



**International  
Human Rights  
Instruments**

Distr.  
GENERAL

HRI/CORE/CRI/2006  
31 August 2006

ENGLISH  
Original: SPANISH

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**CORE DOCUMENT FORMING PART OF THE REPORTS  
OF STATES PARTIES**

**COSTA RICA\***

[18 August 2006]

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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.

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## I. LAND AND PEOPLE

1. The national territory measures 51,100 km<sup>2</sup> and is bounded by the Caribbean Sea, the Pacific Ocean and the republics of Nicaragua and Panama. The boundaries of the Republic are those fixed by the Cañas-Jerez Treaty of 15 April 1858, confirmed by the Cleveland Award of 22 March 1888, with respect to Nicaragua,<sup>1</sup> and the Echandi Montero-Fernández Jaén Treaty of 1 May 1941, in regard to Panama. Coco Island, located in the Pacific Ocean, forms a part of the national territory.

### A. Language

2. Spanish is the official national language (Constitution, art. 76). However, the 1999 constitutional reform established that “the State shall ensure that the national indigenous languages are preserved and cultivated”.<sup>2</sup>

### B. Population

3. According to the 2004 population indicators, Costa Rica’s population is 4,169,672 - 2,120,706 men and 2,048,966 women. The urban population accounts for 49.7 per cent of the total; population growth in 2003 was 2 per cent and population growth due to migration is 0.4 per cent.

4. The population is distributed among the seven provinces that constitute Costa Rica’s main administrative divisions as follows:

Province	Total population	Total men	Total women	Urban population
San José	1 470 282	732 037	738 245	80.4
Alajuela	792 949	406 732	386 217	36.2
Cartago	472 496	240 300	232 196	66.2
Heredia	395 837	200 841	194 996	68.2
Guanacaste	279 283	143 367	135 916	41.9
Puntarenas	372 725	194 287	178 438	40.1
Limón	386 100	203 142	182 958	37.1

*Source:* Basic indicators 2004. Health situation in Costa Rica.

<sup>1</sup> At present there is a dispute between the two countries on the historical interpretation of the extent of the borders, notably with regard to the right of the Costa Rican police to sail on the San Juan river, which marks the frontier between them. The case is before the International Court of Justice.

<sup>2</sup> Inserted under Act No. 5703 of 6 June 1975, art. 2, and subsequently amended to its present form under Act No. 7878 of 27 May 1999, art. 1.

5. The National Census of 2000 showed that 296,461 inhabitants of Costa Rica, or 7.8 per cent of the total population, were born abroad, mostly in Nicaragua, Panama, the United States of America and Colombia; people born in Nicaragua form the largest group, accounting for 75 per cent of the total registered foreign population.
6. According to the census the Nicaraguan population group numbers 226,374 (6 per cent of the total population of the country). It should be noted, however, that an unknown number of persons were not included in the census because they were temporary labourers continually moving around the country to take advantage of farming production cycles.
7. As at 1 September 2005, the Statistics Department of the Migration and Aliens Office had registered 285,848 temporary or permanent legal residents. This number does not include persons who benefited from the migrant amnesty in 1999 or the thousands still in an illegal situation.
8. According to the 2000 census, of the 63,876 persons who identified themselves as indigenous residents, 42.3 per cent live in the 22 indigenous territories.

### C. Demographic indicators

9. Costa Rica's health indicators have consistently improved, resulting in an increase in the population's life expectancy. With major advances in social programmes and service coverage, infant mortality has come down and immunizable diseases are under control. The gaps and inequalities in health status between regions and population groups have narrowed, although there are still differences in social and economic indicators that inevitably translate into health differences within the population.
10. With regard to the age structure of the population, the largest age group is the 25 to 59-year-olds, while the 60+ age group is the smallest. A breakdown of the population by age group in 2002 and 2003 gives the following percentages.

Age group	2002	2003
Under 5	9.6	9.4
5-12	16.5	16.0
13-17	10.6	10.5
18-24	13.3	13.4
25-29	42.3	42.7
60+	7.8	7.9

*Source:* State of the Nation, indicators.

11. Indicators for life expectancy at birth give an overall mean of 78.5 years, with an average of 76.2 years for men and 81 for women, which gives Costa Rica one of the highest life expectancies at birth of all the developing countries. One of the main reasons for the difference between men and women is the greater incidence among men of violent deaths such as homicide, suicide and accidents (mainly traffic accidents), which account for six deaths among men for every one among women.

12. With regard to population density, there is a high concentration per square kilometre in San José, Cartago and Heredia provinces, where there are major conurbations, unlike in Guanacaste, Puntarenas and Limón, large expanses of which are rural and which in addition are typical population-exporting regions. The following table gives a detailed picture of the population density per square kilometre and the dependency ratio, i.e. the number of theoretically dependent people (the under-15s and the over-64s) for every 100 theoretically productive people.

Province	Population density (inhabitants/km <sup>2</sup> )	Dependency ratio (per 100 inhabitants)
San José	296.1	53.3
Alajuela	81.3	59.0
Cartago	151.2	57.4
Heredia	149.0	52.3
Guanacaste	27.5	63.1
Puntarenas	33.1	64.6
Limón	42.0	68.5
Costa Rica	81.6	60.0

*Source:* Basic indicators 2004. Health situation in Costa Rica.

13. With regard to overall birth and mortality rates, the birth rate in 2003 (gross rate per thousand inhabitants) was 17.5, while the mortality rate was 3.8 per thousand. A breakdown by province gives the following figures.

Province	Birth rate (gross per thousand inhabitants)	Mortality rate (gross per thousand inhabitants)
San José	16.7	4.1
Alajuela	17.3	3.6
Cartago	16.2	3.4
Heredia	16.8	3.5
Guanacaste	18.6	4.6
Puntarenas	19.9	3.7
Limón	19.9	3.2

*Source:* Basic indicators 2004. Health situation in Costa Rica.

14. More than 94.9 per cent of births are hospital births. In 2003 66,222 of the total of 72,938 births were hospital births.

15. Costa Rica's infant mortality rate is one of the lowest in the American continent: 10.1 live births per thousand in 2003. The maternal mortality rate is 3.3 per 10,000 live births.

16. Teenage births accounted for 20.3 per cent of total births in 2003; the rate was particularly high in the Caribbean province of Limón, where they accounted for 27.4 per cent of the provincial total. The following table, from the State of the Nation Report, shows total births by age group between 2001 and 2003.

Teenage births	2001	2002	2003
Under 15	601	473	479
15-19	14 860	13 981	14 356
Total	15 461	14 454	14 835

*Source:* Basic indicators 2004. Health situation in Costa Rica.

17. Other interesting indicators (2003) are the percentage of births where the father is unknown (28.4 per cent);<sup>3</sup> and the percentage of children born outside marriage (55.6 per cent).

#### **D. Indigenous peoples of Costa Rica**

18. Officially there are eight ethnic groups or indigenous peoples in Costa Rica: the Cabecar, Bribri, Ngobe, Terraba, Boruca (or Burunca), Huetar, Maleku and Chorotega. Each of these peoples has its own cultural tradition and, although Costa Rica is a small country, each has quite distinct social and cultural characteristics.

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

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

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

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

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<sup>3</sup> An important development in this regard is the Responsible Paternity Act, adopted by Act No. 8101 of 27 April 2001. Under this Act the mother can simply inform the registry office of the identity of the child's biological father and if the time limit expires without objection from the alleged father the child will automatically bear his surname. Alternatively, if the father does not report for a DNA test the children will be granted all rights such as maintenance, education, recreation, medical care, clothing and, most important of all, the establishment of filiation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Indigenous peoples and territories	Ratio of men to women	Age group			Rate of demographic dependence	Average number of children per woman	Overall fertility rate
		Under 15	15-64	Over 65			
Territory	109	46.4	49.8	3.7	101	3.3	91
Bribri people	110	46.8	49.9	3.3	100	4.0	3.3
Salitre	109	48.1	48.8	3.1	105	3.8	3.2
Cabagra	109	48.1	49.5	2.4	102	4.3	3.5
Talamanca Bribri	111	46.3	50.1	3.6	100	4.0	3.3
Kekoldí Cocles	99	42.5	52.7	4.8	90	3.4	2.8
Burunca or Boruca people	111	40.8	54.1	5.1	85	3.9	2.9
Boruca	110	41.7	53.6	4.7	87	3.8	2.8
Rey Curré	114	38.1	55.7	6.2	80	4.3	3.2
Cabecar people	107	51.3	46.1	2.7	117	4.1	3.6
Alto Chirripó	106	52.6	44.8	2.6	123	4.1	3.6
Ujarrás	104	44.5	50.4	5.1	98	4.1	3.1
Tayni	104	53.7	44.7	1.5	123	4.1	3.7
Talamanca Cabecar	115	46.2	51.1	2.7	96	4.1	3.4
Telire	106	53.0	44.8	2.2	123	3.6	3.4
Bajo Chirripó	116	55.6	42.2	2.2	137	5.5	5.4
Nairi Awari	115	53.1	44.6	2.3	124	3.4	2.9
Chorotega people	120	34.5	57.4	8.1	74	3.8	2.4
Matambu	120	34.5	57.4	8.1	74	3.8	2.4
Guaymi people	105	52.9	44.4	2.6	125	4.6	4.1
Abrojo Montezuma	104	53.7	44.1	2.2	127	4.7	4.4
Osa	115	46.6	51.7	1.7	93	5.1	4.9
Conte Buruca	110	51.0	46.3	2.7	116	4.2	3.6
Coto Brus	99	55.3	42.0	2.7	138	4.8	4.3
Maleku people	104	38.8	55.7	5.5	80	3.6	2.6
Guatuso	104	38.8	55.7	5.5	80	3.6	2.6
Teribe or Terraba people	117	38.8	55.3	5.9	81	3.9	2.7
Terraba	117	38.8	55.3	5.9	81	3.9	2.7
Huetar people	108	36.2	57.7	6.2	73	3.6	2.6
Zapatón	114	38.2	54.9	6.9	82	4.5	3.2
Quitirrisí	106	35.4	58.7	5.9	70	3.2	2.4

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

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

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

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

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

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

#### **E. Regions with greatest Afro-Costa Rican presence**

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

40. In the context of the ethnic composition of the population, the 2000 census found that 93.68 per cent of Afro-descendants were Costa Rican by birth, making this the ethnic population group with the highest proportion of Costa Ricans by birth.

41. Other census data that deserve careful analysis concern the birthplace and province of residence of the Afro-Costa Rican population. While 64.25 per cent of Afro-Costa Rican respondents were born in Limón province, 74.37 per cent of them live there. These figures reflect the general profile of the Afro-Costa Rican population as an upwardly mobile social group, with rising educational levels and a growing presence in the cities of Limón and San José.

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

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

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

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

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

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

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

## **F. Chinese population**

46. According to the 2000 census the Chinese population comprises 7,873 inhabitants (0.2 per cent of the total population) - 4,089 men and 3,784 women. Of these, 88 per cent live in urban areas (77.18 per cent in the urban sector and 11.2 per cent on the outskirts of cities), 3.28 per cent in rural clusters and 8.34 per cent in lightly populated rural areas.

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

## II. SOCIO-ECONOMIC INDICATORS

### A. Human development index

48. The United Nations Development Programme (UNDP) produces a series of indicators and parameters to measure countries' level of development, using quantifiable, comparable indices. Costa Rica ranks among those developing countries that have a high level of human development, but it saw a steady decline in its human development index (HDI)<sup>5</sup> and its gender development index (GDI)<sup>6</sup> between 1996 and 2000.

49. Based on its HDI for 2001, 2002 and 2003, Costa Rica ranked 41st, 43rd and 42nd respectively in those years, and in terms of GDI 23rd, 26th and 19th respectively, as shown in the following table.

	2001	2002	2003
Human development index (HDI)			
HDI value	0.821	0.820	0.832
HDI ranking	41	43	42
Gender development index (GDI)			
GDI value	0.813	0.814	0.824
GDI ranking	42	41	41
Gender empowerment index (GEI)			
GEI value	0.571	0.579	0.670
GEI ranking	23	26	19

*Source:* State of the Nation, Costa Rica, 2004.

50. There has been a slight recovery in these indices since 2001, particularly with regard to HDI. There was less of a decline in GDI, possibly as a result of the country's efforts in the legal and administrative spheres over the last 10 years to attain greater equity between the sexes, notably in terms of mechanisms for reporting domestic violence.

### B. Education

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

52. Thus, under article 78, "preschool education and general basic education are compulsory. In the State system these and upper secondary education are free and paid for by the nation.

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<sup>5</sup> The human development index (HDI) measures a country's overall progress on three basic human development criteria: longevity, educational standard and a decent standard of living.

<sup>6</sup> The gender development index (GDI) measures progress on the same criteria as the human development index (HDI) but reflects inequalities between men's and women's progress in order to establish the degree of gender inequality in a country: the wider the gap between GDI and HDI, the greater the inequality.

Public expenditure on State education, including higher education, shall not be less than 6 per cent per annum of GDP, in accordance with the law. The State shall facilitate the pursuit of higher studies by persons who lack financial resources. Scholarships and assistance shall be awarded by the Ministry of Education through a body established by law”.

53. The Constitution also contains specific provisions on the following aspects of education:

(a) Private enterprise in education should be encouraged inasmuch as freedom of education is guaranteed; private schools shall nonetheless be subject to inspection by the State;

(b) The State has an obligation to provide poor pupils with food and clothing. The State shall sponsor and organize adult education in order to combat illiteracy and provide cultural opportunities;

(c) The autonomy of State universities is established, as well as the State’s responsibility to provide financial resources by creating a special fund for higher education.

**(a) Preschool education**

54. Educational provision is made for children aged between 5 years 5 months and 6 years 5 months in the preschool sections of primary schools (cycles I and II of general basic education) and of private kindergartens. The Costa Rican education system covered 33.2 per cent of all children in that age group in 2003 and in 2004 that figure increased to 37.2 per cent, which means more than 3,000 of these children are covered by the education system.

55. Total preschool enrolment in 2004 was 72,668, of whom 456 children were in special education.<sup>7</sup> The following table shows trends in gross enrolment rates from 2002 to 2004.

Year	Coverage
2002	88.7
2003	91.6
2004	90.9

*Source:* Ministry of Education, *Relanzamiento de la Educación Costarricense*, 2004.

56. Special emphasis is being placed on second language teaching and information technology: coverage in English teaching was 16.2 per cent in 2003 and in information technology 31 per cent.

57. To reinforce the efforts being made to achieve universal preschool education, an initiative to develop radio teaching modules and teaching materials is under way. Entitled “Windows on a Child’s World”, the programme targets indigenous, rural and remote rural groups in particular

<sup>7</sup> Ministry of Education report, *Relanzamiento de la Educación Costarricense* (Relaunching education in Costa Rica), 2004.

and is run with the support of 12 cultural radio stations of the Costa Rican Institute of Radio Education, a national daily newspaper, the National Chamber of Radio and the National Radio and Television System.

**(b) Primary education**

58. Primary education is the level with the greatest concentration of pupils in the system - 58 per cent of the overall total for school year 2003. Of the 3,935 schools in service in 2003, 42.3 per cent were schools with a single teacher, located in rural and remote areas of the country and where the teacher takes children at all grades in a single shift. Though schools of this kind account for 42 per cent of the total number of schools, they account for only 7.5 per cent of primary pupils.

59. In the last five years the gross and net enrolment rates in primary education have exceeded 100 per cent, which shows that primary education is now universal.

60. The following table shows trends in primary education coverage in school years 2002, 2003 and 2004.

Year	No. of pupils	Gross coverage	Net coverage
2002	598 915	107.2	100.6
2003	545 645	107.3	100.2
2004	538 011	106.5	n.d.

*Source:* Ministry of Education, *Relanzamiento de la Educación Costarricense*, 2004.

61. Since 2001 the number of primary pupils has declined, mainly for demographic reasons - i.e. a drop in the number of births seven or more years previously.

62. The repetition rate in basic education cycles I and II was 7.6 per cent of all pupils enrolled for the year in 2002 and 7.5 per cent in 2003, an improvement of 0.1 per cent.

63. The dropout rate for 2002 in primary education was 4 per cent, an improvement of 0.5 per cent over 2001. There was a further improvement of 0.1 per cent in 2003, bringing the rate to 3.9 per cent. The school voucher and school meals programmes have been strengthened to address this problem and special programmes have been launched to cater for the special social and educational needs of primary schoolchildren.

64. Enrolment rates in primary and secondary education - i.e. the total number of children enrolled in a primary or secondary school grade divided by the total population in the age group corresponding to that grade - are as follows:

Primary education enrolment rates 1996-2003		Primary pupils who reach 5th grade	Secondary education enrolment rate 1998-2002	
Boys	Girls		Boys	Girls
90%	91%	94%	66%	68%

*Source:* UNICEF, *State of the World's Children* 2005.

65. According to the 2000 census, literacy levels are high: 89.6 per cent of the population aged over 5 has received some form of primary education and 10.2 per cent some form of secondary education.

**(c) Secondary education**

66. According to Ministry of Education records the total number of students in secondary schools in 2004 was 368,126; of these 281,936 attended traditional (formal) classes during the day and 35,603 traditional classes at night.<sup>8</sup>

67. Statistical indicators show that in 2004 gross coverage in secondary education was 82 per cent, an increase of 2.8 per cent over 2003, giving 11,379 more students in the education system.

68. The differential between boys and girls in secondary education in the period from 2001 to 2002 was 1.1, and 1.16 in higher education for the same year.<sup>9</sup>

**(d) University education**

69. University education has its legal basis in the Education Act (No. 2160) of 25 September 1957, which may be regarded as the framework legislation for the education system after the Constitution.

70. Higher education comprises universities and other institutions of higher education (university colleges and higher education institutes).

71. Private universities are regulated by Act No. 6693 (1981). The Act provides the legal framework for private universities and establishes the National Board of Private Higher and University Education, which is responsible for authorizing the foundation and operation of private universities.

72. For State universities there is a coordinating body, the National Council of University Rectors, and a planning body, the Higher Education Planning Office. There is also a body to ensure liaison between the State itself and the State university sector, the Liaison Commission, comprising the directors of the four State universities and the Ministries of Education, Planning, Science and Technology, and Finance. The State universities are autonomous under article 84 of the Constitution.

73. Public higher education is funded by the State and institutions offer a wide range of academic opportunities at three levels: diploma, degree and postgraduate (specialisms, Master's, doctorate).

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<sup>8</sup> Ministry of Education Statistics Department.

<sup>9</sup> Data compiled from the website of the Instituto del Tercer Mundo - Social Watch, based in Montevideo, Uruguay.

74. There are around 70 universities in Costa Rica, 4 of them State universities: the University of Costa Rica, the Technological Institute of Costa Rica, the National University and the State Open University.

75. With regard to information, science and technology, there were 193 Internet users and 197 computers per thousand inhabitants in 2002, and 530 research and development scientists and engineers per million inhabitants.

**(e) Indigenous education**

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

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

Indigenous peoples and territories	Illiteracy (%)	Average level of schooling (years)	Primary education (%)	Secondary education or higher (%)	Percentage of the indigenous population speaking an indigenous language	Percentage of the indigenous population whose mother tongue is an indigenous language	Percentage of the indigenous population whose mother tongue is Spanish	Non-indigenous people who speak indigenous languages
Territory	26.6	3.6	58.3	9.9	61.8	59.7	33.7	0.8
Bribri people	19.9	4.2	63.0	11.0	62.0	55.2	37.9	1.7
Salitre	24.4	3.7	47.7	7.4	38.1	34.6	29.6	1.9
Cabagra	21.5	3.8	55.6	6.1	50.8	46.1	44.4	0.8
Talamanca Bribri	18.8	4.4		68.2	12.4	69.2	62.6	36.5
Kekoldi Cocles	14.6	4.8	70.7	24.5	68.9	22.6	77.4	1.0
Burunca or Boruca people	9.6	4.9	72.8	16.8	5.2	3.8	94.8	0.1
Boruca	9.6	5.0	72.2	17.2	5.7	3.7	95.4	0.1
Rey Curré	9.5	4.7	74.6	15.6	4.2	4.0	93.5	0.0
Cabecar people	50.7	1.7	40.1	3.5	84.4	86.5	6.8	2.1
Alto Chirripó	62.2	0.9	30.4	2.1	89.0	93.4	1.4	2.6
Ujarrás	22.4	3.8	72.4	11.0	69.5	67.0	16.0	0.7
Tayni	40.7	1.9	60.1	2.6	82.7	84.4	5.7	11.1
Talamanca Cabecar	35.8	2.9	53.3	3.3	76.4	73.6	24.5	2.9
Telire	95.0	0.0	0.5	0.0	89.3	96.9	0.0	0.0
Bajo Chirripó	45.4	0.7	3.4	4.2	93.9	92.2	1.7	0.0
Nairi Awari	46.1	1.7	36.8	6.1	85.0	85.4	7.3	25.0
Chorotega people	13.0	5.2	74.9	17.2	0.1	0.3	88.8	0.0
Matambú	13.0	5.2	74.9	17.2	0.1	0.3	88.8	0.0
Guaymi people	27.6	3.1	64.9	5.5	84.5	85.2	5.3	1.4
Abrojo Montezuma	26.0	3.3	66.7	3.2	99.7	99.4	0.0	0.0
Osa	21.0	2.6	73.7	3.2	93.7	93.7	2.1	0.0
Conte Buruca	23.8	3.3	70.0	7.0	71.9	72.3	12.4	0.8
Coto Brus	32.9	2.9	58.8	4.9	89.0	90.5	1.3	33.3
Maleku people	10.8	4.8	76.2	12.5	71.1	49.0	41.6	0.9
Guatuso	10.8	4.8	76.2	12.5	71.1	49.0	41.6	0.9
Terraba or Teribe people	10.2	4.5	64.0	10.7	4.1	4.3	86.3	0.6
Térraba	10.2	4.5	64.0	10.7	4.1	4.3	86.3	0.6
Huetar people	13.5	5.0	78.6	16.5	0.7	0.8	98.2	0.6
Zapatón	24.4	3.6	78.3	4.9	0.0	0.0	88.0	0.0
Quitirrisí	9.4	5.4	78.8	20.7	0.7	0.8	98.8	1.6

Source: National Census and Statistics Institute, 2000 Census.

78. There are currently 224 indigenous schools in Costa Rica, 210 primary and 14 secondary.<sup>10</sup>

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

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

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

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

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

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

*Source:* National Statistics and Census Institute.

**(g) Migrant education**

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

<sup>10</sup> Ministry of Education, Department of Indigenous Education, 2006.

### C. Housing and related services

84. The Constitution, article 65, stipulates with regard to housing that “the State shall promote the construction of low-income housing and shall create family property for workers”.

85. As at the 2000 census, there were 959,144 households and in 2003 there were 1,056,858 occupied dwellings, 51,742 of which were overcrowded. The average number of members per household in 2003 was 4.1, reflecting an average decline of nearly 1 per cent. On this basis, annual housing demand, as indicated by the number of new households, is growing by nearly 4 per cent a year.

86. A housing study based on an analysis of the 1984 and 2000 censuses<sup>11</sup> reported favourable trends in some aspects of housing. The number of members per household has gone down, for example, and the percentage of overcrowded dwellings has fallen dramatically; there are very few dwellings without electricity and only 1 in 100 dwellings has no sanitation.

87. However, the study also showed that there are areas where there has been no improvement: for example, there was no change in the number of households per dwelling, the condition of dwellings deteriorated and the percentage of dwellings without piped or well water has not changed since 1984. According to the indicators for 2003, 79.5 per cent of the population live in dwellings with access to drinking water and 96.3 per cent have access to mains drainage.

88. The housing deficit is an estimated 157,346 dwellings.

89. According to the 2000 census, 75.7 per cent of the total population have access to drinking water. The following table shows provision of water for human consumption, coverage and quality monitoring.

Administration	Total population covered	Percentage	Quality monitoring	Drinking water coverage
			%	
Water Supply and Sewerage Institute	1 795 794	46.9	100	96.6
Municipalities	653 713	17.0	100	64.2
Heredia Public Services Company	180 000	4.7	100	100
CAAR/ASADA	1 098 496	28.7	100	51
No data	96 590	2.7	0	-
Total	3 824 593	100.0	97.4	75.7

**Source: Health sector analysis, Costa Rica.**

<sup>11</sup> Study by Rodríguez and Morales, referred to in the health sector analysis, Costa Rica.

**(a) Indigenous housing**

90. The 2000 census provided information relating specifically to housing in indigenous territories.

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

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

91. The average number of persons per dwelling in indigenous territories is 5.3, more than in peripheral indigenous areas and the rest of the country, where it is 4.1.

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

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

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

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

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

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

**(c) Migrant housing**

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

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

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

100. The greatest differences are between Nicaraguan-headed households living in overcrowded dwellings, which account for 16.9 per cent of the total by number of rooms and 25.4 per cent by number of bedrooms, and Costa Rican-headed households in overcrowded dwellings, which account for 2 per cent and 5.1 per cent of the total respectively.

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

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

#### **D. Health**

103. The Constitution, article 73, establishes "social security for manual and intellectual workers, regulated by a system of compulsory contributions by the State, employers and workers, to protect them against the risks of illness, disability, maternity, old age, death and other contingencies as determined by law". Under article 51, "the family is entitled, as a natural and fundamental element of society, to special protection from the State. That right shall be equally enjoyed by mothers, children, the elderly and the sick and the destitute".

104. During the 1990s, as part of the health sector reform, the Ministry of Health took on practical overall responsibility for health and transferred activities relating to individual treatment to the Costa Rican Social Security Fund (CCSS). Thus all programmes involving individual treatment, including medical support procedures (laboratory work, pharmacy and radiology) and pre- and post-natal care, family planning, growth and development, among others, have been transferred to the CCSS.

105. These reforms have had a major impact, priority being given to the opening of health districts and to the basic comprehensive health-care teams, whose service coverage has expanded from 25.7 per cent of the population to nearly 90 per cent (2002). There has also been a big increase in equipment for clinics and hospitals: between 1998 and 2001, 179 institutions were equipped with 3,392 items, 95 per cent of which was new equipment.

106. The 2000 census shows that 81.8 per cent of the population are covered by health insurance. Coverage has expanded significantly in recent years as the poor, who are unable to join any of the existing insurance schemes, have gained access to health services.

107. The census gives the following figures in respect of the various types of insurance.

	Total	Men	Women
Employee	18.7	25.0	12.5
Voluntary insurance	6.6	10.0	3.2
Family insurance	43.2	32.0	54.3
State-insured	8.5	7.4	9.6
Other	4.7	4.9	4.5
None	18.2	20.6	15.9
Rate of insurance	81.8	79.4	84.1
Dependents' contributions	3.2	2.3	5.4

*Source:* Health sector analysis, Costa Rica, 2004.

108. National per capita expenditure on health was 42,202,202.61 colones in 2003, or 6.68 per cent of GDP. Total State investment in health in 2003 was 398,393,010 colones.

109. In terms of human resources, there is an average of 16.9 doctors, 19.6 nurses and 6 dentists per 10,000 inhabitants, 1.45 hospital beds per 1,000 inhabitants and a hospital bed occupancy rate of 81.65 per cent (data for 2003).

110. Other indicators for 2003 are: average stay in hospital, 5.73 days; consultations at State medical centres, 14,865,333; number of hospitalizations per 100 inhabitants, 8.13; and emergency treatment per inhabitant, 1.12.

111. As to immunization coverage, the following table shows national levels for 2003.

Children under 1: DPT3 vaccination coverage	Children under 1: OPV3 vaccination coverage	Children under 1: BCG vaccination coverage	Children under 1 year 3 months: measles vaccination coverage
87.94	87.94	88.18	89.88

*Source:* Basic indicators 2004, Health situation in Costa Rica, 10th edition.

#### (a) HIV/AIDS

112. The first cases of HIV appeared in Costa Rica in the early 1980s, in haemophiliac patients who had received imported blood derivatives infected with the human immunodeficiency virus. In 1985 the first cases of AIDS were reported, in homosexuals and bisexuals who had lived abroad and returned to Costa Rica in the final stages of their illness.

113. In 1997 a ruling of the Constitutional Chamber forced the Costa Rican Social Security Fund to provide antiretroviral therapy to anyone on demand and a year later the HIV/AIDS Act (No. 7771) was passed, establishing the rights and responsibilities of persons living with AIDS, as well as the responsibilities of institutions.

114. Up to 2001, 2,263 cases of AIDS had been recorded; 134 of these died in 2001 alone, making AIDS the main cause of death among notifiable illnesses: 80.03 per cent of cases are in the 25 to 44 age group, and 84.4 per cent of these reported having been infected by sexual transmission; the worst affected group (43.79 per cent) is men who have sex with men (MSM), followed by heterosexuals (24.8 per cent) and bisexuals (16.68 per cent).

115. From 1985 to date, through the institutions in Costa Rica's health sector, NGOs, certain State agencies, the private sector, and cooperation with other countries and international organizations, substantial efforts have been made in various fields to treat the HIV/AIDS epidemic at the national level. In order to ensure an inter-institutional response, the National Council for Comprehensive HIV/AIDS Care was set up; there is also a network of NGOs and various private initiatives both to prevent infection and to provide comprehensive care for HIV/AIDS sufferers.

### **E. Work**

116. The Constitution provides that the State "should endeavour to see that everyone has lawful and useful employment, duly remunerated, and prevent the establishment on that account of conditions which might in any way curtail a person's freedom or dignity or degrade their labour to the status of a mere commodity". The Constitution also contains provisions on the right to a minimum wage, an eight-hour working day, one rest day per week, paid annual holidays, trade union rights, the legal status of collective agreements and the right to compensation in the event of arbitrary dismissal.

117. Open unemployment has been stable in recent years, with a rate of between 5 per cent and 6 per cent. In gender terms, women have historically found it harder to obtain work: in 2001 women's unemployment stood at 7.6 per cent as compared with men's 5.2 per cent, despite the fact that they remain longer in the education system.

118. As to urban and rural areas, open unemployment was higher in rural areas in 2001, with a rate of 6.5 per cent as compared with 5.8 per cent in urban areas. Women continued to encounter greater problems in obtaining work in rural areas and showed an open unemployment rate of 9.8 per cent.

#### **(a) Indigenous employment**

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

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

### (b) Afro-Costa Rican employment

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

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

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

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

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

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

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

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

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

### (c) Migrant employment

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

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

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

## III. POLITICAL SYSTEM

129. The current Constitution, adopted on 7 November 1949, establishes a presidential regime, of which the following are some of the salient features:

- The President and deputies are elected by popular suffrage (Constitution, arts. 106 and 130);
- The appointment and removal of ministers is the exclusive and discretionary power of the President of the Republic (art. 139);
- The Legislative Assembly is a single-chamber body;

- Censure under article 121, paragraph 24, is of a moral nature;
- The President of the Republic has exclusive power to enact laws during special sessions (art. 118), and also prepares the budget;
- The decisions, resolutions and decrees of the Executive require a joint signature by the President and the appropriate minister (art. 146);
- There is a collegial body called the Council of Government, which has its own political powers (art. 147).

### **A. Powers of the State**

130. The Constitution makes provision for three full powers, the legislature, the executive and the judiciary - each independent from the others - as well as the Supreme Electoral Tribunal and the Office of the Comptroller-General of the Republic.

131. Like the three branches of government, the constitutional bodies enjoy very broad autonomy, which allows them to exercise their respective powers in complete independence from other bodies of the State. Thus no constitutional body is subordinate to any other and the relationship between them is not hierarchical but interdependent.

132. The Constitution also provides for the establishment by law of other bodies which, though of constitutional rank, are not autonomous because they are attached to a constitutional body. Examples are: (a) the Higher Council of Education (art. 81), attached to the Executive; (b) the Budget Office of the Ministry of Finance (art. 177), attached to the Executive; (c) the National Treasury (art. 185), attached to the Executive; (d) the National Wages Board (art. 57), attached to the Executive; and (e) the Civil Registry (art. 104), which forms part of the administrative structure of the Supreme Electoral Tribunal.

133. These institutions have sufficient autonomy to enable them to properly discharge their mandates and thus are all examples of what could be called constitutional decentralization.

### **B. Legislative branch**

134. The Costa Rican parliament has a single chamber and is known as the Legislative Assembly. It comprises 57 members, elected by universal suffrage in elections held every four years, on the first Sunday in February (Constitution, arts. 105 and 107).

135. The 57 deputies hold office for four years and cannot be re-elected for another consecutive term; they must wait at least one parliamentary session before standing for office again. In the Costa Rican electoral process, the valid votes of each province are counted and divided by the number of seats for that province, which gives a figure known as the quotient. The total valid votes for the parties are then shared among the seats and, if any seats are still unassigned, they are distributed according to the residue of remaining votes, from most to least. However, to be eligible for the second round the parties must have received a number of votes equivalent to at least half a quotient, also known as a subquotient.

136. According to article 108 of the Constitution, a deputy must be a citizen with all civil rights, Costa Rican by birth or by naturalization and with 10 years' residence in Costa Rica following naturalization, and at least 21 years of age.

137. Deputies are not liable for opinions expressed in the Legislative Assembly in the exercise of their duties, whether in Parliament itself, in plenary or in committee, or outside. This privilege is granted solely and exclusively to protect deputies in the exercise of their duties.

138. During sessions deputies cannot be arrested for a civil offence except by authorization of the Assembly or consent of the deputy. Since the abolition of execution on the person in civil and commercial matters in 1989, the only way this can be achieved is through the family court in maintenance proceedings.

139. From the time they are declared elected by the Supreme Electoral Tribunal until the end of their term in office, deputies may not be deprived of their liberty on criminal grounds unless they have previously been suspended by the Assembly. Immunity does not apply, however, in a case of flagrante delicto or where waived by the deputy. However, a deputy arrested in flagrante delicto must be released if the Assembly so orders.

140. One important point is that the deputy may waive only immunity from arrest, not immunity from criminal liability, which must in all cases be explicitly lifted by the Legislative Assembly through a qualified majority of two thirds of its members.

141. The functions of the legislature fall into five broad categories: (a) legislation; (b) political oversight; (c) jurisdiction; (d) political leadership; and (e) the non-legislative work of the Legislative Assembly.

142. Under article 121, paragraph 1, of the Constitution the Legislative Assembly has the power to enact, amend and repeal legislation, and to give authentic interpretation to the law, except on electoral matters, where authentic interpretation is the jurisdiction of the Supreme Electoral Tribunal.

143. In the same article the Constitution provides that the Assembly is also responsible, among other functions, for appointing titular and alternate magistrates of the Supreme Court, ratifying or rejecting international agreements, public treaties and concordats; granting or withholding assent for the admission of military troops to national territory; suspending individual rights and guarantees, by a vote of no less than two thirds of all its members; receiving the oath of the members of the branches of government, except ministers; admitting or rejecting charges against the most senior members of the branches of government and if necessary suspending them from their duties; fixing the regular and special budgets; appointing the Comptroller-General and Subcomptroller-General; levying taxes; ordering the removal of State property from public use; approving loans affecting State credit; conferring honorary citizenship; enacting currency legislation; promoting the progress of the arts and sciences; establishing the courts of justice; appointing commissions of enquiry; and addressing formal questions to government ministers.

144. The legislative process starts with the introductory stage, in which bills are submitted to the Legislative Assembly. During regular sessions the process may be initiated by individual deputies or by the Executive. During special sessions it is the sole prerogative of the Executive.

145. There is also an Office for Peoples' Initiatives, which was established on 13 April 1999 to provide more scope for participation in the Legislative Assembly and thus bring Congress closer to the people.

146. The Office takes suggestions, proposals and preliminary drafts of legislation from any citizen, including minors. These initiatives are summarized and their main theme identified, and they are brought to deputies' and their advisers' attention each month so that any they are particularly interested in can be approved for passage through the legislature. Once a people's initiative has been approved, the initiator is informed immediately and is kept informed of its subsequent progress.

147. The discussion stage comprises the bill's passage through a committee and a discussion in plenary. At the committee stage, deputies on the committee or any other member of the Assembly may propose formal or substantive amendments to the draft text. When the draft has been discussed and approved in committee, it is passed on to the plenary together with the committee's recommendation, which may be positive or negative. The bill is then placed on the plenary agenda and is given three readings, which must be held on different days.

148. The rules of procedure of the Legislative Assembly provide for three standing committees with full legislative powers. Each of them has 19 members, all deputies, and may consider bills on which recommendations have been issued or which are exempted from the normal procedure under rule 177 of the rules of procedure, providing they are on the plenary agenda and have not been passed at their first reading. Any motion seeking referral of one or more bills must state which standing legislative committee they should be assigned to. Such motions will be admitted only where signed by:

- Two or more heads of faction who between them represent at least 38 deputies;
- No less than half the heads of faction;
- At least 10 deputies from two or more factions.

To be adopted, such motions require a vote in favour by two thirds of all members.

149. At the approval stage, bills must be passed at the third reading by the majority required under the Constitution in each case. A legislative decree is then drafted and sent to the Executive for ratification.

150. The entry into force stage comprises enactment and publication of the law. In Costa Rica, however, enactment and publication are combined and a law takes effect on publication.

151. Costa Rica's Legislative Assembly has not been unaffected by the modern trend towards giving Parliament an active parliamentary or political oversight function whereby it ensures that the other branches of government, especially the Executive, act in accordance with the law. Its chief means of doing so is the special commissions of inquiry.

152. Under article 121, paragraph 23, of the Constitution, commissions of inquiry may look into any matter the Assembly refers to them and must report within the time set. The commissions

have full access to all government departments in conducting their investigations and may request any information they deem necessary. They may take evidence of any kind and summon anyone for questioning.

153. The scope of these commissions of inquiry is circumscribed by the constitutional powers of other branches of government. For example, a commission of inquiry could not interfere with trials or with matters before the Office of the Comptroller-General or the Supreme Electoral Tribunal. Nor can they investigate anything classified as a “State secret” or request private documents, prohibitions deriving from articles 24 and 30 of the Constitution. Their reports are not legally binding but are political recommendations.

154. As to the Assembly’s jurisdictional function, under article 121, paragraphs 9 and 10, of the Constitution, it may lift the criminal immunity of members of any branch of government and order their suspension if they have been tried or convicted. This is a materially jurisdictional function, for where criminal charges are brought against members of a branch of government the trial cannot proceed unless the Assembly has previously determined, by a two-thirds majority of all its members, that there are grounds for legal action.

155. The Constitution provides for three kinds of state of emergency: (a) suspension of constitutional rights and guarantees; (b) authorization to declare a state of national defence and to make peace; and (c) the right to amend the budget during parliamentary recesses.

156. The suspension of constitutional rights and guarantees by the Executive requires the approval of not less than two thirds of all members of the Assembly and may last a maximum of 30 days. Only the rights and guarantees specifically listed in article 121, paragraph 7, of the Constitution may be suspended.

157. The second scenario involves the exercise of a characteristically political power, i.e. a function which under the Constitution is carried out by the Legislative Assembly, or the Executive during parliamentary recess, in respect of the State and the community as a whole. It is not subject to administrative challenge as it does not cause direct or immediate harm to subjective rights or individuals’ legitimate interests.

158. Lastly the Assembly supervises any change in the purpose of budget allocations during Parliamentary recess. The Executive must immediately call a special session of the Assembly to approve or reject such a change in the budget.

159. Thus the Assembly has political oversight over whether the Executive has applied the somewhat vague legal concepts of “urgent or unforeseen necessity” and “war, internal upheaval or public disaster”.

### **C. Executive branch**

160. The Executive branch is the constitutional authority that carries out the political and administrative functions of the State. It is independent of the other State powers and its relationship with them is regulated by checks and balances that prevent them establishing any juridical connections.

161. It is the Executive that takes the political initiative in the work of the State and in practical terms is thus the key arm of government. At the political level the Executive takes the basic decisions of State and in the legal sphere, under the Public Administration Act, it has overall responsibility for the coordination and direction of all governmental and administrative tasks, including central and decentralized areas of administration.

162. The Executive comprises the President of the Republic, government ministers, the Council of Government and other bodies of the Executive branch, such as the autonomous institutions.

163. Under the Constitution, to be President of the Republic a person must be a Costa Rican by birth and a citizen in the exercise of their rights, a lay person and over 30 years of age. The following may not be elected President or Vice-President: (a) anyone who has served any term as President, or any Vice-President who has replaced the President for the majority of the President's constitutional term in office;<sup>12</sup> (b) any Vice-President who was in office during the 12 months preceding the election; (c) any descendant or relative by blood or in-law of the person holding the office of President at the time of the election; (d) anyone who was a government minister during the 12 months preceding the election; (e) titular magistrates of the Supreme Court, alternate magistrates of the Supreme Electoral Tribunal, the Director of the Civil Registry, directors or managers of the autonomous institutions, the Comptroller-General and Subcomptroller-General of the Republic.

164. Presidential and Vice-Presidential elections are held on the first Sunday in February of the year in which these offices are to be renewed.<sup>13</sup> The presidential term is four years. In the general elections two Vice-Presidents are elected on the same ticket as the President; they replace the President in the event of temporary or total absence, in the order of their appointment.<sup>14</sup>

165. Under article 139 of the Constitution the President's main task is the overall coordination of the work of the State. This involves officially representing the State, discretion to appoint and remove ministers, supreme command of the police force, submission of an annual report (on 1 May each year) to the Legislative Assembly, and requesting permission to leave the country, except to go elsewhere in Central America or to Panama and for no more than 10 days.

166. In addition, under article 26 (c) and (d) of the Public Administration Act the President is called upon to settle disputes between decentralized bodies and central government and to resolve jurisdictional disputes between ministries.

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<sup>12</sup> In decisions Nos. 7818-00 and 2771-03 a constitutional challenge to Act No. 4349 of 11 July 1969, amending article 132, paragraph 1, of the Constitution, was upheld. As a result, the text of the provision as it read before amendment has again come into effect and former Presidents may therefore be re-elected.

<sup>13</sup> A general election was held on 5 February 2006, when Dr. Oscar Arias Sánchez was elected President with effect from 8 May 2006.

<sup>14</sup> The office of Vice-President is not defined in detail in the Constitution. However, the Vice-Presidents have practical functions and some are even in charge of ministries.

167. Under article 130 of the Constitution ministers are required to cooperate with the President, which means that, to be valid, all instruments jointly attributable under the Constitution require the joint signatures of a minister and the President.

168. The function of deputy minister originated in legislative practice and after some years was incorporated into the Public Administration Act (art. 48). This establishes that deputy ministers are required to exercise their authority as senior managers; direct and coordinate the internal and external work of the ministry, without prejudice to the relevant powers of the ministry; act as the focal point for the ministry's internal and external communications; carry out studies and assemble documentation as needed for the ministry's smooth functioning; and delegate, assume, substitute or replace functions in accordance with the Public Administration Act.

169. In practice deputy ministers share the administrative and political running of the ministry, as there are so many tasks that ministers cannot possibly deal with everything for which they are responsible.

170. The Council of Government is a collegial body comprising the President and the government ministers. Its tasks are to ask the Legislative Assembly to proclaim a state of national defence; appoint and remove diplomatic representatives of the State; appoint directors of the autonomous institutions; and resolve any matters the President may consider serious enough to refer to the Council on a consultative basis.

#### **D. Judicial branch**

171. The Constitution (art. 9) establishes the judicial branch as one of the three powers that form the Government of Costa Rica. Further, under article 152, "judicial power is exercised by the Supreme Court and by other courts established by law".

172. The principle of separation of powers is embodied in the Constitution. Their independence is purely organizational, as in practice there is a relationship between the different branches of government, although each retains its own main function and this may not be delegated.

173. The judicial branch is independent of the Executive. Its relationship with the Executive is one of cooperation, since judicial decisions must sometimes be implemented by the police force, which is part of the Executive, and the courts must in turn apply the administrative acts issued by the Executive unless they themselves declare them invalid.

174. At the same time, the Executive is subject to the courts, since its acts may be referred to them on grounds of illegality, in an administrative action, or on grounds of unconstitutionality.

175. With regard to the Legislative Assembly, article 154 of the Constitution states that the courts are subject only to the law, such that no other action by the legislative branch is binding on judges. The legislature can constrain the judiciary indirectly to the extent that approval of its budget and the election of judges are the exclusive prerogative of the Assembly.

176. The main constraint on the Legislative Assembly where the judicial branch is concerned is constitutional oversight of legislation, whereby the Constitutional Chamber has the power to strike down a law on formal or substantive grounds. In addition, under the Constitutional

Jurisdiction Act, all bills requiring constitutional amendment or the ratification of international conventions or treaties, as well as any reservations entered or proposed, must be referred to the Constitutional Chamber for an opinion on their constitutionality.

177. Judicial power is exercised by the Supreme Court and other courts established by law. The Supreme Court is the highest court in the judicial branch and hence its senior administrative authority.

178. The Supreme Court now has four divisions: the First Chamber tries civil, commercial and administrative cases, the Second Chamber tries family, labour and residuary (bankruptcy and inheritance) cases, the Third Chamber tries criminal cases and the Fourth or Constitutional Chamber tries constitutional cases.

179. The judges in the first three Chambers are elected by absolute majority, whereas those of the Constitutional Chamber are elected by a qualified majority of two thirds of the total membership of the Legislative Assembly.

180. Each of the first three Chambers comprises five judges and the Constitutional Chamber seven. The president of the Supreme Court must be Costa Rican by birth.

181. In terms of the operation of the courts, the Constitution and the law lay down a number of principles to ensure their effective organizational independence.

182. To begin with, there is the guarantee of a natural judge (Constitution, art. 35), i.e. the principle that only those bodies and judges established by law are competent to try cases.

183. Under articles 121, paragraph 20, and 152 of the Constitution, the legislature has exclusive authority to create courts of justice; the Executive is constitutionally barred from creating courts or establishing their competence.

184. Under article 41 of the Constitution justice must be prompt, thorough and administered in accordance with the law. Similarly, under article 154, the judiciary is subject only to the Constitution and the law. This guarantee is reinforced by article 155, whereby “no court may take cognizance of cases pending in another court. Each court has proper and exclusive competence to resolve the matters submitted to its jurisdiction, without interference from other courts or judicial bodies”. Where judges violate the principle of impartiality they are guilty of breach of trust and may be liable to civil and criminal action.

185. Under article 153 of the Constitution the judiciary has exclusive competence to resolve any disputes that may arise on different matters, without prejudice to the existence of administrative courts, within the Executive and the judiciary, whose decisions do not constitute actual judgements at law and may therefore always be contested in the courts.

186. The only exception in jurisdictional terms is electoral matters, which, under article 103 of the Constitution, are resolved by the Supreme Electoral Tribunal.

#### **IV. GENERAL LEGISLATIVE FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS**

##### **A. Abolition of the death penalty in Costa Rica**

187. The death penalty was abolished in Costa Rica in 1878 by the then President, General Tomás Guardia, a career soldier, and on 26 April 1882 a provision upholding the inviolability of human life was given constitutional rank. This rule is now enshrined in the Constitution of 7 November 1949, which states in article 21: “Human life is inviolable”.

##### **B. Legal framework**

###### **(a) Constitution**

188. The Constitution of Costa Rica, adopted on 7 November 1949, is the legal foundation that guarantees full respect of all human rights to all citizens.

189. The Constitution contains comprehensive provisions on civil rights, including: the inviolability of human life (art. 21), freedom of movement (art. 22), the right to privacy, freedom and confidentiality of communications (art. 24), right of association (art. 25), the right to asylum (art. 31) and the equality of all human beings (art. 33).

190. With regard to economic and social rights, there are provisions on, among other things, the right to a healthy environment (art. 50), the protection of the family by the State (art. 51) and the right to work, to health and to education, as mentioned above.

###### **(b) International treaties**

191. Article 7 of the Constitution establishes a hierarchy of laws and states that “public treaties, international agreements and concordats duly adopted by the Legislative Assembly shall have a higher authority than laws, upon their adoption or from the date stipulated ...”.

192. Under the Constitution international treaties require legislative approval to become part of the law of the land; however, in a consultative opinion contained in decision No. 6624-94, the Constitutional Chamber established that the provisions of the Vienna Convention on the Law of Treaties - legislative approval of which had been vetoed by the Executive - could be applied, “because [that Convention] constitutes the codification of the customary rules of international law, which are binding - *ius cogens* - and the subject of universal consensus”.<sup>15</sup>

193. In the field of human rights the country has ratified numerous international instruments.

194. At the universal level Costa Rica has signed the Universal Declaration of Human Rights, adopted and proclaimed by the United Nations General Assembly in its resolution 217 A (III) of 10 December 1948.

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<sup>15</sup> Constitution, art. 7.

195. Other international instruments signed and ratified by Costa Rica are the international human rights covenants adopted by the United Nations General Assembly in resolution 2200 of 16 December 1966, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the International Covenant on Civil and Political Rights, which were ratified on 11 December 1968 and published in *La Gaceta* No. 288 of 17 December 1968. In addition, by Act No. 7041 of 8 July 1986, published in *La Gaceta* No. 148 of 7 July 1986, Costa Rica ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid, and by Act No. 7351 of 11 November 1993, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed in New York on 4 February 1985, while on 25 November 2005 the Optional Protocol to the Convention against Torture was approved by Act No. 8459.

196. The country has also ratified the following instruments that protect human dignity: the Convention on the Prevention and Punishment of the Crime of Genocide, ratified by Act No. 1205 of 4 December 1950, published in *La Gaceta* No. 226 of 7 October 1950; the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations on 18 December 1979, ratified by Act No. 6968 of 2 October 1984, published in *La Gaceta* No. 8 of 11 January 1985; and the Convention on the Rights of the Child, ratified by Act No. 7184 of 12 July 1990, published in *La Gaceta* No. 149 of 9 August 1990.

197. The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by Act No. 3844 of 5 January 1967, published in *La Gaceta* No. 5 of 7 January 1967; Act No. 3170 of 12 August 1963, published in *La Gaceta* No. 187 of 21 August 1963, approved accession to the Convention against Discrimination in Education, signed in Paris on 14 December 1960; Act No. 4463 of 10 November 1969, published in *La Gaceta* No. 259 of 14 November 1969, adopted the Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which might arise out of the Convention against Discrimination in Education.

198. Where regional instruments are concerned, Costa Rica signed the American Convention on Human Rights, known as the Pact of San José, Costa Rica, on the day of its opening for signature, 22 November 1969. That instrument was approved by the Legislative Assembly by Act No. 4534 of 23 February 1970, published in *La Gaceta* No. 62 of 14 March 1970, ratified on 8 April 1970 and deposited on 8 April 1970.

199. Likewise, by Order No. 7060-RE, published in *La Gaceta* No. 114 of 16 June 1977 and submitted to the General Secretariat of the Organization of American States on 2 July 1980, Costa Rica declared its unconditional recognition of the competence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

200. The scope of international legal instruments on human rights within the legal order has been defined by judgements Nos. 3435-92, 5759-93 and 2323-95 of the Constitutional Chamber, which has decreed - in particular in No. 2323-95 - that "where international human rights instruments in force in the country are concerned, the provisions of article 7 of the Constitution do not apply, since article 48 of the Constitution contains a special provision relating to human rights giving them legal force at the same level as the Constitution. Indeed, as has been

recognized in the jurisprudence of the Constitutional Chamber, human rights instruments in force in Costa Rica are not only equal in status to the Constitution but also, insofar as they grant greater rights or guarantees to persons, prevail over the Constitution”.

201. What is striking about these legal rulings is that they admit features of the naturalistic conception of law, insofar as even where obligations are established that are not yet binding within the State, they can be invoked as part of the Costa Rican legal order since they are norms belonging to the sphere of good faith and universal coexistence among States.

202. This legal hierarchy of treaties has three basic legal consequences:

(a) From the moment of entry into force of a convention, any law or practice contravening it will be automatically repealed;

(b) Any rule or practical measure subsequently adopted that is contrary to the provisions of a convention will be null and void, even if adopted by the legislature and having the status of law;

(c) Any judicial or administrative remedies available in the national legal system may be invoked to redress any violation of the provisions of this international instrument. In this context it should be emphasized that one may bring an action challenging the constitutionality of any rule or measure that contravenes the provisions of the convention. Furthermore, it is possible to file an application for *amparo* or habeas corpus in the Constitutional Chamber of the Supreme Court to halt and remedy any violation of the provisions of this international instrument.

**(c) Legislation on behalf of the indigenous peoples**

203. With regard to laws governing the rights of the indigenous peoples, Costa Rica has incorporated into its legislation the ILO Convention on Indigenous and Tribal Peoples in Independent Countries (No. 169), which it ratified by Act No. 7316 of 16 October 1992.

204. By decision No. 06229-99 of 11 August 1999, the Constitutional Chamber decreed that ILO Convention No. 169 had constitutional rank. That statement is important because the thrust of the particular provisions concerning indigenous affairs contained therein is to guarantee the indigenous peoples the right to define their own development independently and compel the State to respect their traditions and customs. Furthermore, since this is an international convention, any violation becomes a violation of the constitutional order, which is why it is the Constitutional Chamber that deals with such cases.<sup>16</sup>

205. By Act No. 7549 of 22 September 1995, published in *La Gaceta* No. 204 of 27 October 1995, Costa Rica also approved the Convention setting up the Indigenous Peoples' Development Fund for Latin America and the Caribbean.

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<sup>16</sup> Constitutional Chamber decision No. 06229-99 of 2.30 p.m., 11 August 1999.

206. The most important legal instrument in this field is the Indigenous Act, No. 6172 of 29 November 1977, published in *La Gaceta* No. 240 of 20 December 1977. This law covers such aspects as who count as indigenous people, the legal status of indigenous communities, ownership of reservations and their inclusion in the Public Register, the organizational structure of indigenous communities, expropriation and compensation procedures, means to prevent invasions of lands, expropriation funds, the internal administration of commercial premises, the exploitation of natural resources and the priority accorded to the Act.

207. The Indigenous Act is important because it was at the time a milestone in the history of the Latin American indigenous movement inasmuch as it constituted an advanced set of rules protecting indigenous rights. The Act recognized not only the right of peoples to their lands (art. 5) but also their right to their identity (art. 1) and to their own organization (art. 4), as well as a series of other rights not expressly recognized elsewhere in domestic law.

### **C. Constitutional remedies**

#### **(a) Constitutional Chamber**

208. For years it was the task of the Supreme Court, as the highest court of the judiciary, to ensure the constitutionality of the law. The adoption of Act No. 7128 of 15 June 1989, the Constitutional Jurisdiction Act, radically reformed the treatment of Costa Rican constitutional law by creating a special new chamber and a new approach to interpretation that concerned itself with values, principles and ethical content over and above the letter of the law.

209. In article 2 defining the chamber's competence, the Act states that it can apply not only the rights enshrined in the Constitution but also "those recognized under international law in force in Costa Rica".

210. The Constitutional Jurisdiction Act, by creating a special jurisdiction, modified the system of constitutional justice in force until then, thereby bringing about the greatest change in the law of the land in the past 20 years, a change that has been described as "the real revolution in the legal world".<sup>17</sup>

#### **(b) Constitutional remedies**

211. The Constitutional Chamber has the primary function of ensuring the protection of the fundamental rights embodied in the Constitution and the effective application of its precepts. It is responsible for protecting and preserving the principle of the supremacy of the Constitution, which provides that no rule, treaty, regulation or law in Costa Rica's legal system may be more important than the Constitution itself. This principle is defended mainly through the remedies described below.

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<sup>17</sup> Rivera Sibaja, Gustavo, *Ley de Jurisdicción Constitucional y Creación de la Sala Constitucional* (The Constitutional Jurisdiction Act and the creation of the Constitutional Chamber), Editec (Colección Leyes 29), San José, Costa Rica, 1997, p. 5.

212. To guarantee the implementation of their rights article 48 of the Constitution provides that “every person has the right to the remedy of habeas corpus and *amparo* to re-establish the enjoyment of rights conferred by this Constitution, as well as those of a fundamental nature established in international human rights instruments applicable in the Republic”.

213. During 2004, the percentage breakdown of cases heard by the Constitutional Chamber was as follows: 11.9 per cent, habeas corpus; 2.5 per cent, actions for unconstitutionality; 85.2 per cent, remedies of *amparo*; and 0.4 per cent, other types of cases.

214. For the period 2000-2004, the number of cases heard by the various chambers of the judiciary each year was as follows:

Year	Chamber I	Chamber II	Chamber III	Constitutional Chamber
2000				10 808
2001				12 752
2002				13 431
2003				13 301
2004				13 420

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

215. From 1998 to 2004 the monthly average number of rulings handed down by the Constitutional Chamber was as follows:

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

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

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

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

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

**(i) Habeas corpus**

217. The remedy of habeas corpus is based on article 48 of the Constitution, which guarantees personal freedom and integrity; this means that nobody may be deprived, without just cause, of their freedom of movement and residence or of the right to enter and leave the country. Any person may bring habeas corpus proceedings without any need for a legal adviser or representative. Any person may bring such proceedings on their own behalf or on behalf of another person.

218. The remedy of habeas corpus has a dual status. It constitutes a procedural guarantee, by providing a procedural means of protecting the right to physical freedom and the right of movement; and it is also a fundamental right inherent in the human person. This dual status is reinforced by the provisions of article 7, paragraph 6, of the American Convention on Human Rights which, in addition to establishing this procedural remedy, stipulates that it may not be restricted or abolished in States parties whose laws provide that anyone believing themselves to be threatened with deprivation of their liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat. In other words, a State in which the Convention is in force may not impair the conditions under which habeas corpus is regulated in its legislation and must constantly seek to expand the scope of the protection and never allow it to slip backwards.

219. Although this remedy was originally intended to protect the right of physical freedom and the right to freedom of movement, doctrine and comparative legislation have in fact expanded its scope by distinguishing between the following types of habeas corpus: (a) restorative: the purpose of this type of remedy is to restore the freedom of citizens who have been unlawfully deprived of their liberty owing to a failure to proceed in accordance with domestic legislation; (b) preventive: here the purpose is to prevent threats of deprivation of liberty, including arbitrary threats; (c) corrective: here the purpose is usually to change a prisoner's place of detention, either because it is not suited to the nature of the crime, or because the detainee is being subjected to improper treatment; (d) injunctive: here the purpose is to put an end to unwarranted interference with an individual by the judicial or administrative authorities, for example in restricting the person's access to public or private premises.

220. In Costa Rica's legislation, in addition to being expressly recognized in article 48 of the Constitution, habeas corpus is designed, according to article 15 of the Constitutional Jurisdiction Act, to guarantee personal freedom and integrity against acts or omissions of authorities of any kind, including the judicial authorities, that might constitute threats to personal freedom or unlawful disruption or restriction of the right to move around the country or of the right to freedom of residence, entry and exit.

221. Thus the breadth of the legislation gives the Constitutional Chamber full oversight of any act or omission which, currently or in the future, may restrict or threaten to restrict any protected rights. It has been argued in this connection that habeas corpus has evolved in Costa Rica from a means of protecting the freedom of movement (restorative habeas corpus) to a guarantee of the principle of criminal defence, which now also functions as a means of preventing possible violations of liberty (preventive habeas corpus).

222. The international human rights instruments have steadily gained ground in Costa Rica's legal order. In one case the courts admitted an application for corrective habeas corpus alleging a violation of provisions of international law applicable in the domestic jurisdiction.

Decision No. 199-89 upheld an appeal alleging violation - inter alia - of article 8 (c) of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

223. It was found that "if the person was not being held as a convicted criminal or as a defendant in a criminal trial, but merely as the subject of a deportation order whose detention had been ordered by the Migration and Aliens Office in order to ensure compliance, ... then detention in a prison facility intended for charged defendants and in practice also used to house convicted criminals violates the rules invoked by the applicant; the fact that there are no special detention centres is not a valid excuse, and even less so the claim that special centres would not be any more appropriate for such detainees, for the case concerned fundamental rights that may not be violated for any reason and it is obvious that the detention of persons who are not even on trial must be effected under conditions that are at the very least better than the conditions of detention for those who are".

224. The Constitutional Chamber has recognized the principle that such instruments shall be self-executing where either the implementation rules contained therein do not require any further development in domestic law or, if such development is required, domestic law provides for the institutional and procedural arrangements (organs and procedures) necessary for the exercise of the right in question.

225. Act No. 7128 of 18 August 1989 amended article 48 of the Constitution to read: "Everyone shall have the right to bring habeas corpus proceedings to protect their personal freedom and integrity and to bring *amparo* proceedings to maintain or re-establish their enjoyment of the other rights embodied in this Constitution and of the fundamental rights recognized in the international human rights instruments in force in the Republic. Both these remedies shall be within the jurisdiction of the Chamber referred to in article 10."

226. Habeas corpus proceedings are heard by the Constitutional Chamber of the Supreme Court, which is made up of seven tenured judges (articles 10 and 48 and its transitional provision). The system is a concentrated one, the cases being decided in sole instance. Decisions are not subject to appeal, except that they may be supplemented or clarified within three days on the application of a party, or at any time on the Court's own motion. An appeal for annulment is admissible in cases where it is necessary to correct serious errors in the assessment of the facts that might be detrimental to the parties involved.

227. These proceedings may be brought by any person by petition, telegram or any other means of written communication; they are free of charge and do not require authentication.

228. The proceedings are supervised by the president or by an examining magistrate designated by the president. The president's powers include the power established in article 21, paragraphs 2 and 3, of the Constitutional Jurisdiction Act, which authorizes them to order the applicant to appear, or have an inspection made if the circumstances are thought to warrant one, either before ruling on the application or, if warranted, in order to execute the ruling, whether the application is found admissible or inadmissible. They may also order, at any time, any interim measures of protection they may deem necessary.

229. Under article 9, paragraph 3, of the Act, these proceedings may not be admitted on an interlocutory basis, i.e. without first hearing the arguments of the defendant. This is because the admission of an application of this kind has financial and legal consequences that might otherwise result in a violation of due process.

230. Once proceedings have been initiated they may not be discontinued. Case law holds that in respect of habeas corpus there is no rule authorizing withdrawal; this is a logical position for the law to take, since the mechanism is designed to protect the most important rights in our legal system - the rights of freedom of movement, physical and moral integrity, and personal dignity.

231. Since what is at stake here is the protection of rights that are highly prized by society or of great importance for social harmony, the legal system denies the injured party the option of deciding whether the offender shall be punished. Thus article 8 of the Constitutional Jurisdiction Act provides that, once an application has been made to the Constitutional Chamber, the Chamber must act automatically “and may not invoke inaction by the parties to delay the proceedings”. It is in the public interest to ensure that, having been asked to intervene, the Chamber is not then beholden to those involved in the constitutional process and that even against their will it may proceed to a substantive decision, which is the whole purpose of actions of this kind (Constitutional Chamber decision No. 3867-91).

232. The Constitutional Jurisdiction Act does not allow habeas corpus proceedings to be brought against actions by subjects of private law, unlike *amparo* proceedings, which are also regulated in the Act (arts. 57-65). This is because the nature of the habeas corpus remedy is to protect personal freedom and integrity from acts and omissions by authorities of any kind, even judicial, which might violate or impair them: it is a recourse against abuse of the enforcement powers of the organs of State.

233. Regarding the scope of habeas corpus, according to Constitutional Chamber decision No. 0878-97, “the remedy of habeas corpus is not a prohibitive kind of measure aimed solely at restoring the applicant’s freedom, but is a genuine constitutional process whose purpose is not only to safeguard the rights of personal freedom and integrity in the future, but also to establish violations in the past and to require the authority responsible for any such violation to compensate the victim for damages and pay the applicant’s costs”.

234. The examining magistrate requests a report from the authority stated to be in breach. The report must be submitted within the time limit set by the magistrate, which may not exceed three days. At the same time the magistrate may order the suspension of any action against the applicant that might result in non-compliance with the Chamber’s ultimate decision.

235. In the case of persons who have been arrested and brought before a court but who are not the subject of a detention order, the examining magistrate may suspend consideration of the application for up to 48 hours. At the same time the magistrate shall instruct the court to proceed with the relevant preliminary investigation and report on the outcome, stating whether it has issued a detention order.

236. Any restriction on physical liberty ordered by a competent authority that exceeds the time limits specified in articles 37 and 44 of the Constitution must be imposed through a properly reasoned decision, except in the case of orders to appear or arrest warrants.

237. The examining magistrate may also order the applicant to appear, or have an inspection made if the circumstances are thought to warrant one, either before ruling on the application or, if warranted, in order to execute the ruling, whether the application is found admissible or inadmissible. Interim measures to protect the rights in question may also be ordered.

238. The report of the authority alleged to be in breach must contain a clear explanation of the reasons and legal principles on which its decision was based and of any evidence against the applicant. If the report is not submitted within the required time, the facts invoked to justify the application may be deemed to be established and, if appropriate in law, the Chamber shall declare the application admissible within five days, unless it is found necessary to gather evidence.

239. A judgement upholding an application for habeas corpus entails annulment of the measure challenged in the application and restitution of the claimant's full enjoyment of the right or freedom impaired or violated, and shall order the responsible authority to make reparation for the harm caused, damages being paid through an enforcement procedure in the administrative court, in accordance with the Constitutional Jurisdiction Act (arts. 25 and 26, para. 2).

240. Failure by the authorities in question to comply with the injunctions of the Chamber will incur criminal liability (arts. 71 and 72).

241. In stipulating that habeas corpus may not be invoked against actions by subjects of private law, the Constitution is not making any discrimination, since there exists also the remedy of *amparo*, which is broader in scope. Habeas corpus, within a system such as Costa Rica's, based on the rule of law, protects personal freedom and integrity when these are threatened by acts or omissions by any authority which might violate or impair them. If the Chamber determines that it is not an issue of habeas corpus but rather of *amparo*, it will say so and proceed under the rules of *amparo*.

**(ii) *Amparo***

242. The remedy of *amparo* is also based on article 48 of the Constitution, which establishes the right of any person to use the remedy to maintain or re-establish their enjoyment of the fundamental rights embodied in the Constitution, other than the right to personal freedom and integrity, which is protected by habeas corpus.

243. As with habeas corpus, applications for *amparo* do not require the services of a lawyer. *Amparo* is part of what the Italian jurist Mauro Cappelletti calls the "constitutional jurisdiction of freedom", being a procedural instrument designed specifically to protect such rights.

244. Under article 25 of the American Convention on Human Rights, the right to "effective recourse" has become a primary obligation for the States parties, requiring them to establish legal remedies meeting those criteria within their domestic systems. Ordinary jurisdictions such as the administrative jurisdiction do not suffice nowadays. The injustices that may be done to an individual require other, speedier procedures, even parallel ones, to counter such violations, and the remedy of *amparo* is the most appropriate means by which to do so.

245. *Amparo* may be invoked against any provision or decision and, in general, against any action, omission or simple physical act not based on a valid administrative disposition, committed by public servants or public bodies, and which has violated, violates or threatens to violate any of those rights, as well as against arbitrary actions and acts or omissions based on wrongly interpreted or improperly applied regulations.

246. *Amparo* is also used to safeguard the human rights recognized in international law in force in Costa Rica. This is an important innovation, for there are fundamental rights enshrined in international treaties which are not expressly recognized in our Constitution, such as the right of correction or reply.

247. Under article 57 of the Constitutional Jurisdiction Act, an action for *amparo* may also be brought against “acts or omissions by subjects of private law when they are acting or should be acting in the exercise of public functions or powers or when they find themselves *de jure* or *de facto* in a position of power against which the ordinary legal remedies are clearly insufficient or too slow to guarantee the fundamental rights and freedoms referred to in article 2 (a) of the Act”.

248. These conditions are difficult to pin down, which means *amparo* is rarely used in this way. The Constitutional Chamber has tended to declare it inadmissible in respect of, *inter alia*, breaches of contract, requests to wind up a cooperative, where an injunction has been issued, claims in respect of labour rights, non-compliance with a joint custody order, or where other administrative remedies are available; on the other hand, it is admissible in respect of denial of membership of a cooperative, a landlord cutting off a tenant’s water supply, etc.

249. Unlike ordinary *amparo*, the remedy will not be pursued if the individual’s action is correctly based on statute (Constitutional Jurisdiction Act, art. 57) even if the law in question is unconstitutional.

250. Where *amparo* is used against public authorities, article 30 of the Constitutional Jurisdiction Act states that the remedy will not apply in the following cases: (a) against laws and other normative provisions, except where these are challenged in connection with actions by which they are applied to individuals or where the provisions are self-executing, i.e. they are immediately binding solely by virtue of their promulgation, with no need for any other rules or acts to develop them or render them applicable to the complainant; (b) against decisions and jurisdictional rulings by the judiciary; (c) against acts by the administrative authorities pursuant to court rulings, provided such acts are carried out in accordance with the court’s orders; (d) where the act or omission was legitimately accepted by the aggrieved person; (e) against acts or decisions of the Supreme Electoral Tribunal in electoral matters.

251. Given the broad scope of the legislation, it would be difficult to find cases in which *amparo* proceedings may not be brought, except for cases expressly excluded by law. However, its scope is being delimited by legal precedents. For example, case law has found that, while it is true that any misconduct could give rise to a problem of a constitutional nature precisely because the Constitution is the supreme law from which the entire subconstitutional juridical system is derived, direct violation of the Constitution is in fact required for use of this remedy. Other violations, even indirect ones, should be dealt with by the courts of ordinary jurisdiction.

252. Under article 33 of the Constitutional Jurisdiction Act, an action for *amparo* may be brought by anybody either on their own behalf or on behalf of another person. However, not all violations of the Constitution, no matter how serious, justify *amparo* proceedings. There must be a violation of a fundamental right and not merely an interest in guaranteeing legality in the abstract. For example, violation of a statutory provision of the Constitution does not authorize an individual to seek to sanction administrative actions in the manner of a public prosecutor.

253. The right to bring an action is not subject to any condition, and even minors are entitled to do so. The jurisprudence of the Chamber does not allow *amparo* applications from any public bodies except municipalities.

254. The Constitutional Chamber of the Supreme Court is the competent court to try applications for *amparo*. The application should state the act or omission providing the grounds for the action, the right allegedly violated or threatened, the name of the public servant or body responsible for the threat or injury, and the evidence supporting the allegation. There is no need to cite the constitutional rule which has been infringed provided that the violated right is clearly specified, except where an international instrument is invoked. If the identity of the public servant is unknown, the proceedings are brought against the head of the authority.

255. Any third parties who derive subjective rights from the rule or act providing the grounds for the action will also be a party to the proceedings. In addition, any person having a legitimate interest in the outcome of the action may appear and be heard as an additional party.

256. This remedy is not subject to any other formalities and does not require authentication. The proceedings may be brought by petition, telegram or other written means of communication. If the grounds for the application cannot be established, or if it does not meet the stipulated requirements, the applicant will be advised to correct it within three days. If they do not do so the action is summarily dismissed.

257. *Amparo* proceedings are heard by the President of the Chamber or any judge they may designate - in strict rotation - and are handled on a priority basis, which means any other case of a different kind, except habeas corpus, may be postponed.

258. An *amparo* action does not require any prior recourse and certainly not the exhaustion of administrative remedies. In Costa Rica, *amparo* is a direct action not necessitating any previous pending case, either judicial or administrative.

259. The mere lodging of *amparo* proceedings suspends the effect on the applicant of the laws and other provisions challenged, as well as the effects of the specific acts which are challenged. Suspension is automatic and is notified immediately by the fastest possible means to the agency or official against which or whom the proceedings are brought.

260. However, in exceptionally serious cases the Chamber may order the application or the continued application of such legislation, at the request of the government department the defendant official or agency belongs to, or indeed *proprio motu*, if suspension might cause or risk specific and imminent harm to the public interest greater than the harm which continued

application would cause to the injured party and subject to any conditions which the Chamber may deem appropriate to protect the injured party's rights and freedoms and prevent any impairment of the effects of an eventual finding in their favour.

261. The decision admitting the *amparo* proceedings accords the defendant authority a period of one to three days to submit its report, and may request the administrative file or documentation giving the background to the case. Such reports are considered sworn testimony; accordingly, any inaccuracy or falsehood will render the official concerned liable to punishment for perjury or false witness, depending on the nature of the facts contained in the report.

262. *Amparo* proceedings may serve as a prior pending case (Constitutional Jurisdiction Act, art. 75) for the purpose of seeking a declaration of unconstitutionality when the abolition of a particular rule is necessary for the *amparo* action to be either accepted or dismissed.

263. Apart from this, the Chamber must bar the action if intermediate norms are being challenged at the same time as measures of application or in any case where it considers that the act challenged may be based on a subconstitutional norm (Constitutional Jurisdiction Act, art. 48).

264. If the report shows that the challenge is sound, the application will be declared admissible. If not, the Chamber may immediately ask for specific information, which must be provided within three days, along with any necessary evidence; a hearing may be granted to the applicant and the complainant, if they are not the same person, and to the public servant or representative, and a complete written record shall be kept. Before handing down its decision, the Chamber may order any other steps to be followed.

265. "Any ruling in favour of the applicant shall in principle order compensation for the harm caused and payment of the costs of the proceedings; payment shall be made through an enforcement procedure in the administrative court. It should be noted that the verdict is given without full trial and without the possibility of appeal" (Constitutional Jurisdiction Act, art. 51).

266. A verdict against the applicant cannot award damages for the stay of effects, but may award costs if the application is deemed vexatious.

267. The Act does not set a time limit for making a decision in *amparo* cases. However, the general principles of automatic action and promptness apply (art. 8), in addition to the fact that these cases are to be handled on a fast-track basis, following habeas corpus cases in order of priority (art. 39).

268. Once the ruling becomes final, the responsible agency or official must comply forthwith. If this is not done within 48 hours, the Chamber addresses itself to the superiors of the responsible party and requests them to ensure compliance, at the same time instituting proceedings against the person or persons responsible. After a further 48 hours the Chamber will take proceedings against the superior who has failed to comply with its request, except in the case of officials with immunity, in which case the Public Prosecutor is requested to take appropriate action.

269. There is no appeal against the Chamber's decisions, without prejudice to claims for liability where appropriate. The Chamber's judgements may be elucidated or supplemented,

either at the request of a party if the request is made by the third day, or of its own motion at any time, including in enforcement proceedings to the extent necessary to ensure full compliance with the sentence.

270. Under article 35 of the Act, “an *amparo* action may be brought at any time as long as the violation, threat, disruption or impairment persists and up to two months after its direct effects on the injured party have totally ceased. However, in the case of purely property rights or other rights that can be set aside by legitimate consent, the action must be brought within two months of the day on which the injured party was reliably informed of the violation and was legally able to bring the action”.

271. Thus as a general rule, there are no prescription or extinction limits for an *amparo* action, as long as the violation, threat, disruption or impairment of the fundamental right persists. This rule applies to whatever can be called, in the language of criminal law, “injurious acts with continuing effects”.

272. Concerning acts with immediate effect, the time limit for lodging an action is two months after its direct effects on the complainant have totally ceased. This covers cases of legitimate consent where the injured party might allow the two-month time limit from cessation of the direct effects to elapse without challenging the act or omission by way of *amparo*.

273. Prescription of the *amparo* remedy where it is not sought in time is no impediment to a challenge to the act or procedure by some other means, if permitted in law (Constitutional Jurisdiction Act, art. 36).

### **(iii) Remedy of *amparo* against subjects of private law**

274. As an Italian jurist, Norberto Bobbio, has commented, “There is little point in an individual being free in the State if he is still not free in society. There is little point in the State being a constitutional State if its society is despotic. There is little point in an individual being politically free if he is not socially free ... The current problem of freedom cannot be limited solely to the problem of freedom vis-à-vis the State and in the State, for it affects the very organization of the whole of civil society and has an impact not on the citizen as such, i.e. on the public individual, but on the total individual as a social being.”<sup>18</sup>

275. This is the argument from which the whole justification of the constitutional guarantee is derived. In modern times it is essential to have legal procedures designed to provide effective safeguards of the rights and freedoms accorded to the individual. In modern democratic systems judicial remedies for protection against and correction of possible violations by subjects of private law are an integral part of the systems themselves.

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<sup>18</sup> Hernandez Valle, Rubén, *La tutela de los derechos fundamentales* (Guaranteeing fundamental rights), Editorial Juricentro, San José, Costa Rica, 1990, p. 107.

276. An *amparo* action against an individual is not a remedy designed to resolve every kind of conflict which may arise in private affairs, and it is certainly not conceived as a substitute for the jurisdiction of the ordinary courts. Sometimes a case requires further discussion or evidence, and it is the ordinary courts which should assess the facts with due deliberation and balance.

277. Ordinary *amparo* actions present no major problems in identifying the fundamental rights to be defended (i.e. constitutional rights and human rights laid down in international instruments in force in Costa Rica); however, an *amparo* action brought against an individual is more complicated with regard to rights expressly conferred by law in respect of authorities (for example, freedom of petition), for there is serious doubt about extending such fundamental rights to private relationships.

278. In our country legal proceedings are slow beyond the limits of logic and reason. In some cases they take more than five years. And such cases are not exceptions but rather the rule. By law, *amparo* proceedings may be brought when "... the ordinary legal remedies are clearly insufficient or too slow to guarantee the fundamental rights and freedoms" (Constitutional Jurisdiction Act, art. 57).

279. Once the action is admitted, it is communicated to the person or entity responsible for the injury, threat or omission, giving a time limit of three days to submit evidence in defence, by the swiftest possible written means. This time limit may be extended if it is insufficient for reasons of distance.

280. The decision granting *amparo* shall declare the act or omission giving rise to the action unlawful and shall order the rule in question to be applied, as appropriate in each case and within a certain time as set by the decision itself; it shall also order the person or entity responsible to pay damages and costs.

281. In the case of an omission, the granting of *amparo* will compel the guilty party to respect the right in question. Damages and costs shall be paid through an enforcement procedure in the administrative court.

282. If by the time *amparo* is granted the effects of the challenged act have ceased, or if the act has been carried out in such a way that it is impossible to re-establish the victim's enjoyment of their right, the decision shall warn the offender not to commit the same or similar acts or omissions as those on which the finding was based and shall in principle order payment of damages and costs.

283. It should be noted that the remedy of *amparo* does not exist to solve problems of legal validity or effect, which should be dealt with by other procedures; otherwise the fundamental nature of the remedy would be perverted and it would become a test of legality rather than constitutionality. Thus, *amparo* proceedings may be brought only in respect of the actions of an authority, official or employee which violate or threaten to violate the rights embodied in the Constitution (decision of the First Chamber, 31 January 1986).

**(c) Legislative and operational framework of the Office of the Ombudsman**

284. The Office of the Ombudsman was first established by Act No. 7319 of November 1992, and subsequently by the Ombudsman Act, as supplemented by Decree No. 22,266, which establishes the Regulations governing the Office of the Ombudsman.<sup>19</sup>

285. The competence of the Office is governed by article 12 of the Ombudsman Act, which states: “Without prejudice to the constitutional and legal powers of the jurisdictional organs of the judiciary, the Office of the Ombudsman may, either of its own motion or at the request of a party, initiate any enquiry to elucidate matters arising in the public sector. However, it may not intervene in any way in respect of decisions of the Supreme Electoral Tribunal on electoral matters.”

286. Action by the Office of the Ombudsman may not be substituted for the acts, material proceedings or omissions of an administrative authority in the public sector, its powers being to effectively ensure their legality. The Office is competent to protect human and civil rights, to handle complaints from the general public about the public sector and to protect community interests in matters of concern to the community (Ombudsman Act, art. 14).

287. In its supervisory role the Office does not act only at the request of a party, i.e. when a complaint is lodged. It also has power to carry out in situ studies in a particular area, and has made studies of Costa Rica’s prison system and health system and the situation of the indigenous peoples.

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<sup>19</sup> Ombudsman Act, published in *La Gaceta* No. 155 of 17 August 1994.