



Convention on the Rights of the Child

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WRITTEN REPLIES BY THE GOVERNMENT OF COSTA RICA CONCERNING THE LIST OF ISSUES (CRC/C/OPAC/CRI/Q/1) RECEIVED BY THE COMMITTEE ON THE RIGHTS OF THE CHILD RELATING TO THE CONSIDERATION OF THE INITIAL REPORT OF COSTA RICA UNDER ARTICLE 8 (1) OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT (CRC/C/OPAC/CRI/1)*

[Replies received on 5 December 2006]

1. Please provide information on measures adopted with regard to physical and psychological recovery and social reintegration of refugee, asylum-seeking and migrant children entering Costa Rica who may have been involved in armed conflict abroad.

Costa Rica has no record of children who have been treated after being involved in armed conflict.

2. Article 12 of the Constitution provides that military forces can be organized only under a continental agreement or for the national defence. Please explain whether the provisions of the Optional Protocol would apply under these exceptional circumstances.

The Constitutional Chamber has referred to international human rights instruments, such as the Convention on the Rights of the Child and its optional protocols, in the following terms: "As regards the provisions of the international human rights instruments in force in the country, constitutional case law holds that article 7 of the Constitution is not applicable, since article 48 contains a special provision on such instruments, giving them normative force at the constitutional level. In fact, it is recognized in case law that the human rights instruments in force in Costa Rica not only have a force equivalent to that of the Constitution but actually, inasmuch as they grant greater rights or guarantees to persons, take precedence over the Constitution" (Opinion No. 1319-97, issued at 2.51 p.m. on 4 March 1997).

From the foregoing it may be concluded that while the text of the Costa Rican Constitution suggests that international human rights standards take precedence over laws, the binding interpretation by the Constitutional Chamber of the Supreme Court is that those standards contained in international human rights instruments which offer guarantees exceeding those embodied in the Constitution take precedence over the latter. Accordingly, the Optional Protocol takes precedence over the Constitution and the provisions of the Optional Protocol are applicable even in exceptional circumstances.

It is important to add that on 17 November 1983 the Costa Rican Government declared that "Costa Rica maintains active, perpetual and unarmed neutrality".

3. Please indicate whether there is any legal provision criminalizing forced recruitment or the involvement in hostilities of a person under the age of 18.

The General Police Act (No. 7410, of 20 May 1994) requires recruits to be over 18 years of age. In addition, under article 59 of the Act, anyone wishing to join the police force must:

- (a) Have Costa Rican nationality;
- (b) Be a citizen in full possession of their rights;
- (c) Swear allegiance to the Constitution and the law;
- (d) Have no criminal record in the Judicial Offenders Register; any police record will give rise to close scrutiny of the applicant's life and habits, to establish his or her suitability;
- (e) Be physically and mentally fit for the post;
- (f) Take the tests and examinations required by the Act and its regulations;

- (g) Be selected from the lists drawn up according to the procedures established by the Act and its regulations;
- (h) Have completed upper secondary education;
- (i) Satisfactorily complete the probationary period provided for by the Act;
- (j) Meet any other requirement established by the Act, its regulations or any other applicable legislation.

In addition to the above, Costa Rica has ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which entered into force on 24 February 2003.

4. Please provide information as to whether Costa Rica assumes extraterritorial jurisdiction over the war crime of conscripting or enlisting children under the age of 15 into the armed forces or using them to participate actively in hostilities.

Article 378 of the Criminal Code stipulates that “a prison term of 10 to 25 years shall be imposed on anyone who, in the course of an armed conflict, performs or orders someone to perform acts that could be classed as war crimes or serious violations of the laws of war under the provisions of the international treaties to which Costa Rica is a party, in relation to the conduct of hostilities, protection of the wounded, sick and shipwrecked, treatment of prisoners of war and the protection of civilians and cultural objects in cases of armed conflict, or according to any other international humanitarian instrument” (addition introduced by article 2 of Act No. 8272 of 2 May 2002).

To be quite clear, the answer to the question is that children under the age of 15 cannot participate in such activities, as was pointed out in the report.

Also in relation to extraterritorial jurisdiction, please indicate whether Costa Rican courts can establish their jurisdiction in cases of forced recruitment or involvement in hostilities of a person under 18 if committed outside Costa Rica, by or against a Costa Rican citizen.

In this kind of situation, article 6 of the Criminal Code establishes that proceedings may be instituted for punishable acts committed abroad and that in such cases Costa Rican law is applicable where: (1) they produce or may produce their effect in all or part of Costa Rica; (2) they are committed by individuals serving Costa Rica who have not been tried in the place where the act was committed by virtue of their diplomatic or functional immunity; and (3) they are perpetrated against a Costa Rican or infringe on a Costa Rican’s rights.

Article 7 states that “regardless of the legislation applicable in the place where the punishable act is committed and the nationality of the perpetrator, the punishments provided for in Costa Rican law shall be applied to anyone who: commits acts of piracy or genocide, or counterfeits coins, credit notes, banknotes or other bearer bonds; participates in the trafficking of slaves, women or children; engages in the trafficking of drugs or obscene publications; or commits other punishable acts that infringe on the human rights provided for in the treaties signed by Costa Rica or in this Code”.

Article 8 specifies that the perpetrator of the offences set out in articles 6 and 7 must be in national territory. In cases that come under article 6, a simple complaint lodged by the aggrieved person is sufficient to institute proceedings. In cases that come under article 7, criminal proceedings may only be instituted by the competent bodies. A sentence handed down by a foreign court for the above-mentioned offences does not have the force of *res judicata*.
