



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Concluding observations on the fifth periodic report of Costa Rica\*

1. The Committee considered the fifth periodic report of Costa Rica (E/C.12/CRI/5) at its 51st and 52nd meetings (see E/C.12/SR.51 and 52), held on 19 and 20 September 2016. It adopted the present concluding observations at its 79th meeting, held on 7 October 2016.

#### A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of Costa Rica and the written replies to the list of issues (E/C.12/CRI/Q/5/Add.1), which were supplemented by the oral responses provided by the delegation. The Committee expresses appreciation for the constructive and open dialogue held with the high-level delegation of the State party. The Committee is pleased to have received the additional information offered during the dialogue.

#### B. Positive aspects

3. The Committee welcomes the following legislative and other measures taken by the State party:

- (a) The amendment, in August 2015, of article 1 of the Constitution to recognize the multi-ethnic and pluricultural character of the State party;
- (b) The adoption, on 30 June 2016, of the Act on the Promotion of the Personal Autonomy of Persons with Disabilities (No. 9379);
- (c) The adoption, on 9 December 2015, of the Labour Law Reform Act;
- (d) The adoption of the national employment and production strategy in August 2014.

4. The Committee welcomes the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 23 September 2014.

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\* Adopted by the Committee at its fifty-ninth session (19 September-7 October 2016).



5. The Committee welcomes the State party's ratification of or accession to the following international instruments:

- (a) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 14 January 2014;
- (b) The International Convention for the Protection of All Persons from Enforced Disappearance, on 16 February 2012;
- (c) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 1 October 2008.

## **C. Principal subjects of concern and recommendations**

### **Domestic application of the Covenant**

6. While the Committee welcomes the examples provided by the State party of the direct application of the rights set out in the Covenant, it is concerned that those examples are limited in scope, since they relate mostly to the right to health and are confined to decisions of the Constitutional Chamber.

7. **The Committee recommends that the State party take the necessary steps to promote the enjoyment of all the rights recognized in the Covenant at all levels of the judicial system. In this connection, the Committee encourages the State party to provide training that draws on the content of the Committee's general comments concerning what those rights cover, publicizing the possibility of invoking the Covenant before the courts, with a special focus on judges, lawyers, law enforcement officials, members of the Legislative Assembly and other officials responsible for implementation of the Covenant. It also encourages the State party to organize awareness campaigns for rights holders. The Committee draws the State party's attention in particular to general comment No. 9 (1998) on the domestic application of the Covenant and asks that it include in its next periodic report information on cases in which Covenant rights have been invoked by the national courts.**

### **Rights of indigenous peoples**

8. The Committee is concerned about the failure to consistently respect the right of indigenous peoples to prior consultation with a view to obtaining their free, prior and informed consent in respect of decision-making processes that may affect their ability to exercise their rights, in particular their economic, social and cultural rights. The Committee is also concerned that the bill on the autonomous development of the indigenous peoples has not yet been passed into law and that, although the State has recognized indigenous territories, in practice many of those territories are occupied by non-indigenous persons, a situation which has given rise to serious conflicts (art. 1).

9. **The Committee recommends that the State party:**

- (a) **Ensure that indigenous peoples are regularly consulted with a view to obtaining their free, prior and informed consent in respect of decision-making processes that may affect their ability to exercise their economic, social and cultural rights;**
- (b) **Expedite discussions in the Legislative Assembly on the bill on the autonomous development of the indigenous peoples and set a specific time frame for the speedy enactment of the bill;**
- (c) **Ensure and protect the right of indigenous peoples to own, use, develop and control the lands, territories and natural resources that they possess, including**

through such legal recognition and protection as may be necessary, and ensure that lands occupied by non-indigenous persons are returned to them.

#### **Engagement with civil society**

10. Although the Committee welcomes the establishment of a standing body for civil society consultation as proposed by the Inter-Agency Commission for the Monitoring and Implementation of International Human Rights Obligations, it is concerned that that body is not fully operational and that effective mechanisms are not in place for promoting collaboration between State bodies and civil society organizations (art. 2).

**11. The Committee recommends that the State party step up its efforts to ensure that the Inter-Agency Commission for the Monitoring and Implementation of International Human Rights Obligations and the standing body for civil society consultation become fully operational in the near future so as to ensure effective coordination of policies aimed at the realization of human rights and constructive engagement with civil society organizations with an eye to promoting their active, open and transparent participation in public affairs nationally and in the preparation of its next periodic report.**

#### **Lead agency for social policy coordination**

12. While the Committee notes the establishment of the Presidential Social Council with a view to securing inter-agency coordination in tackling poverty and extreme poverty, it is concerned that the Council does not have sufficient capacity to fulfil its mandate as the lead agency in this area and thus ensure effective coordination between the various bodies responsible for implementing all social policies in the State party (art. 2).

**13. The Committee recommends that the State party take the necessary measures to ensure that the Presidential Social Council is able to function effectively and has sufficient authority and capacity to coordinate the efforts of the various bodies responsible for implementing social policies in the State party and that the State party allocate sufficient financial, human and technical resources for the Council to operate effectively.**

#### **Fiscal policy**

14. While the Committee takes note of the explanations provided by the delegation to the effect that tax reforms are aimed at redistributing income and not only increasing tax revenue, it is concerned that the reforms are not sufficient to combat the growth of inequalities in the State party (art. 2).

**15. The Committee recommends that the State party take the necessary steps to ensure that the current tax reforms are redistributive and socially fair and that they will make it possible to combat the growth of inequalities and to increase the resources available for implementing economic, social and cultural rights.**

#### **Non-discrimination**

16. The Committee is concerned that the State party does not yet have a comprehensive legal framework to combat discrimination (art. 2).

**17. The Committee recommends that the State party expedite the adoption of comprehensive anti-discrimination legislation that ensures adequate protection against discrimination and that it should:**

- (a) **Explicitly include all the prohibited grounds for discrimination listed in article 2 of the Covenant, taking account of general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights;**
- (b) **Define direct and indirect discrimination in a manner that is consistent with its obligations under the Covenant;**
- (c) **Prohibit discrimination in both the public and the private spheres;**
- (d) **Include provisions for access to remedies in cases of discrimination through judicial, administrative and other procedures.**

18. While the Committee welcomes the adoption of the national policy and action plan for a society free from racism, racial discrimination and xenophobia, it remains concerned about continuing discrimination against certain marginalized and disadvantaged groups (art. 2).

19. **The Committee recommends that the State party take the necessary measures to ensure the effective implementation of the national policy and action plan for a society free from racism, racial discrimination and xenophobia, including through the allocation of adequate human, technical and material resources. The Committee urges the State party to increase its efforts to prevent and combat continuing discrimination, in particular against members of indigenous peoples, persons of African descent, persons with HIV or AIDS, migrants, asylum seekers and refugees, including by carrying out awareness-raising campaigns with a view to ensuring the full exercise of the rights recognized under the Covenant, particularly access to employment, social security, health care and education.**

#### **Discrimination on grounds of sexual orientation and gender identity**

20. While the Committee takes note of the various steps taken to combat discrimination on grounds of sexual orientation and gender identity, it is concerned that lesbian, gay, bisexual, transgender and intersex persons continue to experience discrimination. It is also concerned that the absence of legal recognition of their gender identity is a barrier to transgender persons having effective access to work, education and health services (art. 2).

21. **The Committee recommends that the State party adopt a policy that comprehensively addresses discrimination on grounds of sexual orientation and gender identity. The Committee also recommends that the State party take the necessary legislative and administrative measures to recognize the rights of same-sex couples and to ensure that transgender persons have effective access to economic, social and cultural rights.**

#### **Gender equality**

22. Although the Committee takes note of the creation of the Gender Equality and Equity Management System, it is concerned about the low labour participation rate of women, the persistence of horizontal and vertical segregation in the workplace and the considerable wage gap between men and women. The Committee is also concerned that gender stereotypes continue to be deeply entrenched in family and society (art. 3).

23. **The Committee recommends that the State party:**

- (a) **Take the necessary steps to increase the labour participation rate of women and to eliminate the persistent gender wage gap, by combating vertical and horizontal segregation in employment that results in women occupying lower-paid jobs and facing obstacles to the enjoyment of career opportunities on an equal footing with men;**

(b) **Take appropriate measures to promote the equal sharing of roles and responsibilities between men and women in the family and society, including by strengthening the Childcare Network in order to ensure the availability, accessibility and affordability of childcare services and by providing paternity leave.**

24. **The Committee refers the State party to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights.**

#### **Unemployment**

25. **The Committee is concerned that, despite the State party's efforts, unemployment and underemployment are high and disproportionately affect young persons, women, persons with disabilities, members of indigenous peoples, persons of African descent, migrants, asylum seekers and refugees (art. 6).**

26. **In the light of its previous recommendation (see E/C.12/CRI/CO/4, para. 39), the Committee urges the State party to intensify its efforts to bring down the high unemployment rates by, for instance, ensuring that the national employment and production strategy tackles the main causes of unemployment, includes a plan of action with specific targets and focuses on groups that are disproportionately at risk of unemployment. The Committee recommends that priority continue to be given to programmes for good quality technical and professional instruction and training that are adapted to the needs of the job market and take into consideration the needs of the most marginalized and disadvantaged persons and groups.**

#### **Domestic workers**

27. **Despite the information provided on measures taken to improve the working conditions of domestic workers, the Committee is concerned about the persistence of discriminatory practices against this group of workers (art. 7).**

28. **The Committee recommends that the State party:**

(a) **Intensify its efforts to ensure that the working conditions of domestic workers are fair and just in both law and practice;**

(b) **Ensure that the labour inspection mechanism has an adequate mandate to monitor effectively the working conditions of domestic workers;**

(c) **Establish effective complaint mechanisms for reporting abuse or exploitation, taking into account the situation of many domestic workers.**

29. **The Committee refers the State party to its obligations under the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189), in particular its obligations under articles 16 and 17.**

#### **Informal sector of the economy**

30. **The Committee is concerned by the information received about the large number of persons who work in the informal economy and are therefore not properly protected by labour laws, the social protection system or the National Occupational Health Policy (arts. 6, 7 and 9).**

31. **The Committee recommends that the State party:**

(a) **Take all necessary measures to progressively lower the number of workers in the informal sector of the economy, to bring those workers into the formal**

sector and to ensure that they are covered by labour legislation and that they have access to social protection;

(b) Systematically include the informal sector of the economy in labour inspections and the National Occupational Health Policy.

32. In this connection, the Committee draws the attention of the State party to its general comments No. 18 (2005) on the right to work, No. 19 (2009) on the right to social security and No. 23 (2016) on the right to just and favourable conditions of work, as well as its statement on social protection floors: an essential element of the right to social security and of the sustainable development goals (2015) (E/C.12/2015/1).

#### **Trade union rights**

33. The Committee finds it regrettable that, despite its previous recommendation (see E/C.12/CRI/CO/4, para. 41), the State party has not yet enacted the bill to amend article 60 of the Constitution that would remove the prohibition on foreigners from holding leadership posts in trade unions. The Committee is further concerned about reports regarding restrictions on the right to collective bargaining in the public sector and the lack of information provided on the measures taken to address violations of trade union rights, including threats against trade union leaders and members (art. 8).

34. In the light of its previous recommendation (see E/C.12/CRI/CO/4, para. 41), the Committee urges the State party to:

(a) Expedite the adoption of the proposed amendment to article 60 of the Constitution;

(b) Ensure respect for the trade union rights of all workers in both the private and public sectors, in accordance with article 8 of the Covenant and with the provisions of the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98);

(c) Establish effective mechanisms for the protection of union rights, including by effectively investigating all complaints brought to its attention and the payment of adequate compensation to the workers concerned.

#### **Social security**

35. While the Committee welcomes the broad coverage provided by the social security system in the State party, it is concerned that the most disadvantaged and marginalized groups remain outside the social protection system and that they experience difficulties in gaining access to the non-contributory scheme (art. 9).

36. The Committee urges the State party to intensify its efforts to ensure universal social security coverage and appropriate benefits for all persons, including those from the most disadvantaged and marginalized groups so that they may enjoy a decent standard of living and to redouble its efforts to set a social protection floor that includes basic social security guarantees. The Committee also recommends that the State party review the procedures for the allocation of non-contributory pensions so as to avoid errors and reduce waiting times for beneficiaries who depend on those pensions as their sole source of income. The Committee draws the attention of the State party to its general comment No. 19 (2008) and its statement on social protection floors: an essential element of the right to social security and of the sustainable development goals (2015).

### Situation of children and adolescents

37. While the Committee appreciates the efforts made by the State party in terms of protecting children and adolescents from economic exploitation and all forms of violence, it is concerned by information received about child labour and the fact that many children are the victims of physical and psychological violence, including within the family (art. 10).

38. **The Committee urges the State party to continue adopting effective measures to combat child labour by, inter alia, ensuring that the law protecting children against economic exploitation is vigorously enforced, strengthening child labour oversight mechanisms and increasing support for poor families so that they can keep their children in the education system. The Committee urges the State party to take the necessary measures to prevent and penalize all forms of violence against children.**

### Poverty and inequality

39. The Committee is concerned that the measures taken to combat poverty have not been sufficiently effective in reducing the levels of poverty and extreme poverty in recent years or in tackling the rising levels of inequality that affect the most disadvantaged and marginalized groups (art. 11).

40. **The Committee recommends that the State party:**

(a) **Ensure that the National Poverty Reduction Strategy contains specific targets, is implemented using a human rights-based approach, is allocated sufficient resources for its implementation and pays due attention to existing disparities and gaps between different social groups;**

(b) **Take effective steps to substantially reduce the inequality gap, taking into account the needs of the most disadvantaged and marginalized social sectors in both rural and urban areas and of indigenous peoples and persons of African descent in particular.**

41. **The Committee refers the State party to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (2001) (E/C.12/2001/10).**

### Asylum seekers and refugees

42. While the Committee welcomes the progress made by the State party with regard to the procedure for recognizing refugee status, it is concerned that excessive delays continue to occur in the processing of asylum applications and issuance of relevant documentation. It is also concerned that the high cost of renewing migration-related documentation and the fact that the issuance of identity documents is contingent on the obligation to become affiliated to and contribute to the Costa Rican Social Security Fund are an obstacle for refugees to gain effective access to their economic, social and cultural rights, in particular the right to an adequate standard of living (arts. 2 and 11).

43. **The Committee recommends that the State party take the necessary measures to comply with the time limits prescribed in the procedure for recognizing refugee status and to ensure the timely issuance and renewal of documentation for persons who have been granted refugee status, including by doing away with or reducing fees for the renewal of documents and for other administrative procedures. The Committee urges the State party to take specific measures to promote the integration of persons who have been granted refugee status in order to ensure that they have equal access to employment, education, housing and health care.**

### **Right to food and nutrition**

44. While the Committee welcomes the State party's efforts to build an appropriate legal and administrative framework to protect the right to food, it is concerned about the high percentage of women of childbearing age who suffer from anaemia and iron deficiency. The Committee is further concerned about the low rate of exclusive breastfeeding under the age of 6 months (art. 11).

45. **The Committee recommends that the State party adopt the measures needed to promote exclusive breastfeeding in accordance with World Health Assembly resolutions, including by introducing breastfeeding breaks and ensuring support for breastfeeding in the workplace. It also encourages the State party to take the necessary steps to ensure that women of childbearing age have access to adequate food.**

### **Right to adequate housing**

46. Despite the efforts made by the State party, the Committee is concerned about the continued existence of informal settlements and reports of forced evictions carried out without due protection for the persons affected (art. 11).

47. **The Committee recommends that the State party review its social housing measures with a view to adopting a comprehensive social housing strategy that:**

(a) **Is based on the right of every individual to adequate and affordable housing, subject to clearly defined standards of quality and habitability;**

(b) **Gives due priority to disadvantaged and marginalized groups and individuals living in informal settlements or uncertain and unfavourable conditions and protects them from forced evictions, by adopting appropriate regulations and ensuring compensation or the option of adequate housing;**

(c) **Combats segregation and social exclusion on the grounds of a person's social or economic situation or any other grounds of discrimination;**

(d) **Provides for resources that are proportionate to the unmet need for social housing and effective monitoring of the housing situation in the State party and an accountability framework for the implementation of policies and plans.**

48. **The Committee draws the attention of the State party to its general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions.**

### **Rights to water and sanitation**

49. The Committee is concerned about the lack of adequate measures for effective protection of water resources and in particular for the treatment of wastewater. It is also concerned that, despite the efforts made by the State party, the most disadvantaged and marginalized groups have limited access to safe drinking water and adequate sanitation (art. 11).

50. **The Committee recommends that the State party take appropriate steps to establish a system for the collection, management, treatment and disposal of human excreta and wastewater in the State party and for the effective protection of water resources. The Committee urges the State party to increase its efforts to guarantee access to safe drinking water and sanitation services for the most disadvantaged and marginalized groups. The Committee refers the State party to its general comment No. 15 (2002) on the right to water.**



### Right to health

51. The Committee expresses its concern about the large number of people on waiting lists and the long waiting times for health-care services, in particular primary care services, owing in part to a lack of specialized medical personnel, appropriate infrastructure and equipment in some health-care facilities and a unified information system (art. 12).

52. **The Committee recommends that the State party continue its efforts to reduce the number of people on waiting lists and waiting times, including by extending the use of the single electronic record system to all health facilities. The Committee also recommends that the State party strengthen infrastructure and equipment in the primary care system and ensure that hospitals have the necessary medical staff, supplies and medicines. The Committee draws the attention of the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of health.**

### Abortion

53. The Committee is concerned about the excessively restrictive abortion laws, since abortion is permitted only when there is a serious risk to the pregnant woman's life or health. It is further concerned that, in practice, even in the case where the law does permit abortion, access to the procedure is not ensured, owing to the lack of protocols determining when the procedure should be carried out (art. 12).

54. **The Committee recommends that the State party:**

(a) **Amend its legislation on abortion to ensure its compatibility with other fundamental rights, such as women's rights to life and physical and mental health, and to broaden the permitted circumstances;**

(b) **Expedite the adoption of a protocol that ensures access to abortion when there is a risk to the pregnant woman's life or health.**

### Teenage pregnancy

55. The Committee is concerned about the high rates of teenage pregnancy due, in part, to a lack of adequate sexual and reproductive health services and information (art. 12).

56. **The Committee recommends that the State party redouble its efforts to curb the high teenage pregnancy rate, ensure the accessibility and availability of sexual and reproductive health services for all women and adolescents, particularly in rural areas, and incorporate comprehensive, age-appropriate content on sexual and reproductive health into primary and secondary education curricula for both sexes.**

57. **The Committee draws the State party's attention to its general comment No. 22 (2016) on the right to sexual and reproductive health.**

### Right to education

58. The Committee is concerned about the limited availability of preschool education, especially for children from families living in unfavourable socioeconomic conditions. It is also concerned about the high repeat and dropout rates in secondary education and the reports received about the poor quality of education, in particular in rural and remote areas owing in part to a lack of adequate infrastructure and qualified teachers (art. 13).

59. **The Committee recommends that the State party:**

(a) **Step up its efforts to increase access to preschool education, in particular for children from families living in unfavourable socioeconomic conditions;**

(b) **Take appropriate measures to bring down the repeat and dropout rates in secondary education, in particular among disadvantaged and marginalized groups;**

(c) **Take all necessary measures to improve the quality of teaching, including by increasing the number of qualified teachers in receipt of adequate remuneration and benefits, and improving teaching materials and infrastructure.**

#### **Higher education**

60. While the Committee appreciates the efforts made to provide access to higher education, it is concerned that such access remains limited, in particular for students from disadvantaged and marginalized groups (art. 13).

61. **The Committee recommends that the State party take all necessary measures to progressively introduce free higher education and to ensure that higher education is accessible to all on the basis of capacity, in accordance with article 13 (2) (c) of the Covenant.**

#### **Cultural rights**

62. The Committee notes with concern that the measures taken to respect the cultural diversity of indigenous peoples and Afro-descendant populations and to foster the use of indigenous languages are still limited. It is also concerned that both the culture of indigenous peoples and Afro-descendant populations and the use of indigenous languages are not encouraged sufficiently, particularly in the area of education (art. 15).

63. **The Committee recommends that the State party:**

(a) **Take the necessary measures to strengthen the protection of cultural rights and respect for cultural diversity, including more effective implementation of the bilingual intercultural education system;**

(b) **Create favourable conditions for indigenous peoples and Afro-descendant populations to preserve, develop, express and disseminate their identity, history, culture, languages, traditions and customs.**

#### **Benefits of scientific progress**

64. The Committee welcomes the information provided by the State party concerning the authorization of the use of the assisted reproduction technology of in vitro fertilization, pursuant to Executive Decree No. 39210 of 10 September 2015; however, it is concerned that the measure is not sufficiently effective to ensure access to the right to enjoy the benefits of scientific progress and that it also adversely affects the right to sexual and reproductive health and the right to form a family (arts. 15, 10 and 12).

65. **The Committee recommends that the State party continue its efforts to ensure, in practice, access to in vitro fertilization technology and to guarantee the right of persons who need to use this technology to enjoy the benefits of scientific progress and its applications.**

### **D. Other recommendations**

66. **The Committee encourages the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It also encourages the State party to ratify the ILO Maternity Protection Convention (Revised), 1952 (No. 103) and the ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118).**

67. The Committee recommends that the State party take fully into account its obligations under the Covenant and ensure the full enjoyment of the rights enshrined therein when implementing the 2030 Agenda for Sustainable Development at the national level, with international assistance and cooperation when needed. Achievement of the Sustainable Development Goals would be significantly facilitated by the State party establishing independent mechanisms to monitor progress and treating beneficiaries of public programmes as rights holders who can claim entitlements. Implementing the Goals on the basis of the principles of participation, accountability and non-discrimination would ensure that no one is left behind.

68. The Committee recommends that the State party take steps to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights in order to facilitate the assessment of progress achieved by the State party in complying with its obligations under the Covenant for various segments of the population. In that context, the Committee refers the State party to the conceptual and methodological framework for human rights indicators prepared by the Office of the United Nations High Commissioner for Human Rights (HRI/MC/2008/3).

69. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, in particular among indigenous peoples and people of African descent, public officials, judicial authorities, legislators, lawyers and civil society organizations, and to inform the Committee, in its next periodic report, on the measures taken to implement the recommendations made herein. The Committee also encourages the State party to engage civil society organizations in the discussions to be held at the national level on the implementation of the present concluding observations and prior to the submission of its next periodic report.

70. The Committee requests the State party to submit its sixth periodic report, to be prepared in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 31 October 2021. In addition, it invites the State party to update its common core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6, chap. I).

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