



**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 9 OF THE CONVENTION**

**Eighteenth periodic reports of States parties due in 2004**

**Addendum**

**COSTA RICA\***

[31 May 2006]

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\* This document contains the seventeenth and eighteenth periodic reports, submitted as one document, due on 4 January 2004. For the sixteenth periodic report of Costa Rica and the summary records of the meetings at which the Committee considered that report, see CERD/C/384/Add.5 and CERD/C/SR.1513, 1514 and 1521.

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*The following State and non-governmental organizations were consulted and asked to supply information for this report, as part of the process of obtaining national approval:*

Agricultural Development Institute

Association of Domestic Workers (Astradomes)

Atlantic Coast Ports and Economic Development Authority

Caribbean Project Association

Central Bank of Costa Rica

Centre for Afro-Costa Rican Women

Chinese Association of Costa Rica

Costa Rica-Canada Foundation

Costa Rican Electricity Institute

Costa Rican Institute of Fisheries and Agriculture

Costa Rican Institute for Radio Education

Costa Rican Institute for Sport and Recreation

Costa Rican Post Office

Costa Rican Social Security Fund

Costa Rican Tourist Institute

Costa Rican Water Supply and Sewerage Institute

Housing Mortgage Bank

Inter-Agency Institute for Social Assistance

Legal Research Centre, Faculty of Law, University of Costa Rica

Legislative Assembly

Ministry of Culture, Youth and Sport

Ministry of Education

Ministry of Finance

Ministry of Foreign Affairs and Religion

Ministry of Foreign Trade

Ministry of Health

Ministry of Housing and Human Settlements

Ministry of Justice

Ministry of Labour and Social Security

Ministry of Public Works and Transport

Ministry of Science and Technology

Ministry of the Economy, Industry and Trade

Ministry of the Environment and Energy

Ministry of the Interior, the Police and Public Security (including the Migration and Aliens Office)

Ministry of the Presidency

National Child Welfare Agency

National Commission on Indigenous Affairs

National Council for Older People

National Council on Rehabilitation

National Department of Communal Development

National Institute for Housing and Town Planning

National Institute for Women

National Production Council

National Radio and Television System

National Statistics and Census Institute

National Training Institute

Office of the Ombudsman

Omar Dengo Foundation

Paniamor Foundation

Supreme Court

Supreme Electoral Tribunal

In accordance with the practice in preparing other reports, the Costa Rican foreign office requested institutions and non-governmental organizations to submit relevant information. Sometimes a questionnaire was supplied, asking for the information of most relevance to each article of the Covenant. In addition, the Government Social Council requested every national institution to supply the information in its field of competence.

The information received, together with information taken from interviews, the press and studies by public and private institutions, was processed to produce a preliminary report that was submitted to institutions for consultation over a period of two months. The comments received were then incorporated into the final text.

**SEVENTEENTH AND EIGHTEENTH PERIODIC REPORTS SUBMITTED  
AS ONE DOCUMENT BY THE GOVERNMENT OF COSTA RICA IN  
COMPLIANCE WITH THE INTERNATIONAL CONVENTION ON THE  
ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

Costa Rica, as a State party to the International Convention on the Elimination of All Forms of Racial Discrimination, herewith submits for consideration by the Committee on the Elimination of Racial Discrimination its seventeenth and eighteenth periodic reports covering measures adopted during the period 2002-2006, in compliance with its commitments under article 9 of the Convention.

This report has been prepared in accordance with the guidelines established by the Committee for the submission of reports by States parties (CERD/C/70/Rev.5).

**CHAPTER 1**

1. As has been indicated in previous reports, Costa Rica possesses a wide range of legislation guaranteeing full equality of rights to all its inhabitants, regardless of their religion, sex, race, language, opinions, ethnic origin or social group.

**Legal framework**

**Constitution**

2. Article 33 of the Constitution reflects the spirit of the Convention when it states: “All persons are equal before the law and no discrimination whatsoever may be practised contrary to human dignity.”

3. Over the years, the Constitutional Chamber has consistently ruled that: “The principle of equality before the law is violated only if a law provides, without justification, for different treatment of persons in equal situations. It thus follows that the regulations must be equal with respect to the whole of any given category of persons” (Constitutional Chamber decision No. 4675-03).

4. Equality, as the Chamber has repeatedly stated, is violated only when an instance of inequality has no objective and reasonable justification. Equality must be understood in the light of the circumstances of each case in which it is invoked. Thus, the universal application of the law does not prohibit the consideration of different solutions or different treatment for different situations.

5. It is not for judges to decide whether a particular distinction made in a rule is correct or advisable, but rather to ascertain whether or not the criterion of discrimination is reasonable, as it is the judgement concerning reasonableness that enables the Chamber to decide whether or not an instance of inequality is a breach of the Constitution (Constitutional Chamber decision No. 4675-03).

6. In decision No. 337-91, the Constitutional Chamber identified, in line with its settled case law, “objective elements of differentiation that justify and warrant different treatment”. This is



referred to in constitutional doctrine as “positive discrimination”, which consists of affording special treatment to individuals or groups considered to be in a disadvantaged position with respect to others.

7. Lastly, in decision No. 1440-92, the Chamber stipulates that the principle of equality implies the obligation to consider as equal all persons belonging to a particular category or group who are affected by a particular measure, while avoiding arbitrary distinctions. This can be accomplished only by applying the criteria relating to reasonableness.

8. In order to guarantee the enjoyment of all the rights conferred by the Constitution and international human rights treaties, article 48 of the Constitution provides for unrestricted recourse to the remedies of *amparo* and habeas corpus.

9. The Constitutional Chamber, which is now firmly established within the justice system, has become a fundamental pillar of the system for the protection of human rights in Costa Rica. Through its decisions and interpretations, the Constitutional Chamber has introduced a new approach to the interpretation of the law. This approach is linked to values, principles and ethical content which complement the written law.

### **International treaties**

10. As indicated in previous reports, article 7 of the Constitution establishes the hierarchy of legal instruments, stipulating that “public treaties, international agreements and concordats duly approved by the Legislative Assembly shall, from the date of their promulgation or the date they designate, have a higher authority than the laws”.

11. The position of international human rights instruments in the legal order has been defined by decisions Nos. 3435-92, 5759-93 and 2323-95 of the Constitutional Chamber, which has decreed, notably in the last-named decision, 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 special provisions that grant such instruments constitutional rank. Indeed, as has been recognized in the case law of the Constitutional Chamber, the rank accorded to human rights instruments in force in Costa Rica is not only comparable to that of the Constitution itself, but also, insofar as such instruments grant greater rights or guarantees to persons, higher than that of the Constitution.”

12. Similarly, the Chamber’s decision No. 0588-94 provides that: “Pursuant to article 7 of the Constitution, international treaties and agreements, as a source of rules for our legal system, take precedence over ordinary law. This implies that a rule contained in a treaty or agreement - which are equivalent for the purposes of international law - prevails over a domestic legal rule.”

13. Since submitting its sixteenth periodic report in 2002 and defending it orally in 2002, Costa Rica has, pursuant to Act No. 8314 (adopted on 16 September 2002) and Act No. 8315 (adopted on 26 September 2002), ratified the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

14. Despite having ratified the core international instruments, Costa Rica has not taken firm and determined steps to promote and give effect to the international agreements related to non-discrimination. Many aspects addressed in the instruments have not been properly incorporated into national policies, and there are still no clear public policies to combat discrimination.<sup>1</sup>

### **Criminal Code**

15. As indicated in the previous report, Costa Rican legislation expressly classifies racial discrimination as a misdemeanour punishable by several day-fine units, and not as a criminal offence.

16. Article 373 of the Criminal Code stipulates that: “Any person, manager or director of an official or private institution or administrator of an industrial or commercial establishment who applies any prejudicial discriminatory measure based on considerations of race, sex, age, religion, marital status, political opinion, social origin or economic situation shall be liable to 20 to 60 day-fine units. In the event of a repeat offence, judges may, in addition, and as an accessory penalty, suspend a public official from his or her duties or post for a period of no less than 15 and no more than 60 days.” (Pursuant to section 185 (a) of Act No. 7732 of 17 December 1997, the numbering of this article was changed from 371 to 373.)

17. It must be recognized that the legal definition of racial discrimination has not been framed in Costa Rican legislation in such a way as to meet the requirements of the international instruments duly ratified by the State. From this standpoint, the relevant domestic legislation has still not been brought into line with internationally prescribed standards and lacks full legal effectiveness.

18. In the previous report, it was stated that the Legislative Assembly was considering a draft criminal code which, regrettably, made the same mistake as the existing Criminal Code in that it classified racial discrimination as a misdemeanour. In any case, it should be noted that, owing to legal technicalities, this draft was not considered by Congress and was ultimately shelved.

19. Despite the fact that it contains no specific definition of discrimination, the Criminal Code, in accordance with the article in question, does mention a number of closely related offences, such as international crimes, genocide, conspiracy, extolling crime and incitement to hatred.

20. With respect to international crimes, article 374 stipulates that: “A penalty of 10 to 15 years’ imprisonment shall be imposed on anyone heading or participating in international organizations engaged in trafficking of slaves, women, children or narcotics or committing acts of terrorism or violating provisions of the human rights treaties signed by Costa Rica.” (Pursuant to section 185 (a) of Act No. 7732 of 17 December 1997, the numbering of this article was changed from 372 to 374.)

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<sup>1</sup> Viewpoint expressed by the Caribbean Project Association, 28 March 2006.

21. Article 375, on genocide, stipulates that: “A penalty of 10 to 25 years’ imprisonment shall be imposed on anyone who, with the intent to kill, takes part in the total or partial destruction of a particular group of human beings on the grounds of nationality, race, or religious or political belief. The same penalty shall be imposed on anyone who:

- (a) Causes serious bodily or mental harm to members of those groups;
- (b) Places those groups in such precarious living conditions that all or some of the individuals that make up the groups may die;
- (c) Takes measures to prevent births within those groups; or
- (d) Through force or intimidation, transfers children from one of those groups to another group.”

(Pursuant to section 185 (a) of Act No. 7732 of 17 December 1997, the numbering of this article was changed from 373 to 375.)

22. With regard to conspiracy, which is described under Title X on offences against the public peace, article 274 stipulates that: “Anyone who participates in an agreement between two or more persons for the purpose of committing offences shall be sentenced to between one and six years in prison solely for being a party to the agreement.”

23. The offence of extolling crimes is described in article 276, which stipulates that: “Anyone who publicly extols a crime or a person convicted of a crime shall be liable to one month to one year’s imprisonment or 10 to 60 day-fine units.” (Pursuant to section 185 (a) of Act No. 7732 of 17 December 1997, the numbering of this article was changed from 274 to 276.)

24. The Government of Costa Rica wishes to point out that the Committee’s concerns - expressed in paragraph 10 of its concluding observations - relating to the fact that racial discrimination was classified as a misdemeanour, were duly communicated to the competent authorities of the Legislative Assembly. This will enable them to consider reform proposals on the need to criminalize discrimination on grounds of national or ethnic origin and racial discrimination by groups or private associations, as well as to review the fines prescribed.

25. Nevertheless, in exercising its independence as a branch of government, the legislature has, to date, not adopted any legal rules in this regard.

26. To complement the specific regulations referred to in paragraphs 33 to 37 of the sixteenth periodic report, we wish to mention the following regulations on labour and biodiversity.

### **Labour legislation**

27. In the area of labour, article 618 of the Labour Code stipulates that “all discrimination at work for reasons of age, ethnic origin, gender or religion is prohibited”, while article 619 stipulates that “all workers who perform the same job shall enjoy the same rights, same working day and same remuneration, without any distinction whatsoever for reasons of age, gender or religion”.

28. It should be noted that, in addition to the Labour Code, there is a law on discrimination in employment. Costa Rica has ratified International Labour Organization (ILO) Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value and ILO Convention No. 111 concerning Discrimination in respect of Employment and Occupation. In the past few years, the legislation has been updated through the incorporation of provisions relating to gender, such as the Equality of Women Act and Act No. 7600 on Equal Opportunities for Disabled Persons.

29. In addition, article 1 of Act No. 2694 on the prohibition of discrimination at work, which was adopted on 22 November 1960, stipulates that: “Any form of discrimination, manifested as a distinction, exclusion or preference made on the basis of race, colour sex, age, religion, civil status, political opinion, national extraction, social origin, affiliation or financial situation which has the effect of impairing equality of opportunity or treatment in employment or occupation is hereby prohibited.”

30. With regard to women and mechanisms for their protection, legislation providing maternity protection was enacted, according to which, for example, a woman’s employment cannot be terminated during this period. Only justified dismissals and dismissals in cases authorized and endorsed by the Ministry of Labour and Social Security are permitted.

31. Civil society has expressed the view that “the existence of discriminatory practices is still tolerated by the civil service” in Costa Rica. They assert that new, less obvious and more sophisticated techniques have emerged to express prejudice and discrimination on the basis of ethnic or racial origin.

### **Biodiversity Act**

32. The Biodiversity Act (No. 7788), which was adopted on 30 April 1988, contains a series of provisions related to the right of indigenous communities to own property, which is a source of natural, cultural, spiritual, economic and social wealth. The Act also establishes sui generis community rights (art. 82) and the establishment and registration of sui generis intellectual rights (art. 84).

### **Regulations favouring indigenous people**

33. With respect to paragraph 12 of the Committee’s concluding observations on the sixteenth periodic report, it should be mentioned that following the procedural shelving of the Autonomous Development of Indigenous Peoples Bill in mid-2001, Walter Robinson, who was a member of the legislature at the time, resubmitted the bill in its entirety. It is currently at the top of the agenda of items to be considered by the Social Affairs Committee. However, it has not been considered since 2002 and is once again in danger of being shelved over a technicality.

34. We reiterate that this bill, which resulted from a four-stage initiative and broad consultation within both the indigenous communities and the Constitutional Chamber, and which at the time of its consideration received the approval of the Legislative Committee, sets out a framework for the autonomous development of the eight Costa Rican indigenous ethnic groups.

35. The bill basically sets out a series of regulations and actions to be implemented in the areas of public administration, a special education system, health, environmental protection, infrastructure and housing programmes, management of land tenure, establishment of credit systems and recognition of a system of political organization based on territorial councils elected directly by the indigenous communities for the purpose of managing the indigenous territories. The bill also recognizes their autonomy and their right to their own culture.

36. In 2004, Costa Rica submitted its report to the International Labour Organization on the implementation of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. Based on the report, the ILO Committee of Experts on the Application of Conventions and Recommendations, in its recommendations, requested the Government of Costa Rica to introduce legislation to properly regulate and give effect to the rights established in Convention No. 169. In addition, it regretted the shelving of the Autonomous Development of Indigenous Peoples Bill and recalled the importance of dealing with the problem of the presence of non-indigenous persons in indigenous communities and the implications of this situation for land tenure.

37. We wish to report that efforts were made at the institutional level (by the Ministry of Labour and Social Security, the Migration and Aliens Office and the Costa Rican Social Security Fund) to implement a plan for documenting migrant workers in the Bribri/Sixaola region. The plan provides indigenous people with the necessary accreditation to enable them to work in agricultural businesses and agricultural export companies in the region. Provisions to this effect are also included in Decree No. 32696-G-MTSS.

#### **Re-establishment of the National Commission on Indigenous Affairs**

38. One of the most noteworthy developments in the period under review was the reinstatement of the legal mandate of the National Commission on Indigenous Affairs (CONAI) following the election of its nine board members. The Commission had existed for many years without a decision-making body owing to a series of internal differences, which, combined with certain actions in the courts and the Constitutional Chamber, had paralysed it. That, in turn, had had an adverse effect on the indigenous communities, which could no longer rely on a major decision-making body to handle their internal affairs.

39. The new executive board of the National Commission on Indigenous Affairs comprises seven members who are representatives of the indigenous communities and who are appointed for a two-year term.

40. According to the new members, the main problem of the Commission in previous years was that it had strayed from its functions and responsibilities by taking initiatives that fell outside its area of competence. In an effort to refocus on its mandate, their primary objective is to improve the institution's public image and to ensure it complies fully with the provisions of the law governing it, which assign to it the task of coordinating the activities of governmental and non-governmental institutions.

### Statistics on migrants in Costa Rica

41. The National Census of 2000 showed that 296,461 inhabitants of Costa Rica, or 7.8 per cent of the total population, were born abroad, mostly in Nicaragua, Panama, the United States of America and Colombia; people born in Nicaragua form the largest group, accounting for 75 per cent of the total registered foreign population.

42. According to the census, the Nicaraguan population group numbers 226,374 (6 per cent of the total population of the country). It should be noted, however, that an unknown number of persons were not included in the census because they were temporary labourers continually moving around the country to take advantage of farming production cycles.

43. As at September 2005, the Statistics Department of the Migration and Aliens Office had registered 285,848 temporary or permanent legal residents. This number does not include persons who benefited from the migrant amnesty in 1999 or the thousands still in an illegal situation. The following table contains information on the numbers and national origin of foreigners living in Costa Rica.

Country or territory	Temporary	Permanent	Total
<b>Africa</b>			
Algeria	1	6	7
Angola	0	1	1
Benin	0	1	1
Cape Verde	0	4	4
Egypt	0	1	1
Eritrea	0	1	1
Ghana	0	1	1
Kenya	2	7	9
Liberia	0	3	3
Libyan Arab Jamahiriya	0	12	12
Morocco	3	11	14
Mozambique	0	1	1
Nigeria	0	3	3
Senegal	0	3	3
Sierra Leone	1	0	1
Somalia	0	1	1
South Africa	2	4	6
Sudan	0	1	1
Tunisia	1	1	2
Uganda	1	0	1
United Republic of Tanzania	1	3	4
<b>Total for Africa</b>	<b>11</b>	<b>65</b>	<b>76</b>
<b>America</b>			
Argentina	414	779	1 193
Aruba	0	1	1
Bahamas	0	4	4
Barbados	1	1	2

Country or territory	Temporary	Permanent	Total
Belize	6	50	56
Bermuda	0	1	1
Bolivia	28	146	174
Brazil	159	233	392
Canada	271	1 188	1 459
Chile	150	705	855
Colombia	1 884	7 703	9 587
Cuba	70	5 908	5 978
Curacao	1	1	2
Dominica	0	3	3
Dominican Republic	88	1 450	1 538
Ecuador	144	604	748
El Salvador	542	6 355	6 897
Guatemala	291	1 093	1 384
Guyana	0	22	22
Haiti	5	53	58
Honduras	248	1 637	1 885
Jamaica	13	69	82
Mexico	672	1 043	1 715
Nicaragua	3 078	214 394	217 472
Panama	264	4 603	4 867
Paraguay	6	29	35
Peru	286	2 545	2 831
Puerto Rico	1	3	4
Saint Kitts and Nevis	0	1	1
Saint Vincent	0	1	1
Suriname	0	5	5
Trinidad and Tobago	5	13	18
United States of America	1 620	6 602	8 222
Uruguay	36	144	180
Venezuela (Bolivarian Republic of)	419	721	1 140
Total for America	10 702	258 110	268 812
Asia			
Afghanistan	0	2	2
Armenia	0	5	5
Bangladesh	0	3	3
China	222	4 215	4 437
Cyprus	0	1	1
Democratic People's Republic of Korea	2	2	4
Georgia	0	7	7
Hong Kong	33	89	122
India	47	33	80
Indonesia	0	6	6
Iran (Islamic Republic of)	15	100	115
Iraq	0	3	3
Israel	31	115	146

Country or territory	Temporary	Permanent	Total
Japan	109	137	246
Jordan	2	16	18
Kazakhstan	3	1	4
Kuwait	0	1	1
Lao People's Democratic Republic	0	1	1
Lebanon	14	56	70
Malaysia	4	2	6
Mongolia	1	0	1
Nepal	0	4	4
Oman	0	1	1
Pakistan	4	10	14
Palestine	0	9	9
Philippines	33	82	115
Republic of Korea	381	303	684
Saudi Arabia	0	1	1
Singapore	4	8	12
Sri Lanka	1	0	1
Syrian Arab Republic	0	50	50
Taiwan	128	2 130	2 258
Thailand	7	3	10
Turkey	2	10	12
Uzbekistan	0	6	6
Viet Nam	0	2	2
<b>Total for Asia</b>	<b>1 042</b>	<b>7 414</b>	<b>8 456</b>
Europe			
Austria	21	99	120
Belarus	0	9	9
Belgium	40	188	228
Bulgaria	1	41	42
Croatia	0	8	8
Czech Republic	8	37	45
Denmark	12	40	52
Estonia	1	1	2
Finland	1	9	10
France	171	515	686
Germany	176	1 226	1 402
Greece	1	17	18
Hungary	3	19	22
Ireland	9	14	23
Italy	234	1 386	1 620
Latvia	0	1	1
Liechtenstein	1	0	1
Lithuania	1	1	2
Luxembourg	0	6	6
Moldova	0	3	3
Netherlands	105	425	530



Country or territory	Temporary	Permanent	Total
Norway	18	37	55
Poland	6	34	40
Portugal	11	31	42
Romania	4	63	67
Russian Federation	17	233	250
San Marino	0	1	1
Serbia and Montenegro	3	16	19
Slovakia	0	2	2
Slovenia	0	2	2
Spain	124	1 678	1 802
Sweden	28	104	132
Switzerland	133	540	673
Ukraine	5	62	67
United Kingdom of Great Britain and Northern Ireland	133	327	460
<b>Total for Europe</b>	<b>1 267</b>	<b>7 175</b>	<b>8 442</b>
Oceania			
Australia	6	32	38
New Zealand	1	13	14
<b>Total for Oceania</b>	<b>7</b>	<b>45</b>	<b>52</b>
Others			
Stateless	0	3	3
Unclassified	0	7	7
<b>Total</b>	<b>0</b>	<b>10</b>	<b>10</b>
<b>Total resident aliens</b>	<b>13 029</b>	<b>272 819</b>	<b>285 848</b>

*Source:* Department of Planning, Migration and Aliens Office.

44. For the sake of efficiency, in September 2005, the Migration and Aliens Office granted a two-year extension for resident visas issued to the 150,000 Central Americans under the “Exceptions Regime”. This measure will primarily benefit a large number of Nicaraguans (who account for 98 per cent of the total).

### **Census of the indigenous population**

45. As with other ethnic groups, the inclusion of indigenous people in the 2000 census was a response to the need to determine the precise number of indigenous people living in Costa Rica, as well as their characteristics and geographical distribution and the situation of indigenous peoples.

46. Special methods were used to carry out the census in the indigenous communities, where additional information was gathered chiefly in order to determine the ethnic composition of the indigenous population, facilitate the construction of a frame of reference for future specific studies and gather relevant information on the particular features of the indigenous territories.<sup>2</sup>

47. The question on ethnic affiliation that was asked throughout the country and the additional questionnaire used in the indigenous territories had two aims: (a) to compare the situation of the indigenous population with that of the rest of the country; and (b) to provide information on the living conditions and the socio-demographic, educational and economic conditions of persons living in the indigenous territories.

48. Identifying ethnic affiliation is a complex issue and one for which various criteria and variables have been developed. In the case of the 2000 census, the criterion of self-identification was used, in keeping with article 1 of ILO Convention No. 169, which provides that “self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply”.

49. The format of the question used was as follows:

“To which of the following cultures does [name] belong?

- (a) Indigenous
- (b) Afro-Costa Rican or Black
- (c) Chinese
- (d) None of the above.”

50. Before conducting the census and formulating this question, it was necessary to define “culture”, which was understood to include “the traditions, practices and values associated with the identity of the indigenous, Afro-Costa Rican and Chinese ethnic groups and not based on physical appearance, skin colour or place of residence or origin”.<sup>3</sup>

51. On the basis of this criterion, the following parameters were established: indigenous persons are those who identify themselves as belonging by ancestry, intermingling or self-identification to one of the native peoples of Costa Rica, regardless of their place of residence; Afro-Costa Ricans or Blacks are persons who identify with the cultural traditions of groups of African origin and the African diaspora, irrespective of race, colour or nationality; and Chinese are persons who identify principally with the cultural traditions of China, Taiwan or Hong Kong, and who possess cultural traits that differ from those of other groups, such as the Japanese or the Koreans.

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<sup>2</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *Nota Población* (Chile, 2003), p. 222.

<sup>3</sup> Ibid., p. 225.

52. The additional questionnaire completed by persons in the indigenous territories - regardless of whether they considered themselves to be indigenous or non-indigenous - included questions pertaining to their indigenous group of origin, use of an indigenous language, mother tongue, access to land, and types of construction materials used to build their homes.

53. Owing to the particular features of the indigenous territories, a series of institutional measures were taken to guarantee complete coverage of the census: smaller spatial boundaries were established in order to facilitate efforts to locate and interview all inhabitants, various means of transport were used to guarantee access to the more remote areas of the country and indigenous persons and *baquianos* (local people who know the area and can help locate the inhabitants) were used as interpreters.

54. A radio campaign was also organized. The Costa Rican Institute for Radio Education (ICER) played an important role in the campaign by facilitating the recording of community leaders in various languages, such as Maleku, Cabecar, Bribri, Guaymí and Spanish. In addition, census-takers were, in many cases, trained by indigenous teachers, and used the Manual for Indigenous Territories in conjunction with the Manual for Census-Takers.

55. Lastly, various indigenous organizations lent their cooperation in the preparatory stages of the census, which was very useful because it helped to lay the foundation for the later efforts of the census-takers.

56. With regard to the analytical method employed, and based on the data collected, three socio-demographic indicators were devised: education, economic activity and housing. These criteria served as a basis for processing the data and carrying out the corresponding census studies.

### **Indigenous peoples of Costa Rica**

57. As mentioned in the previous report, there are officially considered to be eight ethnic groups or indigenous peoples in Costa Rica: the Cabecar, Bribri, Ngöbe, Terraba, Boruca (or Burunca), Huetar, Maleku and Chorotega. Each of these peoples has its own cultural tradition and, although Costa Rica is a small country, each has quite distinct social and cultural characteristics.

58. A variety of perspectives must be taken into account in any study of Costa Rica's indigenous population, since the census data reveal differences not only between the country's inhabitants but also within the ethnic groups themselves.

59. According to the 2000 census, of the 63,876 persons who identified themselves as indigenous residents, 42.3 per cent live in the 22 indigenous territories.

60. With a few exceptions, indigenous populations traditionally lived in territorial reserves referred to in Costa Rican legislation as "indigenous reservations", but which the Costa Rican indigenous movement and international instruments prefer to call "indigenous territories". Today, however, it appears that the majority live outside these territories: a considerable percentage (18.2 per cent) live on the periphery of these territories, while 39.5 per cent live elsewhere in the country.

61. The territories with the largest populations include Talamanca Bribri (20.7 per cent), Alto Chirripó or Duchi (14.2 per cent), Boruca (8.9 per cent) and Cabagra (7.1 per cent). The remaining 49 per cent are spread over the other territories, the least populated of which are Osa (0.4 per cent) and Bajo Chirripó, Nairi Awari, Abrojo Montezuma, Kekoldi Cocles and Zapatón, which each have less than 1.5 per cent of the total population.

62. The following table shows the total population in the indigenous territories in terms of distribution and size of the indigenous and non-indigenous populations, broken down by indigenous people and territory.

Indigenous peoples and territories	Total population	Population (%)	Indigenous	Non-indigenous	Indigenous	Non-indigenous	Foreign-born
					%		
Territory	33 128	100.00	27 041	6 087	81.6	18.4	2.3
Bribri people	11 062	33.4	9 645	1 417	87.2	12.8	1.7
Salitre	1 403	4.2	1 285	118	91.6	8.4	0.1
Cabagra	2 353	7.1	1 683	670	71.5	28.5	0.1
Talamanca Bribri	6 866	20.7	6 467	399	94.2	5.8	1.8
Kekoldi Cocles	440	1.3	210	230	47.7	52.3	13.2
Burunca (or Boruca) people	3 936	11.9	2 017	1 919	51.2	48.8	0.4
Boruca	2 954	8.9	1 386	1 568	46.9	53.1	0.4
Rey Curré	982	3.0	631	351	64.3	35.7	0.5
Cabecar people	10 175	30.7	9 861	314	96.9	3.1	0.2
Alto Chirripó	4 701	14.2	4 619	82	98.3	1.7	0.0
Ujarrás	1 030	3.1	855	175	83.0	17.0	0.6
Tayni	1 817	5.5	1 807	10	99.4	0.6	0.3
Talamanca Cabécar	1 369	4.1	1 335	34	97.5	2.5	0.7
Telire	536	1.6	536	0	100.0	0.0	0.0
Bajo Chirripó	372	1.1	363	9	97.6	2.4	0.3
Nairi Awari	350	1.1	346	4	98.9	1.1	0.3
Chorotega people	995	3.0	868	127	87.2	12.8	0.4
Matambú	995	3.0	868	127	87.2	12.8	0.4
Guaymi people	2 729	8.2	2 563	166	93.9	6.1	15.6
Abrojo Montezuma	406	1.2	387	19	95.3	4.7	10.3
Osa	118	0.4	114	4	96.6	3.4	8.5
Conte Buruca	1 111	3.4	971	140	87.4	12.6	15.8
Coto Brus	1 094	3.3	1 091	3	99.7	0.3	18.1
Maleku people	1 115	3.4	460	655	41.3	58.7	5.1
Guatuso	1 115	3.4	460	655	41.3	58.7	5.1
Teribe (or Terraba) people	1 425	4.3	621	804	43.6	56.4	1.3
Terraba	1 425	4.3	621	804	43.6	56.4	1.3
Huetar people	1 691	5.1	1 006	685	59.5	40.5	1.1
Zapatón	466	1.4	54	412	11.6	88.4	1.3
Quitirrisí	1 255	3.7	952	273	77.7	22.3	1.1

*Source:* National Statistics and Census Institute, Ninth National Census (2000).

63. It can be seen from this table that there is a strong non-indigenous presence in some territories, notably in Kekoldi, the territory of the Bribri people (52.3 per cent non-indigenous); Boruca, the territory of the Burunca people (53 per cent); Guatuso, the territory of the Maleku people (58.7 per cent); Terraba, the territory of the Teribe people (58.7 per cent); and Zapatón, the territory of the Huetar people (88.4 per cent).

64. In the remaining indigenous territories, the indigenous population is predominant, constituting a majority in the territories of the Cabecar and accounting for the entire population of the Telire territory.

65. The following table compares the total population with the indigenous population in broad geographic areas.

Location	Total population	Indigenous	Non-indigenous	Indigenous (%)	Non-indigenous (%)
Costa Rica	3 810 179	63 876	3 746 303	1.7	98.3
Indigenous territories	33 128	27 041	6 087	81.6	18.4
Periphery	195 295	11 641	183 654	6.0	94.0
Elsewhere in country	3 581 756	25 194	3 556 562	0.7	99.3

*Source: ECLAC, Nota Población, (2003).*

66. As may be seen from this table, the indigenous population constitutes 1.7 per cent of the total population, 81.6 per cent of the population of the indigenous territories, 6 per cent of the population living on the periphery of the indigenous territories and only 0.7 per cent of the population elsewhere in the country.

67. It is worth pointing out that non-indigenous inhabitants make up 18.4 per cent of the population in the indigenous territories. The reasons underlying this presence include the fact that some individuals do not identify themselves as indigenous because of a loss of cultural traditions and the influx of residents from other parts of the country, as well as the influx of foreigners.

68. Another point to bear in mind is that 18 per cent of the 63,876 indigenous people living in Costa Rica indicated that they were born in a foreign country, mainly in Nicaragua or Panama. This means that Costa Rican-born indigenous people make up only 1.3 per cent of the total population.

69. Demographic indicators are presented in the following table for the purposes of analysis and reference.

Population group	Ratio of men to women	Foreign-born population as percentage of total	Average number of children per woman	Overall fertility rate	Infant mortality rate (per 1,000 live births)
Indigenous in indigenous territory	107	1.7	4.1	3.4	28
Indigenous in peripheral areas	106	20.0	3.5	2.8	49
Indigenous elsewhere in country	105	38.0	3.1	2.5	20
Non-indigenous in indigenous territory	120	4.6	3.7	2.8	17
Non-indigenous elsewhere in country	100	7.6	2.7	2.0	16

*Source: ECLAC, Nota de Población (2003).*

70. This table provides several indicators. The figures indicate that the ratio of men to women among the non-indigenous population living elsewhere in the country is 100:100. This ratio increases to 105:100 for indigenous people living elsewhere in the country, to 107:100 for indigenous people living in the indigenous territories, and to 120:100 for non-indigenous people living in the indigenous territories. Some exceptions to these ratios may nevertheless be noted.

71. One factor that needs to be taken into account is the relative size of the foreign-born population. The indigenous people living on the periphery of the indigenous territories and elsewhere in the country include high percentages of indigenous foreigners when compared with other groups and with the national average for non-indigenous foreigners (7.6 per cent). Moreover, the large number of foreigners, indigenous and non-indigenous, living in the indigenous territories cannot be overlooked.

72. With respect to the average number of children born alive to women over the age of 15, the table shows that indigenous women in general and women living in the indigenous territories in particular have relatively more children than other women in Costa Rica. As far as infant mortality is concerned, the figures indicate that the national average is 16 deaths per 1,000 live births for non-indigenous women between the ages of 20 and 24, but in the indigenous territories and on the periphery of these territories the figure rises to, respectively, 49 and 28 per 1,000 live births.

73. The following table shows the demographic indicators broken down by indigenous territory.

Indigenous peoples and territories	Ratio of men to women	Age group			Rate of demographic dependence	Average number of children per woman	Overall fertility rate
		Under 15	15-64	Over 65			
Territory	109	46.4	49.8	3.7	101	3.3	91
Bribri people	110	46.8	49.9	3.3	100	4.0	3.3
Salitre	109	48.1	48.8	3.1	105	3.8	3.2
Cabagra	109	48.1	49.5	2.4	102	4.3	3.5
Talamanca Bribri	111	46.3	50.1	3.6	100	4.0	3.3
Kekoldi Cocles	99	42.5	52.7	4.8	90	3.4	2.8
Burunca or Boruca people	111	40.8	54.1	5.1	85	3.9	2.9
Boruca	110	41.7	53.6	4.7	87	3.8	2.8
Rey Curré	114	38.1	55.7	6.2	80	4.3	3.2
Cabecar people	107	51.3	46.1	2.7	117	4.1	3.6
Alto Chirripó	106	52.6	44.8	2.6	123	4.1	3.6
Ujarrás	104	44.5	50.4	5.1	98	4.1	3.1
Tayni	104	53.7	44.7	1.5	123	4.1	3.7
Talamanca Cabecar	115	46.2	51.1	2.7	96	4.1	3.4
Telire	106	53.0	44.8	2.2	123	3.6	3.4
Bajo Chirripó	116	55.6	42.2	2.2	137	5.5	5.4
Nairi Awari	115	53.1	44.6	2.3	124	3.4	2.9
Chorotega people	120	34.5	57.4	8.1	74	3.8	2.4
Matambu	120	34.5	57.4	8.1	74	3.8	2.4

Indigenous peoples and territories	Ratio of men to women	Age group			Rate of demographic dependence	Average number of children per woman	Overall fertility rate
		Under 15	15-64	Over 65			
Guaymi people	105	52.9	44.4	2.6	125	4.6	4.1
Abrojo Montezuma	104	53.7	44.1	2.2	127	4.7	4.4
Osa	115	46.6	51.7	1.7	93	5.1	4.9
Conte Buruca	110	51.0	46.3	2.7	116	4.2	3.6
Coto Brus	99	55.3	42.0	2.7	138	4.8	4.3
Maleku people	104	38.8	55.7	5.5	80	3.6	2.6
Guatuso	104	38.8	55.7	5.5	80	3.6	2.6
Teribe or Terraba people	117	38.8	55.3	5.9	81	3.9	2.7
Terraba	117	38.8	55.3	5.9	81	3.9	2.7
Huetar people	108	36.2	57.7	6.2	73	3.6	2.6
Zapatón	114	38.2	54.9	6.9	82	4.5	3.2
Quitirrisí	106	35.4	58.7	5.9	70	3.2	2.4

Source: ECLAC, *Nota de Población* (2003).

74. As mentioned above, the majority of the territories demonstrate a higher proportion of men to women, with the exception of the Bribri people in the Kekoldi Cocles territory and the Guaymi people in Coto Brus, where women are in the majority (100 women for every 99 men). In general, the differences are more pronounced in the case of non-indigenous inhabitants.

75. A review of the age structure shows that there are proportionally more young people in some territories, especially among the Guaymi, Cabecar and Bribri peoples, where they account for, respectively, 53, 51 and 47 per cent of the population.

76. Conversely, in five territories the average number of persons over the age of 65 exceeds the national average of 5.6 per cent. This situation may be explained by the migration of young people to other areas of the country. In contrast, the figure is low for the Guaymi (2.6 per cent), the Cabecar (2.7 per cent) and the Bribri (3.3 per cent).

77. Major differences may be found in indicators of demographic dependence. Territories such as Quitirrisí, Zapatón, Terraba, Guatuso, Matambú and Rey Curré have a ratio of 82 dependent persons to 100 economically active persons, whereas in territories such as Coto Brus, Bajo Chirripó, Abrojo Montezuma and Telire, dependent persons outnumber economically active persons.

78. In all territories, the average number of children per woman exceeds the national average of 1.9 children per woman.<sup>4</sup>

<sup>4</sup> University of Costa Rica, *Observatorio de Desarrollo* (San José, 2004).

79. The results of the national census indicate that Costa Rica does not yet have a policy that addresses the problems of indigenous women from a gender-based perspective. For many years, the work of the National Institute for Women (INAMU) was uncoordinated. The institute had no overall strategy to enable it effectively to guide, formulate and coordinate the policies developed to promote the rights of indigenous women.

80. In view of this, a working group whose members included indigenous women was recently established within the National Institute for Women for the purpose of formulating actions to be taken in various areas and ensuring that the needs of indigenous women were taken into account.

81. The plan for 2006 is to implement the initial stage of this strategy in the region of Talamanca and subsequently to extend it to other regions of the country after adapting it to the cultural and historical features of each community.

### **Regions with the strongest Afro-Costa Rican presence**

82. According to the 2000 census, the Afro-Costa Rican or black population consisted of 72,784 persons (1.9 per cent of the total population), of whom 36,478 were male and 36,306 female. However, it should be noted that the census methodology was not suitable for identifying factors that might have led to underreporting, such as the desire of some mulattos not to be identified as Afro-descendants. These figures must therefore be treated with caution.

83. According to Afro-Costa Rican non-governmental organizations, the census suffered from faulty variables, a lack of cross-referencing in the questions and imprecise methodology. Responses had a highly subjective element, given that in some cases the census-taker made assumptions about the respondent's racial status. Afro-Costa Rican representatives feel that only highly educated persons are aware of their racial status and that, although the census represented progress, its results were highly questionable.<sup>5</sup>

84. The issue of indicators featured prominently in the comments made by members of civil society, who reiterated how important it was for the State to adopt an agreed, participative approach to the collection, production and use of information when studying and compiling population statistics.<sup>6</sup>

85. Still on the subject of indicators, the 2000 census looked into the ethnic composition of the population. It found that 93.68 per cent of Afro-descendants were Costa Rican by birth, making this the ethnic population group with the highest proportion of Costa Ricans by birth.

86. Other census data that deserve careful analysis concern the birthplace and province of residence of the Afro-Costa Rican population. While 64.25 per cent of Afro-Costa Rican respondents were born in Limón province, 74.37 per cent of them live there. These figures

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<sup>5</sup> Interview with Epsy Campbell, parliamentarian and president of the Afro-Costa Rican Women's Network, October 2005.

<sup>6</sup> Caribbean Project Association, "Comments on the national report" (28 March 2006).



reflect the general profile of the Afro-Costa Rican population as an upwardly mobile social group, with rising educational levels and a growing presence in the cities of Limón and San José.

Province	Percentage	
	Afro-Costa Rican respondents in 2000 who claim to have been born there	Afro-Costa Rican respondents in 2000 who currently reside there
San José	11.79	14.30
Alajuela	3.74	3.01
Cartago	3.72	2.19
Heredia	1.85	3.00
Guanacaste	4.27	1.36
Puntarenas	4.03	1.76
Limón	64.25	74.37
Abroad	6.36	
Total	100.00	100.00

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

87. The Afro-descendant Costa Rican population lives mainly in urban areas (46,903 inhabitants, or 57.18 per cent of this population group); 7.26 per cent live on the outskirts of cities; 8.79 per cent in rural clusters; and 26.77 per cent in lightly populated rural areas.

88. As yet, there is no national study available for use as a reference for the analysis of the situation of Afro-Costa Rican women. This reflects how the Afro-Costa Rican community has historically been “invisible” as a consequence of racism; the situation has been further exacerbated for women because of their gender. Until 2000, Costa Rica had no official information at all on the subject, which was not covered by national censuses or household surveys. This led to a negative interpretation of the situation, since to all intents and purposes Afro-Costa Rican women simply did not exist.

89. Although the 2000 census did not address all aspects of the situation of Afro-Costa Rican women, it did reveal the high level of female emigration, particularly to the United States, which has affected certain demographic factors. The presence of a significant number of mothers, aunts and similar figures in the United States has facilitated the emigration of a new generation of young Afro-Costa Ricans who take advantage of social networks and family ties to find a way into a labour market that offers them better prospects.

90. The male/female ratio for Afro-Costa Ricans aged 55 to 69 is 113:100, even though women would be expected to predominate in this age group because of differences in the mortality rates of men and women.

91. The nature of the census, with its focus on households rather than on families, hinders the full ethnic identification of all family members. In fact, only 76 per cent of Afro-Costa Rican mothers and 78 per cent of mothers registered as belonging to no ethnic group appeared as heads of household or spouses at the time of the census.

92. According to the census, one third of the wives of Afro-Costa Rican men and one quarter of the husbands of Afro-Costa Rican women are not Afro-Costa Rican. A total of 14,828 men listed themselves as heads of family, of whom 82 per cent live with their spouse and 67 per cent are of African descent. Seventy-five per cent of their children identify themselves as Afro-descendants.

93. A total of 10,938 Afro-descendant women were recorded as spouses, of whom 75 per cent were heads of household. Eighty-six per cent of children in these households identified themselves as Afro-descendants. In addition, 5,862 Afro-descendant women are heads of household, of whom 11 per cent live with their spouse. Of these spouses, 71 per cent are of African descent, as are 87 per cent of their children.

94. One point that emerges from these statistical indicators is that the children of mixed couples identify themselves as Afro-descendants to a greater extent than their parents.

### **The Chinese population**

95. According to the 2000 census, the Chinese population comprises 7,873 inhabitants (0.2 per cent of the total population) - 4,089 men and 3,784 women. Of these, 88 per cent live in urban areas (77.18 per cent in the urban sector and 11.20 per cent on the outskirts of cities), 3.28 per cent in rural clusters and 8.34 per cent in lightly populated rural areas.

96. The 2000 census also revealed information on the civic status of ethnic groups. The Chinese population group contains the highest percentage of persons naturalized or born abroad, at 14.73 per cent, and 51.53 per cent of the persons in this group are Costa Rican by birth.

## **CHAPTER 2. LEGAL FRAMEWORK AND LEGISLATIVE INITIATIVES**

97. As was explained in the first chapter of this report, Costa Rican law contains a definition of the offence of racial discrimination committed by directors, managers or other officials of public or private institutions who apply prejudicial discriminatory measures based on considerations of race, sex, age, religion, marital status, political opinion, social origin or economic situation.

98. The Criminal Code classifies such conduct as a misdemeanour, which means that it is punishable with a fine fixed by the courts according to the income of the offender and at the discretion of the presiding judge.

99. The Legislative Assembly is studying several bills with a view to completing the legal framework. The following bills have been submitted to the Assembly's Standing Committee on Social Affairs.

100. Bill No. 15399, on the restoration of human dignity to indigenous peoples, submitted by the Libertarian Party, states in its introduction that the current national legislation restricts and limits many of the rights of indigenous peoples as individuals and that the legal basis for this restriction is the Indigenous Act. As a consequence, the draft proposes in its only article that Act No. 6172, the Indigenous Act of 26 November 1967, be repealed.

101. Another bill in the pipeline is No. 13977, on the rights of Costa Rican ethno-cultural minorities to communicate their views. This bill appears on the agenda for day 19 of the plenary session (30 September 2005), but risks being shelved pursuant to provision No. 119 of the Legislative Assembly rules of procedure, which establishes that bills will be taken as not submitted and will be shelved if no action is taken four calendar years of their being tabled. A number of motions for an extension have been tabled, but the deadline for adoption has expired.

102. The bill on ethnic and linguistic diversity (No. 13772) was adopted as Act No. 8054. This establishes a day to commemorate Costa Rica's ethnic and linguistic diversity. The introduction to the Act states that the day formerly known as "Race Day" and later the "Day of the Meeting of Cultures", 12 October, has not achieved its objective of integrating the different ethnic groups in the country into the Costa Rican population. The decree establishing the Day of the Meeting of Cultures has not succeeded in dispelling the myth that 12 October is exclusively a celebration of the contact between the indigenous and the Spanish cultures and thus minimizes recognition of other cultures, about whose provenance, contribution and persistence throughout history nothing is said.

103. The Act declares one day in the year the "Day of Ethnic and Linguistic Diversity", with a view to "consolidating the political and social stability of Costa Rica". The last Sunday in September is designated for this purpose, and during the week preceding the day of commemoration and on the day itself official bodies, both centralized and decentralized, State schools and other centres of technical or vocational training are authorized to stage various activities in praise of ethnic and linguistic diversity and values.

104. Of the bills mentioned in the previous report that were due for consideration in plenary, bill No. 13875, entitled "Revision to article 15 (b) of Act No. 7839, the National Education System Act, to include demographic details of national origin and/or ethnic group and language in the national population censuses", was approved in plenary, but was shelved on a technicality under article 199 of the Legislative Assembly's rules of procedure.

105. Another bill, No. 14137, was also shelved. This proposed "to declare 12 October a national holiday each year as just recognition by Costa Rica of the people of Limón for their constant devotion to preserving their cultural heritage, as revealed in their own traditions nourished by the intermingling of races and their rich ethnic diversity". It was published in the Official Gazette, *La Gaceta*, No. 232, on 4 December 2000, but, despite a majority in its favour, fell foul of the rule on four years of inaction.

### **Migrants**

106. Costa Rica has a long tradition of welcoming asylum-seekers and refugees. Costa Rican laws do not differentiate between the rights of nationals and non-nationals, regardless of migration status; the law is applied equally to everyone. This applies to both rights and duties. Even when an individual is not entitled to be in the country, their human rights are still defended and safeguarded, including the rights to physical integrity, human dignity and medical assistance.

107. The support provided at the organizational and local levels to the migrant population should be stressed here. Civil society organizations, religious bodies and various trade unions all play an important role in attending to and channelling the general demands of the migrant

population through activities for migrants (such as programmes and projects) that generate social and productive projects, offer sociocultural, psychological and emotional support, and help them with formalities such as documentation and the legalization process.

108. The 2000 census recorded a significant population of Nicaraguan women in Costa Rica, the majority of whom also had children born there. Many arrived with the intention of staying permanently and contribute significantly to the country's socio-economic development.

109. The large presence of Nicaraguan immigrants, driven to move by economic, political and social hardship, has been widely discussed in Costa Rica and Nicaragua. However, there has been little research into the presence of Nicaraguan immigrant women in Costa Rica and the specific issues they face by reason of their gender.

110. Research has demonstrated that women are highly disadvantaged. Forty-five per cent of Nicaraguan immigrant women have not finished primary education and 11 per cent have had no education at all.<sup>7</sup> Therefore their integration in the labour market is precarious and they are often found at the lower levels of the labour pyramid, particularly in domestic service.

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

112. In addition, as part of a cooperation arrangement between the Ministry of Labour and Social Security, the International Organization for Migration (IOM), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Labour Organization (ILO), workshops on migration issues are given for labour inspectors, the Costa Rican Social Security Fund and the Migration and Aliens Office. In 2005 six workshops took place around the country.

113. Costa Rican immigration policy has been strongly influenced by Constitutional Chamber case law. The court has ruled on such issues as the temporary detention of foreigners; the issuance of visas in cases of marriage by proxy; rejection; the deportation of foreigners with links to Costa Ricans; the issuance of residence permits; and the right of appeal in respect of residence permits, temporary permits or visas.

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

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<sup>7</sup> Chen et al., 2001.

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

116. For this purpose, the Ministry of Labour has drawn up and published an employment policy that proposes to reorganize labour migration with a view to ensuring it is orderly and legal and providing the protection of additional labour standards.

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

118. To meet these new needs, the Government submitted a new Migration Bill to Congress (Legal Affairs Commission file No. 14269). The Committee on the Elimination of Racial Discrimination learned of this bill in Costa Rica's previous report and requested further information on its progress in its concluding observations on that report (CERD/C/60/CO/3, paras. 15 and 16); the bill has now been passed and will enter into force on 12 August 2006.

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

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

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

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

122. With regard to migrant workers in the agricultural and agro-industrial export sectors, a personal guarantee of \$20 per worker was established. This is to be paid by the employer for workers entering the country only during harvesting of agricultural products such as coffee, melons, sugar cane and pineapples, and who return to their country of origin once the harvest season is over.

123. This payment is a deposit which is returned to the employer once evidence of the worker's departure has been provided. This provision complies with article 159 of Decree No. 32696-G-MTSS. Prior to this decree, a deposit of US\$ 100 had to be paid.

124. The return guarantee recognizes that it is in the interest of employers to have a migrant workforce available in order to ensure they have enough workers to produce goods for export, within a framework of fully guaranteed labour rights and minimum occupational health conditions.

125. Decree No. 32696-G-MTSS stipulates that employers must make the final salary payment at a border post, once the worker's authorized period of residence in Costa Rica has elapsed. Article 155 requires the Ministry of Labour and Social Security, through the Labour Inspection Department, to monitor the conditions stipulated in the Labour Code.

### **Migration and Aliens Act**

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

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

128. The bill came in for strong criticism from certain sectors of society, including the Catholic Church, the Office of the Ombudsman and State universities, which asked the Legislative Assembly to refer it back to a special joint commission to correct or clarify a number of aspects that, in their opinion, "were contrary to human rights".<sup>8</sup>

129. These groups criticized what they saw as the use of inappropriate terminology (they wanted to replace the term "illegal" by "irregular") and claimed that the principle of due process was violated inasmuch as there was no provision for appealing against rulings affecting

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<sup>8</sup> *Diario de la Nación*, 8 October 2005.

migrants. For example, under the new law, the police can turn back illegal immigrants within 50 km of the border, and there is no administrative procedure for appealing this decision.

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

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

132. The Office of the Ombudsman believed new legislation on migration was clearly necessary, but "underlined the need for this effort to be part of a comprehensive approach that incorporates the human rights perspective throughout the new legislation and migration policy: it is not enough to make passing reference to human rights in a few articles of the bill".<sup>9</sup>

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

134. The adoption on first reading of the Migration Bill coincided with the publication of a Costa Rican opinion poll on the migrant population by the National University's Institute of Social Studies on Population.<sup>10</sup> This is perhaps one of the few rigorous and systematic studies to look into the perceptions and attitudes of Costa Ricans towards migrants.

135. The study, which dates from August 2005, drew on a sample of 600 persons of different sexes, ages, education and social status. The results are closely linked to the perception that Costa Ricans have of themselves.

136. Almost two thirds of respondents believed that the Costa Rican population lived in better conditions than the Nicaraguan population; this perception was stronger according to educational level - 76.7 per cent of the total were graduates or had university-level qualifications.

137. When questioned on what made their living conditions better, the same or worse, the percentages and responses varied. Those who believed that the Nicaraguans lived better than the Costa Ricans gave their reasons as State support, hard work and determination.

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<sup>9</sup> Office of the Ombudsman, Annual Report 2004-2005 (San José, Costa Rica), chapter on the migrant population, p. 3b.

<sup>10</sup> Studies have also been undertaken by the Latin American Faculty of Social Sciences (FLACSO).

138. Those who believed that Costa Ricans and migrants lived in equal conditions gave their reasons as equal rights and opportunities, access to employment and financial stability. Lastly, those who believed that they lived in worse conditions attributed this to exploitation in Costa Rica, a lack of rights and opportunities, a lack of education, the economic situation and discrimination by Costa Ricans.

### **Permanent Forum for the Migrant and Refugee Population**

139. One of the institutions at the forefront of efforts to find consensus on public migration policies is the Permanent Forum for the Migrant and Refugee Population, which was established at the request of the Office of the Ombudsman 10 years ago.

140. The forum facilitates interaction between 40 State and civil society institutions on an inter-agency, intersectoral and multidisciplinary basis, taking a comprehensive approach to the issue of the Costa Rican migrant population in order to promote an inclusive national development strategy and ensure the protection of human rights.

141. Currently, the forum is discussing a possible redefinition of its aims, mission and future direction, prompted in particular by reports from State institutions and the Office of the Ombudsman. These bodies have proposed that it should refocus on the original concept, which was that the forum should study and analyse the whole migration phenomenon, of which the migrant population and their human rights are central, but not the only, elements.

142. It is worth recalling that the initial aims of the forum were to organize “meetings to analyse regional and national policies and practices in the field of migration, as well as their particular connotations for the rights of migrants and their social, economic and political implications at the regional and national levels”. The forum, as a deliberative body able to make proposals, seeks to ensure that all aspects of this complex issue, which merits a broad-based institutional and intersectoral response in Costa Rica, are properly analysed.

143. As far as interaction between the forum and other bodies is concerned, it is worth pointing out that, within the framework of “communal university work” at the University of Costa Rica,<sup>11</sup> it was agreed to support the forum’s activities through the classification and analysis of the decisions of the Office of the Ombudsman (particularly its Special Protection Department) in the field of migration, in order to boost its usefulness as an instrument to promote and protect human rights.

144. In the public sector, the current problem of migration flows must be tackled from a perspective that takes account not only of migrants but also of the receiving society. As a result of migration, the operation of State institutions and even their budgets will need to be adjusted to meet new demands without neglecting the welfare of the population as a whole.

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<sup>11</sup> This is a university practical carried out by final-year degree students.



145. However, representatives of civil society have been somewhat reluctant to adopt this approach and have stressed the nature of the forum as a body seeking to protect the human rights of migrants.

### **International cooperation**

#### **Cooperation with indigenous groups**

146. The Office of the Ombudsman has been a key player in efforts to improve living conditions for indigenous peoples, and has made efforts to meet and to respond to their needs a priority.

147. In March 2004, the Office of the Ombudsman signed a cooperation agreement for two projects with the German Agency for Technical Cooperation (GTZ): “Sustainable management of natural resources on the Osa peninsula” (PROOSA) and “Promotion of community development and decentralization” (PRODELO). The goal of these projects was to support the Ngobe indigenous people in the Alto Laguna, Alto San Antonio, Coto Brus, Abrojo Montezuma and Conte Buruca communities in their efforts to build up their institutional capacity, benefit from international cooperation and tackle human rights issues.

148. The PROOSA project covers five Guaymí indigenous territories. It focuses on identifying factors that affect the quality of life of workers in these territories, the limited production alternatives and, subsequently, their dietary shortcomings.

149. On this basis, the project was organized around a commission with representatives from each territory, who were offered assistance to develop small, community-supported production projects and to ensure their sustainability.

150. The GTZ project targeted forestry activities in indigenous communities located along the border with Panama.

151. Central America received a donation of \$6 million from the Government of the Spanish region of Andalusia, as part of the latter’s operational cooperation programme in Central America. The share allocated to Costa Rica will be invested in indigenous housing.<sup>12</sup>

#### **Cooperation with migrant populations**

152. The ministries of foreign affairs of Costa Rica and Nicaragua are encouraging a border development initiative entitled the “Nicaragua - Costa Rica Border Development Programme”. The primary objective of the programme is “to contribute to the promotion and creation of productive, economic, social and institutional opportunities, thus helping to turn the border areas between Nicaragua and Costa Rica into an area of progress and opportunity”.

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<sup>12</sup> *La República*, 17 October 2005, “Donación desde Andalucía”.

153. The programme consists of identifying development projects. Its implementation depends on the funding arranged by various governments and international agencies. In October 2005, the following four projects had been, or were about to be, implemented.

154. A project entitled “Concentration of cross-border rural development: Costa Rica - Nicaragua” seeks to encourage rural development along the border, to strengthen the economy and to reduce poverty by generating employment and raising incomes. The cost of financing this project has been estimated at US\$ 20 million, to be donated by the Government of Japan.

155. The goal of the project entitled “Strengthening health facilities for the population in the border area under the agreement between health ministries” is to improve health conditions in the border region by implementing the activities agreed upon in the cooperation agreement between the health ministries of Nicaragua and Costa Rica. The cost is estimated at US\$ 2 million, of which US\$ 500,000 will be provided by the Government of the Republic of Korea.

156. A project entitled “Training and exchange programme in municipal management and development”, financed by Japan, seeks to train the mayors of border towns in municipal management techniques in order to increase decision-making effectiveness in the areas of management and local development. This programme is a response to the need to recognize the reality faced by local governments, which have to deal with many challenges at the level of both the municipal organization and the mayor. Well-planned and well thought-out training is one of the most effective tools available to organization heads. The cost of the programme is estimated at US\$ 1 million.

157. Lastly, a project entitled “Regional information system to strengthen and develop local governments and small and medium-sized enterprises in the border area” aims to promote access to information and information technology by town councils in border towns, so that there will be a secure electronic network linking the councils and businesses for the purposes of integrated information management.

158. Each municipality in the border areas in southern Nicaragua and northern Costa Rica will provide their own appraisals, analyses and solutions, which, because they will be different, should feed into the final overall evaluation and implementation. The cost of the project is estimated at US\$ 500,000, which will be donated by the Government of Japan.

159. The Ministry of the Interior, the Police and Public Security, through the Migration and Aliens Office, manages and receives technical support and assistance from IOM and UNHCR to help the migrant population in Costa Rica, including in the provision of training. In coordination with UNHCR, periodic courses and workshops on refugee issues, including a module on human rights, are offered for migration officials throughout Costa Rica.

160. The Migration and Aliens Office and the Ministry of Labour, with advice from IOM, UNHCR and ILO, are running a series of training workshops for labour inspectors in every region of the country. The workshops include a section on the human rights of migrants.

161. Costa Rica is a member of the Regional Conference on Migration, a permanent forum established in 1996 by the countries of Central America, Mexico, the United States of America, Canada and the Dominican Republic to manage all migration flows to and from the region. A campaign to inform migrants of the risks and dangers of illegal migration is currently being developed.

162. The achievements of the Regional Conference include the following: maintaining a constructive regional dialogue with non-governmental organizations; promoting joint training and operational activities to ensure that repatriation and migration procedures are carried out in an orderly, humane and safe manner; facilitating technical and humanitarian cooperation; organizing specific activities such as seminars and workshops in order to gain a better understanding of regional migration; and creating two networks of liaison officials to facilitate activities - one dealing with consular protection and the other with efforts to combat the trafficking and smuggling of persons.

163. Within the context of the Regional Conference, a seminar/workshop was held in Costa Rica in June 2005 on the subject of "Integration of migrants in receiving countries", co-sponsored by the Government of Canada, in its role as President *pro tempore* of the Conference. The seminar had four basic objectives: to exchange information; to share successful experiences that could usefully be repeated or adapted and make recommendations on their implementation; to develop guidelines for governmental action on migration and the protection of the human rights of migrants; and to emphasize the link between migration and development.

164. A publication produced under the auspices of the secretariat of the Regional Conference on Migration and IOM, with support from the Governments of Costa Rica and Canada, collated the papers presented at the seminar in order to disseminate the valuable information they contained.

165. Furthermore, Costa Rica is represented on the Central American Commission of Directors of Migration Departments (OCAM), which has been in operation since 1990 and whose action plan covers human rights. Within the context of the work undertaken by this commission, it was agreed in 2003 to use a new migrant registration card, the content and format of which was to be defined at the regional level, in order to harmonize the data requested from the traveller.

## **Refugees**

166. Costa Rica has the largest number of refugees in Latin America. Some 13,500 persons with refugee status live in the country, of whom 8,500 are Colombians. It is estimated that about 120 persons arrive every month.<sup>13</sup>

167. As far as its legislation is concerned, Costa Rica is a signatory to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and incorporated these instruments into domestic legislation by Act No. 6079 of 28 August 1977. The procedure to recognize refugee status is regulated by Decree No. 32195-G, published in *La Gaceta* No. 15 of 21 January 2005.

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<sup>13</sup> Data supplied by the UNHCR regional office in Costa Rica.

168. With regard to paragraph 16 of the Committee's concluding observations, the Costa Rican legislation on the determination of refugee status is not applied in a discriminatory manner. Decree No. 32195-G specifically establishes a procedure that must always be interpreted in line with the 1951 Convention and 1967 Protocol.

169. The procedure begins with the submission of an application by the person seeking refugee status to the migration authorities at a border post or at the office specialized in these matters. Once the application is received, the Migration and Aliens Office opens an individual file containing: a questionnaire for asylum-seekers in Costa Rica; the minutes of a confidential interview to verify the well-founded fear of persecution; personal documentation; birth certificate and criminal record if applicable, or a sworn declaration of these; fingerprints from police files; and two photographs.

170. The application must be submitted within one month of arrival in Costa Rica. Once the application has been submitted, the Migration and Aliens Office takes a decision on its admissibility in the light of the facts of the case, the situation in the country and international standards.

171. While the application is being considered, the applicant receives a provisional document that can be renewed until a definitive decision is taken. The director of the Migration and Aliens Office is responsible for making a definitive ruling on refugee status, after considering the technical requirements, within 30 working days of the completion of the personal file. The document provided is valid for one year and may be renewed for a year at a time.

172. Foreigners who have been accorded international protection as a refugee are entitled to engage in any form of paid or gainful manual or intellectual activity, on their own account or as an employee, except for professional activities that by law require approval from the professional association concerned.

173. The decree establishes a number of conditions enabling members of the applicant's family to gain refugee status too.

174. Pursuant to article 14 of the decree, the expulsion of a refugee may only be ordered for reasons of national security or public order, or if the refugee has been convicted of a particularly serious offence and constitutes a threat to the national community. The procedure provides for immediate notification of UNHCR to enable it to arrange for a third country to receive the refugee if possible, in accordance with the guarantee established in article 33 of the Convention relating to the Status of Refugees.

175. If the refugee's application is rejected, the individual concerned or UNHCR may apply for a review of the decision or may appeal against it. In no circumstances will any refugee be returned to a country where his or her life or freedom would be threatened as a result of persecution.

176. Costa Rica has always honoured the tradition of granting asylum, particularly to individuals who have been violently displaced from their countries of origin because their lives, freedom and safety are threatened, or who have well-founded fears of persecution.

177. Costa Rica provides appropriate care for refugees and has lobbied in various international forums for support for its efforts from the international community, in the name of shared responsibility and solidarity between States.

178. A document entitled “Survey of the degree of local integration of refugees in Costa Rica” was published in 2002 by UNHCR and the University of Costa Rica within the framework of the communal university work project entitled “Strengthening the protection of vulnerable refugees and migrants in Costa Rica.”

179. The survey highlights a number of important factors affecting the refugee population, including the legal framework governing their rights and obligations and their relationships with institutions, organizations or national bodies. It also looks at their abilities and the way they take up the challenge of surviving in Costa Rica, the perceptions of refugees on their acceptance by Costa Rican society, and the views of Costa Ricans on refugees.

180. In 2003, with the help of UNHCR, the Department of Refugees of the Migration and Aliens Office received a donation of technical equipment and documentation. The intention was to increase efficiency in dealing with this population group and at the same time to provide training courses for officials in both central and regional offices. In addition, a new agreement was signed to establish two new posts in the Department of Refugees to ensure that it can provide an adequate service.

181. The most significant issue in this area to have been raised during the period under review has perhaps been the rectification that UNHCR was obliged to make in a note to the Government of Costa Rica about the interpretation of the new Migration and Aliens Act.

182. In August 2005, a UNHCR spokesperson issued a press release saying that the new Migration and Aliens Act, which was before the legislature on 29 September and had been approved on first reading, did not meet expectations and that some of its provisions might even give rise to “an exacerbation of the already unfriendly climate towards asylum-seekers and refugees in the country”. She also made a number of comments about the possible effects on the children of persons whose asylum or refugee status was revoked.

183. The Government of Costa Rica, exercising its right to reply, said that the statement was “unjust and misleading”, considering that “in relation to its size and resources, Costa Rica is one of the nations that receives the greatest number of asylum-seekers and refugees and grants them rights that are virtually the same as those granted to its own citizens”.

184. In its letter to UNHCR, the Costa Rican foreign ministry wrote: “In Costa Rica, international human rights instruments have constitutional rank and in fact take precedence over the Constitution where they confer greater rights on persons or afford them greater guarantees. As a consequence, any legal provision that violated such instruments would be inapplicable.” Costa Rica is a party to such international instruments as the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the international human rights covenants and the American Convention on Human Rights (Pact of San José).

185. In conclusion, the letter reiterated that: “The Migration and Aliens Bill followed the public procedure established by Costa Rican law, which included consultation stages in which the various social players were able to make their comments. In order to make sure the new law complied with the current constitutional and international framework, it was also referred to the Constitutional Chamber of the Supreme Court. The Chamber, which is responsible for ensuring that laws comply with the Constitution, concluded, in its decision No. 2005-09618, that the draft neither contradicts nor violates the Constitution or international human rights instruments.”

186. In a clarifying letter, the director of the UNHCR Bureau for the Americas expressed “recognition of the Government of Costa Rica’s commitment to maintaining the highest standards of protection for refugees”, lamenting the fact that the spokesperson’s words had been “interpreted as criticism”. He concluded by expressing gratitude and appreciation for Costa Rica’s acceptance of a large number of Colombian refugees and for its official support of the process to commemorate the Cartagena Declaration on Refugees that resulted in the adoption of the Puebla Process.

### **CHAPTER 3. INTERNATIONAL INITIATIVES**

187. At the international level, Costa Rica has maintained a consistent policy of protecting human rights, as seen in its sponsorship of various resolutions in the Commission on Human Rights, the United Nations General Assembly and the General Assembly of the Organization of American States.

188. Costa Rica fully supports the initiative discussed in the Working Group on Indigenous Populations to adopt a United Nations declaration on the rights of indigenous peoples. For the Government of Costa Rica, the international community has a duty towards indigenous peoples to adopt this international instrument as soon as possible.

#### **General Assembly resolutions supported and co-sponsored by Costa Rica**

189. At the fifty-ninth session of the United Nations General Assembly, in 2004, Costa Rica co-sponsored, in the Third Committee, draft resolution A/59/L.30, entitled “Second International Decade of the World’s Indigenous People”. Costa Rica has traditionally co-sponsored this resolution, which has been submitted for some years by Nordic countries.

190. Although it did not co-sponsor them, Costa Rica joined the consensus in adopting the following two draft resolutions: A/59/L.67/Rev.1, entitled “Measures to be taken against political platforms and activities based on doctrines of superiority and violent nationalist ideologies which are based on racial discrimination or ethnic exclusiveness and xenophobia, including neo-Nazism”; and A/59/L.69, entitled “International Convention on the Elimination of All Forms of Racial Discrimination”.

#### **Commission on Human Rights resolutions supported and co-sponsored**

191. Costa Rica has always co-sponsored the draft resolution adopted by the Commission on Human Rights under agenda item 6 (“Racism, racial discrimination, xenophobia and all forms of discrimination”) entitled “Racism, racial discrimination, xenophobia and related intolerance”.

192. Under agenda item 10, on economic, social and cultural rights, Costa Rica traditionally co-sponsors the draft resolutions on the right to education and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Moreover, it supports the resolution on adequate housing as a component of the right to an adequate standard of living.

193. Under agenda item 11, Costa Rica has always co-sponsored the draft resolution entitled “The incompatibility between democracy and racism”. Under agenda item 13, it co-sponsored the resolution presented jointly by the Group of Latin American and Caribbean States and the European Union on the rights of the child.

194. Under agenda item 14, entitled “Specific groups and individuals”, Costa Rica co-sponsored the draft resolution “Human rights of migrants”, introduced by Mexico. Under the sub-item “Minorities” of the same agenda item, Costa Rica co-sponsored two draft resolutions: “Rights of persons belonging to national or ethnic, religious and linguistic minorities” and “The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS)”.

195. Under item 15, “Indigenous issues”, Costa Rica co-sponsored the following draft resolutions:

(a) “Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights and the International Decade of the World’s Indigenous People”;

(b) “Working Group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994”, introduced by Canada and adopted without a vote;

(c) “Human rights and indigenous issues”.

#### **Resolutions of the General Assembly of the Organization of American States supported by Costa Rica**

196. During the sessions of the General Assembly held in San José in 2001, Barbados in 2002, Santiago (Chile) in 2003, Quito in 2004 and Fort Lauderdale (Florida, United States of America) in 2005, Costa Rica supported the adoption of the following draft resolutions that were adopted by consensus:

(a) “Preparation of a draft inter-American convention against racism and all forms of discrimination and intolerance”;

(b) “The human rights of all migrant workers and their families”;

(c) “American Declaration on the Rights of Indigenous Peoples”;

(d) “Support for the restructuring of the Inter-American Indian Institute”;

(e) “The protection of refugees, returnees, and stateless and internally displaced persons in the Americas”.

## **CHAPTER 4**

197. In August 2004 there was widespread media coverage of a case in which an indigenous Guaymí citizen was charged with a murder for which he claimed to have already served his sentence in Panama.

198. This was not so much a case of discrimination in the administration of justice as an example of the double jeopardy principle (a person may not be prosecuted twice for the same offence).

199. Following action by the Costa Rican and Panamanian ombudsmen, the Panamanian legal authorities issued a criminal record certificate; the Costa Rican authorities were thus able to verify the veracity of the claim and, in a reasoned decision, dismissed the case.

## **CHAPTER 5**

### **Access to the courts**

200. The issue of land restitution remains fundamental to the complaints of indigenous peoples. In decision No. 3468-02, the Constitutional Chamber ruled in favour of the Rey Curré, Terraba and Boruca communities concerning the delimitation of their lands, and instructed the State, through the Agricultural Development Institute, to recover land occupied or lost through illegal sales or leasing. However, the ruling was not acted upon as the State applied for and was granted a deferral of the decision by the Constitutional Chamber. The problem lies in the sum required to recover these lands, which amounts to some 30 million colones.<sup>14</sup>

201. The legal action in the Constitutional Chamber sought to recover some 31,000 hectares located in the area of Buenos Aires de Puntarenas, belonging to 21 indigenous communities.

202. The land issue has been taken up by the Office of the Ombudsman, which has repeatedly urged the competent authorities to safeguard the welfare of indigenous peoples and, in particular, to ensure they have access to interpreters and that their culture is respected in legal proceedings and during the hearing of expert testimony.

203. In chapter 6, further information will be supplied on institutional activities to facilitate indigenous peoples' access to justice.

### **Security of person and State protection**

#### **(a) Migrants**

204. Concerning the right to security of person and protection by the State against violence, the Government of Costa Rica supplied a thorough report to the United Nations special procedures on a series of operations in communities with a strong presence of Nicaraguan migrants.

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<sup>14</sup> Approximately US\$ 60,606 at the exchange rate of 495 colones per dollar of 15 December 2006.



205. On 3 June 2004, the Special Rapporteur on the human rights of migrants asked the Government of Costa Rica to provide a detailed explanation about a police operation carried out on 30 January 2004 in Ciudadela La Carpio, on the outskirts of San José, in which some 600 persons were arrested. The Special Rapporteur also expressed her concern about information alleging that the Costa Rican Social Security Fund was sharing the personal data of undocumented immigrants treated at public medical centres with the Migration and Aliens Office. The third issued raised concerned the alleged existence of a telephone hotline to report undocumented immigrants.

206. In written replies dated 29 July and 9 August 2004, the Government of Costa Rica provided the Special Rapporteur with a detailed response to the complaints. The replies indicated that the Ministry of Public Security, the Interior and the Police, acting under the authority conferred on it by the law and the Constitution, had planned a number of law-enforcement operations.

207. On 30 January 2004, an operation was carried out to identify and bring to book individuals and commercial establishments operating illegally in a troubled area of San José known for its unlicensed businesses, minors at risk, individuals wanted by the police, complaints of domestic violence, runaways and migration controls. For these operations, an inter-agency team was set up, comprising officials from the National Child Welfare Agency, the Judicial Investigation Department, the Immigration Police, staff from the Planning and Operations Department and the Centre for Information and Legal Support of the Ministry of Public Security, in addition to the municipal police of San José and the Costa Rican Red Cross.

208. The outcome of the operation was as follows: 580 persons investigated, 79 extradition procedures initiated, 25 persons deported after completion of due process, 107 persons with links to Costa Rican citizens summonsed, 6 false residence permits detected, 2 firearms seized, 2 bladed weapons seized, 6 minors placed in the custody of the National Child Welfare Agency, 15 persons ordered to appear before the courts, and 1 person charged with fraud.

209. The operation was carried out with due process and with full respect for human rights in response to the need to combat the crime, gangs and domestic violence affecting this area of the country. This operation and others carried out over the years have never been intended to persecute immigrants, as this would be in breach of Costa Rica's international obligations.

210. According to information from the National Child Welfare Agency, the family circumstances of 40 minors were verified. Each minor was taken home with an administrative official to check the relevant documents. All these actions were carried out with the best interests of the child in mind and priority was given to keeping the children with their parents.

211. Costa Rica informed the Special Rapporteur that it was not the job of the Costa Rican Social Security Fund to enforce labour and migration laws, and that the supply of information to

which she referred was in accordance with article 11 of the General Public Administration Act.<sup>15</sup> Moreover, the authorities clearly stated that there was no telephone hotline for reporting violations.

212. The Office of the Ombudsman's 2004-2005 report, like previous reports, expresses its concern about "the infrastructure of the holding centre for foreigners in transit, located in the fifth police precinct" despite recognizing "the improvements made by the Migration and Aliens Office in light of the recommendations made by this institution and decisions of the Constitutional Chamber".

213. According to the report, "the centre does not have adequate facilities to hold foreigners subject to administrative proceedings to verify their migration status or subject to fairly long deportation procedures".

214. The report concludes that "this situation is aggravated by the fact that current legislation sets no maximum holding times and makes no provision for suitable accommodation for families with children or for adequate sanitation conditions in the facilities, among other things".

215. Regarding this concern raised by the Office of the Ombudsman, the Migration and Aliens Office, through the Immigration Police, has stated that "there is a protocol to be followed when a foreigner enters the holding centre for foreigners in transit and requirements that must be complied with in order not to violate the person's rights".

216. This procedure includes checking personal data to screen out minors, who are handed over to the National Child Welfare Agency. All details of adults are recorded on a custody sheet and they are given the telephone number of their consulate (in accordance with their right to consular assistance). It is worth mentioning that public telephones are provided next to the units, and can be used by foreigners to make direct calls at any time.

217. In accordance with due process, a lawyer from the Migration and Aliens Office must interview the foreigner, who is informed that giving false testimony is an offence and that they have a right to legal representation, and takes a sworn statement from them. Subsequently, the legal and migration status of the foreigner is evaluated before issuing an administrative decision.

218. The period that foreigners spend in the centre varies according to their migration status. Following a question from the Office of the Ombudsman on the constitutionality of the Migration and Aliens Bill (processed as legislative file No. 14269), the Constitutional Chamber, in its decision No. 2005/09618 of 20 July 2005, stated that: "On many occasions, this Chamber has upheld the idea that the migration authorities may restrict the liberty of a foreigner who illegally enters the country, for a period of time that might reasonably be considered necessary to

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<sup>15</sup> Article 11 of the General Public Administration Act reads as follows: "1. - The public administration shall act in accordance with the law and shall only be able to carry out such acts or provide such public services as are authorized by the law, in accordance with its position in the legal hierarchy. 2. - An act expressly regulated by a written rule, even if somewhat imprecisely, shall be considered authorized, at least in terms of its motive or content."

expel and deport them. In such circumstances the period of 24 hours referred to in article 37 of the Constitution does not apply (see decision No. 05-7390, among others). Therefore, neither the possibility of preventive detention nor a maximum period of detention are unconstitutional, as long as this period is, as the articles state, 'strictly necessary'. Therefore, this Chamber rejects the applicants' claim that these articles are unconstitutional."

219. When a deportation order is executed, the foreigner is taken to Juan Santamaría airport in an official vehicle in the custody of an official. If deportation is carried out by land, two or more guards accompany the foreigner in buses belonging to the institution. As far as the foreigner's basic needs are concerned, he or she is given food supplying proteins and carbohydrates.

220. Two days per week are made available for detained foreigners to receive visits. Their families may supply clothing, food and money. Furthermore, detainees' legal representatives and interpreters, if necessary, have free access 24 hours a day.

**(b) Indigenous people**

221. With regard to action taken by the forces of law and order to protect indigenous people, community security projects have been developed to train and organize communities, so that crime and feelings of insecurity can be reduced by involving the public in crime-prevention activities. Such a project is under way in the Matambú indigenous community, where 18 individuals have been trained.

222. Another programme, called *Pinta Segura* ("Paint safe"), teaches children about prevention and public security by giving them colouring books on security topics, thus encouraging them to communicate and report any acts of aggression. This programme has been provided for 49 indigenous children from the first to fourth grades, while 152 children from kindergarten to sixth grade have been taught about domestic violence.

223. The Drug Control Police have carried out various operations to eradicate marijuana plants on indigenous reservations in order to ensure a better quality of life for the population. Between 2002 and 2005, some 151 plantations were destroyed. Moreover, activities were undertaken to seize leaves before they were processed. In 2005, the police also distributed 50 shovels, 50 picks, 50 knives, 50 machetes, 200 foam mattresses, 200 blankets, seeds and 70 packs of daily necessities among the indigenous population.

**Civil and political rights**

**(a) Civil rights of indigenous people**

224. Autonomy for indigenous peoples is a key issue in the political debate. In this context, in November 2004, the first Congress of Presidents of Indigenous Development Associations took place to discuss autonomy.

225. One of the most controversial topics in recent years has been the Costa Rican Electricity Institute's proposal to construct a hydroelectric dam in the south of the country, capable of producing 1,500 megawatts - more than the total energy generated today by all Costa Rican hydroelectric projects. Environmental groups and indigenous communities strongly oppose this proposal, since it affects five indigenous peoples and seven indigenous territories.

226. According to indigenous communities, this hydroelectric project would have damaging effects on the environment, their culture and the whole consultation process. According to them, it would cause irreparable damage to the environment, particularly biodiversity, aquatic and terrestrial ecosystems, microclimates and endemic natural resources. It would also affect intellectual community rights (*sui generis* rights) related to the ancestral knowledge of nature and would upset indigenous peoples' relationship of dependency on their environment.

227. They argued that the hydroelectric project would also have a cultural impact, given that in other parts of the world this type of situation had led to the almost total destruction of the relocated peoples. They also strongly criticized the consultation process that the authorities had undertaken.

228. As sustained negotiations over a period of years between the authorities, the affected communities and various interest groups failed to reach an agreement, in August 2005 the Costa Rican Electricity Institute decided to reconsider the project's viability and to immediately begin studying other options to meet the country's energy needs.

229. The Costa Rican Electricity Institute, despite dropping the Boruca hydroelectric project, still satisfied a variety of needs for electricity and telephone lines in the region. Telephones were installed in 30 houses and the exchange was expanded in the Boruca community. Electricity was installed for some 10 families; solar panels were set up in the Linda Vista and Coquito communities for the Terraba and Curré indigenous peoples; and public telephones with a satellite connection were installed in the Curré community.

230. The promotion and education of community leaders is an important aspect of the organizational structure of indigenous communities, and the National Department of Communal Development has therefore been encouraging such activities in order to foster their participation in decision-making and problem-solving that is consistent with their own world view.

231. In terms of indigenous cultural specifics, a number of changes to prison visiting rules were recommended by the Office of the Ombudsman to ensure that the institution of the family was respected according to the traditions of each indigenous people. The Office intervened after learning of the case of an indigenous female minor who was not permitted to visit her detained partner because she had to be accompanied by an adult, despite having a family of several children recognized by Bribri traditions.

232. The Office of the Ombudsman recommended that the Social Rehabilitation Office modify the Costa Rican prison visiting regulations (Executive Decree No. 25881-J) to incorporate criteria for assessing visiting requests. In line with this recommendation, the Director of the National Institute of Criminology indicated that "instructions have been circulated to the coordinators of the community and legal territories requiring them to set up a commission to analyse the recommendation".<sup>16</sup>

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<sup>16</sup> Office of the Ombudsman, Annual Report 2004-2005 (San José, Costa Rica); see the chapter on the migrant population.

**(b) Civil rights of Afro-Costa Ricans**

233. With regard to Afro-Costa Rican women, the first Forum of Afrodescendant Women of Limón Province was held in August 2005. Organized by the National Institute for Women, it was part of a strategy to incorporate the diversity and opinion of Afro-Costa Rican women into the decision-making process.

234. The outcome of the forum is being incorporated into the institutional management process. At the same time, it should be stressed that, as a result of a process of presentations and discussions, a number of proposals have been made for legislative and institutional change, such as amendments to article 1 of the Constitution, to recognize multi-ethnic and multicultural diversity, and to article 76, to respect the language, spirituality and religion of people of African descent.

**(c) Political rights**

235. One important aspect is indigenous peoples' participation in elections. For the recent February 2006 elections, the Supreme Electoral Tribunal set up a programme entitled "Equality in the exercise of the right to vote", which attempted to ensure full access to the electoral process for this group. One of the main components of the programme was a study in which various representatives of the indigenous communities took part, to identify the biggest problems standing in the way of indigenous participation in elections, their causes and possible solutions.

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

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

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

**Economic, social and cultural rights**

**Right to work**

*(a) Indigenous employment*

239. Indicators of economic activity reveal net participation rates of around 50 per cent for the indigenous population, with high rates in the territories of Talamanca Bribri (58 per cent), Talamanca Cabecar (62 per cent) and Nairi Awari (80 per cent). On the other hand, participation rates are relatively low in the territories of Rey Curré, Ujarrás, Abrojo Montezuma and Zapatón, where the average is 40 per cent.

240. The rate of open unemployment is no more than 2 per cent in 14 of the territories but is over 5 per cent in 4 of them: Zapatón (5.4 per cent), Terraba (5.6 per cent), Boruca (5.9 per cent) and Guatuso (10.4 per cent). Most of the population works in farming or with livestock, except in Quitirrisí, where a sizeable proportion works in the secondary and tertiary sectors (35.4 and 42.7 per cent, respectively).

241. In 2004, with the financial support of the ILO International Programme on the Elimination of Child Labour (ILO/IPEC), research was conducted into the employment and education of indigenous children and youngsters in the territories of Boruca, Ngabe and Bribri, which are located in the southern part of the country. The purpose of the research was to identify the working conditions of indigenous children and youngsters in Costa Rica and the types of jobs they mostly do, and to consider risk factors and forms of protection with a view to devising measures to prevent children from joining the workforce.

242. As a result of this research, a report was prepared and a database containing the names of the indigenous child workers who have been identified was set up. Both the report and the database are currently undergoing revision and processing and will be available shortly; they are expected to be a useful tool for defining appropriate intervention strategies.

243. Within its sphere of competence, the Ministry of Science and Technology has promoted the Mobile Classroom Programme in indigenous communities located in the Talamanca region. The programme aims, with the cooperation of the University of Costa Rica, to promote training projects in such areas as ecotourism, medicinal plants and poultry-farm management.

244. At the regional level, the Atlantic Coast Ports and Economic Development Authority (JAPDEVA) has developed advisory projects for the production and marketing of goods produced by the indigenous peoples of Talamanca, Matina and Siquirres and has provided support in protecting the nature reserves of the national parks in the area.

245. In conjunction with the Costa Rican Fisheries and Aquaculture Institute (INCOPESCA) and the Embassy of Taiwan, activities were carried out with indigenous communities in the area of Alta Talamanca aimed at promoting seed production and the breeding and development of tilapia, a dietary staple of these communities.

246. As at October 2005, more than 50 tilapia production tanks had been built in the indigenous communities of Alta Talamanca, Chiroles, Gabilancanta, San Vicente, Bribri and Bocauren. The project also includes the provision of technical assistance, training and apprenticeships at the Los Diamantes Experimental Station in Guápiles.

247. Extensive information on employment in the indigenous sector may be found in the report submitted in 2003 by the Costa Rican Government in compliance with ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

248. It should also be pointed out that within the context of the negotiations being carried out by Costa Rica with a view to ratifying the North American Free Trade Agreement (NAFTA) with the United States, a white paper entitled "The labour dimension in Central America and the Dominican Republic: Building on progress. Strengthening compliance and increasing capacity" was prepared.

249. The white paper identifies the most important labour issues on which the region and individual countries should concentrate in the context of the free trade agreement. Among its main points, it identifies shortcomings in the protection afforded to vulnerable groups, such as women, indigenous people and migrant workers, against discrimination in the labour market.

250. At the regional level, the report recommends, inter alia, the establishment of a regional centre for equality in employment to provide training, educational materials, information on good practices and support for programmes to eradicate racial discrimination. Although Costa Rica has not yet ratified the North American Free Trade Agreement, it is considering implementing these recommendations without delay, with the help of funds provided by donor agencies.

251. In keeping with its mandate, in 2002 and 2003, the Ministry of the Economy, Industry and Trade organized the National Crafts Fair, where indigenous groups promoted their goods in the national marketplace. However, for budgetary reasons, in the past few years it has not been possible to hold the fair again.

252. The National Production Council, which is the official institution that provides support to the production sector, is currently engaged in developing various production projects in the indigenous territories, for the direct benefit of some 1,308 indigenous people. These projects involve the sowing of organic cacao, the production of organic banana vinegar and the expansion of banana crops for export and oil-palm nurseries.

253. The National Production Council, together with the Inter-Agency Institute for Social Assistance (IMAS), is conducting a "Production ideas" programme, which is helping some 100 families to sow certified beans. As part of the programme, a kit of basic work tools, such as shovels, picks, machetes, batons and boots, is distributed to participants to enable them to carry out their work.

254. For the purpose of ensuring an organized system of labour migration, the Migration and Aliens Office has issued a migrant worker card to the Guaymí people in the south of the country. The card helps them to get settled and to find work in the local plantations. Furthermore, efforts are being made to coordinate with the Costa Rican Social Security Fund (CCSS) and the Ministry of Labour in formulating a plan to provide comprehensive assistance to the indigenous persons who arrive in the San Vito area to pick coffee.

*(b) Afro-Costa Rican employment*

255. The Afro-Costa Rican population has a generally positive image and is known for its high level of schooling, but when it comes to occupational indicators the picture changes dramatically, with unemployment figures for young Afro-Costa Ricans that are above the national average.

256. According to the 2000 census, whereas the national open unemployment rate for young men between the ages of 20 and 29 is 4.87 per cent, the average for young Afro-Costa Ricans is 7.2 per cent. On the other hand, the level of participation of Afro-Costa Rican women in the labour market is significantly higher than the national average.

257. The employment situation of the Afro-Costa Rican population is as follows:

	Total male population	Total Afro-Costa Rican male population	Total female population	Total Afro-Costa Rican population
	(%)			
Working	63.48	59.48	25.59	28.76
Working or helping a relative without pay	0.66	0.33	0.15	0.07
Not working but has a job	1.27	2.01	0.61	0.86
Looking for work and has worked previously	3.29	4.32	0.55	0.74
Looking for work for the first time	0.47	0.66	0.13	0.17
Pensioner/independent means	5.86	6.06	3.26	3.40
Student/not working	15.90	17.50	15.70	17.75
Carrying out household chores	2.58	2.94	51.66	45.26
Other	6.49	6.70	2.35	3.00
Total	100.00	100.00	100.00	100.00

*Source:* State of the Nation programme, Forum on the 2000 Census, July 2001.

258. Data from the 2000 census indicate that Afro-Costa Rican women tend to work in white-collar jobs: 50.19 per cent of them hold administrative or professional jobs, as compared with 44.92 per cent of women in the general population. In addition, the data show a relatively low percentage of unskilled female workers.

259. Conversely, the participation of Afro-Costa Rican men in administrative or technical jobs or trades (27.75 per cent) is slightly lower than the national average, while they are over-represented at the other end of the occupational scale, with a percentage of unskilled workers markedly above the national average.

260. The following table shows the occupational level, by sex, of the economically active Afro-Costa Rican population as compared with the national population:

	Men		Women	
	Total	Afro-Costa Rican	Total	Afro-Costa Rican
	(%)			
Managerial level in civil service or business	3.00	2.08	2.31	2.22
Professional (scientific or intellectual)	5.95	5.66	15.74	21.52
Technical (scientific or intellectual)	12.80	13.73	12.30	11.75
Administrative	4.93	6.28	14.57	15.42
Sales in shops etc. or provision of services	11.85	11.70	19.47	20.86
Skilled job in raising livestock, farming and fishing	7.94	4.85	0.61	0.32
Skilled job in construction, mechanics or manufacturing	14.94	12.86	2.63	2.91
Assembly or operation of machinery	12.03	11.11	7.19	2.80
Unskilled jobs	26.55	31.74	25.17	22.18
Total	100.00	100.00	100.00	100.00

*Source:* State of the Nation programme, Forum on the 2000 Census, July 2001.



261. One consequence of the concentration of Afro-Costa Ricans in the formal sector is that this ethnic group has the lowest percentage of persons not insured by the Costa Rican Social Security Fund (16.4 per cent).

(c) *Migrant employment*

262. Although immigrants, particularly those from Nicaragua, can be found all over the country, the immigrant population tends to be concentrated in the central, Atlantic and northern regions, since that is where the economic activities that absorb immigrant labour (agricultural exports, agro-industrial plants and services) are located.

263. Panamanian immigrants tend to move between the border communities and the coffee- and banana-producing areas. Colombian immigrants mostly settle in the cities, attracted by relatively skilled jobs in business and services.

264. The average age of the immigrant population is between 20 and 39, showing that recent migration flows reflect a search for job opportunities. Around 2000, some 50 per cent of the Nicaraguan immigrant population was in that age bracket, while only 11 per cent was over the age of 50. The fact that teenagers and young people make up a large proportion of the migrant population is due in part to the tendency to make greater use of the labour of the family as a unit.

265. According to a study conducted in 2004 by the Latin American Faculty of Social Sciences for the Housing Promotion Foundation (FUPROVI) entitled, "Assessment of Nicaraguan immigration in six communities located in the San José Metropolitan Area",<sup>17</sup> labour market participation rates according to nationality are higher for the Nicaraguan population than for the Costa Rican population (67.8 per cent versus 55.1 per cent). The net labour market participation rate for the female immigrant population is considerably higher than that of the female population living in Nicaragua, which means that Costa Rica is the principal labour market for Nicaraguan women.

266. As mentioned previously, the main areas in which Nicaraguan immigrants are employed are agriculture, construction, services and business. This segment of the working population is vital to the agricultural export industries that have been promoted in the last few years (pineapple, melon, cassava, palm heart, ornamental plants, etc.), as well as to traditional activities such as coffee-picking, sugar-cane harvesting and the banana industry.

267. The female migrant labour force, which accounts for 51 per cent of the total migrant population, is primarily concentrated in the service sector, particularly in domestic work. The situation of female migrant workers is somewhat sensitive since many of these women have low-visibility jobs, which makes them even more vulnerable, and since they often receive less than the minimum wage and lack social protection.

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<sup>17</sup> Abelardo Morales and Miriam Pérez, *Diagnóstico para la inmigración nicaragüense en seis asentamientos del Área Metropolitana de San José*, 1st ed. (San José, Costa Rica, 2004), p. 18.

268. One indicator that should be highlighted with respect to the incidence of poverty (defined as insufficient income) is that it is higher in households in which the head of household or one of the spouses is Nicaraguan (24.9 per cent of households, or 31.1 per cent of the population) than in the remaining households (20.9 per cent of households, or 23.1 per cent of the population).

269. However, in households made up exclusively of Nicaraguans, poverty levels are lower than the national level as a result of greater integration in the labour market, fewer dependent household members without income and the extension of the working day.<sup>18</sup>

270. Immigrants represent a small percentage of all poor persons in the country: 4.9 per cent of all families living in poverty, 4.6 per cent of families living in extreme poverty and 5.1 per cent of families with unsatisfied basic needs. Households with a Nicaraguan head of household account for 6.7 per cent of all poor households and 7.9 per cent of extremely poor households.

271. It is important to point out that the Ministry of Labour has helped considerably, despite limited human and economic resources, to increase awareness of the situation of the migrant population through efforts to ascertain the number of migrant workers engaged in seasonal agricultural work and to monitor and inspect their working conditions.

272. In its 2005 report, the Office of the Ombudsman highlights two important points: the first is that the Migrant Labour Unit of the Ministry of Labour is conducting research on production activities and specific occupations, particularly in the agricultural sector.

273. The aim of this research is to identify employment sectors in which the national or regularized foreign workforce might be displaced by an irregular foreign workforce accepting labour conditions that fall short of the minimum conditions of employment. The research aims to reduce exploitation by employers and to issue recommendations that will enable the Migration and Aliens Office to control migrant labour flows.

274. A second aspect to highlight, according to the report, is the fact that the Costa Rican and Nicaraguan labour ministers have signed an “agreement for managing migrant flows between the countries for the purposes of employment”. This agreement states in the preamble that “it is essential, within the context of appropriate migration and labour policies, for the Governments of Costa Rica and Nicaragua to promote and implement agreements aimed at regulating, organizing and controlling migrant flows, in keeping with the existing labour and migration standards established in each country”.

275. The aim of this agreement is to regulate labour migration, ensuring that the Nicaraguans who come to Costa Rica have an employment contract and that Costa Rican employers, for their part, guarantee the minimum requirements for housing and worker protection.

276. Furthermore, recognition should be given to the work of civil society organizations (particularly non-governmental organizations), as well as religious organizations and some workers’ organizations, in meeting and managing the general needs of the immigrant population

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<sup>18</sup> Ibid., p. 19.

through programmes, projects and other initiatives geared towards supporting production processes, improving sociocultural and psychological conditions, and developing projects to help migrants with formalities such as form-filling and complying with migration regulations.

### **Land tenure**

277. Another economic indicator is that of access to and ownership of land by indigenous peoples. The 2000 census revealed that at least 80 per cent of households of the Bribri, Boruca, Cabecar and Guaymi peoples have land, except in the territories of Salitre and Ujarrás, where the percentages are 53 and 71 per cent, respectively. For the remaining peoples, access to land ranges between 53 and 73 per cent. Over 90 per cent of those who have access to land are titleholders.

278. The census was also revealing in that it confirmed that in the indigenous territories only 1 out of every 10 hectares is in conformity with the law; in addition, it was discovered that there are non-indigenous families who own more than 5,000 hectares, which reflects a disturbing trend towards the concentration of indigenous land in the hands of non-indigenous individuals.<sup>19</sup>

279. The Office of the Ombudsman has been very critical of the State institutions concerned by this issue and expressed this in no uncertain terms in its 2005 annual report, in which it states that “no steps have been taken to recover land for indigenous communities, which is one of the principal, as yet, unmet obligations of the Costa Rican State”.

280. The Office of the Ombudsman also states in its report that “along with the State’s failure to ensure the recovery of land located in the indigenous territories, in examining the land recovery programme of the National Commission on Indigenous Affairs, it was discovered that this institution had been openly managing a piece of property until January 2005”. The report points out that this situation is an infringement of the Indigenous Act.

281. In its reply, the National Commission on Indigenous Affairs stated that it was in the process of transferring the property, but that it had encountered legal obstacles in doing so and was requesting the Indigenous Development Association to defray the cost of the notary fees. This was, once again, an infringement of the law, since any officially registered transfer of property located in an indigenous territory was required to be performed entirely free of cost to the indigenous communities. At the time this report was prepared, the property transfer was in the process of being transacted.

### **Economic indicators**

282. A variety of data collected by the 2000 census demonstrate that the indicators of well-being for the Afro-Costa Rican population closely approximate the national average. For example, 10.76 per cent of the Afro-Costa Rican population utilizes a cesspool, latrine or “none”, while the national average is 10.35 per cent, and 2.36 per cent of the Afro-Costa Rican population lacks electricity, while the national average is 3.33 per cent.

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<sup>19</sup> *La Nación*, editorial, 4 August 2004.

283. On the other hand, 9.67 per cent of the Afro-Costa Rican population owns a home computer, whereas the national average is 14.03 per cent. As stated previously, these data reflect a certain improvement in the indicators of economic well-being, without however implying that they are entirely satisfactory.

### **Development of road infrastructure**

284. Under the part of the national development plan entitled “Infrastructure and transportation”, the Ministry of Public Works and Transport has been implementing a strategy to restore, maintain and preserve national and cantonal roads, which include roads giving access to the various indigenous settlements in the country.

285. Two sources of financing have been used to develop road infrastructure: international and internal. There are plans to use international financing to repair 50 kilometres of roads in the canton of Talamanca and 70 kilometres in Turrialba. As at October 2005, roadworks already under way in some areas were in the phase of drainage system installation and header construction. When this phase is completed, work will begin on ballasting.

286. Internally financed roadworks were being carried out in the cantons of Turrialba, Nicoya, Nandayure and Talamanca. In the canton of Turrialba, an investment of 5.9 million colones was used to improve the roads between Tuyutic and Paso Marcos Río Pacuare, Río Moravia and Esucula Quetzal, Moravia and Carolina in Chirripó, and Escuela Bajo Pacuare and Nimari.

287. In Nicoya, 23.4 million colones were spent on ballasting and pipe-laying on roads linking Cañal to Moravia, and Belén to Quebrada Bonita. In Nandayure, 30.5 million colones were spent on repairing the road between Pueblo Nuevo and La Soledad, including reballasting and header construction. In Talamanca, 9.5 million colones were spent to maintain the roads linking Sibujó to San Miguel and Shuabdi to Yorkin.

288. In 2005, road maintenance works were carried out in the cantons of Turrialba and Nicoya. In Turrialba, 6.2 million colones were spent on the roads between Río Moravia and Escuela Quetzal, and in Nicoya, 11.5 million colones were spent on roads linking Belén and Quebrada Bonita.

289. The National Highway Council has been implementing strategic action No. 2.4.5.2 entitled “Ballast maintenance contracts and equipment and machinery hire contracts for the national highway system”, which aims to keep the foundations of the national roads in a satisfactory state of repair on a permanent basis.

### **Development of telecommunications**

290. To complement the information referred to in paragraph 215, during the period 2002-2005 the Costa Rican Electrical Institute (ICE) installed 176 solar panels in residential projects, which are supplying electricity to 176 customers in various indigenous communities. This represented an institutional investment of approximately 135.6 million colones for a total capacity of 18,240 watts.

291. As far as community projects are concerned, during this same period, a total of 48 panels were installed. These are supplying electricity to 30 customers in various indigenous communities. Some 28.28 million colones were spent on installing these panels, which have a total capacity of 3,580 watts.

292. In the last four years, 40 public telephones have been installed in indigenous communities. Of these, 5 are card-operated phones and 35 rely on the public telephone system.

### **Trade-union rights**

293. As mentioned in the previous report, migrant workers are free to join trade unions, but they may not hold leadership positions.

294. One of the most active trade unions in the area of migrant workers is the Association of Domestic Workers (Astradomes), whose membership includes a large number of Nicaraguan workers. Astradomes is an organization that defends the rights of domestic workers and for many years has been pushing for reforms in legislation to provide for, among other things, a shorter working day and one free day. Astradomes has also reported, in the course of the preparation of this report, that it is considering filing an *amparo* appeal to elicit a ruling on the bill by the Legislative Assembly. Its efforts also extend to providing legal advice and to organizing workshops that offer training to increase rights awareness.

### **Right to housing**

#### *(a) Indigenous housing*

295. The additional questionnaire for indigenous communities in the 2000 census covered a number of variables having to do with type of dwelling, particularly with regard to the construction materials used. The information obtained included the following:

Geographical area	Average number of persons per dwelling	Dwellings in good condition	Dwellings with running water	Dwellings with septic tank	Dwellings with electricity
Indigenous territory	5.3	26.5	29.1	21.2	38.3
Peripheral indigenous areas	4.1	48.5	67.6	75.9	90.4
Rest of the country	4.1	64.9	91.0	90.7	97.5

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

296. One of the first points to note in this table is that the average number of persons per dwelling in indigenous territories is 5.3, which is more than in peripheral indigenous areas and the rest of the country, where it is 4.1.

297. Furthermore, fewer dwellings are listed as being in good condition in the indigenous territories than in the rest of the country. It is obvious that, after the materials used and natural wear and tear have been taken into account, only limited resources are available for improving the dwellings, which lack certain basic services such as septic tanks and mains electricity.

298. Statistics from the 2000 census also show a high level of unsatisfied basic needs in indigenous communities.

299. These needs were identified in the national census on the basis of access to decent housing, health care, education, and other goods and services.

300. In indigenous territories, the basic needs of 7.6 per cent of indigenous persons and 14.4 per cent of non-indigenous persons are being met. This percentage increases as indigenous persons move away from their territories: for those in peripheral areas the figure is 29.4 per cent and for those in the remainder of the country it is 36.2 per cent. However, these figures remain low compared to the rest of the country, where the basic needs of 60.4 per cent of the inhabitants are being met.

301. Lastly, whereas the level of unsatisfied basic needs of indigenous persons in peripheral areas was higher than that of indigenous persons in the rest of the country - which was in turn higher than that of non-indigenous persons in the rest of the country - it was lower than that of indigenous persons inside the territories. In other words, the level of unsatisfied basic needs was highest for persons living in the indigenous territories.

302. In recent years, in order to repay this long-standing “institutional debt”, the Ministry of Housing has invested in various housing construction projects sponsored by the Costa Rica-Canada Foundation to meet the needs of this segment of the population.

303. Between 2000 and 2005, the Costa Rica-Canada Foundation built a total of 875 dwellings, investing approximately 1,490,150,000 colones.

304. With an investment of approximately 966 million colones in housing vouchers, between 2002 and 2003 assistance was provided to 497 families in the regions of Huetar Atlántica (Chirripó), Burunca, Chorotega and Central, which include communities such as Cabagra, Talamanca, Quebrada La Vaca, Quitirrisí, Conte Burica, Boruca, Ujarrás, Montezuma, Salitre, Orochico, Chirripó, Matambú and Coroma.

305. In order to respect cultural identity, these houses were built using three different systems depending on the preferences of each indigenous group. Some were built on a foundation of concrete slabs, others on a single-block foundation with the upper part of the house in wood; in the case of remote communities accessible only by footpath, the houses were built exclusively with timber extracted rationally from the mountains in the various reservations with the relevant permits. Moreover, all houses were built on piles since they are generally located in flood-prone areas and the indigenous people use them to shelter animals and grain.

306. In 2004, as part of the Indigenous Housing Programme, a social investment of 1,973 million colones in housing vouchers was used to assist some 825 indigenous families living in communities such as Talamanca, Chirripó, Matambú, Quitirrisí and Boruca. Not all the houses concerned were located within the indigenous territories.

307. In keeping with the action plan of the Ministry of Housing, roughly 1,007 million colones were to be allocated in 2005 to meet the housing needs of 328 families of the Maleku in Guatuso, Terraba in Buenos Aires, Matambú in Hojancha, Quitirrisí in Mora, Grano de Oro and Tayutic in

Turrialba, and Talamanca and Alto Conte in Corredores. The average size of the dwellings is between 42 and 60 square metres, and, given that many do not have electricity, the Costa Rican Electricity Institute has provided solar panels, which will make it possible for them to use electricity for a few hours of the day.

308. As is the case of houses that have already been built or those in the process of construction, houses are allotted in accordance with the needs and customs of each ethnic group. For example, the Cabecar people prefer to have the kitchen in their houses on the ground floor with a food storage area. For sanitation, they prefer a latrine, 25 metres from the house.

309. One important aspect in implementing the housing programmes has been the introduction of various requirements for housing applicants. The Ministry of Housing and the Costa Rica-Canada Foundation take into account the particular circumstances of the inhabitants of the indigenous territories and apply more flexible criteria when processing requests.

310. In carrying out the housing programmes, cadastral plans are not required and engineers generally lay out the construction using coordinates. To the extent possible, local labour is used for construction, and the average length of time taken to build the houses is six months, owing to the treatment that must be applied to the wood.

311. The houses are not privately owned but are governed by a communal property regime. The comprehensive development associations grant tenure and rights, and assign the trees to be used for the construction of the dwelling. The houses cannot be built until tenure has been granted.

312. At the end of 2005, the Costa Rica-Canada Foundation had 185 applications in hand, which were due to be processed in 2006 once the corresponding studies had been carried out.

313. The main obstacles to housing construction are geographical factors such as poor roads and long distances, particularly in the areas of Talamanca and Chirripó, where it is common to find mountain paths or trails that make it difficult to transport materials. There are also other constraints, such as health factors and certain cultural practices such as polygamy (some indigenous men have two or more wives, but by law only one dwelling can be allotted to each family group).

*(b) Afro-Costa Rican housing*

314. According to the 2000 census, 10.67 per cent of the Afro-Costa Rican population live in very poor housing, 29.02 per cent in fairly good housing and 59.71 per cent in good housing (in 0.6 per cent of cases the question was not applicable). This in turn is a clear indicator of the high level of urbanization of the Afro-Costa Rican population.

315. One important fact is that, both among the Afro-Costa Rican population and among the general population, a disproportionate number of children live in the poorest households. However, this is slightly less the case for Afro-Costa Rican children than for the general population.

316. According to the 2000 census, 10.35 per cent of all households, and 14.54 per cent of children under 4 years of age, use cesspools, latrines or “none”; the equivalent figures for the Afro-Costa Rican population are 10.76 per cent and 14.45 per cent respectively.

(c) *Migrant housing*

317. The 2000 census showed that 7.1 per cent of households headed by Nicaraguans lived in slums and 7.9 per cent in squats (for households headed by Costa Ricans the figures are 1.2 per cent and 1.5 per cent respectively). In urban areas, Nicaraguan households accounted for 35.4 per cent of all households living in slums and 30.1 per cent of squatter households.

318. The census identified 15,014 slums with 64,070 inhabitants. Nearly 30 per cent of them - i.e., 4,408 dwellings, housing 22,279 persons - were inhabited by families headed by a Nicaraguan. In urban areas, households headed by Nicaraguans accounted for 35.4 per cent of all slums.

319. Other indicators revealed that in nearly one fourth of the dwellings with a Nicaraguan head of household, the walls, floors and roof were in poor condition, whereas in Costa Rican-headed households, less than one tenth of the dwellings were in poor condition.

320. The greatest differences are between Nicaraguan-headed households living in overcrowded dwellings, which account for 16.9 per cent of the total by number of rooms and 25.4 per cent by number of bedrooms, and Costa Rican-headed households in overcrowded dwellings, which account for 2.0 per cent and 5.1 per cent of the total respectively.

321. Lastly, access to basic sanitation services, taking into account the kind of water supply, the water source, the kind of sewage disposal and whether or not there is a bathroom, is lower in Nicaraguan-headed households, 13.4 per cent of which have no sanitation and 29.6 per cent have inadequate sanitation, than in Costa Rican-headed households (2.9 per cent and 12.5 per cent respectively).

322. Under the migrant amnesties and the current law (Act No. 7052), there are no restrictions on immigrants' access to housing, provided that their migrant status and their family and employment circumstances demonstrate a reasonable likelihood that they will be able to reside legally and permanently in the country.

323. Like any Costa Rican family, regularized immigrant families who wish to apply for a housing voucher may do so through the authorized representatives of the Housing Finance Scheme.

324. Under the current administration, family vouchers have been granted to 1,386 families whose head of household is from another country, at a cost to the State of 3,716,900,000 colones, or 4.28 per cent of the funds allocated for this purpose.

325. One of the great challenges facing the country in this area is the institutional response to the needs of the Nicaraguan population; this group's fertility rate is double the national rate (4.1 versus 2.7), which means that, in the medium term, it will be necessary to mount a more comprehensive response for a segment of the population whose needs are going to increase.



## **Social security and social assistance**

### *(a) Indigenous persons*

326. As shown by the 2000 census, disaggregated figures for the population without social security are revealing: 35.2 per cent of indigenous persons in indigenous territories are not insured (though this does not mean that they do not receive social assistance and medical services). This figure falls to 28.4 per cent for indigenous persons in the rest of the country - still a high figure, given that a large number are foreigners - and 19.8 per cent for indigenous persons living in peripheral indigenous areas. Moreover, 20.7 per cent of non-indigenous persons living in indigenous territories lack social security, while the figure for non-indigenous persons in the rest of the country is 18 per cent.

327. In October 2002, the Ministry of Health developed, by means of a participatory and multisectoral approach, a new policy and a specific strategy for improving the quality of life and the health status of the indigenous population. This national policy addresses the historic debt owed to the indigenous peoples with regard to their development and respect for their rights, and is based on the notion of full respect for their right to self-determination and the preservation of their identity and culture.

328. Noteworthy among the actions taken under this new public policy are the consultation process with the indigenous communities regarding the national health policy (in compliance with ILO Convention No. 169); the development of a process for planning actions designed to improve the health status of the indigenous peoples in each indigenous territory; courses in interculturality and health aimed at raising awareness among health officials; and addressing the specific requests and demands for services and infrastructure made by the various indigenous communities.

329. The following are among the actions being carried out: continuing the process of consulting with the indigenous communities; organizing the first National Indigenous Health Forum; following up on the joint plans of the Costa Rican Social Security Fund and the Ministry of Health to improve the health and quality of life of the indigenous peoples; promoting the development of a specific assistance scheme based on respect for interculturality and differing world views; reviewing national legislation and international standards; addressing the specific needs of the indigenous communities; and implementing a technical cooperation project with Brazil.

330. Special consideration is given to indigenous migrant populations, for whom a binational health-monitoring scheme has been set up in border areas and awareness-raising activities are carried out in receiving communities. It is planned to continue carrying out actions using a binational approach with an emphasis on interculturality, build local decision-making capacity and active awareness, develop a health information system that takes travelling and mobility into account, promote occupational health and improve basic sanitation.

331. The following may be listed as the main results achieved: increased indigenous participation in decision-making; strengthened strategic alliances between the relevant institutions and the development associations and indigenous non-governmental organizations; and a stronger role for the Ministry of Health in regulating indigenous health.

332. The National Council for Rehabilitation and Special Education (CNREE) provides assistance to indigenous persons with disabilities by including them in its programmes “Poverty and disability” and “Services for family coexistence”. For this purpose, it has a special centre located in Grano de Oro in Turrialba, and complements these efforts by providing subsidies to indigenous children and adults with disabilities.

333. Within the context of its mandate and the terms of the legal framework contained in Act No. 7935 (Comprehensive Older Persons Act and the regulations thereto), the National Council for Older People has a programme called “Building ties of solidarity”. Under this programme, joint efforts have been made with the municipality of Talamanca (on the Atlantic side of the country) to assist all adult indigenous persons and illegal aliens living in the region, without any distinction as to nationality or ethnic origin.

334. It is important to recognize the work of the Air Surveillance Service of the Ministry of Public Security, which carried out a total of 106 flights between 2002 and 2005 in response to emergencies involving indigenous settlers and in support of health campaigns in the indigenous territories.

*(b) Migrants*

335. The large migrant population of Costa Rica requires health institutions to provide a wide-ranging and prompt response to its needs. Consequently, as the body in charge of health policy, the Ministry of Health, together with other national institutions, has developed an assistance scheme based on respect for the special characteristics and cultural identity of this population.

336. Before discussing the health component of the national development plan, it is important to point out some health indicators that reveal the special characteristics of the migrant population, particularly those of Nicaraguan migrants. The principal causes of hospitalization among men are injury, trauma, psychosis and tumours related to employment risks. Among women, the causes are of a gynaecological, obstetric, general or prenatal nature.

337. The principal health problems identified by health workers in the areas with a large migrant population are malnutrition, parasitic infestation, skin diseases, respiratory diseases and diarrhoea, mainly in children, and sexually transmitted diseases and pathologies associated with the work environment (low-back pain, intoxication and allergies, among others) in adults. A study conducted in 2002 showed that the most frequent problems that women and children migrants brought with them to Costa Rica were malnutrition, parasitic infestations and gastrointestinal disorders.

338. A problem that occurs frequently with migrant women related to the provision of health-care services for childbirth and family planning. Health officials find it difficult to provide proper follow-up in such cases owing to missed appointments and the fact that many women move around to other parts of the country as part of the social and labour integration process in which migrant families are typically involved.

339. In accordance with the political and institutional framework in Costa Rica, the governing principle for health services is that they should be available for all who need them. However, for immigrants, access to such services depends on three things: their migrant status, the terms of their employment contract and the level of health care needed.

340. Under current legislation, illegal aliens cannot obtain insurance by any means (direct, indirect or voluntary) since the formal requirements for doing so include a certificate of residence and a work permit. In the case of medical emergencies they are guaranteed treatment (completely free of charge) but, in normal situations, their irregular situation sometimes hinders speedy and appropriate treatment.

341. One of the major problems encountered in the labour market is late payment of wages by employers, who sometimes make salary deductions without reporting them to the State or simply without reporting them to workers, thereby excluding workers from access to health services. The Ministry of Labour has devised a series of actions to address this problem, but limited economic resources and the small number of labour inspectors have made it impossible to address this problem in a comprehensive fashion.

342. It should be pointed out that three categories of health care are offered in the country. In communities, primary care is provided by basic comprehensive health-care teams. Immigrants' access is made easier by the fact that there are no requirements of any kind and service is provided in exchange for a voluntary contribution. At emergency centres, treatment is provided without regard to the patient's migrant status; however, insurance is required for doctor's visits or hospital stays. It is at the primary health-care level that migrants have access to health services.

343. In order to address this situation, the current administration has been developing a conceptual framework of health care for the migrant population based on the national policies contained in the National Development Plan 2002-2006, current national legislation and international standards, the National Health Policy for the Migrant Population 2004-2006 and the objectives established by the national migrant population forum.

344. In terms of national policy, it was decided to take action along the following main lines: design a strategy to provide information and training to the migrant population on rights and obligations in the area of health; organize awareness-raising workshops on the social integration of the national and migrant populations for health-care officials who work with migrants; review existing legislation on health; organize meetings to exchange information with strategically placed migrant groups; and carry out research into the perception and knowledge of health-care officials regarding the foreign population and into the migrant population's perception of the main problems in obtaining access to health services.

345. The main results achieved by these public policies include the following: national objectives aimed at identifying inequalities and reducing the social exclusion of minority and vulnerable groups in the field of health have largely been met; these groups are better informed about their rights and obligations; there has been an increase in awareness on the part of health

officials; efforts have been made to reduce xenophobia; inter-agency efforts have been made to meet the needs of these segments of the population; and the guiding role of the Ministry of Health in the provision of health care to the migrant population has been strengthened.

346. The Office of the Ombudsman has stated in its reports that a number of actions are needed to improve the institutional response to the provision of health care for migrants. In this connection, it has pointed to the need to organize family-planning campaigns for migrants; organize responsible-parenthood campaigns; promote environmental policies; promote prevention policies aimed at reducing the number of hospitalizations for contagious diseases (diarrhoea, parasitic infestations, viral infections, etc.); make plans to cope with an increase in demand for paediatric services; and implement screening programmes and programmes to prevent accidents at work.

347. As far as care for migrants with disabilities is concerned, the National Council for Rehabilitation and Special Education grants subsidies to Nicaraguan children; regrettably, however, the programme cannot be extended to older migrants since this is not provided for in Act No. 5662 establishing the Social Development and Family Allowances Fund.

348. Linked to the issue of social security, the Inter-Agency Institute for Social Assistance, in keeping with its mandate, grants a series of benefits and subsidies to indigenous persons, migrants, Afro-Costa Ricans and others, without distinction of any kind, in order to meet specific health needs. For example, if any member of a family has a disability, he or she may be granted an allowance to purchase a technical aid (an orthopaedic apparatus or a wheelchair, for example). In addition, these programmes may be extended to provide specialized care for older persons, children and adolescents, each of whom has particular needs.

349. Likewise, social welfare institutions - old peoples' homes, shelters and day-care centres - provide care for illegal aliens, without discrimination against them, specially in centres located in the border areas of the country.

*(c) Afro-Costa Ricans*

350. The Afro-Costa Rican population has full access to all health-care services. Nevertheless, there have been many calls from individuals of African descent for a health-care system that is tailored to their particular culture - one that respects multiculturalism and differences, adapts the course of treatment and revives traditional medicine.<sup>20</sup>

**Water supply and sewerage system in indigenous communities**

351. The Costa Rican Water Supply and Sewerage Institute carried out a study of rural aqueducts in indigenous communities in September 2005. Its conclusions are very revealing, and

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<sup>20</sup> National Institute for Women (INAMU), Report on the First Forum of Afro-Costa Rican Women (2005).

reflect a need for far-reaching change and specific action to help indigenous communities, who have unfortunately been neglected for decades and who have missed out on the development enjoyed by Costa Rica in various social spheres.

352. The study revealed that of the 37 systems examined, 5 (14 per cent) presented a low health risk, 14 (39 per cent) a medium health risk, 12 (33 per cent) a high health risk and 5 (14 per cent) a very high health risk. Furthermore, most of the water sources were at risk of pollution. Of the 38 storage tanks studied, 27 were at high or very high risk. Of the pipes, 15 posed a very high health risk, and the high content of faecal coliform bacteria (11/ml) in the water supplied to the population increased the risk of infant mortality and communicable diseases.

353. It was found that 67 per cent of the systems examined supplied water classed as non-potable according to National Water Laboratory microbiological quality criteria; aqueduct maintenance procedures and the condition of the aqueducts were poor; 39 per cent of the systems that used raw water from surface sources and three spring did not comply with National Water Laboratory chemical and physical quality criteria; and 92 per cent of the systems (34 aqueducts) had no disinfection system, as shown by the lack of residual chlorine in the distribution network.

354. The study made both general and specific recommendations, including: eliminate health risks in the water system by applying a suitable corrective and preventive maintenance programme; improve planning and maintenance procedures, as well as their frequency; and rebuild and improve the structures in question. It also recommended training the relevant management bodies, eliminating surface water sources, promoting the environmental “Blue flag” campaign, including the aqueducts in indigenous territories in the 2002-2006 national programme to improve water quality for human consumption, installing simple disinfection systems and erecting protective fences around the structures.

## **Education**

### **(a) Indigenous education**

355. With regard to indigenous education, the 2000 census confirmed some important data on education and literacy. Average illiteracy rates, although still higher than the national average of 4.8 per cent, remained below 10 per cent in communities such as the Quitirisí (9.4 per cent) and Boruca (9.6 per cent), but reached high levels in communities such as Telire (95 per cent). In general the Cabecar people, to whom the last-named territory belongs, show the worst levels.

356. The following table provides a number of educational and linguistic indicators for each of Costa Rica’s indigenous communities.

Indigenous peoples and territories	Illiteracy (%)	Average level of schooling (years)	Primary education (%)	Secondary education or higher (%)	Percentage of the indigenous population speaking an indigenous language	Percentage of the indigenous population whose mother tongue is an indigenous language	Percentage of the indigenous population whose mother tongue is Spanish	Non-indigenous people who speak indigenous languages
Territory	26.6	3.6	58.3	9.9	61.8	59.7	33.7	0.8
Bribri people	19.9	4.2	63.0	11.0	62.0	55.2	37.9	1.7
Salitre	24.4	3.7	47.7	7.4	38.1	34.6	29.6	1.9
Cabagra	21.5	3.8	55.6	6.1	50.8	46.1	44.4	0.8
Talamanca Bribri	18.8	4.4		68.2	12.4	69.2	62.6	36.5
Kekoldi Cocles	14.6	4.8	70.7	24.5	68.9	22.6	77.4	1.0
Burunca or Boruca people	9.6	4.9	72.8	16.8	5.2	3.8	94.8	0.1
Boruca	9.6	5.0	72.2	17.2	5.7	3.7	95.4	0.1
Rey Curré	9.5	4.7	74.6	15.6	4.2	4.0	93.5	0.0
Cabecar people	50.7	1.7	40.1	3.5	84.4	86.5	6.8	0.1
Alto Chirripó	62.2	0.9	30.4	2.1	89.0	93.4	1.4	6.0
Ujarrás	22.4	3.8	72.4	11.0	69.5	67.0	16.0	0.7
Tayni	40.7	1.9	60.1	2.6	82.7	84.4	5.7	0.1
Talamanca Cabecar	35.8	2.9	53.3	3.3	76.4	73.6	24.5	9.0
Telire	95.0	0.0	0.5	0.0	89.3	96.9	0.0	0.0
Bajo Chirripó	45.4	0.7	3.4	4.2	93.9	92.2	0.7	0
Nairi Awari	46.1	1.7	36.8	6.1	85.0	85.4	7.3	0
Chorotega people	13.0	5.2	74.9	17.2	1.0	0.3	88.8	0
Matambú	13.0	5.2	74.9	17.2	0.1	0.3	88.8	0
Guaymi people	27.6	3.1	64.9	5.5	84.5	85.2	5.3	4.0
Abrojo Montezuma	26.0	3.3	66.7	3.2	99.7	99.4	0.0	0
Osa	21.0	2.6	73.7	3.2	93.7	93.7	2.1	0
Conte Buruca	23.8	3.3	70.0	7.0	71.9	72.3	12.4	0.8
Coto Brus	32.9	2.9	58.8	4.9	89.0	90.5	1.3	3.0
Maleku people	10.8	4.8	76.2	12.5	71.1	49.0	41.6	0.9
Guatuso	10.8	4.8	76.2	12.5	71.1	49.0	41.6	9.0
Terraba or Teribe people	10.2	4.5	64.0	10.7	4.1	4.3	86.3	0.6
Terraba	10.2	4.5	64.0	10.7	4.1	4.3	86.3	0.6
Huetar people	13.5	5.0	78.6	16.5	0.7	0.8	98.2	0.6
Zapatón	24.4	3.6	78.3	4.9	0.0	0.0	88.0	0.0
Quitirrisí	9.4	5.4	78.8	20.7	0.7	0.8	98.8	0.6

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

357. The above table shows low educational levels for indigenous peoples, particularly for the Cabecar and Guaymi peoples. However, the figures are better for the Quitirrisí, Kekoldi Cocles, Boruca and Rey Curré peoples, who have on average almost five years of schooling. Nevertheless, in no territory has over 25 per cent of the population received a secondary education.

358. Primary education data for children aged between 5 and 15 show that the higher the level of schooling, the lower the illiteracy rate. In 10 territories, attendance exceeds 70 per cent, but in 4 it fails to reach 40 per cent.

359. With regard to indigenous languages, as mentioned in Costa Rica's sixteenth periodic report (para. 38), the Constitution has been amended to place an obligation on the State to ensure their preservation and development. The results of the 2000 census must be treated with caution, for some people, though speakers of an indigenous language, did not identify themselves as speakers of that language but referred only to Spanish.

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

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

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

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

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

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

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

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

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

367. The percentage of indigenous people who speak an indigenous language is very small in the Boruca (5.7 per cent), Rey Curré (4.2 per cent) and Terraba (4.1 per cent) territories and practically zero in the Matambú, Zapatón and Quitirrisí territories.

368. As to the mother tongue, 60 per cent of the indigenous population aged 5 or over learned to speak using an indigenous language. However, although this is an indication that these are living

languages, it is not clear that the language in question is the one used for communication. An exception is the Kekoldi Cocles territory, where 22.6 per cent of the population learned to speak using an indigenous language and 68 per cent currently speak that language.

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

370. The 2000 census shows that the indicators are generally better for the indigenous population living outside indigenous territories than for those living within them. The problems experienced also affect non-indigenous populations, but to a lesser extent. Therefore, it can be supposed that the geographical conditions in many territories are a key factor in the enjoyment of better living conditions.

371. With regard to basic general education (which includes preschool and primary education and the first three years of secondary education), the enrolment figures for children aged 5 to 15 speak for themselves. Whereas in the rest of the country 85 per cent of non-indigenous children are enrolled in a school, the figure falls to 56 per cent in indigenous territories.

372. The difference is even more marked in the population aged 15 and over who had at least one year of secondary education: only 9 per cent of indigenous people living in indigenous territories have had such an education, as compared with 46 per cent of non-indigenous people in the rest of the country.

373. The average duration of schooling is 7.6 years for the non-indigenous population in the rest of the country, as compared to 3.4 years for indigenous people in indigenous territories.

374. An essential conclusion to be drawn from the 2000 census is that more attention is being paid to the special characteristics of each indigenous people. The detailed information obtained enables the authorities to undertake a more careful and detailed analysis when drawing up public policies to meet inhabitants' needs.

375. The fact that problems are experienced by both indigenous and non-indigenous inhabitants of the territories suggests that the problems might be closely related to geographical location. Moreover, it should be borne in mind that there are considerable differences between territories and that these are heightened by a significant non-indigenous presence in some territories, which affects indigenous culture, customs and traditions.

376. Significant infrastructural improvements have been made to improve and expand the 197 primary schools and 9 secondary schools in indigenous communities (as at November 2005), such as the construction of a gymnasium at the Talamanca technical college in the Bribri community, Limón province. This cost 98 million colones (some US\$ 200,000 at the exchange rate on 15 December) and has a capacity of 500 people in a building that covers 1,000 m<sup>2</sup>.

377. The college was also equipped with the latest technology, enabling it to join the Technological Innovation Programme along with 60 other Costa Rican schools.



378. As stated in the previous report, the Ministry of Education established the Department of Indigenous Education in April 1995 to promote specialized education. This department was established to attend to the specialized educational needs of the national indigenous communities.

379. As part of the institutional efforts being made in this area, indigenous languages and cultures are taught in primary and secondary schools by peripatetic teachers using special educational programmes and methods adapted to the local indigenous communities. Moreover, there is a permanent advisory service for all teachers working in indigenous areas and the curriculum has been adapted to cover cross-cutting themes such as the environment, nature and sustainable development. Production projects have been set up and alternative curricula developed to suit the levels and/or educational cycles in which indigenous environmental education must be provided.

380. Other activities implemented by the Department of Indigenous Education include the inclusion of cross-cutting themes in the part of the curriculum dealing with values, such as language, culture, the environment, human rights, the law and traditional practices. Themes and content that recognize and publicize the contributions made by national indigenous cultures to the creation and development of identity, self-reliance and national human development have also been considered for inclusion.

381. Educational materials such as textbooks and documents have been developed for the use of teachers to facilitate the incorporation of such initiatives in the curriculum. This work needs to be supplemented and consolidated by optimizing other factors, by, for example, ensuring that teachers receive professional training and encouraging community involvement in education.

382. The Department of Indigenous Education has also organized a number of meetings, such as the National Meeting of Indigenous Teachers, to encourage the exchange of experiences and to debate community-related topics on an annual basis. The 2005 meeting sought to reinforce cultural bases by reviving elements of indigenous cultures.

383. The meeting also enabled teachers to acquire practical knowledge that they could put to use in their communities, in areas such as the preparation and use of natural inks, Boruca craftwork in cotton fabrics, Maleku and Chorotega pottery and Terraba, Bribri and Cabecar traditional music. Moreover, lectures were given on such themes as cultural changes in indigenous communities, the indigenous world view and oral tradition, traditional indigenous medicine and suggestions for teaching indigenous traditional culture.

384. The theoretical, reference, conceptual and methodological indigenous education programme is being implemented following an approach based on bilingual intercultural education, which means that some educational materials on teaching practice and curriculum development are already available.

385. However, there are many problems with the approach and with the facilities available to the communities for educational purposes. These problems were discussed at a November 2004

seminar in which the differences between rural and urban education were highlighted, as well as the need for the Ministry of Public Education to introduce different tests for indigenous and non-indigenous pupils.<sup>21</sup>

386. Despite some institutional achievements in terms of infrastructure, the promotion of languages in schools and the appointment of teachers, serious problems remain. For example, the essential principle of having lived in the area for at least three years is not applied when staff are first appointed to posts.

387. The allocation of teaching posts in indigenous communities is currently being discussed. ILO Convention No. 169, article 76 of the Constitution and Decree No. 22072, establishing the indigenous education system, form the legal basis for appointments.

388. In particular, articles 9 and 10 of Decree No. 22072 state that teachers in indigenous schools must belong to a local ethnic group and should preferably have been born in the territory concerned. If teachers do not meet these requirements, the Ministry of Education should provide an intensive training programme for teachers working in these communities.

389. The institutional line is that, given that it is impossible to find teachers with a university or secondary education or qualified staff to teach indigenous language and culture, the teachers who come closest to meeting the requirements will have to be employed, since these subjects are part of the curriculum in indigenous schools (decision No. 34-97 of the Higher Council of Education).

390. This interpretation of the law is a cause of great concern to indigenous groups and institutions such as the National Commission on Indigenous Affairs, because indigenous teachers are being asked to meet the same requirements as other teachers, without consideration for the special nature of their job. This has led to the dismissal of some teachers who did not meet the requirements in the strict sense of the law, and to the appointment of non-indigenous teachers in indigenous schools.

391. The Office of the Ombudsman shared this concern in its 2005 report, where it pointed to “the need to pay special attention to the procedures for appointing teachers in indigenous schools, as this situation is the cause of numerous complaints to this institution about the lack of consultation with communities, the failure of some teachers to meet the requirements, the appointment of teachers of culture and language to schools other than those of their ethnic group of origin, and the number of classes allocated to the subject”.

392. Other problems include difficulties in boosting indigenous languages given the lack of books in these languages and the lack of trained teachers. This is a crucial point, bearing in mind that the Huetar and Chorotega peoples have already lost their languages and the Boruca and Terraba languages are in danger of disappearing.

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<sup>21</sup> *La Prensa Libre* newspaper, 29 November 2004.

393. To train teachers, national advisers from the Department of Indigenous Education provide eight-hour induction courses for regular teachers covered by any of the agreements signed by the Ministry of Education with the National University or the University of Costa Rica, as well as for teachers who come from private universities and are working in indigenous schools. However, it should be pointed out that these agreements have expired, leaving an academic vacuum.

394. In order to reduce the “digital divide”, the Ministry of Science and Technology developed the Mobile Classroom Programme to provide training through discussions on various topics by scientists and professionals.

395. Public and private institutions are participating in this programme through an inter-agency commission comprising representatives of the Ministry of Science and Technology, the four State universities, the Ministry of Agriculture and Livestock and the National Council of Science and Technology. The programme promotes mobile classrooms as an “intellectual link” designed to create an environment conducive to the development of inter-university projects that seek to pursue comprehensive regional development on the basis of scientific and technological knowledge.

396. The programme has been implemented in such areas as Sepecue, Coroma, Cachabri and Yorkin, in Talamanca, where discussions and training courses have been held on ecotourism, medicinal plants and the management of poultry farms, in conjunction with the University of Costa Rica.

397. Moreover, with the support of the Ministry of Science and Technology, community centres - some in indigenous communities or in areas with a strong migrant presence - are being equipped with Internet access, thanks to a donation from the Government of the Republic of Korea.

398. To ensure that financial constraints do not force indigenous students to give up their studies, the Ministry of Education and the Inter-Agency Institute for Social Assistance have introduced projects and programmes to help families. In its annual operating plans, the Inter-Agency Institute includes grants to support socio-educational measures in programmes for pregnant teenagers or teenage mothers. The aim is to allow children under the age of 18 from indigenous families (and from migrant families, among others) who might otherwise be forced to leave school because of their financial situation to continue with their studies.

399. An example of such institutional support can be found in Turrialba, in the east of Costa Rica, where the Inter-Agency Institute is helping 378 indigenous Cabecar families who receive the allowance for families living in poverty, comprising a sum of 30,000 colones (about US\$ 75) a month. This enables families to have a balanced diet while ensuring that their children remain in the education system. This support is provided in cooperation with teachers in the various communities.

400. In the field of technical education, the National Training Institute trained 2,607 indigenous people in the agricultural and livestock sector between 2002 and 2005. The training was given in professional and specialized centres located in the seven planning units; mobile staff also gave courses in businesses, organizations and communities.

401. To complement its training courses, the National Training Institute runs support programmes that offer guidance, psychological and social services, and also helps students in the areas of vocational guidance, registration and student welfare. These services include a programme of financial assistance for participants on training schemes.

402. The occupational sectors in highest demand by indigenous young people are administration, plant technology, crafts, animal husbandry, tourism, agricultural business management, information technology, soil and water technology, accounting and finance, secretarial work, food processing, forestry and the environment, the manufacturing of made-to-measure clothing, planning, hairdressing and beautician work, leather work and sports fishing.

*Omar Dengo educational project*

403. The National Information Technology Education Programme (PRONIE) run by the Ministry of Education and the Omar Dengo Foundation is one of the main projects undertaken to improve teaching in indigenous communities and, particularly, access to information technology. As at 18 July 2005, the project was being implemented in 12 indigenous schools in the rural areas of Limón (8), Alajuela (2), Guanacaste (1) and Puntarenas (1) provinces.

404. The total number of beneficiaries in these indigenous schools is 1,532, of whom 473 carry out practical work in laboratories and 1,059 receive lessons in information technology in the classroom. This number represents 16 per cent of all pupils registered in public indigenous kindergartens and schools (9,581).

405. The following table shows the distribution, by province and area, of indigenous schools and pupils benefiting from the PRONIE first and second cycles project.<sup>22</sup>

Province	Schools benefiting			Pupils benefiting		
	Urban	Rural	Total	Urban	Rural	Total
San José	-	-	-	-	-	-
Alajuela	-	2	2	-	137	137
Cartago	-	-	-	-	-	-
Heredia	-	-	-	-	-	-
Guanacaste	-	1	1	-	146	146
Puntarenas	-	1	1	-	207	207
Limón	-	8	8	-	1 042	1 042
Total	-	12	12	-	1 532	1 532

*Source:* National Statistics and Census Institute, 2002.

<sup>22</sup> Data from 18 July 2005.

406. The figures for distribution by level of education and sex of pupils in indigenous schools benefiting from the PRONIE first and second cycles project indicate a predominance of males, although the difference is not large. The table below shows the total number of beneficiaries by level of education.

Level of education	Students benefiting		
	Male	Female	Total
Preschool	146	112	258
Interactive II	37	37	74
Transition	109	75	184
First cycle	373	325	698
First grade	142	111	253
Second grade	104	117	221
Third grade	127	97	224
Second cycle	314	252	566
Fourth grade	119	101	220
Fifth grade	114	85	199
Sixth grade	81	66	147
First and second cycles	687	577	1 264
Special education	8	2	10
Total	841	691	1 532

*Source:* National Statistics and Census Institute, 2002.

**(b) Afro-Costa Rican education**

407. The school enrolment rate among Afro-Costa Ricans aged 13 to 17 is 73.87 per cent, which is higher than the national average of 68.11 per cent. The proportion of Afro-Costa Ricans with secondary or higher education also exceeds the national average.

408. The statistical records show that 50.7 per cent of the male Afro-Costa Rican population have completed primary school and 49.3 per cent have completed secondary or higher education. The figures are similar for Afro-Costa Rican women, of whom 46.49 per cent have completed primary school and 53.51 per cent have completed university education.

409. This shows that the proportion of female university students is greater among the Afro-descendant population than in any other ethnic group except the Chinese. Afro-Costa Rican men, by contrast, are underrepresented at the university level.

410. The following table shows the level of education of those aged over 17 by sex, for the total population and the Afro-Costa Rican population. Afro-Costa Rican women's educational achievement is of particular note, with an average of 17.21 per cent as compared with the national average.

	Men/total	Men/ Afro-Costa Ricans	Women/total	Women/ Afro-Costa Ricans
	(%)			
No formal education	6.15	5.53	5.58	5.04
Primary	49.59	45.17	48.86	41.46
Secondary academic	24.49	29.59	25.46	29.08
Secondary technical	3.08	5.08	2.88	4.83
University equivalent	1.84	1.73	2.40	2.38
University	14.85	12.90	14.83	17.21
Total	100.00	100.00	100.00	100.00

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

411. A point that deserves highlighting is the promulgation by the Ministry of Education of an executive decree establishing the Commission for Afro-Costa Rican Studies to study racial diversity. The establishment of the Commission is an important step, and has been acknowledged as such by civil society.

412. The development of an education system that promotes the values of equality and respect is vital to combat discrimination. Costa Rica will therefore need to improve courses of study so that they pay more attention to the contribution made by Afro-Costa Ricans to the construction of national and social identity; it will also need to improve teacher training in the field of human rights. The World Programme for Human Rights Education, promoted by Costa Rica in the Commission on Human Rights, will be a valuable guide and tool for this purpose.<sup>23</sup>

### (c) Migrant education

413. The profile of migrant students - and particularly Nicaraguan students - has a number of special features owing to their low levels of school enrolment compared with the national average. According to the 2000 national census, 44.3 per cent of migrants did not complete primary school or failed to attain any level of formal instruction; there are also important differences between the sexes, for while 47.1 per cent of men failed to complete primary education, the figure for women is 41.5 per cent.

414. A study carried out in 2001 by the International Organization for Migration showed that conditions were still inadequate in schools attended by migrant children. The main problem is overcrowding in schools in areas with a large immigrant population, which exacerbates shortcomings in infrastructure, teaching staff and teaching materials and the problems of mixed-age classes and low levels of knowledge, and thus makes it more difficult for teachers to manage classes that are already unsettled for technical, psychological or social reasons.

<sup>23</sup> See the revised draft plan of action for the first phase (2005-2007) of the World Programme for Human Rights Education (A/59/525/Rev.1), adopted by the General Assembly in its resolution 59/113.

415. The study also showed that there are practical problems in dealing with a group of pupils with different learning needs who are intolerant of, or who stereotype, children of other nationalities, which leads to low self-esteem among immigrant children.

416. Despite the financial constraints on institutions in 2004 and 2005, the education budget allocated to meeting the needs of migrant students was increased by 10 per cent (2004).

417. Currently, the authorities allocate some \$23 million of the annual \$1 billion education budget to meeting the needs of the 46,000 foreign pupils (5 per cent of the school population).

418. The Ministry of Education's programmes aimed at meeting the needs of the most vulnerable groups include: school canteens, which cater for some 41,000 foreign children at a cost of 610 million colones; "start-of-year grants" (given at the start of the school year to families with a low income), which to date have been given to 20 foreign pupils, at a cost of 260,000 colones; and school transport and scholarships, provided for 307 foreign pupils at a cost of 6,043,000 colones.

419. The main item of expenditure in schools is scholarships, which have been open to all, regardless of nationality, since 2003. Until that time, they were only awarded to Costa Rican students.

420. The issue of awarding scholarships to foreign pupils was examined by the Constitutional Chamber in August 2003, when it heard an action brought by the Office of the Ombudsman alleging that article 4 (a) of Act No. 7658, on the National Scholarships Fund, was unconstitutional. The action was brought with a view to ensuring that foreign pupils from low-income families could enjoy this benefit.

421. Under the Act, one of the requirements for receiving this benefit was that applicants had to be Costa Rican, which created inequality among children. This violated educational principles, undermined the special protection provided for this population group and was contrary to the principle of the equitable distribution of wealth.

422. By granting the appeal, the Constitutional Chamber ensured that the rights of minors are fully protected in public policies and in care, prevention and protection programmes implemented by the government institutions that make up the national system for the comprehensive protection of the rights of children and young persons.

423. While foreign pupils are trying to come to terms with the national education system, a number of steps are taken to bring them up to the educational level corresponding to their age (as they are often behind in their education), including special classes at the end of the school day to help them learn the language, spelling and, especially, local customs and geography.

424. An education programme entitled "Expanding the Costa Rican education system in communities affected by Nicaraguan migration connected to Hurricane Mitch" was launched five years ago in Costa Rica under the auspices of the Ministry of Education, the International Organization for Migration and the United States Agency for International Development (USAID), and was very successful in its approach to sociocultural diversity.

425. USAID donated \$5 million to this programme, of which \$3.5 million were invested in educational infrastructure, \$1 million in training and \$500,000 in teaching materials.

426. At the heart of the programme lies a specific conceptual framework for addressing migration and intercultural issues. This framework incorporates a mediation model that aims to develop understanding as a means of approaching social and pedagogical issues and to provide stimuli to develop abilities and cognitive and other skills that will contribute to the social integration of children traumatized and uprooted by Hurricane Mitch.

427. With the support of the Costa Rica-United States of America Foundation for Cooperation (CR-USA), two additional phases were implemented: the second consisted of a programme entitled “Spreading and consolidating the best practices identified in the first phase of the programme to extend the benefits of the extra capacity in school communities”, and the third consisted of a programme entitled “Education and migration: mediation to improve academic performance, prevent dropping out/exclusion and promote sociocultural diversity in the transition between primary and secondary education (2004-2006)”.

428. The second phase focuses on academic performance and boosting the self-esteem of children with special needs who are behind in their studies, who are in classes with younger pupils or who need time to adjust in 86 schools in San José and Desamparados.

429. The third phase consists of building on successful experiences in keeping students in school, at least until the third cycle, and thus avoiding exclusion and social risks. Moreover, national education policies promote the rights of children and young people by taking an intercultural approach to teaching and social integration that benefits both the national and the immigrant school populations.

430. In line with one of the key goals of the third phase, a book entitled “Education without borders: a successful experience in dealing with sociocultural diversity” was published. It sets out the key theoretical and methodological aspects of migration, poverty and intercultural issues in a simple and effective manner, paying special attention to mediation in the development of understanding.

431. The National Training Institute has identified the migrant population as one of the groups coming under its remit. During the period 2002-2005, 19,057 young migrants, the majority of whom were Nicaraguans, received technical or vocational training. As in the case of indigenous groups, the institute not only provides courses in its training centres but also gives classes in the workplace. It also provides support in terms of guidance, psychological help and social work.

432. The subjects in greatest demand from young migrants are food preparation and processing, information technology, the manufacture of clothing, tourism, administration, catering, secretarial work, occupational health, plant technology, hairdressing and beautician work, and electrical work.



### **Indigenous communities and the environment**

433. A key issue is respect for the world view of indigenous people and their relationship with the land. The Ministry of the Environment and Energy has been working successfully with indigenous peoples on the protection of forests and reforestation, as well as on forestry policies that conform to the Costa Rican indigenous world view.

434. The most important programme is the one undertaken by the National Forestry Fund offering support in almost all indigenous territories to pay for environmental services on an annual basis in accordance with the availability of resources. At the time of writing, 70.44 per cent of indigenous reservations (2,379.7 km<sup>2</sup>) are wooded, representing 10 per cent of the country's total forest cover.

435. It should be pointed out that the payment to which indigenous communities are entitled for submitting their lands to the Programme of Payments for Environmental Services has been gradually increased. The ensuing increase in income for indigenous communities has had a positive impact on the quality of life of the inhabitants of the territories concerned.

436. In 2005, applications for payments for environmental services were received in respect of 14 projects, covering 7,840 ha. Payments have already been made in respect of 9 projects covering about 4,800 ha under the agro-forestry mode (214,300 trees); payment for 2 projects (71,000 trees) is currently being processed.

437. The Bribri community has received payments for environmental services since 1997. Up to 2004, 17 projects had been included, covering a total of 5,317 ha of forests. This represents an income for the community of some 404,418,050 colones over a 10-year period.

438. Community projects have prioritized the management of microbasins and protection of springs and water sources supplying the respective communities. Financial resources have been invested in improving the management of development associations, supporting schools such as the Sula-Yom Amubri school, repairing and building bridges and purchasing a tractor for farming.

439. All the Cabecar communities have participated in such projects since 1997. There are currently 28 projects under way, covering a total of 11,540 ha and representing an income of 920,792,200 colones over the 10-year period since 1997. Of these 28 projects, 24 are to protect woodlands and 1 protects agro-forestry systems of 47,300 trees, benefiting 114 people, of whom 33 per cent are women.

440. The income has been used to establish a scholarship fund for primary- and secondary-school pupils to purchase equipment and uniforms at the start of each academic year as well as a social welfare fund to meet inhabitants' most urgent needs, such as the cost of travelling to medical appointments at regional or national hospitals or the cost of medicines or funerals.

441. These resources have also been used to promote infrastructure development, such as at the Sibuju school, where the classroom was rebuilt and a canteen added. In the San Vicente community, a “student village” comprising a primary and high school was built to teach pupils up to the fifth year of high school.

442. In the Cabecar territory of TaynÍ, the roads have been improved, drains have been installed in the watercourses that cross roads, school canteens have been built and a distance-learning secondary school has been built in the Boca Cohen community. There is also a project run by women to breed chickens for local consumption.

443. In the Cabecar territory of Telire, a social welfare scheme has been introduced for older people and the sick, providing medical resources and coordinating doctors’ visits. Moreover, schools and canteens have been set up, households with very low incomes have been supplied with blankets, saucepans and tools, and projects have been set up to produce milk and meat.

444. The Boruca community began to participate in such projects only recently, in 2003. They are currently implementing five projects over an area of 2,744 ha of woodland, for which they will receive an income of 249,451,110 colones by 2009. These projects are of direct benefit to 31 persons, of whom 19 per cent are women, and the income from them has been used to pay administrative costs, protect resources, undertake community works and pay managers.

445. Fifteen projects are under way in the Guaymi community, 14 in the area of woodland protection and 1 in the area of reforestation. They cover a total of 7,111 ha and generate an income of 548,148,000 colones. The projects are of direct benefit to 190 people, of whom 21 per cent are women. Nine of the 15 projects are located on community land and are intended to meet the requirements of the contract dealing with protection, while other resources are earmarked for the community.

446. It has not been possible to begin the first project in the Terraba community, owing to a legal challenge launched by non-indigenous inhabitants of indigenous territories, who “claim to own the land even though it is in a territory legally declared an indigenous reservation”.<sup>24</sup>

447. The development associations of the QuitirrisÍ and Zapatón indigenous territories, representing the Huetar ethnic group, have begun agro-forestry projects covering 35,000 ha, which means that six of the eight groups in the country are now participating in the environmental services programme.

448. In association with the United Nations Conference on Trade and Development (UNCTAD) and other organizations, the Ministry of the Environment and Energy is reviewing State forestry policies towards indigenous peoples. These policies are implemented in conformity with Costa Rica’s international commitments under the various legal instruments ratified by the Legislative Assembly.

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<sup>24</sup> Ministry of the Environment and Energy, “Payment for environmental services in indigenous territories” (2005).

449. As well as reviewing existing legislation to facilitate access to the benefits of biodiversity, in accordance with articles 82 to 85 of the Biodiversity Act, which sets out the legal guidelines to protect traditional knowledge and access to genetic and biological resources in indigenous territories, a training programme is being carried out to manage biodiversity, along with workshops on the rules governing access to genetic resources. Moreover, courses on environmental protection have been provided for the various indigenous communities.

450. The Ministry of the Environment and Energy has encouraged regional initiatives to support the efforts of the National Commission on Indigenous Affairs to give greater consideration to indigenous peoples in the Puebla-Panama Plan.

451. Lastly, in December 2004, the Ministry of the Environment and Energy, working with two national indigenous organizations (Ixacaavaa and Ngobegue) and the International Alliance of Indigenous and Tribal Peoples of Tropical Forests, organized an international meeting to prepare a statement by indigenous and tribal peoples to be delivered at the United Nations Forum on Forests.

### **Representation**

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

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

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

455. Historically, only four Afro-descendant women have had a seat in Congress; only one is a current member. The current Government has no Afro-descendant or indigenous ministers. Nor are people of African descent or indigenous people represented in the judiciary.

456. National elections were held in February 2006 to elect the President, the 57 members of Congress and municipal representatives. Three members of the Afro-Costa Rican community ran for president: Ms. Epsy Campbell for Acción Ciudadana (Citizens' Action Party), Ms. Sadie Esmeralda Britton for Unión Nacional (National Union Party) and Mr. Howard Romper Blake for Fuerza Democrática (Democratic Force Party). Mr. Romper Blake also ran for Congress. Liberación Nacional (National Liberation Party) also fielded two Afro-Costa Rican women candidates in the congressional elections in Limón province.

457. This lack of representation is also reflected in institutions such as universities. In the past 30 years, only one Afro-Costa Rican has been appointed rector of one of the four State universities.

## CHAPTER 6

458. Everyone in Costa Rica, regardless of their ethnic, national or social origin, has free access to justice and the right to exercise all the rights and remedies provided for by law to protect their rights.

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

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

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

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

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

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

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

San José, 5 March 2001.”

462. The case law of the courts hearing cases in which one of the parties to a dispute is indigenous has focused particularly on agrarian issues (the sale and assignation of land in indigenous territories) and on the compulsory consultation procedures established by ILO Convention No. 169.

463. Judgement No. 9805-05 decided in favour of the indigenous Cabecar community and ordered the National Commission on Indigenous Affairs to transfer to them a smallholding that it had purchased on their reservation, confirming the decision of judgement No. 9199-04. The judgement orders the president of the National Commission or the person performing that

function to take the necessary steps to transfer the deeds to the smallholding known as Los Villalobus to the Comprehensive Development Association of the Cabecar Indigenous Reservation of Talamanca.

464. Judgement No. 6856-05 upheld an action alleging that a precedent set by the Limón Agrarian Court was unconstitutional in declaring the compulsory joinder of the National Commission on Indigenous Affairs in cases relating to indigenous territory, i.e. in declaring that the National Commission must be a party to all proceedings relating to indigenous territories, which the complainants considered a violation of ILO Convention No. 169. The Chamber upheld the action against the Agrarian Court's precedent, with declarative and retroactive effect from the date the ruling took effect, without prejudice to the rights acquired in good faith and the rulings made with the authority of *res judicata*.

## CHAPTER 7

### Legal framework

465. The 1949 Constitution includes a chapter on education and culture that not only maintains past achievements, but also develops several important concepts and guarantees.

466. Thus, under article 78: "Preschool education and general basic education are compulsory. In the State system these and upper secondary education are free and paid for by the nation. Public expenditure on State education, including higher education, shall not be less than six per cent per annum of GDP, in accordance with the law ... The State shall facilitate the pursuit of higher studies by persons who lack financial resources. Scholarships and assistance shall be awarded by the Ministry of Education through a body established by law."

467. Title VII of the Constitution also deals with education, establishing in particular the obligation of the State to provide poor pupils with food and clothing (art. 82).

468. One of the most notable proposals submitted to the Legislative Assembly to promote and protect culture is the bill (No. 15125) entitled "Act establishing the Ethnohistorical and Cultural Museum of Limón Province".

469. In setting out its reasoning, the bill stresses that the Costa Rican Caribbean region is an area in which various ethnic groups live together and have developed cultural manifestations that "merit being brought together in an institution that investigates, educates, promotes, disseminates, preserves and enriches the historical legacy and cultural expressions of the inhabitants of Limón, which are their ancestral heritage" (page 1 of the bill).

470. The aim of the bill is to establish an ethnohistorical and cultural museum that will protect the historical heritage of Limón province (excluding the papers that go to the National Archives).

### Culture

471. Since 2000, the Ministry of Culture, Youth and Sport has been developing a programme specifically for indigenous communities to provide technical support for initiatives aimed at preserving, promoting and disseminating their values, customs and traditions, as well as the transfer and exchange of knowledge about farming methods and crafts.

472. Craft workshops have been held to improve techniques and introduce new ones, drawing on the experience and knowledge of the indigenous communities, while at the same time preserving indigenous designs that reproduce symbols and shapes reflecting their world view and their direct relationship with nature. In order to promote and market arts and crafts, the Indigenous Intercultural Conference has been held for several years in October at the National Centre of Culture (headquarters of the Ministry).

473. Financial assistance has also been provided to pay for posters and leaflets advertising cultural festivals and local craft fairs in the Cabecar, Guaymi, Maleku and Huetar communities. With the help of a donation of \$7,000 from the Inter-American Development Bank, workshops were held in 2002 and 2003 in the indigenous territories of Ujarrás, Salitre, Cabagra, Terraba, Coto Brus, Abrojos, Montezuma and Talamanca. Financing was also provided to publish two documents entitled “Ujarrás - a people of giants” and “Curré - yesterday, today and always”. With funds from the national budget, calendars were printed portraying Cabecar (2003), Bribri (2004) and Guaymi (2006) legends and traditions.

474. In the context of various initiatives to promote indigenous values, in August 2005, the third “Tournament of Indigenous Cultures” was held to promote the fundamental values of Costa Rican indigenous cultures through sport, in this case baseball matches between children. The children were taught the names of the indigenous groups in Costa Rica and given other information about them.

475. These projects are an example of government efforts to preserve and revitalize indigenous languages and to promote and disseminate indigenous traditions, customs and knowledge. They offer new opportunities for different sectors of society to become involved in the management and development of artistic and cultural activities in their communities. They also generate, distribute and use artistic and cultural products and services produced collectively and individually.

476. As far as Afro-Costa Rican culture is concerned, the Ministry of Culture, Youth and Sport has promoted meetings of Afro-Central American young people, the Day of Black People and Afro-Costa Rican Culture, black culture festivals in Limón, calypso music festivals and concerts, and the International Year to Commemorate the Struggle against Slavery and Its Abolition.

477. The National Department for the Prevention of Violence, which is part of the Ministry of Justice, in conjunction with the Office of the Ombudsman and as part of official initiatives to construct a culture of peace within Costa Rica, runs anti-violence campaigns in schools with a high proportion of immigrant children.

478. “The season for non-violence” is celebrated every year between 30 January and 4 April and promotes awareness-raising initiatives and respect for migrants as a way of facilitating their integration into Costa Rican society. A public event was held in 2003 to analyse the book *Los Otros Armenazantes* (“The Threatening Others”), the outcome of research at the University of Costa Rica and a useful tool for raising public awareness.

479. In the case of the migrant population, the sociocultural dimension of migration must be considered. The establishment of binational homes, primarily comprising Nicaraguans and Costa Ricans, is a key aspect in the analysis of social relations and the links between the two population groups.

480. The 2000 census showed that more than one third (36.8 per cent) of persons living in households headed by Nicaraguans were born in Costa Rica; most of them were children, but they also included spouses and other family members. As a result, there is interaction between the customs, cultural and religious practices and traditions of the two population groups.

481. Within Costa Rica, migrants have established their own cultural space, not only in parks, dance centres and sporting activities such as baseball or boxing, but also in radio programmes such as “Nicaraguan voice” and “Women without borders”.

### **Information and dissemination of the culture of minority groups**

482. In terms of disseminating values and principles to promote human rights and preserve indigenous traditions, Canal 13, the only State television channel, has been transmitting free programmes about indigenous peoples such as “From people to people”; a broadcast from the Central American Craft Fair showing craftwork by indigenous Costa Ricans; a broadcast from Quitirrisí on the importance of Costa Rican indigenous culture; and a programme called “Population health needs: customs and traditions”.

483. Other programmes broadcast include a short programme entitled “Origins”; “Facing the people”, a programme on migration issues; a broadcast from Golfito on indigenous issues; and spots on migrants from various countries.

484. National radio has broadcast “Emergency radio”, a programme tackling indigenous issues; “Let’s understand our values”; and an interview with the president of the National Commission on Indigenous Affairs, analysing various aspects of the Costa Rican indigenous population.

485. With regard to the recommendations made by the Committee on the Elimination of Racial Discrimination following its consideration of the sixteenth periodic report of Costa Rica (CERD/C/60/CO/3, para. 14), the Costa Rican Journalists’ Association adopted a code of ethics in June 2003, establishing principles of professional behaviour rooted in respect for human rights and the avoidance of stereotypes.

486. Article 11 reads: “The profession must be governed by the principles of collective morality and avoid any publication contrary to the values of the national community, its democratic institutions and public morals. As a consequence, journalists must take special care to protect the rights of children, as well as respecting the privacy, honour, good reputation, image and private family life of citizens. Nevertheless, if the persons concerned, by their roles, responsibilities, behaviour or activities, are classed as persons who are active in public life, journalists must decide whether the information is of public interest and/or whether the event concerned takes place in public. Journalists should take into account whether the publication is of general interest and should act in accordance with that principle.”

487. Article 14 indicates that: “Journalists must behave respectfully when obtaining information and must be sensitive to the suffering or shame of others, particularly when filming, taking photographs or carrying out interviews at times of tragedy or human suffering. Moreover, in their reports, they should not create stereotypes based on race, gender, age, religion, social or economic status or physical handicap, which might lead to exploitation, hate or public mockery.”

### **Cultural broadcasters in indigenous communities**

488. As stated in the sixteenth periodic report, one of the most valuable initiatives in the sphere of communication with rural communities is the one taken by the Costa Rican Institute for Radio Education (ICER), an institution that was established in 1973.

489. ICER, a private not-for-profit association, carries out its work with the backing of a cultural cooperation agreement signed by the Governments of Costa Rica and Liechtenstein. As an educational institution, it follows the open-education model, promoting distance learning using radio, written materials and a personal tutor through the “Teacher in the home” programme. This experiment has transcended borders and today the association provides advice and runs similar projects in other countries of the region.

490. ICER initiatives include a joint project developed with the Ministry of Education and the International Organization for Migration to cater for the population at high social risk and for migrants. Moreover, one of its environmental education programmes is set in an indigenous community, and it has an ongoing project involving 12 small cultural radio stations, of which 5 are located in indigenous communities.

491. The five radio stations located in indigenous communities are the Voice of Talamanca in Talamanca; Corredores Cultural Radio in Corredores; Tonjibe Cultural Radio System in Guatuso; Turrialba Cultural Radio in Turrialba; and Buenos Aires Cultural Radio in Buenos Aires. As was stated in the previous report, these small radio stations have become an indispensable link and means of communication for the rural and indigenous communities in which they are located and typify “the excellent image of Costa Rica as a country where one can live in a peaceful democracy and have access to the media, education and health”.<sup>25</sup>

492. ICER plans to establish three new radio stations in the near future, in the Telire and Chirripó indigenous communities and Puerto Viejo, Limón, where there is a strong indigenous and Afro-Costa Rican presence.

493. As far as the development of educational materials is concerned, ICER implemented a project with ILO to print copies of ILO Convention No. 169 for distribution to Costa Rican indigenous communities. The project was backed up by special programmes on the cultural radio stations.

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<sup>25</sup> ICER, note dated 5 October 2005.



494. A primer in Bribri was produced to teach people how to read and write in the local language, with support from the “Teacher in the home” radio programme. To complement this, in 1995 ICER published a special pocket edition of *Semillas de Sibo*, a book on Bribri legends and stories, and brought together indigenous writers from different indigenous communities for a training workshop in 2000.

495. In 2002, a series of radio programmes on reinforcing the legal-defence capacities of indigenous peoples in Central America was produced. In conjunction with ILO the same year, in a joint initiative with the National Radio Chamber and national broadcasters, ICER broadcast a series entitled “Indigenous people, our forgotten brothers and sisters”, which was an extremely valuable awareness-raising exercise. Radio spots have also been recorded in indigenous languages to explain the process of registering for an identity card to the inhabitants of indigenous towns and subsequently to teach them how to cast a vote in the next elections.

496. With the assistance of the United Nations Educational, Scientific and Cultural Organization (UNESCO), since 2004 ICER has been running a project on the use of new technologies to further democratize radio communication, with the goal of encouraging the use of the Internet in indigenous communities and promoting the exchange of radio programmes by all community radio stations via the Internet.

497. In 2005, with the help of legal professionals, ICER initiated a programme to publicize the scope of the Autonomous Development of Indigenous Peoples Bill. For this purpose, a commission comprising one representative of Congress, one from the Office of the Ombudsman, one from ILO and one from the Supreme Electoral Tribunal has been established.

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