



## International Covenant on Civil and Political Rights

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### Human Rights Committee

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

1. The Human Rights Committee considered the sixth periodic report of Costa Rica (CCPR/C/CRI/6) at its 3248th and 3249th meetings (CCPR/C/SR.3248 and 3249), held on 16 and 17 March 2016. At its 3259th meeting, held on 24 March 2016, the Committee adopted the following concluding observations.

##### A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of Costa Rica and the information contained therein. It is grateful for the opportunity to pursue its constructive dialogue with the high-level delegation of the State party on the steps that Costa Rica took during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for its written replies to the list of issues (CCPR/C/CRI/Q/6/Add.1), which were supplemented by the oral replies provided by the delegation.

##### B. Positive aspects

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

(a) The amendment in August 2015 of article 1 of the Constitution to recognize the multi-ethnic and pluricultural character of the State party;

(b) The adoption of the Trafficking in Persons Act (No. 9095) on 26 October 2012 and of its implementing legislation on 9 September 2015;

(c) The adoption of the Migration and Foreign Nationals Act (No. 8764) on 19 August 2009 and of the Regulations governing Refugees (Executive Decree No. 36831) on 28 November 2011;

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\* Reissued for technical reasons on 27 June 2016.

\*\* Adopted by the Committee at its 116th session (7-31 March 2016).



(d) The adoption of the national policy for a society free from racism, racial discrimination and xenophobia and its associated action plan on 20 November 2014.

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

(a) The International Convention for the Protection of All Persons from Enforced Disappearance, on 16 February 2012;

(b) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 1 October 2008;

(c) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 14 January 2014;

(d) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 23 September 2014.

## C. Principal subjects of concern and recommendations

### Domestic application of the Covenant

5. While the Committee welcomes the information provided on the implementation of the rights established under the Covenant, it is concerned that in some cases the Covenant is not applied to the fullest extent possible. The Committee also welcomes the establishment of the Inter-Institutional Commission for the Monitoring and Implementation of International Human Rights Obligations; however, it is concerned that, to date, the Commission's activities have been limited and that the standing body for consultation with civil society is not fully operational (art. 2).

**6. The State party should disseminate the content of the Covenant among judges, lawyers and the general public and train judges in the Covenant's applicability in domestic law. The State party should ensure that the Inter-Institutional Commission for the Monitoring and Implementation of International Human Rights Obligations has the means, including the necessary financial, human and material resources, to carry out its mandate effectively and can guarantee that the standing body for consultation with civil society is fully operational.**

### Office of the Ombudsman

7. Notwithstanding the State party's efforts to allocate adequate funding to the Office of the Ombudsman, the Committee is concerned that these resources remain insufficient to ensure that Office can function effectively. It is also concerned that the process for selecting the Deputy Ombudsman is not transparent (art. 2).

**8. The State party should ensure that the Office of the Ombudsman has the financial, human and material resources that it needs to carry out its functions effectively and that the process for selecting the Deputy Ombudsman is transparent, with a view to guaranteeing the full independence and effectiveness of the Office in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).**

### Non-discrimination

9. Despite the State party's efforts to combat discrimination, the Committee is concerned about the persistent structural discrimination against indigenous peoples and persons of African descent, which hinders their access to education, employment and housing. The Committee is also concerned at the continued stigmatization of migrants,

asylum seekers and refugees, and discrimination against persons with disabilities. It is further concerned by the lack of a general legal framework on non-discrimination prohibiting discrimination on all the grounds enumerated in the Covenant (arts. 2 and 26).

**10. The State party should step up its efforts to dispel stereotypes of and eliminate discrimination against indigenous peoples, persons of African descent, migrants, asylum seekers and refugees, and persons with disabilities by carrying out awareness-raising campaigns to promote tolerance and respect for diversity, among other actions. It should expedite the adoption of an act on the prevention and punishment of all forms of discrimination and should ensure that it contains a general prohibition of discrimination on all the grounds enumerated in the Covenant and includes provisions allowing for reparation through effective and appropriate legal remedies in cases of discrimination, racism or xenophobia.**

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

11. The Committee notes the various steps taken to combat discrimination on grounds of sexual orientation and gender identity. It is nevertheless concerned at the lack of a policy that comprehensively addresses this type of discrimination. It is also concerned at reports of cases of abuse and violence, including by officials, against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and regrets that the State party did not provide any information on the relevant investigations (arts. 2, 7 and 26).

**12. The State party should take tangible steps to put an end to discrimination against and the social stigmatization of LGBTI persons in order to send an unequivocal message that no form of harassment, discrimination or violence on grounds of sexual orientation or gender identity will be tolerated. All cases of violence should be investigated and the perpetrators brought to justice and punished appropriately.**

#### **Discrimination against persons living with HIV/AIDS**

13. The Committee commends the State party on its efforts to combat discrimination against persons living with HIV/AIDS. However, it is concerned at reports that persons living with HIV/AIDS, especially those belonging to marginalized or disadvantaged groups such as persons deprived of their liberty, LGBTI persons and migrants in an irregular situation, are discriminated against and face problems finding employment and accessing health services and medical treatment (arts. 2 and 26).

**14. The State party should adopt specific measures to raise awareness of HIV/AIDS with a view to countering prejudice against and negative stereotypes of persons living with HIV/AIDS. It should step up its efforts to ensure that persons living with HIV/AIDS, particularly persons deprived of their liberty, LGBTI persons and migrants in an irregular situation, enjoy equal access to health care and medical treatment.**

#### **Gender equality**

15. Despite the measures adopted to promote gender equality, the Committee is concerned about the significant gender pay gap and the high rate of unemployment among women. It is further concerned that, despite the progress made through the implementation of a quota system, women — especially indigenous women and women of African descent — remain underrepresented in decision-making positions (art. 3).

**16. The State party should continue its efforts to eliminate the gender pay gap. The Committee encourages the State party to adopt temporary special measures in order**

**to continue increasing the participation of women in public affairs at all levels of government and in management roles in the private sector.**

#### **Abortion**

17. The Committee is concerned that abortion is permitted only when there is a serious risk to the pregnant woman's life or health and that the law does not permit other exceptions, such as in cases of rape, incest or fatal fetal impairment. It is also concerned that, even in the sole case where the law permits abortion, the procedure is not available in practice owing to the lack of protocols determining when the procedure should be carried out, thus prompting pregnant women to seek clandestine abortions which endanger their lives and health. The Committee is further concerned at reports that women have been subjected to violence at the hands of medical professionals who, in some cases, even denied them access to basic medical procedures (arts. 3, 6, 7 and 17).

18. **The State party should:**

**(a) Amend its legislation to introduce additional grounds for voluntary termination of pregnancy, such as when the pregnancy is the result of rape or incest or in cases of fatal fetal impairment, in order to ensure that legal obstacles do not lead women to resort to clandestine abortion, which endangers their lives and health;**

**(b) Adopt without delay a protocol that ensures access to abortion when there is a risk to the mother's life or health;**

**(c) Ensure that sexual and reproductive health services are accessible to all women and adolescent girls;**

**(d) Continue its efforts in favour of educational programmes at the formal level (in schools) and at the informal level (through the press and other communication media) on the importance of using contraceptives and on sexual and reproductive health rights and ensure their implementation;**

**(e) Ensure that cases of violence against women in health facilities are thoroughly investigated and that perpetrators are brought to justice and punished appropriately.**

#### **In vitro fertilization**

19. The Committee takes note of Executive Decree No. 39210 of 10 September 2015 authorizing use of the assisted reproduction technology of in vitro fertilization and embryo transfer, but is concerned that access to that technology continues to be obstructed by excessive restrictions (arts. 17 and 23).

20. **The State party should do all it can to pursue its stated intention to eliminate the ban on in vitro fertilization and to prevent excessive restrictions from being placed on the exercise of the rights set out in articles 17 and 23 of the Covenant by persons who wish to avail themselves of that technology.**

#### **Violence against women and children**

21. The Committee is concerned that, notwithstanding the legislative framework in place to protect women against violence, the phenomenon of violence against women in Costa Rica, including domestic violence and femicide, remains widespread. It is also concerned by the low number of convictions in connection with such acts of violence and the insufficient number of shelters for victims. The Committee is further concerned by the high level of violence against children (arts. 3, 6, 7 and 24).

22. **The State party should:**

(a) **Take the necessary steps to eliminate violence against women and should establish a system that ensures access to effective remedies, including rehabilitation for victims;**

(b) **Increase the number of shelters that are equipped with the necessary material and human resources;**

(c) **Adopt the necessary legislative and administrative measures to prevent and penalize all types of violence against women and children;**

(d) **Establish a system for reporting acts of violence against women and children, including maintaining a database so that cases can be analysed and appropriate measures taken.**

**Human trafficking**

23. While the Committee welcomes the adoption of the Trafficking in Persons Act (No. 9095), it is concerned by the low number of investigations conducted and convictions handed down for this crime. The Committee regrets that information was not provided on measures to identify victims and to ensure that victims have access to effective remedies (art. 8).

24. **The State party should make a greater effort to combat human trafficking, including by systematically and actively investigating and prosecuting those responsible and ensuring that persons found guilty of that crime are punished appropriately. The State party should also guarantee access to effective remedies for victims, including rehabilitation, and should gather comprehensive statistics with a view to strengthening anti-trafficking efforts.**

**Torture and ill-treatment**

25. The Committee is concerned that the State party did not provide any information on the investigation and punishment of human rights violations committed by officials at detention centres or by members of the police, especially those involving torture and ill-treatment (art. 7).

26. **The State party should ensure that reports of torture or ill-treatment are investigated fully and diligently so that perpetrators are brought to justice and, if found guilty, are punished with penalties proportionate to the gravity of the crime. It should also ensure that victims receive appropriate compensation.**

**Conditions of detention**

27. Despite the efforts deployed by the State party, the Committee is concerned by the continued high levels of overcrowding and poor conditions that are prevalent in places of detention, in particular at area F of the La Reforma detention centre. The Committee is also concerned by reports indicating excessive and prolonged use of pretrial detention (arts. 9 and 10).

28. **The State party should take effective steps to improve physical conditions at prisons, reduce current levels of overcrowding and adequately provide for the basic needs of all persons deprived of their liberty. In particular, the State party should adopt alternative measures to the deprivation of liberty and should ensure that pretrial detention is used solely as an exceptional measure and not for excessively long periods, in accordance with article 9 of the Covenant.**

**Living conditions at detention centres for migrants**

29. The Committee is concerned by information pointing to inadequate living conditions at the Temporary Detention Facility for Irregular Foreign Migrants, in particular overcrowding, poor sanitation and lack of health services. It is also concerned that the law does not limit the time that migrants may be held in detention (art. 10).

**30. The State party should step up efforts to improve living conditions at migrant detention centres, including with regard to appropriate sanitation and health services, with a view to fully complying with the provisions of article 10. The State should guarantee that migrants are held in administrative detention only when justified as a reasonable, necessary and proportionate measure, guaranteeing as well that such detention is used only as a measure of last resort and for the shortest time possible.**

**Judicial independence**

31. The Committee is concerned by the information provided by the delegation about the disciplinary proceedings initiated against a family court judge for having recognized a de facto union between two young people of the same sex, inasmuch as that represents a serious concern with regard to judicial independence (arts. 14 and 17).

**32. The State party should ensure and protect the independence and impartiality of judges and guarantee that judicial decisions are taken free from any type of pressure or interference.**

**Freedom of thought, conscience and religion**

33. The Committee notes with concern that not all religions enjoy the same benefits and privileges in the State party. The Committee reiterates its earlier concern about Catholic marriages being the only ones that are legally valid in Costa Rica, since that situation discriminates against persons who practise other religions (arts. 2, 18 and 26).

**34. The Committee reiterates its previous recommendation (CCPR/C/CRI/CO/5, para. 10) and urges the State party to take the necessary steps to bring its domestic legislation into line with articles 2, 18, 23 and 26 of the Covenant and to guarantee the principle of non-discrimination between religions.**

**Child labour**

35. The Committee is concerned by information received about child labour in the State party, although it recognizes the efforts made to provide assistance to children who live or work in the street (art. 24).

**36. The State party should continue to take effective measures to address the situation of children living in the streets and the exploitation of children in general, including by organizing public awareness campaigns about the rights of children.**

**Registration of births**

37. The Committee takes note of the State party's efforts to ensure that all births are registered, but regrets that a significant number of members of the Ngöbe-Bugle indigenous community still do not have a birth certificate and face hurdles in order to obtain one (arts. 24 and 27).

**38. The State party should continue its efforts to ensure that all children born in its territory are registered and receive an official birth certificate and it should conduct campaigns to register all adults not yet registered.**

### **Juvenile justice system**

39. While taking note of the efforts deployed to improve the juvenile justice system, the Committee is concerned by the lack of effective measures for the social reintegration of children in conflict with the law (art. 24).

40. **The State party should take steps to guarantee the effective implementation of rehabilitation programmes that promote the reintegration into society of children in conflict with the law.**

### **Rights of members of indigenous peoples**

41. The Committee is concerned that the draft legislation on the autonomous development of indigenous peoples has not yet been passed into law and that no legal arrangements have been put in place to ensure that indigenous peoples are consulted in advance on decisions that could have an impact on the exercise of their rights. Despite the legal recognition of indigenous peoples' right to the lands and territories that they have traditionally possessed or occupied, the Committee is concerned by the limited protection afforded for the exercise of those rights in practice and by the fact that some indigenous communities have been attacked as the result of land conflicts (art. 27).

42. **The State party should:**

(a) **Expedite the adoption of the draft legislation on the autonomous development of indigenous peoples;**

(b) **Ensure that indigenous peoples are effectively consulted in order to secure prior, informed and free consent before any measure is adopted or implemented that could have a substantial impact on their way of life and culture, in particular in relation to projects that could have an impact on their lands, territories or other resources, such as projects to explore for or exploit natural resources;**

(c) **Guarantee in practice the right of indigenous peoples to the lands and territories that they have traditionally possessed or occupied, including through such legal recognition and protection as may be necessary;**

(d) **Make the necessary legal means available so that indigenous peoples may recover inalienable lands previously granted to them under national legislation and provide appropriate protection, including with effective remedies, to indigenous peoples who have been the victim of attacks.**

### **Dissemination of information on the Covenant**

43. The State party should widely disseminate the Covenant and its two optional protocols, the text of the State party's sixth periodic report, the written replies to the list of issues prepared by the Committee and the present concluding observations, in order to further raise awareness of the rights established by the Covenant among judicial, legislative and administrative authorities, civil society, NGOs operating in the country and the general public.

44. In accordance with rule 71 (5) of the Committee's rules of procedure, the State party should provide, within one year following the adoption of the present concluding observations, relevant information on its implementation of the Committee's recommendations made in paragraphs 10 (non-discrimination), 18 (abortion) and 42 (rights of members of indigenous peoples) above.

45. The Committee requests the State party to submit its next periodic report by 31 March 2021 and to include in that report specific, up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. It further requests the State party, when preparing its next periodic report, to consult widely with civil society and the NGOs operating in the country. Pursuant to General Assembly resolution 68/268, the word limit for the report is 21,200 words.

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