</sup> Ibid.

166. In 1989 a three-day seminar-workshop on HIV/AIDS was held for 120 officials representing all the national centres of the prison system. Experts from the Pan-American Health Organization provided funding and took part, along with professionals from the Ministry of Health's CCSS, INCIENSA<sup>14</sup> and other institutions involved in tackling this issue.

167. The outcome of this seminar was an initial document containing institutional rules for tackling HIV/AIDS in the national prison system. This document was approved and ratified by the Institutional Technical Department. Backed by this document, AIDS sub-committees were formed in all prisons to run workshops, hold talks with videos, distribute condoms, pamphlets and brochures so as to raise awareness in the population, thereby encouraging them to pass on and spread the information and help prevent the spread of the AIDS pandemic.

168. In 1993 the Prison Training Academy held another seminar-workshop in order to update the previous work, the methods used and the impact achieved, with statistical monitoring of the behaviour of the syndrome in the national prison system; it also included the new theme of HIV/AIDS among minors in conflict with the law, for which a number of guidelines were issued.

169. In order to make the process sustainable, COPESI meets on the second Friday of each month, analyzing information provided by the sub-committees. Monitoring and supervisory visits are also made to the institutional centres, so tackling the issue in a systematic and comprehensive way.

170. For October 2000, a new workshop-seminar, funded by the Pan-American Health Organization, was held, with two central goals: the first was to assess officials' knowledge of handling prisoners with HIV/AIDS in prisons and the second was to draft a paper of policies, technical guidelines and methods complying with Law No 7771 (the General Law on AIDS) and its implementing regulation, and containing diagnosis and comprehensive care procedures for prisoners with HIV/AIDS in the national prison system, and disseminated the document under the title: "Rules and procedures for comprehensive care of HIV/AIDS in the Costa Rican prison system".

171. The document contains policies, guidelines and approaches to care of adult and minor prisoners; it also contains diagnosis and care procedures emphasizing close communication with the AIDS committees of the national and regional hospitals, especially the Hospital México – the largest in the country. In November 2001, the document was examined and adjusted to bring it into line with the law at Session No 1501 of the National Criminology Institute's Technical Department.

172. With tasks similar to those of COPESI, the National Prison Committee for Tuberculosis Care (COPENAT) also operates, issuing the necessary guidelines for managing procedures, prevention and treatment of tuberculosis at national level and within the prison system.

173. Chronic disease clinics have also been organized in all prisons in order to achieve appropriate and effective control of chronic diseases among detainees in the prison system.

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<sup>14</sup> National Institute of Science and Health Research.

174. From 1998 to 2004, premises were built designed to treat health problems in the following institutional penal centres: Liberia, San Carlos, Gerardo Rodríguez and Cartago, and the clinica of the San José institutional centre was remodelled, thereby relieving the workload on the local CCSS clinics in the communities where those prisons are located.

175. With the increasing size of the La Reforma clinic, in 2002 a post was created for a specialist in pharmacy, in order to administer movements of medicines in that and nearby prisons.

176. By 2004, there was at least one professional nurse in each prison, able to provide immediate coverage for situations linked to health problems in the prison population, so offering an opportune and effective response to the provision of the service and reducing the number prisoners needing to be taken to hospital.

### **Mentally disordered persons in conflict with the law**

177. The issue of mentally disordered prisoners is important because it has not been properly regulated. At the behest of the Office of the Ombudsman an interinstitutional committee was formed, composed of officials from various institutions of the Executive and Judiciary, with a view to detecting the problems arising out of the application and implementation of the precautionary measures, security measures and the care of prisoners suffering from any mental disorder.

178. The committee's main goal was to establish, from the legal and medical points of view, the rights of persons with mental disorders in conflict with the law, the State's responsibility in this area and the type of centre where this population could be placed in order to receive proper medical and technical attention.

179. An indication of the scale of the problem is that during the period 2003-2004, the National Psychiatric Hospital with 811 beds, treated 637 cases, 53% of which were men (339 cases) and 47% women (298 cases); of those, a total of 49 cases (90% men) were referred under legal proceedings.

180. In the past, persons who have been sent for secure medical treatment have tended to be interned for many years, which in practice amounts to indeterminate sentences, leading to damage, stigma and segregation, and a lack of real opportunities for re-entering society.<sup>15</sup>

181. On 15 October 2004, officials of the Office of the Ombudsman presented to the members of the Interinstitutional Committee of a project entitled "Creation of an alternative centre specializing in comprehensive psychiatric care for mentally disordered persons in conflict with the law".

182. This project, which follows a study by the competent institutions, considers aspects such as the rights of disabled persons, the rights of prisoners, the problem of mentally disordered persons in conflict with the law, the description of the issue of precautionary internment measures and curative security measures at the National Psychiatric Hospital and the description of the project

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<sup>15</sup> Office of the Ombudsman. Creation of an alternative centre specializing in comprehensive psychiatric care for mentally disordered persons in conflict with the law. P. 3.



to build an alternative centre specializing in comprehensive psychiatric care for those accused of or sentenced for criminal offences, specifying the staff required on the premises to care for the population and what kind of security measures are required.

## **Diet**

183. Within the administrative services provided by the Department of Social Adaptation, is the “Nutrition Department”, in place since 1989; at central administration level it is currently staffed by a head nutritionist, 2 supervisors at national level and support staff.

184. The catering services are one of the most expensive items in the institution’s budget, accounting for some 30% of the total budget for the purchase of the foodstuffs required to feed the prison population and staff, plus the wages of the kitchen staff, equipment and public utilities (water, electricity and gas). A defined balanced diet is supplied that includes regular consumption of red and white meat.

185. Depending on the number of users of the service at each centre, the Department of Nutrition places orders based on the food products included in the diet, which the supplier delivers to the various centres in monthly or weekly instalments, as agreed for each type of product (grain, groceries, meat products, greens, vegetables and other perishables).

186. In 1994, more elaborated order documents were introduced, to take account of the needs of each group concerned: prison population, security officers, and technical and administrative staff, also considering the kinds of food authorized, namely:

- a) Prison population: breakfast, lunch, coffee, dinner;
- b) Security officers: the four meals above plus a night ration;
- c) Technical and administrative staff: lunch.

187. The assignment of therapeutic diets is also considered, necessitating the purchase of special additional products, such as tea, oats, biscuits, cheeses and gelatines. In 1999 Circular No 3 was issued (and is still current) as a nutritional guide for persons with pathologies.

188. From 2001, the list of foods used in the normal diet was revised, to offer more variety and a proper nutritional input in the dishes provided as part of the weekly menu, which is monitored at central level by the Department of Nutrition to check how the products supplied are used and prepared, and the frequency at which similar preparations are served. The average energy or calorie input is 2 500 kcal, the real need of an adult man is 2 900 kcal, and 2 200 kcal for women.

189. Specific diets are also considered for different groups according to age and gender, and meals are adapted to their level of activity. The groups are as follows: older persons, minors, adult men and women.

190. In 2003, the response to special dietary needs was improved and checks were introduced, as explained in Circular N-06-2003 on therapeutic diets, which are prescribed by the staff of the Health Unit serving each prison.

191. A new system to control the quantities, quality and preparation of products was set up, allowing better monitoring of the suppliers of the prison system and the internal units related to the catering services, and the Department of Nutrition stepped up its supervision of the kitchens and catering procedures in all the prisons.

192. With the consolidation of the Department of Nutrition, the foodstuffs purchasing procedures were reviewed and altered to enable the bodies involved to set up a cross-referenced control system, so that catering costs can be determined with better precision at any time for proper use of budgetary resources.

193. Despite efforts to supply a diet suited to the customs and needs of Costa Ricans, the institutions' financial circumstances have not always allowed an adequate diet to be guaranteed. It is clear that supplies of dairy products, fruit and vegetables need to be improved to come closer to the ideal coverage of individual and communal requirements, so fostering optimum health.

194. In special diets, appropriate products have been supplied as food supplements. All of the above developments reflect the interest and responsibility in providing proper human nutrition to prisoners and prison staff, which has been achieved today to a large extent through the implementation of controls and smoother and more efficient working methods, which can be further improved.

195. From 1997 the number of officials specializing in cookery was increased so that they could process and prepare the food, rather than having the inmates do it as was the case previously. There is currently a staff of 144 cooks spread over the various prisons.

196. In the special case of La Reforma, which has the highest population in the country, from 2001 it has had its own kitchen, where two full-time nutritionists work with sufficient support staff to offer a centralized service to the whole population.

197. As a consequence of the above, under the Prison Infrastructure Improvement Plan there are plans to build new kitchens and stores for the prisons, fitted with specialized equipment for these services (refrigeration systems, cooking pots, ovens, cookers, etc.). Work of this kind has been going on at the Pérez Zeledón, Liberia, Buen Pastor, Pococí, San Carlos and Cartago prisons.

198. The following table shows the budget allocated for each year under the foodstuffs subheading, and the average annual population. This analysis reveals that from 1995 there was an increase in the amount of the budget allocated to the foodstuffs heading, as a result of the increased observed in the prison population, although the two headings are not proportional to one another.

<i>Year</i>	<i>Budget subheading 240 (¢)</i>	<i>Average annual population</i>	<i>Annual cost based on average population</i>	<i>% growth in relation to previous year's budget</i>
1989	228 000 000	3 892	58 581.71	
1990	270 000 000	3 905	69 142.13	18.03
1991	303 384 000	3 961	76 592.78	10.78
1992	303 384 000	3 346	90 670.65	18.38

<i>Year</i>	<i>Budget subheading 240 (¢)</i>	<i>Average annual population</i>	<i>Annual cost based on average population</i>	<i>% growth in relation to previous year's budget</i>
1993	349 000 000	3 472	100 518.43	10.86
1994	365 000 000	3 698	98 702.00	-1.81
1995	410 000 000	4 200	97 619.05	-1.10
1996	615 449 627	4 705	130 807.57	34.00
1997	800 000 000	5 804	137 835.98	5.37
1998	910 000 000	6 004	151 565.62	9.96
1999	1 200 000 000	6 943	172 835.95	14.03
2000	1 575 000 000	7 575	207 920.79	20.30
2001	1 375 000 000	7 649	179 762.06	-13.54
2002	1 500 000 000	8 113	184 888.45	2.85
2003	1 998 000 000	8 407	237 569.09	33.20
2004	2 062 290 550	8 890	231 978.69	3.22

*Source:* Statistics Department, Department of Social Adaptation.

199. As an important footnote to the above table, it should be pointed out that it takes no account of the staff of the Department of Social Adaptation, which receives the catering service in the prisons, nor of the effects of the rise in the cost of living and inflation on this subheading. Nevertheless, in practice the resources allocated are insufficient to meet the needs of a service of this kind.

### **Situation of prisoners in relation to the family**

200. As mentioned above, the institutional organization has a specific care unit, which has the task of strengthening links between prisoners, their families and society. This Community Unit has the basic goal of ensuring that the prison population's needs are met regarding their reference family group and other external support resources, enabling them to maintain emotional ties while in prison.

201. When the prisoner is admitted, this Unit is responsible for assessing who are the most significant persons with whom communication is required through general visits, visits by minors (governed by the Regulation on Visits to Prisons in the Costa Rica Prison System regulations on visits to Costa Rican prisons) and intimate visits as laid down in the Regulation on the Rights and Duties of Prisoners

202. It also has to identify the personal a family resources for the reference to social welfare institutions, when the situation so requires, such as needs for housing, food, health, education, assistance in cases of domestic violence and possibly social studies for technical cooperation with embassies subsidizing prisoners who are citizens of their countries.

203. At the individual level, prisoners' social needs are monitored. These needs are viewed not only as shortcomings but also human and collective potentials.

204. Assistance for the family starts from the central role that the family plays in building an identity, subjectivity and primary socialization spaces, essential to human growth<sup>16</sup>.

205. To that end, an assessment is made to try and identify bonding patterns between the members such as manifestations, forms and feelings in relation to others, formal and informal communications networks within the family; who promote conflicts; how are actions redressed, who carries out household chores and how; where does the power circulate; who leads activities and how can situations leading to conflict be adapted or corrected.

206. Social studies of families and reference or support resources are fundamental for defining the possibility of promoting a benefit that allows the sentence to be served at a lower level of physical confinement.

207. In order to grant this benefit, it is necessary to know the social representation of the family, the power, interaction and communication relationships, interests and desires; the positions of the members, resources, limits, strengths and weaknesses, and the family's relationships with the outside world: community, organizations, institutions and the space occupied in day-to-day life.

208. The above is achieved by home visits, which allow social research aimed at the goal of the study or the benefit sought by the prisoner, the most common being the possibility of release on parole or a change of level.

209. At the institutional level the following tasks are carried out to maintain family ties:

- a) Social assessment of admission of minors to general visits; the priority is to identify security risks and ensure protection for children and adolescents.
- b) Social assessment of admission to intimate visits; the priority is to identify any risk to personal integrity or to the security of the institution.
- c) Assessments of exits for emergencies related to the health or death of a blood relative of the first degree
- d) Assessments of special visits to the prison for family emergencies.

210. At the semi-institutional and community levels the family approach is made by monitoring in the community and at the workplace, including coordination with government and non-governmental bodies. This work has been designed as a Community Networks project, whose main contribution has taken the form of a work bag for semi-institutional prisoners.

211. For minors, in accordance with the Juvenile Criminal Law, minors and juveniles in family groups are approached in an attempt to integrate them properly into the family and community. Prisoners serving alternative sentences are handled in groups according to their problems, such as groups for tackling sexual violence and violence in general.

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<sup>16</sup> In that connection, see article 50 of the Constitution: "The State shall procure the greatest welfare of all inhabitants of the country, organizing and promoting production and the most adequate distribution of wealth..."

212. Depending on the type of violence, the group approach involves socio-educational and therapy groups, so as to help modify abusive behaviours in intra-family relationships. Priority treatment is given to cases identified as having violent relationships in a couple. For this purpose, victims are also referred to other external institutional or non-governmental support bodies.

213. In relation to the victimology assessment, specific professional techniques are used to seek information about the environment in which the person lives their daily life. The primary and secondary victims are contacted to understand what the person is telling us through words, deeds and silences. This involves a process of listening, hearing, analyzing and interpreting.

214. This assessment aims to identify the measures for protecting victims once the detainee leaves prison, and will be used to determine the conditions under which the assessed person could benefit from serving the sentence at a lower level of confinement.

215. The Community Unit reinforces the development of the individual, family and community human potentials of the persons in the prison system, resulting in life plans that give sense and meaning to personal relationships, fostering social integration without delinquency.

### **Investment in prison infrastructure**

216. The Costa Rican Government, in response to the observations made by the Committee of Experts regarding the first report on compliance with the Convention Against Torture, set out in point 135(d) of their subjects of concern, has made major efforts to invest in the infrastructure needs and thereby avoid the problems of prison overcrowding.

217. The Office of the Ombudsman, while critical and emphatic about the need to improve the infrastructure<sup>17</sup>, acknowledged in its last activity report<sup>18</sup> that “major progress has been achieved in human rights as a result of the work carried out by the authorities of Ministry of Justice and Mercy, including the infrastructure improvement plan for the institutional penal centres, which enabled new space to be opened in various prisons so as to offer a partial solution to the current overcrowding problem, and other kinds of infrastructure designed to meet the needs of the security and health units”.

218. There follows a full and detailed list of infrastructure investments in recent year and their proportion to the prison population.

219. The prison reform in the late 70s provided substantial budget resources for prison infrastructure, culminating in the building of what at the time was named the San José Admission Unit, in 1982.

220. From that year onwards, the allocation of resources was reduced considerably. As indicated above, during the 90s, the San Lucas, Tierra Blanca de Cartago and finca la Soledad prisons were closed.

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<sup>17</sup> Office of the Ombudsman. Annual Report 2002-2003, Chapter 5. Prison population.

<sup>18</sup> Office of the Ombudsman. Annual Report 2004-2005, Chapter 6. Prison Population.

221. Those years also saw the promulgation of laws that led to the growth of the prison population, reaching such extreme that attracted the attention of the authorities of the Judiciary, who succeeded in raising awareness in other authorities of the Executive in search of budget resources to revive the growth of the prison infrastructure.

222. In the late 90s financial resources were able to be injected into the Ministry of Justice, via the Board for Construction, Installation and Property Acquisition, to the tune of a billion colones per year, specifically to tackle the problem of prison overcrowding. This investment has been sustained from that year until the present, achieving major successes in terms of improvements and extensions.

223. The following work was commissioned in 1990:

- a) Repairs and alterations to the window bars of the closed medium-security blocks of the La Reforma centre and change of meshing.
- b) Extension and remodelling of dormitories of security staff at the Luis Felipe González Flores centre.
- c) Building of a block for conjugal visits and a residential block for security staff at the San Lucas penal centre.
- d) Building of bathrooms in dormitories in the residential blocks for the inmates at the Pérez Zeledón and Puntarenas admission units.
- e) Construction of a football pitch for inmates of the medium-security section of the La Reforma centre.
- f) Remodelling of the installations of the centres for minors.
- g) Construction of access control and search building at the La Reforma centre.
- h) Constructions of housing for conjugal visits at the San José admission unit.

224. In 1991 some ₡93 000 000.00 (ninety-three million colones) were invested in the construction and remodelling of the following:

- a) Prefabricated housing blocks for inmates, La Reforma;
- b) Prefabricated housing blocks for inmates, Puntarenas semi-institutional penal centre;
- c) Prefabricated housing blocks for inmates, P. Zeledón semi-institutional penal centre;
- d) Prefabricated housing blocks for inmates and administrative offices, Limón semi-institutional penal centre;
- e) Remodelling and repair of blocks for inmates and sanitary block, Pérez Zeledón semi-institutional penal centre;
- f) Re-roofing of gymnasium, minimum security, La Reforma;

- g) Construction of perimeter wall, San José;
- h) Prefabricated housing blocks for inmates and administrative offices, Nicoya;
- i) Prefabricated housing blocks for inmates, Pococí;
- j) Roof repairs, Buen Pastor;
- k) Exterior lighting, centre for female minors, Amparo Zeledón;
- l) Miscellaneous repairs, training centre;
- m) Construction of search cubicles, San José.

225. In 1992 almost ¢25 000 000.00 (twenty-five million colones) were invested in prison infrastructure:

- a) Repair of an internal bridge at the La Leticia semi-institutional penal centre;
- b) Construction and extension of the second level for a guards' dormitory at the Heredia institutional penal centre;
- c) Extension of the drinking water header tank at the San José institutional penal centre;
- d) Construction of housing for conjugal visits at the Limón institutional penal centre;
- e) Construction of bathroom blocks, multipurpose hall, kitchen/refectory block at the Pococí centre.

226. In 1993, an investment of nearly ¢10 500 000.00 (ten million five hundred thousand colones) was spent on the following improvements:

- a) Construction of a blockhouse at the Limón institutional penal centre;
- b) Miscellaneous repairs, conduits, drainpipes and eaves at the Limón institutional penal centre;
- c) Miscellaneous repairs to staff dormitories at the Pococí centre;
- d) Perimeter fence of La Reforma centre, to site family-visit areas.

227. In 1994, an investment of some ¢64 000 000.00 (sixty-four million colones) went into the following construction and reinforcement works:

- a) Construction of dormitory for guards and officials, Pococí centre;
- b) Construction of prefabricated offices and storeroom, Pococí centre;
- c) Structural reinforcement of perimeter wall, Limón penal centre;

- d) Perimetre enclosure project at the La Reforma centre, constructed of wire mesh and a barbed wire fence.
- e) Construction of a covered walkway, wire mesh and various repairs at the Ampara Seledón semi-institutional centre.
- f) Remodelling of the kitchen at the San José penal centre
- g) Perimetre enclosure at the Luis Felipe González Flores centre for minors.
- h) Miscellaneous repairs to the office block at the La Leticia semi-institutional centre.

228. In 1995, ₡156 000 000.00 (one hundred and fifty-six thousand colones) were invested to commission the following infrastructure work:

- a) Remodelling and general repairs, Antiguo Rossiter Carballo admission centre for referring offending minors at social risk.
- b) General repairs to blockhouses, La Reforma penal centre.
- c) Construction of communal housing block, Limón penal centre.
- d) Perimetre enclosure at the La Reforma penal centre, constructed of wire mesh and a barbed wire fence.
- e) Perimetre enclosure at the Luis Felipe González Flores centre for minors.

229. In 1996, an investment of ₡330 000 000.00 (three hundred and thirty million colones) was spent on the following building work:

- a) Construction of communal housing block, Pérez Zeledón penal centre.
- b) Construction of inmates' housing block, Limón penal centre.
- c) Building work, Liberia penal centre
- d) Building work, Pococí penal centre.
- e) Construction of housing block, San Carlos penal centre.
- f) Construction of housing block and additional work, Puntarenas penal centre.

230. In 1997, work continued on the construction projects indicated for the previous year. Investments during that year amounted to nearly ₡418 000 000.00 (four hundred and eighteen million colones).

231. In 1998, investment amounted to nearly ₡156 000 000.00 (one hundred and fifty-six million colones) on the completion of the work commissioned in 1996, plus maintenance work.

232. In 1999, investments of nearly ₡559 000 000.00 (five hundred and sixty-nine million colones) were spent on new work and maintenance for the construction and restoration of the following centres:



- a) Construction phase 1, Cartago penal centre, construction phase 2, Liberia penal centre
- b) Building work, San Carlos penal centre, phase 2.
- c) Building work, Buen Pastor penal centre, Remodelling areas A and B, La Reforma penal centre.
- d) Restoration of single kitchen, La Reforma.
- e) Installation of telephone exchange, Liberia penal centre.
- f) Remodelling phase 1, Centro Amparo Zeledón

233. In 2000, some ¢996 000 000.00 (nine hundred and ninety-six million colones) were invested in the continuation of the projects begun the previous year, new work and maintenance.

- a) Building work, Buen Pastor penal centre.
- b) Change of structure and roofing of Area C, La Reforma penal centre.
- c) Construction of prefabricated classrooms, Area A, La Reforma penal centre.
- d) Construction of prefabricated classrooms, Area B, La Reforma penal centre.
- e) Construction of prefabricated block for technical treatment, Areas A and B, La Reforma penal centre.
- f) Construction of prefabricated dormitory block for guards, San Rafael penal centre.
- g) Construction of prefabricated housing block for inmates, Limón penal centre.
- h) Construction of prefabricated block for technical and administrative office, Limón penal centre.
- i) Remodelling of San Sebastián penal centre.
- j) Construction of housing block and miscellaneous work, Pérez Zeledón penal centre.
- k) Installation of telephone exchange, Cartago penal centre.
- l) Installation of telephone exchange, San Carlos penal centre.
- m) Boring and construction of deep well, La Reforma penal centre.
- n) Extension of electrical cables, Pococí penal centre.
- o) Extension of electrical cables, La Reforma penal centre.
- p) Extension of electrical cables, Nicoya semi-institutional penal centre.
- q) Installation of electrified perimeter mesh, La Reforma penal centre.
- r) Installation of closed-circuit TV, La Reforma penal centre.

234. In 2001, some ¢1 441 000 000.00 (one thousand four hundred and forty-one million colones) were invested in the continuation of the projects begun the previous year, new work and maintenance.

- a) Purchase of various buildings, San Ramón penal centre.
- b) Construction of prefabricated block for inmates, San Rafael penal centre.
- c) Construction of waste water treatment plant, Buen Pastor penal centre.
- d) Construction of waste water treatment plant, Liberia penal centre.
- e) Extension of three-phase electricity supply line, Gerardo Rodríguez penal centre.
- f) Construction of gabion wall, Buen Pastor penal centre.

235. In 2002, investment on construction work and improvements was close to ¢236 000 000.00 (two hundred and thirty-six million colones), for the following projects:

- a) Construction of access building, Pococí penal centre.
- b) Alterations to office space and Area C premises, La Reforma penal centre.
- c) Installation of generator set, Cartago penal centre.

236. In 2003, nearly ¢309 000 000.00 (three hundred and nine million colones) were invested in the continuation of the projects begun the previous year, new work and maintenance.

- a) Construction of housing block for inmates, Puntarenas penal centre.
- b) Construction of prefabricated blocks, San Rafael penal centre.
- c) Construction of prefabricated classrooms and bathroom blocks, Gerardo Rodríguez penal centre.

237. In 2004, nearly ¢1 244 000 000.00 (one thousand two hundred and forty-four million colones) were invested in the continuation of the projects begun the previous year, new work and maintenance.

- a) Construction of inmates' housing block, Limón penal centre.
- b) Construction of multipurpose covered area for family visits and sports activities, Buen Pastor penal centre.
- c) Redevelopment of old kitchen area for offices and technical treatment areas, Area C, La Reforma penal centre.
- d) Construction of inmates' housing block, Pococí penal centre.
- e) Construction of prefabricated housing block for inmates, Liberia penal centre.
- f) Construction of prefabricated housing block for security staff, Limón penal centre.

- g) Boring, construction, supply of equipment and commissioning of deep well and interconnection with existing well at La Reforma penal centre.
- h) Construction of perimeter wall, San Rafael penal centre.
- i) Construction of perimeter wall, La Reforma penal centre.

238. From the information provided it can be deduced that up to 1995 no major investments were made to open premises for placing prisoners, resources being allocated to the construction of prefabricated blocks for housing detainees in semi-institutional centres, major improvements in the existing infrastructure, or the carrying-out of work needed to improve conditions for technical treatment and provision of services.

239. 1996 saw the start of a marked trend of building new centres or confinement blocks for inmates, without neglecting technical treatment areas, improvements in the existing infrastructure and housing for the security staff, a trend which has continued to date, with the steep rise in the prison population.

240. The ratio between the prison population and the infrastructure is a key factor in understanding the need for investment in new detention centres. In May 1990, 262 more persons than the housing capacity of the centres (1340 spaces) represented overcrowding of 24.3%. For April 2005, there was an absolute population of 7569 prisoners with a housing capacity of 7276 spaces, i.e. an overpopulation of 293 persons, representing 4.0% overcrowding.

241. This highlights the growth in our prison population, and the efforts made, especially in recent years) to increase the housing capacity of the Costa Rican prison system.

242. The following table shows the trend in overpopulation between 1996 and 2005, according to information from the Statistics Department of the National Criminology Institute.

<i>Year</i>	<i>Population</i>	<i>Housing capacity</i>	<i>Absolute over-population</i>	<i>Relative over-population</i>
1996	4408	2979	1429	48
1997	4967	3029	1938	64
1998	5208	3323	1885	57
1999	5374	4125	1249	30
2000	5636	5169	467	9
2001	5772	5445	327	6
2002	6571	6060	511	8
2003	6691	6146	545	9
2004	7116	6799	317	5
2005*	7569	7276	293	4

\* *Statistical report of prison population, April 2005.*

243. Prominent among the most recent buildings is the Care Centre for Young Adults, opened in September 2005; this new centre now offers spacious premises with better and more appropriate conditions for care and accommodation.

244. Having regard to the observation in point 135.f)<sup>19</sup> in the CAT Committee's report on the first national report, note that on 29 September 2005 Area D of the La Reforma centre was opened with 80 high-security spaces, with a novel architectural design aiming to ensure full observance of the inmates' human rights.

245. This new internment area was built in accordance with the recommendations of the Constitutional Chamber of the Supreme Court of Justice and other supervisory bodies. It has spacious rooms and a sun terrace where inmates may take the sun and fresh air whenever they wish. This situation complies with the provisions of the international instruments, notably the Beijing Minimum Rules which lay down a minimum of one hour of sunshine for detainees to take physical exercise.

#### **Semi-institutional centre for women**

246. In order to deal with the specific needs of women prisoners placed in more open prisons, at the Buen Pastor institutional penal centre, in 1980 a section was created to handle this population in a semi-institutional context. In 1994 this unit was converted into a technical and administrative unit, physically separate from Buen Pastor.

247. The consolidation of the technical handling in this sector of the population enabled care to be properly canalized to the units operating within the centre and those vulnerable aspects requiring care that the centre cannot provide. It is run by coordination with government and private institutions and non-governmental organizations (NGOs) and the community.

248. Situations specific to each prisoner and her family are handled. Group sessions focus on women's issues such as: reproductive health, the law on sexual harassment, the law on responsible paternity and domestic violence; a specific therapy group treats women who have survived or are living through situations of this kind.

249. Note that similar models are used for the country's male population, with the advantage that since it is a much larger group of population, treatment takes place in centres operating a regional level.

250. Also, as one of the specific aspects relating to the female population, it is regarded as highly important the operation of a specific unit operating at the Buen Pastor penal centre, called the "Casa Cuna", where in order to foster the bond between mother and child in early childhood and to avoid the sentence being postponed, children of prisoners are allowed to stay with their mothers until age three. Above that age, after coordination with the prisoner, they are placed back with her family members, or in homes of other public or private institution, if the minors have no supporting family to house and bring them up. When dealing with this sector of the population, close ties are maintained with the National Children's Trust, as the body responsible for supervising and safeguarding the rights of minors.

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<sup>19</sup> Among the subjects of concern, the Committee observes in paragraph 135.f) that the maximum-security detention regime, comprising 23 hours of confinement and just one hour outside the cell, appears excessive.

### **Centre specializing in the care of older persons**

251. The need to create areas for specialist care of some segments of the prison population led to the decision to equip an area for older persons who were already held in some of the country's prisons and, on account of their age or some other handicap, were victimized by the rest of the population. The installations designed for that segment of the population offer substantial improvements in housing, hygiene, dietary and professional care conditions, according to their characteristics and needs.

252. The diagnosis carried out in the institution early in 1995 revealed that the population of older prisoners in shared cells suffered a faster physical and mental deterioration as a result of their interrelation with other individuals, whose habits and activities were more than they could tolerate; in addition, there were complications on account of chronic illnesses becoming more acute with age. There were also some similarities between them: offence committed, length of sentence, need for professional approach, links to the outside and others, which led to their being perceived as a homogeneous group that should be placed and handled differently from the other prisoners, with no intention to discriminate against anyone.

253. This centre has been consolidated into a care centre with installations located at San Rafael de Ojo de Agua, to the west of the capital. It currently houses 131 prisoners.

### **Minors (juvenile offenders)**

254. In 1963 the law on the protection of minors was approved, and reformed in 1996 by the Law on Juvenile Justice, Law No 7576. The protection law embodied a number of important shortcomings, such as the minimum age for internment of minors, so in 1994 it was necessary to introduce a reform setting it at 12.

255. For this reason, it was common in the internment centres to find people with problems of behaviour or social exclusion alongside adolescents having committed various types of offences.

256. At that time, the criterion of detention took precedence over other forms of action in relation to the socially disadvantaged population. There were two internment centres in the country, one for males and one for females, with an average population of 120 juveniles each; health and education were always guaranteed as fundamental rights.

257. From May 1996 the Law on Juvenile Criminal Justice required the prison authorities to make certain organizational changes, since by providing for recourse to detention only in exceptional cases, it considerably reduces the number of juvenile internees and applies non-custodial sentences, especially release on parole and alternative measures.

258. Since 1998 there have been installations to support minors of both sexes, and offices handling the population serving alternative sentences, from the greater metropolitan area; monitoring visits to the rest of the population take place at least once a month.

259. Furthermore, pursuant to the Law on Juvenile Justice, the level of care for children and adolescents must take account in the exercise of its functions of the following regulations: the Children and Adolescents Code, international instruments such as the United Nations Minimum Standard Rules for the Administration of Juvenile Justice, the United Nations Rules for the

## Protection of Juveniles Deprived of their Liberty and the International Convention on the Rights of the Child.

260. In the institutional approach to the level of care for children and adolescents, the following basic parameters are followed: implementation of a care plan and executing it for an adolescent serving an alternative or custodial sentence, or a provisional arrest warrant, with respect for human dignity; the national and international regulations and the promotion of work in the institution, the community or with public or private organizations fostering the non-institutionalization and de-institutionalization of the population.

261. Furthermore, participation is encouraged in the formulation of national policy on juvenile offenders, so as to consolidate the juvenile criminal justice system in terms of fundamental rights and to maintain a system of uniform and integrated information, so enabling policies and guidelines to be established within the Department of Social Adaptation.

262. In order to safeguard the specific nature of care for the population subject to the Law on Juvenile Justice, it is for the institution to ensure full compliance with the provisions of the International Convention on the Rights of the Child and the Law on Juvenile Justice.

263. The prison institution is currently making major efforts to protect the rights of juvenile offenders, especially in the context of formal education, health, recreation and culture, and contact with their families and the media. In this programme there is no overcrowding and the population is classified as required by law: by age, legal status and sex.

264. Regarding the right to formal education, the adolescent or juvenile can opt for any level of education. There is an education centre within the detention centre that has spacious classrooms, a library, an audiovisual room and an IT laboratory; research is also encouraged.

265. As for the right to health, they are cared for as soon as they enter the institution and referred to the medical care provided by Social Security in case of need. They are given a balanced diet, consisting of three meals and two snacks a day.

266. Regarding the right to recreation and culture, recreational and cultural spaces are encouraged, with recourse to the support of other public and private bodies for the organization of various activities.

267. In the plan of interaction and contact with their family and the outside world, young people have visiting days, are entitled to make telephone calls, and special and conjugal visits. The Institution keeps its doors open to voluntary work, forming a social support network with other bodies for all the population covered by the programme.

268. Finally, there is a centre for young adults who committed their offence while a minor and are serving a sentence that continues after they reach age 18, where a new building is under construction; at the same time, work continues on a new technical care project suited to the particular characteristics and needs of this group, and its legal situation.

269. As a consequence of the implementation of Law 7576, detention is being used as an exception measure; more than 80% of the prison population is subject to socio-educational sentences, mainly on parole, and community service.

## **Prison system budget**

270. As required by Law No 4762, the Department of Social Adaptation, an agency attached to the Ministry of Justice, is the body responsible for the administration and execution of custodial measures and penalties handed down by the competent authorities.

271. Owing to its nature, the funds allocated to the Department come from the national budget of the Republic. Even though it is the unit that receives the most resources within the Ministry, they are not sufficient to implement the technical care programmes and the custody of the prisoners, and the latter are constantly complaining to the jurisdictional or administrative authorities monitoring their rights, including the Constitutional Chamber, the executory courts and the Office of the the Ombudsman.

272. This concern for the allocation of financial resources to the prison system is reflected in the annual reports of the Office of the Ombudsman; in its last report it said that “it is still a matter of concern that the highest government authorities do not allocate sufficient budget resources to the Ministry of Justice to cover all the outstanding needs of the prison system”.<sup>20</sup>

273. Historically, the most expensive item in the budget has been wages, which accounts for 60% of the total resources allocated to the Department of Social Adaptation, while 25% goes to the purchase of foodstuffs and the rest covers investment in new infrastructure, operating costs, maintenance, public services and technical measures.

274. Despite the efforts to construct new buildings, there are problems equipping them, assigning technical and administrative staff, and meeting the requirements of the guards. Nevertheless, the population is growing and demanding new premises and services. In this respect, it has to be understood that in a small country, with imperative needs to be met for other segments of the population, resources allocated to the prison administration are not a priority and in general they are governed more by what can be allocated than what is required.

275. Linked to this, it is observed that the adoption of detention as the most used penalty, the extension of time spent in prison as a result of longer sentences and restrictions on the application of the commutation of sentences, have not gone hand in hand with greater budget resources.

276. International support for prompt and thorough justice programmes or for civil security programmes with better training and more facilities for detecting illicit acts tends to increase the number of “users” of the prison service, without doing anything to increase the allocation of budget resources.

277. The following table sets out the amount of the budget allocated to the Ministry of Justice, the percentage allocated to the Department of Social Adaptation, per year and the percentage comparison of growth from one year to the next. It does not include the effects of the rising cost of living and inflation which have a negative impact on the resources allocated.

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<sup>20</sup> Office of the Ombudsman. Annual Report 2004-2005, Chapter 6. Prison Population.

<i>Period</i>	<i>Budget allocated to ministry of justice</i>	<i>Budget allocated to social adaptation</i>	<i>Percentage of allocation</i>	<i>Budget of social adaptation, % growth</i>
2005	26 864 994 366.00	19 575 566 000.00	72.87	21.76
2004	22 018 192 000.00	16 077 543 269.00	73.02	11.27
2003	19 881 326 810.00	14 448 929 234.00	72.68	18.26
2002	16 978 800 466.00	12 218 312 226.00	71.96	12.14
2001	14 950 386 266.00	10 895 972 766.00	72.88	14.00
2000	13 185 269 000.00	9 557 560 752.00	72.49	38.40
1999	9 561 039 000.00	6 905 648 483.00	72.23	10.16
1998	8 711 972 400.00	6 268 631 000.00	71.95	15.81
1997	7 345 620 800.00	5 412 988 000.00	73.69	51.96
1996	5 510 320 000.00	3 561 997 000.00	64.64	29.47
1995	4 082 392 000.00	2 751 267 000.00	67.39	-0.25
1994	3 772 096 600.00	2 758 198 000.00	73.12	-7.09
1993	3 623 024 000.00	2 968 617 000.00	81.94	110.81
1992	2 347 221 750.00	1 408 191 000.00	59.99	10.88
1991	1 776 335 800.00	1 270 015 000.00	71.50	18.82
1990	1 492 917 191.00	1 068 823 791.00	71.59	43.35
1989	1 115 635 000.00	1 115 635 000.00	66.83	-

*Source:* - Statistics Department, Ministry of Justice.

## **The right to education**

278. Organized education, as a creative training activity, has existed in the Costa Rican prison system since 1970. It has been recognized as a fundamental right with institutional approval since 1975.

279. On this point, it is important to review some of the principle and rules governing the policy of care for prisoners at international level, such as the provisions of the “Basic Principles for the Treatment of Prisoners”, adopted and proclaimed by the United Nations General Assembly in its resolution 45/111 of 14 December 1990, principle 6 of which states that “all prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality”.

280. Also, the “Standard Minimum Rules for the Treatment of Prisoners, adopted by the 1<sup>st</sup> United Nations Congress on the Prevention of Crime and the Treatment of Offenders”, signed in Geneva in 1955 and approved by the Economic and Social Council in its Resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977”, state that:



*"Rule 77: Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration."*

281. The education of prisoners must be coordinated, where possible, with the public education system so that they can continue it with no difficulty upon their release.

282. Rule 78 states that "Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners" and Rule 40 that "Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

283. Moreover, Resolution 1990/20 of the United Nations Economic and Social Council lays down a number of criteria and guidelines applicable to prison education.

284. In order to devise a policy that enables subsequent re-entry into society, from 1969 when the primary education programmes were being developed in the old central penitentiary, a process of training for prisoners was begun to enable them to integrate into society on an equal and competitive footing.

285. In 1982 the first cooperation agreement was signed between the Ministry of Public Education and the Ministry of Justice, and the educational procedures were legalized by the certification of studies. In 1983, approval was given for the setting-up of the National Distance University, to administer future adult education programmes.

286. In 1992, the second interministerial cooperation agreement was signed between the Ministries of Justice and Public Education, so allowing a more efficient response to the growing educational needs and forms of assistance required.

287. In 1994, the Modular Education Plan for Young People and Adults was incorporated into the educational offerings of the prison system, an educational method fostering growth in prisoners' potential.

288. The tele-secondary programme was launched for adult women in 1995, and later for adult men. The first project began at the Buen Pastor centre and the second in Area D of the La Reforma centre.

289. An institutional vision is currently being followed that aims to solve cognitive shortcomings using a variety of learning models; to that end a preliminary assessment is being carried out to identify the technical assistance plans needed.

290. Aspects such as the meaning of the law, human dignity and the differences between individuals are being taught using educational modules that address such issues as "who we are", "our democracy" and "growth through language".

291. The teaching programmes also recreate the ability to negotiate and acknowledge the problem or circumstance that led to prison, in modules such as "our community" and "how the body works".

292. By studying these modules, it is possible to foster a different attitude to personal and family problems, to seek an answer, eliminate the insult or aggression, awaken creative thought, improve one's language and ways of relating to others, thereby promoting assertive communication, dignifying and strengthening the spirit, reassessing their condition as a person, with rights and obligations and becoming an individual able to find constructive answers to their problem with community living and their present situation.

293. Education as a means of commuting the sentence is provided for in Article 55 of the Criminal Code:

"The prison sentence shall be commuted, the first half being served normally, i.e. one day for one day.

The second part shall be commuted through work, two days' imprisonment being equivalent to one day's work."

294. In 1995 the Constitutional Chamber stipulated that the commuting of a sentence must be based on work actually done. The decision did not define work as that carried out by muscular or physical effort alone. In accordance with this definition, work in a prison institution was defined as:

- a) A human act,
- b) Not distressing,
- c) Corresponding to any action signifying creation, effort and/or modification of nature or objects,
- d) The product of creative thought by the mind.

295. The scope of this interpretation, regarding education as a productive occupation of time, has enabled it to be applied as a component in commuting the sentence on the basis of the provisions of Article 55 of the Criminal Code.

296. Besides having committed an offence, the current prison population also has the general characteristic of not having completed studies, whether primary, secondary or university, especially the first two of those levels.

297. If we assume that one of the problems of delinquency or criminal behaviour is the individual's taking little or no part in the development of the ideas in the community, then cognitive and learning deficiencies appear as factors unleashing deviant behaviour.

298. It is acknowledged that economic or legal factors are not the only routes to deviance; educational socialization deficiencies are also factors that contribute to socially inappropriate behaviour. Starting from these initial premises and in line with the Institutional Development Plan, the prisoner is someone who does not have the means to live in society; society's task is therefore to help these individuals to adapt, by means of education and work.

299. The Education Unit develops educational programmes at national level in line with prisoners' needs and expectations, thereby contributing to their training and personal and academic development. By helping prisoners to complete studies in the various academic and vocational cycles, skills and aptitudes develop that may match the current needs of Costa Rican society and help prisoners to rejoin the labour market once they are released.

300. Likewise, academic, cultural and recreational activities are carried out with the aim of fostering and reinforcing the students' creativity, identity, values and knowledge.

301. The educational services offered in prisons form part of programmes developed and devised by the Ministry of Education; these programmes range from literacy to higher education.

302. Academic courses include five options for each academic cycle (literacy, initial level, intermediate level, final level and modular education plan for young people and adults (CINDEA), level 1. All prisons offer primary education, nearly 70% of them preferring the Open Education Programme for Cycles I and II, while 38.5% opt for or supplement it with CINDEA level I curriculum.

303. Furthermore, in the secondary education plan four levels are offered to cover the level II, level III, the seventh to ninth years of the distance secondary curriculum and the school leaving examination for mature students. For secondary education, 84.6% of the centres offer Cycle III under the Open Education programme, ICER, while only 30.7% offer CINDEA, Level II. In Cycle IV, only the school leaving examination for mature students option is offered.

304. Higher education is offered in 77% of prisons; almost all do so via the State Distance University and in the special case of San Ramón penal centre via the (private) University of San José; they are planning to sign an agreement for this purpose in future.

305. The number of students registered in each prison is closely related to the size of the prison population, the detainees' preferences regarding the choice of courses offered and the centres' real ability to running them (physical premises, human resources); thus not all penal centres offer all the alternatives.

306. The following table shows which penal institutions teach all the cycles of formal education defined in the national education system, through the possibility of presenting several alternatives for the same cycle, offering the beneficiary population more opportunities in line with their needs and preferences.

**Prisoners – Registrations per year, national level**

<i>Year</i>	<i>Number of registrations</i>
1995	1 350
1996	1 850
1997	1 700
1998	1 600
1999	1 800
2000	2 457
2001	2 779
2002	3 000
2003	2 930
2004	2 875

Data gleaned from final reports of the various centres. No reliable figures found prior to 1995. Department of Social Adaptation, 2005

307. In 2004, 2 875 out of the total of 8 890 detainees in prison were registered on formal education courses.

308. A sizeable proportion of the prisons also offer free courses, covering subjects such as languages, art, accountancy, handicrafts, music, literature, sports and technology.

309. The teaching staff working in the various penal centres are officials of the Ministry of Public Education, except at La Reforma penal centre which has seven teachers on the staff of the Ministry of Justice (2004).

310. It is important to stress that the infrastructure at the various prisons is not always the most appropriate since, as we have said, the resources are generally allocated to building accommodation. In the most recent building work, it has been possible to equip premises suitable for teaching, as shown below:

<i>Institutional penal centre</i>	<i>Teachers</i>	<i>Classrooms/premises</i>
Limón	4	6 classrooms
Liberia	4	3 unequipped areas
Pococí	1	4 unequipped areas
Cartago	6	2 classrooms, 1 library
San José	2	5 classrooms, 1 library
San Ramón	1	1 unequipped areas
San Carlos	3	2 unequipped areas
La Reforma	11	9 classrooms, 1 library
Puntarenas	4	2 unequipped areas
San Rafael	4	3 classrooms, 1 library
Pérez Zeledón	4	4 classrooms, 1 library
Dr Gerardo Rodríguez	8	3 classrooms
Nicoya semi-institutional penal centre	1	1 unequipped area
Buen Pastor	5	4 unequipped areas <sup>21</sup>
Young adult	3	1 unequipped area
Juvenil Zurquí	4	8 classrooms, 1 library

*Source:* Department of Social Adaptation, 2005.

311. Note that the San Rafael, Dr Gerardo Rodríguez and Young Adult penal centres share teachers for Spanish, science, mathematics and social studies..

<sup>21</sup> Up to 2000 it had 6 classrooms at its disposal, and from that year onward, owing to a donation of land, it was transferred to the community of San Rafael Arriba de Desamparados.

## **Access to technology**

312. Prisoners' access to technology during the course of occupational activities is provided mainly in the form of training conducted in coordination with the National Learning Institute (INA)<sup>22</sup>, as part of the various courses that have been given in a number of penal centres. An example of this has been courses in organic fertilization, hydroponics, setting up forest nurseries, computing, electrical technology and measurement, repair of domestic electrical appliances, English, administration of small businesses, occupational health, industrial slicing machinery, tailoring, various craft trades, etc.

313. Since 1972 the INA has been taking part in training work within the prison system. This began at the Luis Felipe González Flores centre, then in Tierra Blanca de Cartago and subsequently at a variety of centres, such as Buen Pastor and La Reforma. However, it was not until 1986 that it formally took part in the prison system following the signature of an agreement between both institutions.

314. This initial agreement met a specific need to govern the relationship between prisoners at the La Reforma penal centre and the INA's National Specialist Model Farm Centre. The aim was to upgrade and supplement the training programmes in the agriculture and livestock field and to enable prisoners to carry out maintenance work on the Model Farm and surrounding areas.

315. In 1990 and 1993 two new more general agreements were signed, involving detainees from other prisons and other specializations of the INA. These agreements also covered training for technical and administrative staff working at the prisons, in order to further their personal and professional development.

316. Another important aspect is that teaching methods were no longer limited to training and production but also included the regular courses given by the Institute. Also, prisoners taking part in training, of any of the kinds mentioned above, could have their sentences commuted in accordance with article 55 of the Criminal Code. When the training was complete, they would receive a certificate of achievement on the INA course.

317. Technical training for inmates of penal centres is a commitment that vocational training can and must support, as it is an indispensable tool to enable prisoners to re-enter working life and contribute productively to the process of national development.

318. The INA took on this responsibility in 1986 in close cooperation with the Ministry of Justice, by signing interinstitutional cooperation agreements. These instruments are applied to all the country's penal centres and each one draws up the programme of training activities with the INA's seven Regional Units.

319. From January 2002 to September 2004, a total of 1 846 persons received training in the various specializations offered by the National Training Institute at the institutional penal centres.<sup>23</sup>

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<sup>22</sup> The National Learning Institute is an independent institution with a remit to provide technical and vocational training, covering the whole country.

<sup>23</sup> Data supplied by the INA's Development and Statistics Unit.

320. INA training offered penal centres is imparted using two methods, for open centres or closed centres.

321. Training in open centres is for prisoners in semi-institutional centres (previously known as trust centres). They receive INA training specifically in farming and livestock rearing at the Model Farm located at Central Headquarters, in Uruca or at the Organic Farming Centre, at La Chinchilla in the province of Cartago, and in various vocational training centres known as Public Workshops. They are training using the training-production method or “learning by doing”. They attend on an equal footing with any other Costa Rican. As students of the Institute, registered persons are subject to the regulations governing both participants in training courses and grants.

322. Most of these people have low incomes, so they receive a financial incentive or grant. Similarly, like any INA student, they are offered careers guidance, the services of a social worker and psychological support.

323. In the case of closed centres, the INA travels to the institutional penal centres to teach various modules. During 2004 the Institute provided training at the penal centres of La Reforma, San José (formerly San Sebastián), Buen Pastor, Cartago, Adulto Mayor, San Rafael, Gerardo Rodríguez, Pérez Zeledón, Liberia, Limón, San Carlos and Puntarenas. Training takes place face-to-face with an instructor, in premises set aside in each penal centre. A total of 588 persons were given training up to September 2004. Lessons take place Monday to Friday at times previously agreed with the various coordinators of the Training and Work Unit.

324. The administration of each centre selects the population that will take part in the training course. Lessons are given in a classroom, refectory or purpose-built workshop. Not all prisoners may register since they have to match a profile defined by the Institute, so there is a strict selection and review process for the prison population wishing to attend training.

325. Under this initiative the INA aims to train prisoners in vocational training projects that help them to re-enter the labour market and society. The benefits of training are felt even when students are in prison, as even the fact of being occupied improves their self-esteem and reduces levels of anxiety and stress induced by their environment.

### **Work in the prison system**

326. For 2002, the Department of social adaptation placed 1693 people in service-sector jobs, 1380 people in self-employment and craft trades, 300 people in projects with private enterprise and 391 people in institutional production projects. Moreover, 50 prisoners receiving training work in association with the National Training Institute (Model Farm, etc.) covering 600 people.

327. Note that all prisoners in the semi-institutional level are currently working.

328. The prison system runs production projects with a view to generating work for the prison population, for which they receive a financial incentive. Besides keeping prisoners busy, this boosts their potential and contributes to their personal development. Working allows them to learn a trade which, in future, will for many of them become their main tool for supporting their families.

329. In 2003, 69% of the population of the penal centres was occupied in work and training projects. Of the total prison population at institutional level, 82.2% kept themselves occupied studying or working, and all of those at semi-institutional level.

330. Various kinds of production projects, such as farming, stock rearing, and poultry: poultry farms producing eggs, farms for rearing, fattening and slaughtering pigs, livestock breeding, rearing, fattening and slaughter, growing of coffee, vegetables, citrus fruit, bananas, cassava, etc., take place at the institutional or semi-institutional centres of La Reforma, Liberia, San Carlos, Pococí, Limón, Pérez Zeledón, San Luis and Nicoya.

331. These projects received investments of 106.16 million colones, so creating 199 jobs for the prison population, and ongoing occupation and vocational training that enabled them to commute their sentences through work and earn a total of 30.27 million colones as an incentive to work.

332. This investment breaks down as follows: 30.27 million for wages, 0.97 million for contracting non-personal services, 57.40 million to purchase materials and supplies and 17.52 million in investments for buying equipment or developing infrastructure.

333. The prison system benefited with the development of these production projects, as it also delivered products for sale, which generated 125.22 million colones. One factor to be highlighted is that this work produces greens, fruit and vegetables which are eaten by the prisoners themselves at the various centres.

334. In the industrial field, a number of projects are promoted within the prison system related to the production of school furniture for the Ministry of Public Education and of concrete products such as blocks, posts, drainpipes, at the La Reforma, San Carlos, Pococí and Limón institutional centres.

335. In 2003 these projects created 190 jobs for the prison population, and ongoing occupation and vocational training that enabled them to commute their sentences through work and earn a total of 33.11 million colones as a financial incentive to work.

336. In 2003 projects were carried out for 290 prisoners with private enterprise; 1980 prisoners were employed in general services and a total of 1540 prisoners worked in self-employed businesses.

337. The amount invested in 2003 was 232.45 million colones, broken down as follows: 33.11 million colones for wages, 193.60 million colones to purchase materials and supplies and 3.42 million in investments for buying equipment or developing infrastructure.

338. During 2004, a total of 370 prisoners worked with private enterprise, another 2 200 in general services, 1 800 prisoners in self-employed business and 774 prisoners took part in training. These figures show that of the total prison population, which exceeds 7 000 inmates at institutional level, 67% remained employed in production and training activities, and 100% at semi-institutional level.

339. Regarding to the level of employment in the prison system, it must also be realized that 29% of the population studies in the various academic levels offered by the system. These percentages are not mutually exclusive since some prisoners both work and study.

340. Regarding production projects, in 2004 industrial, farming and livestock activities were implemented in 9 of the prison system's 15 centres, which enabled 1 200 inmates to be kept in production activities.

341. Inputs worth 30 million colones were invested in farming activities, which generated revenue of 94.25 million colones; this was reinvested in infrastructure and equipment for the prison system.

342. In 2004 the investment in inputs for production amounted to 295 million colones; a further 14.6 million colones were invested in equipment. Sales of production generated revenue of 363.8 million colones.

343. Much of industrial production related to furniture for use in schools, specifically desks, bookcases and computer tables. 36 300 desks were made in 2005.

### **Buen Pastor – Casa Cuna Penal Centre**

344. The Buen Pastor penal centre currently<sup>24</sup> has a population of 481 inmates. This prison is no exception to the overcrowding problem and the consequences of that. From 1990 to 2003, the country's female prison population grew by 483%, so compelling the authorities of the Ministry of Justice to build a new establishment, opened in 2001, with a capacity for 320 women prisoners.

345. Given the specific characteristics and needs of women prisoners, it was necessary to devise a series of measures to safeguard the full enjoyment of a number of rights and needs of women and mothers. An example of this is the "Casa Cuna".

346. In this place a care programme is organized for the children aged up to three of women prisoners. The child care focuses on ante-natal care, paediatrics, psychology, nutrition and early stimulation.

347. The children also have access to their own opportunities and rights, as far as possible within an organization such as the prison system.

348. Care and work that is promoted with prisoners imply in the field of technical care an interdisciplinary effort in areas of care such as education, work, communal living, legal and community assistance, domestic violence, drug addiction, health and safety, which means having a work plan that allows the needs of the population to be properly attended to for their future integration into society.

349. As a response to this plan, prisoners are continuously encouraged to study and work; to that end, the Buen Pastor centre organizes literacy, primary, secondary and university education programmes, and courses in English and art. Free courses are also given in such areas a production workshops, personal development programmes, prevention of addictions and related diseases.

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<sup>24</sup> At the time of writing, January 2006.



350. Finally, in order to improve technical care and bring women closer to their families and place of origin, the Calle Real penal centre in Liberia Guanacaste runs a module for women; there, an area is in operation for 30 women who are placed there on account of their behaviour, length of sentence and residence.

351. Also, throughout the country there are places where women can receive care and monitoring from the perspective of de-institutionalization. 198 women are placed in this care structure.

### **Access to culture**

352. Access to culture, as a component of a strategy of integration and development of prisoners' human skills, brings about a change in the person. To that end, there is provision for each penal centre, especially those in the greater metropolitan area, to promote activities every year to motivate prisoners to express their oral expression and artistic skills.

353. At the la Reforma, Buen Pastor, Dr Gerardo Rodríguez, San Rafael and San José penal centres, groups are organized for folk dancing, street musicians, public speaking and reading, watercolour painting and poetry and prose, with the support of external bodies such as the National Distance University or volunteer groups.

354. The penal centre with the best tradition in the development of cultural activities is Buen Pastor, where through the legacy of the Religious Congregation which ran it for years, artistic expression was regarded as a fundamental activity in caring for imprisoned women or minors.

### **Technical cooperation**

355. As regards technical cooperation, the Ministry of Security and Governance, via the General Directorate for Migration and Aliens, has managed and received technical assistance and support from the IOM and UNHCR in programmes designed to care for the basic needs of Costa Rica's migrant population, including training. The running of courses and workshops on refugees and migration officials throughout the country is periodically coordinated with the UNHCR, with a module on human rights.

### **Law and order in the indigenous communities**

356. As regards measures designed to protect the indigenous population by the police force, community security projects have been carried out in order to promote the training and organization of the communities so that citizens can participate actively in crime prevention, so reducing delinquency and the feeling of insecurity among the inhabitants. This project is run in the indigenous community of Matambú, where 18 people have been trained.

357. Another programme is "Paint Safe", consisting of teaching children about community prevention and security, under which they are given colouring books alluding to the theme of security, thereby creating an attitude of informing about and reporting any attacks. Under this project 49 indigenous children from first to fourth grade have been trained and 152 pupils from kindergarten to sixth grade have been taught about domestic violence.

358. Furthermore, the Police Drug Control Department has conducted a number of operations to eradicate marijuana plants in the indigenous reservations, so as to give the inhabitants a better quality of life. From 2002 to 2005 some 151 plantations were destroyed. Measures were also taken to confiscate the leaves awaiting processing. Under an additional project, in 2005 the police supplied 50 shovels, 50 picks, 50 knives, 50 machetes, 200 foam mattresses, 200 blankets, seed for sowing and 70 newspapers to the indigenous population.

## ARTICLE 11

359. Article 40 of the Constitution clearly states the “Nobody shall be subjecting any person to cruel or degrading treatment or to an indefinite sentence or confiscation of property. Any statement obtained by violent means shall be null and void (our underlining). The text of the Constitution expressly prohibits the police from using violence to obtain a statement. Every person has rights merely because they are human, not simply because they live in a democratic society with a political system that grants them.

360. The Costa Rican legal system has scrupulously ensured that persons whose rights are under threat have the opportunity to require the judicial organs to safeguard or re-establish the lawful situation. In this context, article 48 of the Constitution provides the remedies of amparo and habeas corpus, two key instruments in protecting the dignity of the individual and re-establishing the situation.

361. As stated in the 1<sup>st</sup> report, the remedies provided by the Constitution guarantee personal freedom and integrity (habeas corpus) and the maintenance or re-establishment of enjoyment of the other rights (amparo).

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

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

<i>Year</i>	<i>Chamber I</i>	<i>Chamber II</i>	<i>Chamber III</i>	<i>Constitutional chamber</i>
2000	788	826	1 202	10 808
2001	1 088	762	1 283	12 752
2002	746	723	1 349	13 431
2003	637	877	1 383	13 301
2004	830	1 117	1 749	13 420

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

364. From 1988 to 2004, the monthly average number of rulings handed down was as follows:

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

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

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

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

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

366. Regarding the authorities' examination mechanisms and as was stated in detail in the first report, each of the various police forces in their particular areas of competence has a detention and examination procedure, which must be lawful and respect the dignity of persons at all times. When situations have occurred that run counter to due process, there are mechanisms such as the Office of the Ombudsman, the Attorney General's Office and constitutional remedies to require the lawful situation to be re-established.

367. Note that the Attorney General's Office<sup>25</sup>, within its structure, has a number of units not only for receiving criminal allegations and initiating criminal actions, but also for handling crime victims.

368. Thus, the Office for the Civil Defence of Victims is responsible for processing the procedures for the execution of the sentence deriving from the files of the compensatory civil actions, in which the ruling came out in favour of the civil interests of the parties represented.

<sup>25</sup> Public Prosecutor's Office. Annual report on the work of the Attorney General's Office for 2003.

369. This Office has a legal unit that coordinates a number of measures for assisting victims with various national and international institutions; prominent among those agreements is the one signed with UNHCR, which aims to coordinate with the inspection of various offences in San José, cooperation for assistance in cases of threats with aggravation against refugees in Costa Rica, especially Colombians.

370. It also has a Psychology Unit that provides assistance to victims in criminal cases, to help them to recover their emotional balance after the upset of the crime committed or the treatment they have received. The main specific services that this unit provides are immediate assistance in emotional crises, referral to other institutions, formation of therapy groups and support networks<sup>26</sup>.

## ARTICLE 12

### Monitoring institutions

371. According to article 458 of the Code of Criminal Procedure, the executory judges, as inspectors of the running of the prison administration, make periodic visits to the country's penal centres in order to check that their sentences are being properly executed.

372. Similarly, under article 12.2 of law No 7319 of 17 November 1992 setting up the Office of the Ombudsman, its officials commonly visit the country's prisons; they are empowered to meet any prisoner at their discretion.

373. There is also an Interinstitutional Committee of the Ministry of Justice and the Office of the Ombudsman which meets every month to discuss issues relating to prison procedures and prisoners' fundamental rights.

374. According to the report of the Office of the Ombudsman for the year 2003-2004 and consistent with previous periods, most allegations received by the Office about the prison system relate to medical care, family visits, dissatisfaction with placing and physical aggression. There are also complaints about infrastructure and overcrowding.<sup>27</sup>

375. The Office's report acknowledges that a high proportion of the complaints were handled by informal consultation and measures that satisfied the person concerned.

376. The following table lists the complaints received:

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<sup>26</sup> This office is responsible for dealing with the concerns expressed by the Committee in point 135.e) of the final observations on the 1<sup>st</sup> Final Report on Costa Rica (A/56/44).

<sup>27</sup> The annual report for 2004-2005 also notes that they are a cause for many complaints.

<i>Subject</i>	<i>Ongoing</i>	<i>Concluded</i>	<i>Total</i>	<i>Concluded from previous period</i>
Medical care	19	55	74	10
Diet		2	2	1
Physical aggression		4	7	2
Security of institution		2	2	4
Placement	1	6	7	5
Technical assessments	3	1	4	2
Transfers		2	2	2
Family visits	3	10	13	1
Conjugal visit		1	1	1
Special visit		1	1	
Suspension of visiting		1	1	
Administrative arrangements	7	12	19	2
Injunctive relief		1	1	
Due process	1	2	3	
Disciplinary measures	1	3	4	
Confiscations	1	2	3	
Special exits	1	1	2	
Administrative procedures	2		2	
Poor conditions in prisons	2	4	6	2
Parols		1	1	
Poor service from administration of justice	1		1	
<b>TOTAL</b>	<b>45</b>	<b>111</b>	<b>156</b>	<b>32</b>

*Source: Office of the Ombudsman, Annual Report 2003-2004.*

377. Note that there is an interinstitutional committee between the Ministry of Justice and the Office of the Ombudsman, which meets every month to analyze important administrative or technical issues for the improvement of the day-to-day working of the prison system.

### ARTICLE 13

378. As indicated in the first report, in Costa Rica there are no plans to set up an independent human rights commission, but there is a range of legal institutions and mechanisms to monitor and report on any abuses of human rights of any inhabitants, without distinction.

379. In this regard, article 41 of the Constitution provides full protection, stating that “Everyone shall receive reparation for injuries or damage to their persons, property, or moral interests

through recourse to the laws. Justice must be prompt, thorough, without denial, and in strict accordance with the laws”.

380. Regarding the provisions of article 13 and as already explained, the Constitution offers the remedies of amparo and habeas corpus as legal instruments of the highest level to restore the individual to the enjoyment of all his rights. Other authorities are the institutions of the inter-American system for the promotion and protection of human rights (Inter-American Commission on Human Rights and the Inter-American Court of Human Rights) and the Office of the Ombudsman. Other fora are the executory judges for the prison system, and the Comptroller of Services and the Legal Department at the institutional level. Within the remit of the Ministry of Public Security and the Judicial Investigation Department, there is the Office of Internal Affairs and the Comptroller of Services.

## ARTICLE 14

### **Migration policy**

381. Costa Rica has a long tradition of receiving asylum-seekers and refugees. As mentioned, Costa Rican law makes no distinction between the rights of national or aliens, regardless of their migration status; the law applies equally to all. This applies to both rights and obligations. Even if a person has entered the country illegally, he may defend and uphold his human rights, including respect for his physical integrity, respect for human dignity and the right to medical assistance.

382. In order to guarantee a framework of respect and full rights for the migrant, the police force and especially the Special Migration Police receives regular training courses with specific guidelines such as the respect of immigrants’ human rights, with a view to raising their awareness and guaranteeing that they act in accordance with the law of the land.

383. Costa Rica’s migration policy has been strongly influenced by the rulings of the Constitutional Chamber in specific cases. Issues such as temporary arrest of aliens, the granting of visas for marriages by proxy, refusal of entry, deportation of aliens having links with Costa Ricans, granting of residence, the right to petition in relation to residence applications, temporary permits or visas and other administrative procedures have been defined by the Constitutional Chamber. To a certain extent this situation has limited the chances of devising a comprehensive migration policy that takes account of all the cases that can arise in migration matters, since there is no limit to the scope of citizens’ claims.

384. In recent years, the General Directorate for Migration and Aliens has approved a number of measures by executive decree in order to regulate national migration policy. Costa Rica is one of the countries in the world that receives the most immigrants in relation to its size and capacity. It is therefore necessary to transform the migration management system to regulate the growth in the foreign population residing in the country, face up to the persistent pressure from illegal migration movements and the steady growth in new influxes of foreigners.

385. The Executive has been aware and responsible, making obvious efforts to devise a migration policy for the country (through legislation) that can offer a most effective response to the problem of migration, while fully respecting human rights and dignity, acknowledging and fostering orderly international migration as an important factor for development, while at the same time providing mechanisms that can effectively prevent and discourage disorderly and

irregular influxes, applying sanctions to anyone fostering irregular practices that contravene social legislation.

386. Through the implementation of migration policies by the General Directorate for Migration and Aliens, the country has endeavoured to counter marriages by proxy, resolve applications for refugee status, residence and temporary permits, grant visas under the consultation system, arrange deportations under articles 49, 50 and 118 of the current General Law, restrictively apply the concept of the assisted immigrant governed by article 35(a), and many other situations involving administrative decisions which have obviously led to selectivity regarding the entry and stay of foreigners in the country.

387. To deal with new migration requests, the Executive presented a new migration bill to the Congress of the Republic, which the Legal Affairs Committee handled under dossier No 14 269. The Committee noted his bill in the previous report and asked for more details of its progress. According to points 15 and 16 of its report of observations to the Government, it has been approved and will enter force on 12 August 2006.

388. The bill was submitted for constitutional consultation and in ruling No 2005-09618 the Constitutional Chamber found that article 67 of the bill contained an unconstitutional element; the text reads as follows:

*“Article 67. Where an alien applies for entry or a stay on the grounds of proxy marriage with a Costa Rican, evidence must be produced to show that the couple have lived together for at least one year outside the country. Furthermore, if residence is applied for, the marriage must be duly entered in the Costa Rican Civil Register. For the purposes of this Law, living together as a couple means a stable union of the couple as a primary social unit, characterized by publication, cohabitation and exclusivity, deserving the protection of the State”.*

389. For the magistrates of Costa Rica’s supreme constitutional court, “regarding authority to determine marriage by proxy, the only unconstitutional element in the view of the Chamber, is the requirement for the Costa Rican to have lived abroad in a couple for a year, since that requirement runs counter to the principle of free will, and runs indirectly counter to the prohibition laid down in article 32 of the Constitution, by requiring the Costa Rican to have lived outside the country in a conjugal union for at least a year; furthermore, this requirement violates the constitutional principles of reasonableness, rationality and proportionality...”

390. Moreover, in September 2005 an executive decree was approved reforming the current implementing regulation of the General Law on Migration and Aliens.

### **Migration law**

391. Among the most important aspects that the new law deals with are the criminalization of human trafficking, the organization of arranged marriages between aliens and Costa Ricans to enable the former to obtain residence in the country, the prohibition of the entry into the country of aliens sentenced for sex crimes, exploitation of minors, homicide, genocide, tax evasion, and trafficking of arms, humans, cultural, archeological or ecological heritage, or drugs.

392. Entry into the country is also prohibited to foreigners who have been imprisoned in the past ten years for fraudulent crimes against minors or violence against women or disabled persons. It is also stipulated that the legal representatives of a means of international transport on which a foreigner gains illegal entry to the country, may be charged with a fine varying from 3 to 12 times the amount of the basic wage (between 333 000 and 1 332 000 colones or US\$ 672 and US\$2 690 at the exchange rate of ¢500 to the dollar).

393. The bill was harshly criticized by some sectors of society, such as the Catholic Church, the Office of the Ombudsman and the public universities, which at the time asked the members of the Legislative Assembly to return it to a special joint committee to correct or clarify some aspects which they felt “ran counter to human rights”.<sup>28</sup>

394. The criticisms raised by these groups, were the use of certain terminology that they regarded as inappropriate (they asked for the term “illegal” to be replaced by “irregular”) and noted that the principle of due process was being violated in that no provision was made for challenging decisions affecting immigrants. For example, on the basis of the new law, the police could refuse entry to illegal immigrants in an area 50 km inside the frontier without there being any administrative remedy against the officers’ decision.

395. They also pointed out that there were no provisions for the families of illegal immigrants and no reference was made to the setting-up of centres to house them or of the participation of the PANI where there were minors. Moreover, the Catholic Church was concerned about the provision to penalize anyone giving shelter to persons not legally entitled to stay in the country, considering in particular the case of humanitarian aid.

396. In its report for 2004-2005, the 2004-2005 also listed a number of assumptions or situations which, in the judgment of the institution, the bill did not address; these included the guarantee of judicial review of decisions handed down by the General Directorate for Migration and Aliens, the fundamental right to personal freedom, the need to set maximum terms of detention and effective jurisdictional safeguards, and the adaptation of the regulations to international standards for the protection of human rights.

397. For the Office of the Ombudsman, there is a clear need for new migration legislation in Costa Rica but “stresses the need for that effort to be in line with a comprehensive view of the theme, with a human rights perspective as the core running through the definition of new legislation and the resulting migration policy; it is not sufficient merely to make a passing reference to human rights as the bill does in some of its articles”.

398. Nevertheless, the Costa Rican Government has been clear and has reiterated in various for a that these regulations have been subject to a thorough legal study, with consultations of constitutionality and which obey the need for a piece of legislation that responds to the real situation of a country such as Costa Rica, a net receiver of migrants.

## **Refugees**

399. Costa Rica has the highest refugee population in Latin America. Some 13 500 persons live in the country under this statutory regime, 8 500 of whom are Colombians.

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<sup>28</sup> Office of the Ombudsman. Annual Report 2003-2004.



400. Regarding the legislation applied, Costa Rica is a signatory of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Both instruments were incorporated into national law by Law No 6079 of 28 August 1977. In addition, the procedure for recognizing the status of refugee is regulated by decree No 32195-G published in La Gaceta No 15 of 21 January 2005.

401. The legal framework for determining the status of refugee is decree No 32196-G which lays down a procedure in accordance with the provisions of the 1951 Convention and its 1967 Protocol.

402. This procedure begins with the submission of the request by the applicant to the migration authorities located at the various frontier posts or to the office specializing in such matters. After receiving the application, the Department of Refugees of the General Directorate for Migration opens an individual dossier containing the questionnaire for applicants for refugee status in Costa Rica; the minutes of a confidential meeting to test whether their fears of persecution are grounded, a personal document, the birth certificate and the record of any previous convictions or a sworn affidavit of both, fingerprints from the Police Archive and two photographs.

403. The application must be submitted within one month of entry into the country. Once this is done, the Technical Section of the Department of Refugees will deliver an opinion on the soundness of the application, taking account of the claims made, the situation in the country concerned and international regulations.

404. While the application for refugee status is being processed, the applicant will be issued with a temporary document that may be renewed until such time as a definitive decision on the application is reached. It is for the Director-General for Migration to take the final decision on refugee status, taking account of the technical opinion of the Technical Section of the Department of Refugees, within 30 working days of the completion of the personal dossier. The document issued will be valid for one year and renewable for one year at a time.

405. Once the foreigner has been declared a refugee under international protection, he is entitled to carry out any paid or profitable manual or intellectual work, as a self-employed person or as an employee, with the exception of the professional activities that by law are subject to approval by the relevant professional association.

406. The decree lays down a number of conditions to enable the applicant's family to be granted refugee status also.

407. According to article 14 of the Decree, a refugee may be expelled only for reasons of national security or public order or, having been convicted by a final judgement of a particularly serious crime, he constitutes a danger to the community of that country. The procedure provides for immediate notification of UNHCR to enable it to arrange for a third country to receive the refugee, within the limits and always in line with the guarantees set out in article 33 of the Convention relating to the Status of Refugees.

408. If the refugee's application is refused, he or the UNHCR may invoke the standard remedies for annulment and appeal. In no circumstances may any refugee be returned to the country where his life or freedom would be threatened on account of persecution.

409. Costa Rican has always been faithful to its tradition of asylum, especially regarding persons displaced violently from their country of origin because their life, freedom or safety would be threatened or they had reason to fear persecution.

410. Costa Rica pays due attention to refugees and has lawyers in various international for a to ensure that these national efforts are backed by the international community, in accordance with the States' joint responsibility and solidarity.

411. In 2002, UNHCR, jointly with the University of Costa Rica, in the context of the University Communal Work Project "Strengthening the protection of refugees and vulnerable migrants in Costa Rica" drafted a document entitled "Diagnosis of the degree of local integration of refugees in Costa Rica".

412. The diagnosis highlights important characteristics of the refugee population; the legal framework of their rights and obligations and the relationship established with national institutions, agencies or authorities. It also looks at their capabilities and how they face up to the challenge of surviving in Costa Rica, perceptions of refugees in relation to their acceptance in Costa Rican society and the opinions of Costa Ricans on this segment of the population.

413. With the cooperation of the UNHCR, in 2003 a donation was received of technical equipment and documentation for the Department of Refugees of the General Directorate for Migration and Aliens with a view to aiding efficient handling of the refugee population and at the same time giving training courses to officials of both the central and regional offices. A new agreement was also reached to create two new posts to reform the staff of the Department of Refugees, so as to ensure proper care.

414. In August 2005, a UNHCR spokesperson made a statement to the press to the effect that the new General Law on Migration and Aliens, which on 29 September was going through the legislative process, with a favourable first opinion, did not live up to expectations and that some of its provisions could even "lead to an exacerbation of the already unfriendly climate towards asylum seekers and refugees in the country". She also made a number of criticisms about the possible fate of children of asylum seekers and refugees if their refugee status were withdrawn.

415. The Costa Rican Government, availaing itself of the right to reply, declared that the statements were unfair and untrue, since "in relation to its size and capacity, Costa Rica is one of the countries in the world that receives the most immigrants and it grants them practically the same rights as its own citizens".

416. In its letter to UNHCR, the Costa Rican Chancellery wrote "human rights instruments in force in Costa Rica not only have similar status to the Constitution but also, in so far as they grant greater rights or guarantees to persons, take precedence over the Constitution". Accordingly, any legal provision running counter to those rules would be inapplicable. The international legislation to which Costa Rica is a party includes the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol, the United Nations covenants on Human Rights and the American Convention on Human Rights (Pact of San José).

417. To conclude, the note reiterated that "the draft General Law on Migration and Aliens followed the public procedure as required by Costa Rican law and included stages of consultation in which the various social players were able to comment. As an indication of the new

legislation's adherence to the current constitutional and international framework, the bill was also submitted to the Constitutional Chamber of the Supreme Court of Justice. This court, which has the task of monitoring the constitutionality of laws, concluded in its decision No 2005-09618 that the text of the bill neither contradicted nor violated the Constitution nor international human rights instruments.

418. In his note of clarification and correction, the Director of the Office for the Americas of the United Nations High Commissariat for Refugees expressed his recognition of the Costa Rican Government's commitment to maintain the highest standards of protection for refugees, regretting that the sentence by the organization's spokesperson should have been interpreted as a negative criticism.. He concluded by acknowledging and appreciating how many Colombian refugees the country received and the official support for the process of commemorating the Cartagena Declaration that resulted in the adoption of the Puebla Plan.

### **ARTICLE 15**

419. All persons in Costa Rica, regardless of ethnic, national or social origin, have free access to justice and to exercise all the rights and remedies provided by the legal system to protect their rights.

420. In order to give a specific, differentiated treatment to the indigenous issue, the Supreme Court of Justice has set a deadline for the appointment of an inspector specializing in indigenous affairs, who will have jurisdiction over the whole country. A team of interpreters handling aboriginal languages has also been set, who may be summoned as required to the courts hearing the cases.

421. In order to ensure equal access to the courts and in particular to consider the indigenous view on the cases to be resolved, in Circular No. 20-2001, the Supreme Court of Justice instructed the Judges of the Republic, before ruling on disputes, to consult indigenous peoples in all disputes submitted for their consideration.

422. The above-mentioned Circular No. 20-2001 is worded as follows: Subject: Use of an interpreter were necessary and duty to consult the indigenous community on the scope of the conflict submitted for consideration.

### **TO THE COUNTRY'S JUDICIAL AUTHORITIES HANDLING CIVIL AND CRIMINAL CASES**

#### ***Be it known that:***

The Higher Council at session No. 5-2001 held on 16 January 2001, Article XXXI, decided to inform you that where an interpreter is required, you are to designate one as appropriate to provide the necessary assistance for the effective application of Article 339 of the Code of Criminal Procedure.

It also decided to inform you of your duty to consult and enquire with the indigenous community regarding the scope of the conflict submitted for your consideration, especially when that community incorporates Common Tribunals, chiefdoms or Development Associations which resolve issues within the community.