



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

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COMMITTEE AGAINST TORTURE

**WRITTEN REPLIES BY THE GOVERNMENT OF COSTA RICA \* \*\*  
CONCERNING THE LIST OF ISSUES (CAT/C/CRI/Q/2) RELATING  
TO THE CONSIDERATION OF THE SECOND PERIODIC REPORT  
OF COSTA RICA (CAT/C/CRI/2)**

[25 February 2008]

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

\*\* The annexes to this document are available at the secretariat.

## Article 2

1. ***Please indicate whether a national record is kept of information from domestic courts concerning cases of torture and ill-treatment that have occurred in the State party.***

The reply to this question will be submitted at a later date.

2. ***Please provide information on legislation and practice with regard to:***

(a) ***When and by whom a detainee's personal details are recorded, who has access to the record and how long it takes to bring the detainee before a judge;***

(b) ***What percentage of detainees have not been charged.***

The reply to this question will be submitted at a later date.

3. ***Please comment on measures taken to address the problems relating to the juvenile criminal justice system identified in the State party's initial report and on their impact.***<sup>1</sup>

The reply to this question will be submitted at a later date.

4. ***Please comment on the infrastructure of the Detention Centre for Foreigners and the care provided in the Centre for victims of human trafficking offences. Please comment also on the lack of proper detention centres for migrants in border areas, particularly those entering from Nicaragua.***<sup>2</sup>

At the present time the Detention Centre for Foreigners is divided into two units, one for men and one for women. These are equipped with five bathrooms each for the convenience of detainees. The maximum capacity decided by the Constitutional Chamber of the Supreme Court of Justice is 100 persons, in order to ensure the minimum conditions required by existing international standards. The Centre also has leisure areas (gardens), public telephones, television viewing areas, reserved family areas, a kitchen, administrative areas such as the secretariat and legal office, and other facilities for internal security, as well as a duty register.

Work is currently being undertaken on modernizing the regional headquarters and frontier posts, in conjunction with the Central American Bank for Economic Integration, partly in order to provide amongst others suitable facilities for migrants, such as larger premises, more waiting room chairs and soft drinks.

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<sup>1</sup> CAT/C/24/Add.7, paras. 194-196.

<sup>2</sup> Report of the Office of the Ombudsman of Costa Rica on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. DGR-0708-2007, 31 August 2007, pp. 11 and 12.

5. ***Please provide detailed information on the work of the team of interpreters handling aboriginal languages, the number of interpreters involved and the impact that the measures described in the State party's report have had in ensuring access to justice for indigenous communities.***<sup>3</sup>

By decision of the Office of the Attorney General of the Republic, the Inspector for Indigenous Affairs coordinates his work with the National Commission for Indigenous Affairs (CONAI) and various offices of the judiciary, so that due attention is paid to these matters and daily efforts are made to improve the public service, as reflected in the fact that the Inspector's Office has received inquiries and complaints from indigenous persons from all over the country. The Office has been operating since 2005 and has been coordinating cases involving the indigenous population, circulating guidelines and identifying the best solutions to disputes.

With regard to interpreters in indigenous languages, applications have been made to the Governing Board of CONAI in order to secure the services of qualified staff. The matter is still being processed, however, since potential applicants have to comply with the conditions laid down in Circular No. 65-2006 of the Secretariat of the Supreme Court of Justice, amending Circular No. 123-2004 establishing Regulations governing the Employment of Operators and Experts in the Judiciary. These regulations contain a series of requirements which must be met by persons working as interpreters. At present CONAI's decision is awaited regarding the selection of candidates.

### Article 3

6. ***How does the State party ensure compliance with article 3, paragraph 1, of the Convention in cases of expulsion, return or extradition? Is there a procedure to assess the danger of the person being subjected to torture in the country to which he or she is returned? Please indicate whether immigration officials or authorities empowered to order refoulement receive training in the subject of political asylum and the requirements of article 3 of the Convention. Please indicate also whether free legal assistance and interpretation are available in practice to foreigners who appeal against a deportation decision.***

In article 111 of Migration Act No. 8487, the State guarantees compliance with article 3, paragraph 1, of the Convention, in the following terms:

ARTICLE 111. Unless stipulated to the contrary in the following article, no person with refugee or asylum status may be deported, expelled or returned to the territory of another State where their life or liberty would be in danger on account of their race, religion, nationality, membership of a particular social group or political opinions. No person may be deported or expelled while their application for refugee or asylum status is pending.

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<sup>3</sup> CAT/C/CRI/2, para. 68; CAT/C/24/Add.7, para. 311.

With regard to the training received by officials of the Immigration Police, the only training they receive is that provided by the Office of the United Nations High Commissioner for Refugees (UNHCR) concerning the treatment of refugees, not asylum-seekers.

With regard to asylum and the legal conditions pertaining thereto, according to article 108 of Migration Act No. 8487, the Migration and Aliens Office is not authorized to grant asylum status:

ARTICLE 108. Asylum status may be granted only by the Executive. The Ministry of Foreign Affairs and Worship shall be responsible for investigating every application for asylum, in order to ascertain whether the circumstances of the application call for urgency and to verify whether they correspond to the conditions contained in the relevant international instruments, which have been duly ratified by Costa Rica. Once the investigation has been completed, the Ministry of Foreign Affairs and Worship shall submit a recommendation to the President of the Republic.

With regard to political asylum, as indicated in the following reply, the Legal Department of the Ministry of Foreign Affairs must enquire into the human rights situation prevailing in the applicant's home country in order to determine whether he or she will be exposed to any risk if political asylum is denied.

**7. *Please provide information on the number of applications for asylum and refugee status that were rejected during the period 2002-2006, the procedure for determining the countries to which asylum-seekers were returned and the steps taken to ensure that they were not exposed to danger on their return.***

For the period 2002-2006, the 2002 figures differ from those for subsequent years insofar as they include data from earlier years, which considerably increase the average number of applications, at any rate for that period. In 2002 (subject to that proviso), there were 4,421 applications, 1,818 in 2003, 1,373 in 2004, 1,287 in 2005 and 422 in 2006, as listed in the following table.

Year	Applications	Rejections
2002	4 421	973
2003	1 818	376
2004	1 373	177
2005	1 287	111
2006	422	18
Total	9 321	1 655

As far as political asylum is concerned, if an applicant claims to be at risk of torture, the Legal Department of the Ministry of Foreign Affairs will consider whether their arguments make sense, will if necessary ask them for further clarifications and will consider - for instance by visiting the websites of specialized governmental and non-governmental organizations that give

information about this type of human rights violations - whether it is reasonable to suppose that the applicant will run that risk in the country concerned. In any event, even if a person is denied political asylum, they may still apply for refugee status, so that through one or the other procedure (asylum or refugee status) the problem will be dealt with very carefully.

8. ***Please indicate what stage has been reached in the planned amendment of the current Migration Act.<sup>4</sup> It has been reported that the body responsible for ruling on applications for refugee status is to be changed in the amended version of the Act, which establishes a Visa and Asylum Commission and stipulates that there shall be no appeal against that body's decisions. Please comment on the composition/qualifications envisaged for the Visa and Asylum Commission and indicate how the fact that its decisions are unappealable can be reconciled with the State party's obligations under article 3 of the Convention.***

The draft Migration Act is currently under review with a view to preparing a single text. It is hoped that within a month the final document will be ready for resubmission to the Government and Administration Committee, will be passed and will be sent to Plenary for approval. It is estimated that the new Act will be ready by June of this year at the latest. With regard to the fact that the decisions of the Visa and Asylum Commission are unappealable, right of appeal is guaranteed under the Constitution, despite the fact that it is denied by the Migration Act.

In any case, the revised version of the Act prepared by the Committee is founded on the international human rights conventions, agreements and other legal instruments signed by Costa Rica. Any ruling derived from the amended version will be fully in keeping with the principles of respect for human integrity and rights. The Committee is a collegiate body backed and supervised by the Ministry of the Interior and Police.

#### **Article 4**

9. ***Please state whether attempted torture is an offence in the State party.***

Torture is an offence under article 123 bis of the Criminal Code, which states that:

“Anyone who inflicts pain or physical or mental suffering on another person, or intimidates or coerces another person in connection with an act they have committed or are suspected of committing, in order to obtain information or a confession from them or from a third person, or on grounds of race, nationality, gender, age, political, religious or sexual preferences, social position, financial situation or civil status, shall be punished by 3 to 10 years’ imprisonment.

If such acts are committed by a public official, the penalty shall be 5 to 12 years’ imprisonment and a 2- to 8-year bar on holding office.”

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<sup>4</sup> See the Office of the Ombudsman’s annual report for 2006-2007.

Attempted torture, however, is not covered either in the existing Code or in the draft Criminal Code currently under consideration by the Legislative Assembly.

**10. *The State party's report<sup>5</sup> provides data in paragraphs 55 to 65 concerning complaints regarding cases of degrading treatment, abuse of authority and other violations. Please provide updated information on complaints regarding cases of torture, if any, of cruel, inhuman or degrading treatment, of complicity in or instigation of such acts, and of abuse of authority by law enforcement agencies and prison staff. If convictions were returned for such offences, what criminal and/or administrative penalties were imposed? Please provide information on such complaints, with a quantitative breakdown by offence, sex, age, and the ethnicity or minority group to which the complainants belong.***

There are two distinct authorities within the Ministry of Public Security that handle complaints of police misconduct.

The first is the Department of Legal Discipline, which, under article 51 of the Regulations governing the organization of the Ministry of Public Security, deals with administrative disciplinary proceedings initiated against ministry officials and issues recommendations. It is also responsible for ordering the appropriate inquiries into alleged breaches of discipline by ministry officials.

The second is the Office of the Comptroller of Services, which receives complaints from users of services supplied by the Ministry of Public Security and liaises with the Office of the Ombudsman to issue information and to monitor and implement the recommendations issued.

During the complaint procedure, if the Office of the Comptroller of Services should identify any circumstances that could justify initiating disciplinary proceedings against one or more officials, the complainant will be consulted as to whether they wish to make statements or call witnesses. Documents are then forwarded to the Department of Legal Discipline for the appropriate investigation.

### **Complaints received by the Department of Legal Discipline**

#### *Complaints of abuse of authority<sup>6</sup>*

Year	Total processed
2002	186
2003	205
2004	135
2005	175
2006	102

<sup>5</sup> CAT/C/CRI/2.

<sup>6</sup> The data refer to administrative proceedings that have been processed. This does not necessarily mean that the alleged facts were verified in all cases.

## Complaints received by the Office of the Comptroller of Services

### *Complaints of abuse of authority*

Year	Total processed
2002	4
2003	5
2004	1
2005	5
2006	3

### *Complaints of arbitrary detention*

Year	Total processed
2002	4
2003	2
2004	5
2005	4
2006	3

### *Complaints of irregularities*

Year	Total processed
2002	12
2003	9
2004	34
2005	7
2006	15

### *Complaints of assault*

Year	Total processed
2002	4
2003	3
2004	5
2005	4
2006	2

It should be noted that the Department of Legal Discipline of the Ministry of Public Security does not have a breakdown of data by sex, age, ethnicity or minority group.

Since it was set up in 1997, the Office of the Comptroller of Services has kept files on all cases forwarded by the Office of the Ombudsman and monitors compliance with all recommendations issued.

The tables below show all files of the Office of the Ombudsman relating to allegations of assault, irregularities, abuse of authority and arbitrary detention processed by the Office of the Comptroller of Services.

*Allegations of abuse of authority processed*

Year	Total processed
2002	9
2003	16
2004	3
2005	1
2006	4
Total	33

*Allegations of abuse of authority, by outcome of investigations by the Office of the Ombudsman, 2002-2006*

Status	Cases
Closed	11
Final report without recommendations	10
Recommendations	8
Shelved	3
Recommendation to another institution	1
Total	33

*Allegations of assault processed, by year*

Year	Total processed
2002	3
2003	1
2004	3
2005	-
2006	2
Total	9

*Allegations of assault processed, by outcome of investigations by the Office of the Ombudsman*

Status	Cases
Closed	4
Recommendations	2
Pending	2
Final report without recommendations	1
Total	9



*Allegations of detention processed, by year*

Year	Total processed
2002	12
2003	13
2004	10
2005	5
2006	1
Total	41

*Allegations of detention processed, by outcome of investigations by the Office of the Ombudsman*

Status	Cases
Closed	29
Final report without recommendations	7
Recommendations	2
Suspended	1
Shelved	1
Recommendation to another institution	1
Total	41

*Allegations of irregularities processed, by year*

Year	Total processed
2002	4
2003	3
2004	2
2005	2
2006	2
Total	13

*Allegations of irregularities processed, by outcome of investigations by the Office of the Ombudsman, 2002-2006*

Status	Cases
Closed	8
Final report without recommendations	3
Recommendations	1
Pending	1
Total	13

The foregoing shows that most cases investigated by the Office of the Ombudsman are now closed or gave rise to a final report without recommendations, i.e., some complaints were groundless, the facts could not be verified or the Ministry of Public Security took steps to investigate the alleged events or to prevent human rights violations.

According to its report, the Office of the Ombudsman received some 235 complaints of various forms of abuse of authority, such as assault, detention, degrading treatment, eviction and confiscation.

During the period 1999-2004, the most common complaints were submitted by young people, sex workers (women and transvestites), itinerant traders, occupiers of land (e.g. squatters, people evicted from the “El Bambusal” estate in Río Frío de Sarapiquí), migrants and demonstrators (ICE Combo, fishermen of the Gulf of Nicoya), who were treated as offenders. The Constitutional Chamber and the Office of the Ombudsman have repeatedly drawn the attention of the Ministry of Public Security to the fact that it is unconstitutional to detain people without substantiated evidence that they have committed an offence - in other words, purely on suspicion or in order to investigate their background, or on account of their appearance, or because they were in a certain place at a certain time.

There has been, however, a significant fall in the number of complaints of abuse of authority since 2005. This can be attributed to: (a) implementation of the recommendations issued to the police to prevent them committing, by act or by omission, human rights violations such as mass round-ups, arbitrary detentions, physical or psychological assault and arbitrary evictions; (b) the growing professionalization of the police, with the incorporation of human rights, police procedures and special legislation in police training courses; (c) efforts by the Office of the Ombudsman to promote and publicize rights and obligations in various communities and institutions.

With regard to persons deprived of their liberty, the Office of the Ombudsman recommended that the prison authorities order the appropriate bodies to observe the proper administrative procedure for investigating complaints submitted by persons deprived of their liberty regarding irregular conduct or assault by correctional officers. It also stated that such procedures should provide for an impartial body to be in charge of supervising proceedings, the taking of evidence and mechanisms to ensure due process and the parties’ defence rights, as required under the Public Administration Act and supplementary labour legislation.

To this end, the prison authorities issued a circular on 5 January 2006, informing the directors, administrators and security supervisors of the country’s prisons of their duty to refer any complaints made by prison inmates of irregular conduct or assaults by prison staff to the Office of the Ombudsman for investigation.

- 11. *Paragraph 60 of the State party's report refers to a number of complaints against the police from transvestites and to the Office of the Ombudsman's recommendation to the Ministry of Public Security that it should instruct the National Police Academy to identify training needs. Please comment on the action taken on this recommendation and its impact.***

Police violations of the freedom of movement and personal integrity of transvestites constituted grounds for complaint until 2004. The Office of the Ombudsman recommended that the Police should work with the relevant social institutions to guarantee the right to security of all inhabitants without distinction with regard to gender, sex, age or ideology.

As indicated in the foregoing reply, since 2005 the police force has complied with the recommendations of the Office of the Ombudsman that it should avoid violating human rights, whether by deed or by omission. Moreover, with the growing professionalization of the police force, human rights, special procedures and special legislation have been incorporated in police training courses.

#### **Articles 6 and 7**

- 12. *Please indicate what measures have been taken by the State party to ensure that all detainees can communicate immediately with a lawyer of their choice, and that they have access to a doctor, a person of confidence and, in the case of foreigners, the representatives of their State of origin.***

By tradition the State of Costa Rica upholds its legal system, as governed by the principle of independent powers, and is loyal to its international commitments. This takes precedence over or is reflected in all the public institutions of Costa Rica.

The security force of the Ministry of Public Security is a preventive police force whose members receive training in their professional procedures and duties. From the beginning of their police training, officers attend courses in subjects such as the State and Democracy, the Principles and Duties of Police Forces, Police Ethics, Human Rights and Police Legislation I and II.

According to the basic principles governing police work, law enforcement officers must observe the Constitution, international treaties and all existing laws. They are therefore under a strict obligation to protect civil liberties, the dignity of persons and human rights. In addition, according to police law, for no reason and under no circumstance whatever may there be any justification, excuse or impunity for acts of torture or cruel, inhuman or degrading treatment or punishment.

Police officers must at all times wear authorized police uniforms and must carry papers identifying them as public authorities. When arresting or interrogating anyone, they must give them the reason for their arrest, and explain their right to be assisted by counsel and not to make any self-incriminating statements. They must also care for and protect the physical and mental health of the persons in their custody, especially from the point of view of providing medicines, medical examinations or hospital treatment for those in urgent need whose life may be in danger.

Any nationals or foreigners arrested by police officers at the time they are committing an offence must be brought before the competent judicial authority (prosecutors' offices). Should a member of the police force fail in the performance of his duties, the Ministry of Public Security will take action through the Department of Legal Discipline and the Office of the Comptroller of Services, which receive all the complaints of the public for violations of their rights or for misconduct on the part of members of the police force. If such complaints involve offences they must be brought before the appropriate courts.

The legal system of Costa Rica also includes other public bodies, such as the Office of the Ombudsman, the courts of justice and the Constitutional Chamber, which monitor the fulfilment, defence and protection of human rights and liberties.

### **Article 10**

**13. *Please provide more information on the follow-up action taken on the Committee's concluding observations<sup>7</sup> regarding the training of police officers and prison personnel.***

The humanities section of the curriculum of the Basic Police Training Course which is currently being given in the National Police Academy includes material on the performance of the security services, more particularly with respect to their way of dealing with the public, with specific emphasis on the need to ensure that such services are available to everyone, with no discrimination.

**14. *Please state whether all prison police officers are systematically issued with an explicit set of human rights instructions, dealing in particular with torture and inhuman, cruel and degrading treatment.***

There is in fact a specific human rights course intended for prison staff that places special emphasis on torture and inhuman, cruel and degrading treatment. This course is part of the Basic Police Training Course given in the Prison Training School. It lasts three full days (eight hours a day) and covers the content of the Manual of Good Penitentiary Practice, which incorporates the principles of the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Constitution.

Work is conducted in active classes consisting of groups that study hypothetical cases and the case law of the Constitutional Chamber of the Supreme Court related to human rights in a prison setting.

An additional 100 hours of personal study are spent on King's College London's course on A Human Rights Approach to Prison Management, and all subjects taught must mainstream the theme of human rights in prisons.

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<sup>7</sup> A/56/44, para. 135 (b).

15. *It has been reported<sup>8</sup> that in late 2005 the Basic Police Training Course - the course that anyone interested in working as a police officer must attend and pass before being appointed - included a special course on human rights dealing, inter alia, with the prohibition of torture. Recently, however, there has been a reduction in the number of hours devoted to the Basic Police Training Course and the approach has been changed, with priority being given to the development of other tactical skills and with human rights training being confined to a single course for senior officers. Please explain how this apparent regression in human rights protection can be reconciled with the State party's obligations under article 10 of the Convention.*

The contents of curricula are by nature flexible and must be constantly reassessed. This year the reassessment of the Basic Police Training Course as such has indicated a need to increase the number of hours devoted to selected subjects, including human rights.

16. *Please provide detailed information on the training that police forces receive regarding the obligation not to obey superior orders that would involve the commission of acts of torture.*

The Rules of Ethics for members of the police forces attached to the Ministry of Public Security are analysed in the handbooks of the 2006 courses on Police Ethics, which are intended for police staff studying the Basic Police Course on Drugs, municipal police and others.

The course on ethics also includes the Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly in December 1979. Article 2 of the Code of Conduct expresses the need to respect and protect human dignity and maintain and uphold the human rights of all persons, while article 5 stipulates that no act of torture or other cruel, inhuman or degrading treatment or punishment may ever be permitted, a matter which is clearly spelled out to all those attending the police training courses.

Also according to article 10 (k) and (l), of the General Police Act, law enforcement officials are not liable to punishment if they disobey superior orders implying a violation of constitutional guarantees. These paragraphs are worded as follows:

Article 10: Basic Principles

(...)

(k) [They must] faithfully obey the instructions and orders of higher ranking officials. They will not be punished, however, if they disobey orders that amount to a clearly punishable offence or that infringe constitutional guarantees.

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<sup>8</sup> Report of the Office of the Ombudsman of Costa Rica on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. DGR-0708-2007, 31 August 2007.

(l) They may not, for any reason or at any time, invoke special circumstances, such as a state of war or a threat to national security or to the State, states of emergency or any other public emergency, as justification, excuse or impunity for acts of torture or cruel, inhuman or degrading treatment or punishment.

(...).

**17. *What action does the State party take to assess the impact of training courses on the prevention of torture and other cruel, inhuman or degrading treatment, including all matters pertaining to the abuse of authority?***

The National Police Academy carries out periodic impact assessments of the contents of its courses, the results of which then serve as input for updating the general training plan.

**18. *Please comment on whether the Istanbul Protocol is used in training medical staff to identify cases of torture.***

The reply to this question will be submitted at a later date.

**Article 11**

**19. *Please comment on the increase in the prison population mentioned in paragraph 135 of the State party's report. What steps have been taken to determine the reasons for the growth in the prison population? Please state the grounds for the low figures shown in paragraph 126 of the report for alternative penalties.***

There are several factors that have led to an increase in the prison population, including longer prison sentences, the criminalization of certain acts and the use of pretrial detention as a precautionary measure.

The country has 16 detention centres with a total capacity of 8,140 places. Out of this total, 7,665 cells are occupied and 475 empty.

This spare capacity may, however, be used up by the end of 2008 if the new Traffic Act is approved and prison sentences are introduced for driving under the influence of alcohol. To this is added the fact that the Supreme Court plans to submit pickpockets to summary court proceedings.

The authorities intend to respond by building a new detention centre for suspects in 2009.

Alternative penalties have been successfully applied where minors are concerned, but not in the case of the adult population, for whom there are few possibilities.

A bill is currently under discussion (No. 11,871) for a new criminal code, which will include alternative sanctions.

**20. *Please provide statistics by sex, age and nationality for persons deprived of their liberty under different legal circumstances.***

Please see the attached document prepared by the Department for Research and Statistics and the Social Rehabilitation Department.

**21. *Please comment on the measures taken by the State party to address the issues raised by the Office of the Ombudsman with regard to the health of persons deprived of their liberty, as reflected in paragraphs 159 to 161 of the State party's report.***

Health care is provided directly to users (persons deprived of their liberty) in the various prisons in the following forms:

(a) *Outpatient consultation*: this service is available for eight hours daily, from 8 a.m. to 4 p.m., Mondays to Fridays;

(b) *Emergency consultation*: this service is available from 8 a.m. to 8 p.m., Mondays to Fridays;

(c) *Exceptional assessments*: this service is offered to patients who could not be attended under (a);

(d) *Hospital assessments*: this service is available at times when the health services are closed - that is, on public holidays and on Saturdays and Sundays - to inmates, who are taken to the hospital where they are registered for assessment and treatment;

(e) *Referrals for outside specialist consultation*: in this case patients are referred to registered specialist clinics and hospital services for assessment by the appropriate specialist;

(f) *Laboratory and surgery examinations*: the aforementioned health centres offer services according to assigned quotas;

(g) *Referrals for hospitalization*: patients may be referred to public or private hospitals, according to the rules applied in each detention centre.

**22. *Please indicate what stage has been reached in the project entitled "Creation of an alternative centre specializing in comprehensive psychiatric care for mentally disordered persons in conflict with the law".***

The bill dealing with the "Creation of a psychiatric detention centre" (No. 16269) is currently being considered by the Legislative Assembly's Special Committee on Human Rights.

23. *According to the report of the Office of the Ombudsman for 2006-2007, “it is important to take into account the special circumstances of the Pococí and Limón Institutional Centres, which, owing to the increase in the prison population and existing demand, need to recruit full-time doctors; the measures that have been taken to date are inadequate”. It has been reported<sup>9</sup> that the opening hours of clinics, emergency areas and the quasi-hospital area at Centro La Reforma fail to ensure 24-hour medical attention and that medical services are not available at weekends or on public holidays. Moreover, the administrative procedure for delivering medicines is reportedly unreliable and involves delays, especially at Centro La Reforma. Please comment.*

As far as the recruitment of assistant general practitioners is concerned, the Pococí and Limón Prisons (CAI) have been employing a full-time medical professional, under the responsibility of Dr. Jeiner Salas at Limón and Dr. Francisco García at Pococí, since June 2007. The medical team also includes one professional nurse for each centre.

At La Reforma Prison, the service as described above is available from 8 a.m. to 8 p.m. from Mondays to Fridays. Between the hours of 8 p.m. and 8 a.m., patients are taken if necessary for assessment to the nearest registered hospital, which is the San Rafael de Alajuela regional hospital situated at a distance of some 10 km.

With regard to the delivery of medicines, La Reforma includes a pharmacy as part of its installations, run by the Costa Rican Social Security Service, and medicines are supplied according to the basic social security procedure.

24. *The report of the Office of the Ombudsman for 2006-2007 refers to the rundown state of the F Wing (formerly the maximum security wing) of La Reforma Institutional Penal Centre. The report also expresses concern, like the Committee against Torture,<sup>10</sup> about the current regime of 23 hours of confinement and 1 hour in the open air. Please comment.*

The reply to this question will be submitted at a later date.

25. *It has been reported that, in the women’s prison, the maximum security wing is used to punish prisoners who have broken prison rules. Some complaints received by the Office of the Ombudsman refer to the indiscriminate use made of this area by the prison administration and security officials and the abusive imposition of such punishment in the case of offences for which it was unmerited.<sup>11</sup> Please comment.*

The F Wing of El Buen Pastor prison is divided into three areas:

- (a) Section A: eight single rooms;

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<sup>9</sup> Ibid.

<sup>10</sup> A/56/44, para. 135 (f).

<sup>11</sup> See footnote 8 above.



- (b) *Section B*: one single room and one six-bed dormitory;
- (c) *Section C*: one four-bed dormitory.

The total capacity of F Wing is 18; it is currently occupied by 3 inmates, 1 in each of the sections. The low number of inmates is due to the practical efforts made to find alternative measures in order to use the wing as little as possible.

It should be noted that the placement of women deprived of their liberty in that unit is the outcome of due process fully in line with current rules.

Until such time as Decree No. 33876-J on Technical Regulations of the National Penitentiary System, which delegates decisions in disciplinary matters to a committee, is published, the placement procedure is conducted in two ways:

- (a) *Preventive measure*: a procedure under the present Regulations, applied exceptionally (art. 28) in order to ensure the stability and security of the centre (1993 Regulations, chap. II, art. 27, part not derogated) subject to the ruling of the Director of the Centre and whoever is in charge of the wing (art. 29);
- (b) *By agreement of the Assessment Board*: which, prior to the application of due process, could under the Regulations place a person deprived of liberty in this wing for serious or very serious offences (arts. 34 and 35).

It may be noted that the three persons deprived of liberty currently held in the wing have exhausted all possibilities of placement within El Buen Pastor prison itself, because they have been rejected by their peers owing to reiterated offences, which upset the normally accepted routine. Thus their transfer to this wing is not so much a disciplinary measure as a means of ensuring their own safety as well as that of their fellow inmates.

Under the present Regulations, the only maximum security wing in the country is in the Penal Centre of La Reforma (art. 76). El Buen Pastor has kept F wing as a maximum security area for women deprived of their liberty who are unable to share common premises with others.

**26. *Please comment on the complaints received by the Office of the Ombudsman against the National Children's Trust for allegedly placing children of women deprived of their liberty in different care centres from those indicated and for failing to keep them informed of their children's circumstances in the centres concerned.***<sup>12</sup>

The reply to this question will be submitted at a later date.

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<sup>12</sup> Ibid.

**27. *Please comment in particular on the situation as regards education and sport for children deprived of their liberty, including in the new Institutional Penal Centre for Young Adults. Please state whether cases of violence among the inmates have been recorded.***

The Zurquí Juvenile Training Centre is where boys and girls between the ages of 12 and 18 are sent by the juvenile courts to serve provisional or final custodial sentences.

Education is provided on the basis of an agreement between the Ministry of Justice and the Ministry of Education. The educational centre is registered under the name of Escuela Corazón de María. Its head and one teacher are appointed by the Ministry of Justice and three more posts are paid for by the Ministry of Education.

The centre caters for all the young people concerned, guaranteeing this right as the cornerstone of the care provided for each of the boys and girls.

Given the high turnover of inmates (with constant admissions and departures), the Maestro en Casa (*teacher at home*) programme - of the Costa Rican Institute for Radio Education (ICER) and the Ministry of Education - is used on account of its flexibility, which ensures that any youngsters can be enrolled as soon as they are admitted to the training centre. Entrants are first tested and then placed at the appropriate level according to their assessment or qualifications:

- (a) Level 1: grade 3 literacy;
- (b) Level 2: grades 4 to 6;
- (c) Level 3: grades 7 to 9;
- (d) Secondary education: grades 10 and 11.

The work is scheduled according to the timetable drawn up by the Ministry of Education, with students sitting two standard exams each year. The certificates issued by the centre carry no mention of the detention centre where the persons are being held in order to ensure that they can continue their studies outside without stigma. It is worth mentioning that students who are shown by social tests to be in serious financial difficulty are awarded grants by the National Scholarship Fund (FONABE).

All inmates take part in sporting activities at least twice a week. For this the centre uses three areas alternately. Support is also provided by volunteer groups, who generally run some recreational activity in the course of their scheduled visits to the centre. One official is put in charge of planning events. The Costa Rican Sport and Recreation Institute (ICODER) is also encouraged to hold joint activities with the training centre.

As far as violence is concerned, no incidents have been recorded that caused injuries to inmates, apart from private quarrels which are duly dealt with.

With regard to the Centre for Young Adults, article 140 of the Juvenile Justice Act states that “if a minor deprived of liberty reaches the age of 18 during internment, they shall be transferred to an adult penal centre, but kept physically and materially separate from the adult

inmates”. The Centre for Young Adults is situated within the premises of La Reforma, technically separate from the latter but benefiting from administrative and security support.

Within the Centre for Young Adults, an educational centre is currently offering two programmes approved by the Ministry of Education under La Reforma’s budget code:

(a) Study Plan for the education of young persons and adults, which allows the effective participation of outside contributors through the formulation and implementation of quick and relevant educational solutions. The plan covers three major areas: academic, socio-productive and personal development;

(b) Open Education, which is intended for young people who have finished grade 5 of primary education wishing to obtain their “End of Primary Studies” certificate. It is open to all inmates, regardless of whether they are serving provisional or final custodial sentences. The programme has a staff of six; it is managed by an official of the Ministry of Justice, supported by five educators paid for by the Ministry of Education, who give courses in Spanish, English, social studies, science and mathematics. One of these teaches the first and second cycle curriculum full time. No staff are assigned specially to the socio-productive and personal development sections, which have the support of institutional resources and programmes. For instance, this year a trade course is being offered in coordination with the National Training Institute (INA).

The Ministry of Education approves certificates by the same procedure as evening classes and follows the same timetable of studies, including exams. Despite this timetable, however, courses are flexible enough to admit students at any time during the school year.

Students are also eligible for grants from the National Scholarship Fund (FONABE). The fund has an Education Board approved by the Ministry of Education and the municipality of the province of Alajuela, which offer financial support, subject to the limitation that the funds must be used within the educational area of La Reforma.

A multi-purpose sports ground is currently being built. At present sport is practised using La Reforma’s facilities for two sessions a week, one for sport and the other for gymnastics. Owing to problems between inmates, not all of them can attend simultaneously and the sections are obliged to rotate.

As regards violence, there have frequently been private quarrels and in 2007 an average of four youngsters had to be treated for physical assault, so that a series of measures were taken to avoid that kind of situation. This year an effort is being made to build more premises so as to have more choice in relocating inmates.

**28. *Please comment on the resources allocated to the Office of the Ombudsman for its work as a national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.***

The reply to this question will be submitted at a later date.

## Articles 12 and 13

**29. *Please indicate how disciplinary proceedings for acts of torture or for cruel, inhuman or degrading acts are conducted and whether they run concurrently with criminal proceedings in respect of the same acts.***

All the disciplinary proceedings conducted by the Department of Legal Discipline of the Ministry of Public Security, regardless of the cause that gave rise to them, comply with the ordinary procedure laid down in article 308 ff. of the Public Administration Act, which establishes that:

1. The procedure laid down in this Title must be observed in all the following cases:
  - (a) Whenever the final act may cause serious harm to the person concerned, either by imposing obligations, or by withdrawing or denying personal rights, or by any other form of serious and direct infringement of their legitimate rights and interests; and
  - (b) Whenever any conflict or dispute arises with respect to the Administration in the proceedings.
2. The rules laid down in this Title shall be applicable to disciplinary proceedings whenever these lead to the application of penalties of suspension or dismissal, or other penalties of similar gravity.

Under article 85 of the General Police Act, the initiation of criminal proceedings does not prevent an administrative enquiry being launched concurrently into the same facts with a view to applying disciplinary proceedings. Administrative proceedings are usually quicker than criminal proceedings because deadlines differ in the two systems.

**30. *Please state whether the submission of a formal complaint by the alleged victim is required to initiate a criminal and/or administrative investigation into cases of torture or cruel treatment.***

The submission of a formal complaint by the alleged victim is not required to initiate a criminal and/or administrative investigation into cases of torture or cruel treatment, since the Department of Legal Discipline must act ex officio, or in response to a complaint, as soon as it is informed that an official of the Ministry of Public Security may have been guilty of misconduct.

**31. *How does the State party ensure that victims and witnesses who report acts of torture or other cruel treatment are protected against reprisals or ill-treatment, especially where such complaints are filed by persons deprived of their liberty?***

The reply to this question will be submitted at a later date.

32. *What steps has the State party taken to investigate and shed light on complaints of ill-treatment of children deprived of their liberty and, where appropriate, to punish the persons/officials concerned?*

With regard to administrative measures taken to investigate and shed light on complaints of ill-treatment brought against officials and where appropriate to punish the official concerned, a circular was issued to prisons containing Departmental decision No. DG 01-2006 (attached), addressed to prison directors, administrators, security supervisors and others, calling for any complaint by persons deprived of their liberty to be dealt with immediately, ensuring that the facts reported are investigated in order to ascertain the person responsible, so that no acts violating the fundamental rights of persons deprived of their liberty may remain unpunished.

Moreover, unrestricted action may be taken by bodies in charge of monitoring the lawfulness of acts performed by the prison authorities, such as the Constitutional Chamber, the sentence enforcement courts, the Ministry of Health, the Office of the Ombudsman or the Office of the Comptroller of Services.

#### **Article 14**

33. *Please indicate whether the right to compensation is linked to the acceptance of applications for amparo and habeas corpus. Please state whether a victim of torture or cruel, inhuman or degrading treatment can obtain compensation in a case where the perpetrator has been subjected to disciplinary or administrative but not criminal sanctions.*

The reply to this question will be submitted at a later date.

34. *Please provide up-to-date statistical data on reparations awarded by domestic courts and granted in practice to victims of cruel, inhuman or degrading treatment and abuse of authority, including disaggregated figures by type of offence and convicted authority.*

The reply to this question will be submitted at a later date.

35. *Please comment on the Committee's concern regarding the non-existence of State-run rehabilitation programmes for victims of torture and other cruel, inhuman or degrading treatment and indicate what steps have been taken to remedy the situation.*

The reply to this question will be submitted at a later date.

#### **Article 15**

36. *Please indicate what stage has been reached in the plan to amend article 181 of the Code of Criminal Procedure which, as currently drafted, could be interpreted, according to some sources, as permitting evidence obtained through torture to be used in legal proceedings where it favours the defendant.*

A bill to amend article 181 of the Code of Criminal Procedure is before the Legislative Assembly (file No. 16,275) and is currently under discussion in the Standing Committee on Legal Affairs.

The bill would delete the phrase “unless it favours the accused” because the sponsors believe the current formulation encourages the use of torture and ill-treatment.

In 2001 the then Ombudsman, José Manuel Echandi, brought an action for unconstitutionality against article 181 of the Code of Criminal Procedure. The Constitutional Chamber of the Supreme Court responded as follows (decision No. 2002-6511):

“The article in question must be seen in context, as a coherent and systematic part of the Code as a whole and the legal system in general. This provision does not stand alone but forms part of a whole set of procedural rules that in turn apply rules and principles of constitutional rank.

“It is clear from those rules that, as a general principle, Costa Rican criminal procedure categorically prohibits the use of illegal evidence, that is to say, evidence obtained by violating a person’s fundamental rights ...

“The sense of these rules is not to favour, permit or encourage the use of illegal evidence in any way. The State cannot produce or use illegal evidence in investigating crimes. However, for cases where agents of the State nevertheless do so in violation of the guarantee protecting the accused, the legislature gave courts the right to take account of the spurious evidence, but only to the extent that it favours the accused, as the beneficiary of that guarantee ... In the Ombudsman’s view, the discretion allowed to the court under the rule in question violates the prohibition on torture and cruel and degrading treatment and the right to inviolability of communications, as established in the Constitution and the instruments of international law in force in Costa Rica; in this Chamber’s view, however, it penalizes the use of a spurious means of producing evidence ...

“Article 181 of the Code of Criminal Procedure penalizes the use of prohibited methods and indeed reinforces that prohibition in the second paragraph, whereby such evidence cannot be used against the accused but retains its probative force where it benefits the accused. Evidence produced by such acts may be used if it favours the accused because, as already noted, the ban on using illegal evidence is a safeguard for the accused but does not prevent it being admitted if the accused will benefit. Moreover, it is clear that the intention of the rule is to penalize the State, because not only can illegal evidence not be used against the accused, it can be used in the accused’s favour ... Under the principle of inviolability of defence, the State, and particularly the police and the Public Prosecutor’s Office, are obliged to respect the accused’s right and guarantees; but if they fail to meet this obligation there is no reason for the accused to suffer twice for such a violation of fundamental rights. If it is possible to extract from illegally obtained evidence points that, when objectively considered and analysed in accordance with the rules of evaluation of evidence, are in the accused’s favour, then such evidence must be admitted following the principle of pro libertate and in particular the general principle of fairness, which is the highest aspiration of the legal order. Moreover, it is not true to say that this rule encourages the gathering of evidence by illegal or violent means, whether in the public or the private sector. Officials guilty of such misconduct - regardless of whether the evidence obtained is used in favour of the accused - are liable to penalties of various kinds ...”

In legal opinion No. OJ-011-2007, the Attorney General's Office accepted the Constitutional Chamber's views on the constitutionality of article 181 of the Code of Criminal Procedure. At the same time, however, it recognized the legislature's power "to amend the law as proposed, as it appears, at least, that such an amendment will not have adverse consequences that might violate the Constitution or impede the application of article 181 of the Code of Criminal Procedure".

### **Article 16**

**37. *What measures has the State party taken to facilitate the filing of complaints concerning acts of violence against women and children, especially those affecting persons deprived of their liberty?***

Article 40 of the Constitution states that "no one may be subjected to cruel or degrading treatment, or to life imprisonment, or to the penalty of confiscation. Any statement obtained by means of force is null and void".

In 2001 the Legislative Assembly passed an amendment inserting a new article 123 bis in the Criminal Code, as follows:

Anyone who inflicts pain or physical or mental suffering on another person, or intimidates or coerces another person in connection with an act they have committed or are suspected of committing, in order to obtain information or a confession from them or from a third person, or on grounds of race, nationality, gender, age, political, religious or sexual preferences, social position, financial situation or civil status, shall be punished by 3 to 10 years' imprisonment.

If such acts are committed by a public official, the penalty shall be 5 to 12 years' imprisonment and a 2- to 8-year bar on holding office.

In line with the commitments made by the State of Costa Rica on ratifying the international human rights conventions, particularly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, legislation has been enacted to protect the human rights of women and, in particular, to combat and prevent violence against women.

In 1996, by executive decree, Costa Rica set up the National Plan for the Treatment and Prevention of Domestic Violence (PLANOVI), an instrument for coordinating action by the State and civil society to detect, address and prevent violence against women, and for changing the socio-cultural patterns that perpetuate and legitimize it. In early 1998, by Executive Decree No. 26,664, PLANOVI became the National System for Prevention and Treatment of Domestic Violence.

The Domestic Violence Act was passed in 1996. This is an Act of family law that contains substantive and procedural provisions for judicial measures to protect the victims of domestic violence. It establishes a precautionary procedure involving judicial intervention as a matter of priority, as an informal, flexible and expeditious preventive measure.

Recently (April 2007) the Legislative Assembly adopted the Violence against Women Act to protect the rights of the victims of violence and to punish the various forms of physical, psychological, sexual and material violence against women, as gender discrimination, specifically within a marriage or a de facto union, whether publicly acknowledged or not, and in compliance with the obligations undertaken by the State.

The Act penalizes a series of behaviours that seriously harm women's lives, personal integrity, liberty and property. It creates 11 new offences not covered by the current Criminal Code, such as femicide, ill-treatment, preventing freedom of movement, emotional violence, abusive sexual conduct, sexual exploitation of a woman and prevention of access to justice.

In the specific case of persons deprived of their liberty, complaints of violence or human rights violations are lodged with the Comptroller of Services at the Ministry of Justice and Pardons.

Because they are in confinement, people deprived of their liberty may submit their complaint or queries by telephone, although in very sensitive or complex cases they are asked to submit their complaint in writing and if necessary an official from the Office of the Comptroller of Services will go to the prison to take a statement of complaint. The Comptroller of Services has also established a prison visiting schedule in order to attend the prison population.

A complaint should state the full name and identification number of the person filing the complaint, the allegations, the persons or bodies involved and any evidence available or an indication of where to find such evidence. The complainant may ask not to be named and absolute confidentiality will be maintained.

If any person deprived of their liberty receives threats or their physical integrity is at risk they are transferred to a special cell as a protective measure to keep them out of danger. The prison also takes action against the person making the threats or representing a danger.

Where violence occurs, a complaint is submitted to the prosecutor's office and the prison provides proper follow-up.

Other domestic instances that may be approached in the event of human rights violations are the Office of the Ombudsman and the Constitutional Chamber of the Supreme Court. The Constitutional Chamber's functions include guaranteeing the remedies of habeas corpus and *amparo*, the rights and freedoms enshrined in the Constitution and the human rights recognized by international law in Costa Rica.

The Office of the Ombudsman is a public institution that protects the rights and interests of everyone living in Costa Rica. It also ensures the proper functioning of public services.

Anyone living in Costa Rica - nationals and non-nationals, men and women, minors and adults - can file a complaint with the Office of the Ombudsman if their rights or interests have



been impaired through the fault of a public institution or its officials. The Office of the Ombudsman has the power to act when it detects irregularities, not necessarily following a complaint. The National Institute for Women (INAMU), as part of its statutory functions, assists in judicial and constitutional proceedings, and provides input to administrative proceedings, where these affect women's rights.

Lastly, in situations where the national authorities concerned fail to act in response to a complaint or a human rights violation, the affected person may seek redress through international channels for the State's failure to protect their rights under international human rights instruments ratified by Costa Rica.

By its ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2001, the Costa Rican State gave all women and women's groups the right of international redress if they believe justice has not been done at the domestic level, the Protocol being an international instrument that provides a mechanism to enforce the substantive rights established therein. Women and women's groups thus have the capacity and the wherewithal to submit communications at the international level regarding discrimination, and this reinforces the comprehensive protection of the human rights of women.

**38. *Please comment on initiatives/measures taken to prohibit corporal punishment in domestic law.***<sup>13</sup>

A bill prohibiting corporal punishment of children and adolescents has been submitted to the Legislative Assembly by the Office of the Ombudsman (file No. 15,341) and is currently before the First Plenary Committee of the Legislative Assembly, which has set up a drafting group that is required to take due account of the best interests of minors and the parties.

In essence, the bill aims:

- (a) To repeal the authority to use corporal punishment;
- (b) To prohibit corporal punishment in accordance with the recommendations of the Committee on the Rights of the Child;
- (c) To generate public policy and cultural change with respect to the rights of minors as subjects of law.

The purpose of the bill is to bring about constructive change that will ensure respect for the dignity of minors, not pointing the finger of blame for actions mistakenly committed against children and adolescents, but rather trying to raise awareness of the need for other methods of child-rearing and discipline. Physical punishment should not continue to be used as a way of educating or setting boundaries: there are alternative, non-physical methods that do not pose a risk to minors.

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<sup>13</sup> CRC/C/15/Add.266.

Through the National Council on Children and Adolescents, the Costa Rican State adopts public policies to eradicate corporal punishment. The National Children's Trust (PANI) has run a major campaign nationwide, "Educating with love", and various local campaigns through the Children and Adolescents Protection Boards.

Likewise, the Office of the Ombudsman runs training and awareness programmes for public officials, the general public and parents.

NGOs also work with PANI as it attempts to bring about cultural change with regard to children's upbringing and education. NGOs have helped, inter alia, with national campaigns, written publications and technical support, and have made representations to the various parliamentary bodies in order to get the bill adopted.

**39. *Please comment on measures taken by the State party to eradicate trafficking in children for the purposes of sexual and labour exploitation.***

Although Costa Rica has no accurate data on trafficking, it has acknowledged the existence of the problem and set up the National Coalition against Smuggling of Migrants and Trafficking in Persons to work on strategies for detection, victim support, penalization and legal reform.

The Coalition was created by Executive Decree No. 32,824 of 8 November 2005 (*Official Gazette* No. 243, 16 December 2005); Executive Decree No. 34,199 subsequently established the structure and functions of the Coalition's internal bodies.

The Ministry of Public Security, the Interior and the Police is the State agency responsible for coordinating the Coalition. The Coalition comprises, in addition to the Ministry, the following bodies of the Executive:

- (a) National Institute for Women;
- (b) Ministry of Justice and Pardons;
- (c) Ministry of Health;
- (d) Costa Rican Social Security Fund;
- (e) Ministry of Education;
- (f) Ministry of Labour and Social Security;
- (g) National Children's Trust;
- (h) Ministry of Foreign Affairs and Worship.

The judiciary, the Office of the Ombudsman and the Legislative Assembly attend as observers, along with representatives of international organizations directly involved with this problem.

The National Commission against the Commercial Sexual Exploitation of Children and Adolescents (CONACOES) has also been established to combat child commercial sexual exploitation.

Costa Rica has become a country of origin, transit and destination for trafficking in persons for purposes of commercial sexual or labour exploitation, both inside the country and abroad.

In terms of support for victims of trafficking, PANI has developed an Agency Protocol on Support for Victims of Trafficking which is binding on all PANI offices from 2008. It is also important to note that the Protocol on Repatriation of Victims of Trafficking was adopted at the twelfth Vice-Ministerial Meeting of the Regional Conference on Migration, held in New Orleans, United States of America, in April 2007.

PANI provides comprehensive support to victims, in accordance with the general support guidelines for safeguarding minors' rights, without discrimination on grounds of nationality, sex, ethnic origin or any other characteristic. PANI has no special hostel for victim reception.

As a member of CONACOES, the PANIAMOR Foundation has worked for several years with a project to plot trafficking for purposes of commercial sexual exploitation, and this has helped identify high-risk areas.

In June 2007, the Council of Government approved the National Plan to Combat the Commercial Sexual Exploitation of Children and Adolescents 2008-2010, which agencies are required to implement and incorporate in their budget planning. The Plan came into operation this year, with four components: prevention and promotion, support, defence and protection of rights and strengthening of institutions.

The National Plan to Combat the Commercial Sexual Exploitation of Children and Adolescents 2008-2010 provides for action to combat trafficking in minors for purposes of commercial sexual exploitation, as well as concrete measures against sex tourism.

As part of the prevention of sexual violence against minors, INAMU has taken the following initiatives:

(a) Campaign against sexual violence and teenage pregnancy: during 2005, 2006 and 2007 publicity and information were developed to raise public officials' awareness of teenage pregnancy. This material aimed to portray teen pregnancy as an offence (rape), and emphasized that public officials have a duty to report pregnancy or suspected sexual abuse under the Children and Adolescents Code;

(b) Development and distribution of materials on children's rights: preparation of awareness-raising and information material on children's rights began in 2005. A children's section has been created on the INAMU website ([www.inamu.go.cr](http://www.inamu.go.cr)), with a hard-copy version and a compact disc. This material is intended for children and informs them about their right to live without violence. The written material and compact disc have been distributed in schools throughout the country;

(c) Training and awareness-raising on sexual abuse: since 2005 teenage pregnancy and sexual abuse have been taken up in various forums for consideration, discussion and training.

In 2006 two meetings were organized to discuss teenage pregnancy with public officials, with a view to building strategies to prevent sexual abuse of girls and provide specialist support for pregnant girls. In 2007 a training session was organized for teachers in indigenous schools around Turrialba, Cartago, on prevention and support in the area of child sexual abuse;

(d) Preparation of material to detect child sexual abuse: a document was produced in 2007 to help specialists working directly with children to detect situations of sexual abuse.

### **Other matters**

**40. *Is there legislation in the State party prohibiting the production of and trade in equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment? If so, please provide information about its content and implementation. If not, please indicate whether such legislation is being contemplated.***

Costa Rica has no legislation prohibiting the production of and trade in equipment specifically designed to inflict torture. However, the international human rights instruments Costa Rica has signed make such legislation unnecessary.

**41. *Please report on any legislative, administrative or other measures that have been adopted to combat terrorism. Please indicate also whether these measures have adversely affected any legal and practical human rights guarantees.***

Executive Decree No. 31659-MP-RE-SP-H-J.MOPT of 10 February 2004 (*Official Gazette* No. 40, 26 February 2004) established the Interagency Committee on Terrorism (CISTE) as an internal clearing house for information on international security and anti-terrorist efforts, with the following functions:

(a) To liaise between the various State bodies with missions directly or indirectly related to the fight against terrorism or to State and citizen security;

(b) To coordinate follow-up to Costa Rica's international commitments on security and combating terrorism;

(c) To recommend to the Ministry of Foreign Affairs and Worship and other relevant competent bodies the positions to be adopted by Costa Rica in international forums on security and terrorism issues.

Since the Committee's inception several meetings have been held with deputies from the Committee on Drug Trafficking and their advisers, on the evaluation, analysis and adoption of a draft bill to strengthen anti-terrorism legislation (file No. 15,494).

Recently (28 February-2 March 2008) the Deputy Minister of the President's Office (the chair of CISTE) and a large delegation attended the seventh regular session of the Inter-American Committee on Terrorism, which adopted the Declaration of Panama on the Protection of Critical Infrastructure in the Hemisphere in the Face of Terrorism. A report was submitted to this meeting, together with a clear statement of Costa Rica's position on issues such as the Costa Rica Consensus, terrorism and all measures and initiatives being taken in Costa Rica.

The main activities undertaken in various fields in pursuit of the proposed objectives are described below.

### *Legislation*

Costa Rica has been determinedly combating terrorism with the tools of law and cooperation, as shown by its ratification of the Inter-American Convention against Terrorism in September 2006. Costa Rica also signed, in September 2005, the International Convention for the Suppression of Acts of Nuclear Terrorism and is currently taking the necessary steps for ratification. CISTE has also undertaken to adopt a law on terrorism complying with all international legal standards, and to that end has held meetings with members of the Committee on Drug Trafficking and their advisers with a view to organizing extraordinary meetings of the Legislative Assembly on the bill to strengthen anti-terrorism legislation.

In January 2007 a comparative analysis of the legal texts related to the bill to strengthen anti-terrorism legislation was carried out to incorporate the amendments made under the “motion 137” legislative procedure into the original majority report on the bill.

In order to present valid and relevant information for drafting and analysis, a comparative table was developed showing the main problems highlighted by United Nations experts with respect to the bill to strengthen terrorism legislation (No. 15,494) in March 2005, and setting out comments and possible solutions with regard to the wording of the provisions of the bill.

In early 2006 the international experts again discussed the bill and the amendments introduced under motion 9-137, and published a new document containing conclusions and recommendations (“Analysis of the bill to strengthen anti-terrorism legislation. File No. 15,494”, text of 19 September 2006). The CISTE secretariat, working with the former secretary of the Committee, Mr. Arnoldo Brenes Castro, produced another comparative table showing the experts’ main findings and possible solutions for compliance with Costa Rica’s obligations under international conventions.

### *Current status of the bill*

There is a majority report from the Committee on Drug Trafficking and three reports on motions under rule 137 of the rules of procedure of the Legislative Assembly; any motions adopted should be incorporated into the majority report.

A fourth report is still awaited, unless new motions are submitted. As the bill is not high on the Plenary agenda there is still time to submit any motions for amendment that have been accepted by a deputy. To date no new motions have been filed. A document outlining the main amendments to bring the bill into line with international standards has been referred to the Parliamentary advisers.

### *Customs and border controls*

In this context intelligence has been recognized to be one of the first lines of defence in any anti-terrorism programme, as that is what identifies the threat and provides information to

intelligence services in the Americas, Europe and Asia through communication networks; these networks are extremely useful for checking the names of anyone suspected of involvement in terrorism and other information on the subject.

Following such exchanges the Department of Intelligence and National Security (DIS) updates its interactive database with information on persons suspected of links to terrorist activities and networks and puts out appropriate alerts regarding entry to Costa Rica.

In 2006, as part of the ongoing global restructuring, notably in the wake of the events of 2001 in the United States of America and, later, in Europe, and in order to reinforce all actions related to combating and preventing terrorism, DIS, like other institutions, was involved in developing security policies that would help to curb any terrorist activities attempted on Costa Rican territory.

The security policies implemented include several relating to the formal entry into force of the Protocol for dealing with major crises, a specific instrument intended to serve as a technical platform for the construction, development and operation of the necessary mechanisms to deal with, resolve and follow up on major crises anywhere in the country.

Because of its specialist nature and coverage, in times of major crisis it is up to DIS to collect information that could forestall political or economic crises affecting the Government, physical or other attacks on senior representatives of the various branches of Government and threats to national territorial integrity.

DIS keeps up a constant cooperation and exchange of information with its counterparts in Latin America, via communication networks, which are a very useful tool for checking the names of those suspected of involvement in terrorism and other related information.

By means of such cooperation and communication any query on terrorist activities, suspicions or links can be dealt with, and the data analysed and added to the relevant listing.

Together, DIS and the Migration and Aliens Office have established guidelines for the creation of a database to flag entry to Costa Rica of individuals with connections to terrorist networks.

Under current regulations DIS provides the Migration and Aliens Office with intelligence on persons suspected of links to terrorist organizations; the data come from DIS sources and from Interpol. However, the full list does not appear in Interpol's Costa Rica office database, only on what DIS terms a "standing alert" list at the national level.

Other lists of terrorists provided by the United Nations, Interpol and the European Police Office (EUROPOL) are sent to the Costa Rican Drug Institute, the offices of the Superintendent of Financial Institutions, the Superintendent of Securities, and the Superintendent of Pensions, and to the Migration and Aliens Office. DIS also works with this list and coordinates with the customs authorities and the other police forces.

CISTE is a member of several world assemblies of the 184 member countries of Interpol, which debate issues related to terrorism, bioterrorism and non-proliferation of weapons of mass destruction, and the latest investigative techniques to combat organized crime.

Terrorism is an item on the current Government's Standing National Security Agenda, to which DIS, CISTE and other security agencies and institutions contribute.

This is a very important point in operational terms, for this is what provides its legal mandate; the General Police Act, which established the State Security Department, outlines the powers of DIS in very generic terms, as watching over national or State security, but makes no mention of very important elements such as jurisdiction and the investigative techniques it may use.

The nature of terrorism means that the *iter criminis*, i.e., the planning of a crime, is a process that can be carried out in various places, countries and ways and can include a range and variety of actions. What makes it most difficult to detect plans for an attack is just this *modus operandi*, amounting to a stalking war conducted, not in open battle, but by infiltration, seeking victims by attrition. It is basically a high-intensity war requiring only one person to place an explosive device or car bomb, or to jam airline computer systems, contaminate water courses or seize control of hydroelectric dams, simply at the push of a button.

The sophisticated methods and techniques used have made terrorist activity very hard to detect by even the most specialized intelligence agencies. Costa Rica has historically tasked DIS with investigating and detecting it, in the conviction that the powers of investigation, detection and prevention of possible terrorist activity should be assigned by Act of Parliament; that Act should also set forth the powers and prerogatives of DIS in this regard, in its capacity as depositary of State security.

DIS plays an essential part in the Government's policy on terrorism and has taken on the investigation of subversion, sabotage, front organizations, concealment and promotion of activities to undermine the system, illegal arms transfers, suspected funding of terrorist activities, threats against senior government officials, and organized crime, among other things.

In addition, one of the tasks of the Navigation and Security Department of the Maritime Port Authority is oversight and review of port facility security plans, which are based on the International Ship and Port Facility Security Code (Executive Decree No. 31845-MOPT, Supplement No. 27 to *Official Gazette* No. 119 of 18 June 2004) and are certified annually.

As to institutional security measures, the Costa Rican Electrical Institute has taken action to strengthen the protection of important parts of the electrical and telephone infrastructure, such as power stations and telephone masts, notably from vandalism, which causes serious financial harm, in particular, to public services that all citizens need.

In this regard, joint efforts are being made with external bodies, on a basis of close coordination and cooperation, as exemplified by the Public Prosecutor's Office, the security forces and the Judicial Investigation Department.

The Customs Department is responsible for the following customs checks:

**A. Controls in authorized customs ports to regulate the entry and exit of capital in monetary form**

Given that money laundering is a typical means of financing terrorism, a series of administrative policies and arrangements have been implemented, starting in 2004, to help prevent and punish such offences. These include:

(a) Resolution RES-DGA-153-2004, which approved the Manual of Procedures for Entry of Passengers and Passengers' Goods, which established the general rules applicable in authorized customs ports;

(b) Resolution RES-DGA-072-2005 of 17 February 2005, by which Costa Rica adopted the Central American Passenger Customs Declaration form, for entry by air, sea or land;

(c) In addition, with regard to port security, 2006 saw the adoption of the Regulations Governing Public Works and Services Concessionaires in respect of the Construction and Operation of the Puerto Caldera Grain Terminal, and the Regulations Governing Public Service Investor-Operators in Puerto Caldera Terminal, administration of the port having been awarded to the Caldera I and Caldera II port consortiums.

The concessionaires have an obligation to comply with all security arrangements agreed with the competent bodies, as in the case of investor-operator Alterra Partners Costa Rica at the Juan Santamaria International Airport.

Even so, with the aim of tightening up controls, the Customs Department intends to propose to the Technical Committee on Customs Procedures this year (2008) a change to the Central American Passenger Customs Declaration form, inserting a new box for travellers to indicate the origin of assets, i.e., where these are over US\$ 10,000 in cash or US\$ 50,000 in securities, they must provide evidence of its lawful acquisition; the information would then be sent to the Costa Rican Drug Institute for investigation.

Similarly, for the current year the annual operations plans of the various control units of the National Customs Service and authorized customs ports are to include provision for unannounced checks whereby the goods carried by every traveller passing through the various checkpoints are thoroughly inspected. These operations would be coordinated in advance to enable them to be carried out jointly with the agencies concerned, such as the Drugs Police, the Immigration Police and the Ministry of Agriculture and Livestock.

**B. Imports of weapons, ammunition, accessories and explosives**

As background, the following are some of the administrative provisions (regulations, circulars, directives) and laws on the subject:

(a) Resolution DGA-044-2004;

(b) Circular DNP-031-2004;



- (c) Circular DNP-045-2005, Customs Procedures Manual;
- (d) Regulations on risk classification of dangerous goods;
- (e) Act No. 8,265, on accession to the Convention on the Physical Protection of Nuclear Material;
- (f) Technical Regulations RTCR 305:1998, Inland transport of dangerous goods: marking of units for ground transport of hazardous materials and chemicals;
- (g) Executive Decree No. 24334-S, Regulations governing lead/mercury content in paint;
- (h) Rules for registering dangerous goods;
- (i) Ratification of the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials.

In addition, in December 2006, when TIC@, the new Customs Service information technology and communications network, came on-stream, risk guideline IMTDDE0386, requiring physical and documentary verification of 100 per cent of arms and ammunition imports, also came into operation, to ensure compliance of arms imports with the rules governing their entry to Costa Rica and preventing the entry of prohibited arms and ammunition.

Further, in January 2007, risk profile INTDRPMH-01-2007 was implemented instructing the Audit Office to review 237 customs import declarations; this exercise yielded positive results including the imposition of a number of fines, so it will be repeated this year.

Similarly, electronic tagging was introduced in November 2006 for containers carrying goods of this kind, as an additional control measure.

**42. *Please indicate what measures the State party has taken to include the gender perspective in legislation prohibiting torture. Indicate also specific measures taken to prevent acts of sexual violence. Please provide statistics on the number of investigations conducted and on their findings.***

The Costa Rican State has made strenuous efforts to ensure the recognition of the human rights of women. The adoption of the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women represented a significant step forward in the recognition of women's rights.

Under the Beijing Declaration, the State of Costa Rica undertook to implement the Beijing Platform for Action, by ensuring that all policies and programmes incorporate the gender perspective. This, too, is an important advance in terms of legislation to protect women, one that gives them greater protection and means of asserting their rights, and helps establish gender equality and equity in society.

As to measures for the recognition and inclusion of the gender perspective in general legislation to protect women, in addition to the ratification of the conventions already mentioned and the Convention against Torture, whereby the State assumes the obligation to ensure compliance with every international human rights protection instrument, Costa Rica has also enacted the following legislation on sexual violence.

In 1995 the Act against Sexual Harassment in Employment and Education was passed. Its purpose is to prohibit and punish sexual harassment in working relationships and in teaching, as constituting discrimination on grounds of sex and contrary to the dignity of women and men. The Legislative Assembly currently has before it a proposal to amend the Act to establish penalties for holders of elected office and cover sexual harassment of domestic servants.

In 1996 the Domestic Violence Act was passed. This establishes a precautionary procedure involving judicial intervention as a matter of priority, as an informal, flexible and expeditious preventive measure. It allows the courts to order protective measures for the victims of sexual violence or physical, psychological or material violence. It gives special protection to the victims of violence within couples and of incestuous sexual abuse.

In June 2007 the Act on Strengthening Action to Combat the Exploitation of Minors was passed, amending the offences of sexual violence established in title III of the Criminal Code.

This Act now covers victims from age 13, makes pregnancy resulting from rape an aggravating circumstance and criminalizes possession of pornography, the only new offence. Progress has been made in one important respect, namely the repeal of article 92 of the Criminal Code, whereby a prosecution or punishment was extinguished if, where legally possible, the accused or convicted person married the victim of an offence against honour.

One achievement in the area of violence against women is the adoption of the Violence against Women Act in 2007. This provides protection for victims of violence and criminalizes a range of behaviours that cause serious harm to women's lives, personal integrity, liberty and property.

As described in reply 39 above, Costa Rica has a National Coalition against Smuggling of Migrants and Trafficking in Persons. There is also a monitoring committee made up of technical staff from the member bodies and representatives of the following NGOs and international agencies:

- (a) International Organization for Migration (IOM);
- (b) International Labour Organization (ILO);
- (c) Office of the United Nations High Commissioner for Refugees (UNHCR);
- (d) Gender and Society Foundation;
- (e) PANIAMOR Foundation;
- (f) Centro Internacional para los Derechos Humanos de los Migrantes;

- (g) Alianza por tus Derechos;
- (h) Defence for Children International;
- (i) National Network of Civil Organizations on Migration.

There is also a technical secretariat, under the Ministry of the Interior.

There is now a strategic plan of action, the outcome of the monitoring committee's work. It includes initiatives by various organizations, governmental and non-governmental, that are involved in tackling people trafficking and migrant smuggling.

The plan covers a three-year period and comprises the following components:

- (a) Promotion and prevention;
- (b) Support;
- (c) Defence and protection of rights.

IOM has assisted with the development of the plan and with monitoring implementation.

On the question of people trafficking, article 245 of the Migration and Aliens Act states:

A prison term of two to six years shall be handed down to anyone who:

- (a) For the purposes of smuggling, conducts or transports people into or out of the country through locations not authorized by the Department, evading immigration controls or using false information or papers;
- (b) For the purposes of smuggling migrants, houses, hides or harbours foreigners entering or resident in the country illegally.

The penalty established by this article shall be increased by one third when the perpetrator or accomplice is a public servant or when minors are used to commit such offences.

Another national mechanism to prevent sexual violence is the National Commission against the Commercial Sexual Exploitation of Children and Adolescents (CONACOES), established in 1996 and constituted in 2000 as a special commission of the National Council on Children and Adolescents, the body that coordinates policy on this sector of the population.

The National Commission has the following aims:

- (a) To encourage the development and sustainable implementation of a gender-, generation- and rights-based public policy to eliminate risk factors, provide victim support, conduct research into the issue and punish those who promote the commercial sexual exploitation of minors;

(b) To ensure consistent and comprehensive institutional, intersectoral and interdisciplinary action by organizations working with the problem of sexual exploitation, and with national, regional and local scope;

(c) To promote a national culture of reporting of any forms of commercial sexual exploitation of minors;

(d) To assist in ongoing promotion of respect for the human rights of minors in order to change the conditions that favour, legitimize and perpetuate child commercial sexual exploitation in Costa Rica.

The Special Information Section of the National Institute for Women (INAMU) carried out a survey entitled “Violencia en contra de las mujeres: las cifras también hablan” (“Violence against women: figures that speak”), which presents data on the number of 911 calls received by the family and non-family violence and sexual offences emergency system, by province and by year.

Province	2001	2002	2003	2004	2005	2006	2007	Province total
Alajuela	214	193	76	45	36	22	6	592
Cartago	143	118	53	33	18	22	8	395
Guanacaste	64	54	15	12	5	13	2	165
Heredia	128	105	48	37	24	23	8	373
Limón	72	71	34	32	32	17	6	264
Puntarenas	62	53	23	15	25	16	3	197
San José	600	538	237	289	247	186	50	2 147
Sin ubicar	44	31	16	82	38	86	15	312
Total	1 327	1 163	502	545	425	385	95	4 445

The following table shows the number of 911 calls received by the emergency system in relation to attacks of any kind against women, by province and by year.

Province	2001	2002	2003	2004	2005	2006	2007	Province total
San José	6 131	23 077	18 694	21 267	20 840	23 040	8 355	121 404
Alajuela	1 934	6 838	5 305	5 564	5 620	6 074	2 379	33 714
Cartago	1 461	4 905	3 932	4 452	4 058	4 399	1 542	24 749
Heredia	1 275	4 534	3 354	3 786	3 856	4 429	1 616	22 850
Guanacaste	739	2 762	2 241	2 480	2 613	3 010	1 190	15 035
Puntarenas	904	3 333	2 584	3 016	3 122	3 501	1 354	17 814
Limón	811	3 403	3 056	3 731	3 643	4 309	1 674	20 627
Sin ubicar	102	88	55	119	85	222	25	696
Total	13 357	48 940	39 221	44 415	43 837	48 984	18 135	256 889

The survey shows that, despite the efforts made in recent years, it is still difficult to obtain data disaggregated by sex and age, and that there are still inaccuracies in the conceptual base and analytical categories, and consequently in the data currently available on violence against women.

- 43. *Please indicate whether the Criminal Code defines an offence applicable to public officials who fail to report acts of torture that have come to their knowledge in the discharge of their duties.***

Under the Code of Criminal Procedure, article 281 (a), public officials or employees have an obligation to report any offences subject to automatic prosecution they may become aware of in the course of their duties.

As the Court of Criminal Cassation stated in judgement No. 2006-0296, “this Court has consistently taken the view that civil servants are duty bound to report any irregularities that may concern their service or function, even where these relate to the honour and decency of others”.

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