

COSTA RICA

CERD 28TH No. 18 (A/9018) (1973)

134. The initial report of Costa Rica, submitted on 20 January 1970, was considered by the Committee at its third session. It was deemed unsatisfactory and additional information was requested. Such information was not received by the Committee. The second periodic report, dated 4 February 1972, was considered, jointly with a supplementary report submitted on 8 August 1972, at the seventh session (131st meeting).

135. Several members placed special emphasis on the information that the Government of Costa Rica had, with a view to establishing a legal basis for subsequent legislation giving effect to the provisions of the Convention, introduced an amendment to the Constitution, and that it had subsequently - when its new Penal Code was enacted - grouped together in a single section all provisions relating to human rights, including anti-discrimination provisions. It was noted that the supplementary report, which had been submitted prior to the adoption of general recommendation III by the Committee, contained the text of Decree No. 4015 of 1967, which prohibited export and import trade with South Africa until such time as the Government of that country abandoned its policies of racial discrimination. It has noted also that, according to the second periodic report, the few American Indians who preferred to remain in rural areas were duly protected by laws safeguarding all their rights.

136. The question was raised whether trade with Southern Rhodesia had also been prohibited. Doubt was expressed whether articles 371 and 372 of the Penal Code set fully the requirements of article 4 of the Convention. The precise ethnic connotation of the word "whites" - who, along with "persons of mixed ancestry", were said to comprise 97.65 per cent of the total population - called for some explanation; and the appropriateness of the term was questioned. Some members inquired whether American Indians were protected by laws that related particularly to them or by the general legislation applicable to the entire population, and whether the fact that they were given agricultural training meant that they did not have access to higher education.

137. In his reply, the representative of Costa Rica explained that no special measures had been taken to prohibit trade with Southern Rhodesia because Costa Rica had not had trade relations with that country; that the term "whites" referred to European immigrants and their descendants; that the relationship between Costa Rican legislation and article 4 of the Convention had not been the subject of juridical decisions because the occasion had never arisen to apply the relevant provisions; and that American Indians, who comprised 0.33 per cent of the total population, enjoyed the same rights as the rest of the population, including access to higher education, but that at the same time they received special protection. He assured the Committee that he would transmit the comments made at the meeting to his Government.

138. The Committee decided to consider the reports satisfactory, and expressed the hope that the questions put by its members would be answered in the third periodic report.

CERD 29th No. 18 (A/9618) (1974)

173. The third periodic report of Costa Rica was welcomed by the Committee for furnishing the information envisaged in the Committee's general recommendations III and IV. It was observed that the lack of information on judicial measures and court cases was attributable to the fact, stated in the report, that no individual had come before the courts to complain that provisions condemning racial discrimination in any form had been transgressed. Although the third periodic report contained no new information on measures adopted since the submission of the second periodic report, the Committee welcomed the fact that the third periodic report reaffirmed the continued effect of constitutional and legislative provisions already described in the earlier reports, that it amplified the information provided in the past concerning those provisions, and that it took due account of the observations made in the course of the Committee's consideration of the second periodic report.

174. The Committee welcomed heartily the information that, on 8 January 1974, the Government of the reporting State made a declaration in accordance with article 14, paragraph 1, of the Convention, recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals as provided for in that article. The Committee noted that Costa Rica had thus become the fourth State Party to make the declaration in question. It was asked, however, whether the Government of Costa Rica had also established or indicated a body within its national legal order with the competence described in paragraph 2 of article 14 of the Convention.

175. Extracts from a statement made by the Minister of Foreign Affairs of the reporting State before the Security Council, which were cited in the report, gave rise to some requests for clarification, particularly with respect to the part which read: "The present Government of Costa Rica introduced in 1970 a policy of universalization of our diplomatic relations." Inasmuch as the statement was introduced, in the report, by a remark indicating that it was cited in connection with the wish expressed by the Committee "to be informed of the international political position of countries which have signed the Convention, particularly their position vis-à-vis nations which have been condemned by the United Nations for such truly heinous discriminatory policies as apartheid", members of the Committee wished to know whether the policy of universalization of diplomatic relations had led to the establishment of diplomatic relations with the illegal régime in Southern Rhodesia or had led to the repeal of Legislative Decree No. 4015 of 1967, which prohibited export and import trade with South Africa until such time as the Government of that country abandoned its policies of racial discrimination.

176. The appropriateness of the use of the word "whites" to describe persons of mixed Spanish and Indian ancestry, which had been questioned at the seventh session and with respect to which some observations were made in the report under consideration, continued to be considered questionable; the word mestizos appeared to be more appropriate.

177. In his statement before the Committee, the representative of the Government of Costa Rica referred to the questions mentioned in paragraph 175, above, and stated that Legislative Decree No. 4015 of 1967 remained in force. As to the question of diplomatic relations, he did not consider the Committee the most appropriate forum for a discussion of that matter, but would nevertheless state

that Costa Rica maintained diplomatic relations with South Africa, but not with Rhodesia.

CERD A/36/18 (1981)

279. The fourth, fifth and sixth periodic reports of Costa Rica covering the period of 1974 to 1980, submitted in one document (CERD/C/66/Add.29), were introduced by the representative of the reporting State, who provided some additional information on the ethnic groups living in his country and recalled that Costa Rica had recognized the competence of the Committee to receive and consider communications from individuals within Costa Rican jurisdiction in accordance with article 14, paragraph 1, of the Convention. He also informed the Committee that Costa Rica had ratified several international instruments in the field of human rights, including the Inter-American Convention on Human Rights, that the Inter-American Court of Human Rights had been set up in San José in accordance with that Convention, and that his Government had been the first to accept the competence of the Court. Furthermore, he provided information on the Inter-American Human Rights Institute which had been established in his country on 30 July 1980 and on the University for Peace, the creation of which had been approved by the General Assembly at its thirty-fifth session.

280. Members of the Committee expressed their appreciation of the valuable report, with regard in particular to the information provided on the problem of the indigenous population and on the measures taken or planned to improve its conditions. Some members of the Committee, however, pointed out that the guidelines for the preparation of reports had not been followed by Costa Rica and expressed the hope that further information on articles 3, 4 and 7 of the Convention would be provided in that country's next periodic report. The country was commended for having accepted the obligations under article 14 of the Convention.

281. With regard to measures taken by Costa Rica to promote the economic, social and cultural advancement of the indigenous population, while protecting it from the more advanced communities, members of the Committee expressed some apprehension that such excessively protective measures could result in keeping this population "as a museum piece" instead of integrating it into the life of the society, which would certainly correspond more to the interests of the country. It would be useful for the Committee to have an analysis of the work done by the National Indigenous Affairs Commission, established under the Act of 11 July 1973, with regard to health, housing and agrarian reform, and information on its achievements. It was asked, in particular, what opportunities were open to indigenous persons for self-management of activities important for their day-to-day living and future in the country. Furthermore, it would be useful for the Committee to have information on the action taken to protect the indigenous population from the more advanced communities in Costa Rica and to prevent any encroachment on its land. In this connection, it was observed that the word "reserve", like some other words used in the report which denoted a concept of racial division, had rather unpleasant connotations, and that it was not clear from the legislation on the indigenous groups whether their members could leave the reserves if they wished, settle elsewhere in Costa Rica and participate in the national life on an equal footing with other Costa Ricans, or whether, by law, they must remain in the reserves or move out only as migrant workers. It was also observed that, although the prohibition of liquor sales in the reserves, provided for in article 6 of the Indigenous Act, was intended to protect the indigenous inhabitants against corruption of their morals, it seemed to be a somewhat stringent measure. Moreover, it was noted that a round-table held in October 1979 and attended by the President of Costa Rica and the representatives of 15 indigenous communities, was to be followed by budgetary appropriations to provide those communities with more roads, land,

health centres, teachers, drinking water supplies and other facilities, and more information was requested on that follow-up action. It was asked, in particular, whether such discussions were organized on a regular basis, whether the representatives of the 15 communities who had met the President had been selected or elected according to some special procedures, and whether, in view of the scarcity of land and the increasing population, any alternative policies were being contemplated, such as industrialization programs or other economic measures. Information was also requested on the ethnic composition of Costa Rican society, on whether indigenous persons were entitled to participate in the election of the President of the Republic, on the extent to which they enjoyed equal political rights, and on what had been done to ensure the development of the black population living in Costa Rica.

282. Members of the Committee took note of the fact that Costa Rica had made progress in the enactment of domestic legislation for the implementation, in particular, of article 4 of the Convention. Some members, nevertheless, asked whether any organizations pursuing racist objectives could or did operate in Costa Rica, or whether the Government took an absolutely firm line against them. It was observed, in this connection, that article 372 of the Costa Rican Penal Code referred to organizations of an international character and would therefore not apply to domestic organizations. Furthermore, while article 33 of the political Constitution of Costa Rica stated that all persons were equal before the law and that no discrimination whatsoever might be practised contrary to human dignity, no provision was made for any penalty for infringement of that provision. It was also noted that under article 371 of the Penal Code any person, manager or director of an official or private institution or administrator of an industrial or commercial establishment who applied any prejudicial discriminatory measure would be punishable by a financial penalty, and it was asked what was to be understood by “prejudicial”; what sort of prejudice was involved and whether it was only material or could also be moral.

283. In connection with article 5 of the Convention, some members of the Committee were interested in having an analysis of the political situation of Costa Rica, an explanation of its political principles and information on its electoral system. Information was also requested on the protection of the political and economic rights of citizens, their freedom of movement, the inflow of foreigners since the lifting of all restrictions on immigration on grounds of race under Act No. 5360 of 11 October 1973, and on whether members of any communities other than those mentioned in the report had sought refuge in Costa Rica and what the official policy was on asylum.

284. With reference to article 6 of the Convention, it was asked what procedures were available in compliance with the provisions of that article.

285. Under article 7 of the Convention, information was requested, in particular, on Costa Rica’s activities in connection with the Inter-American Court of Human Rights and the University for Peace, and the reference to the international activities which had given Costa Rica the reputation of a country which promoted human rights and fought against racial discrimination.

286. In replying to questions raised by members of the Committee, the representative of Costa Rica provided some additional data and information concerning the indigenous population living in his country. He also clarified that the term “indigenous reserves” referred only to the communities which were protected by law and provided explanations concerning various provisions of the

Indigenous Act and other documents annexed to his Government's report. Furthermore, he explained that the difficulties facing Costa Rica in adopting measures to implement article 4 of the Convention were due to the problem of enacting laws for the punishment of non-existent offences. However, article 7 of the Constitution provided that international conventions and treaties ratified by Costa Rica took precedence over domestic legislation. They could therefore serve to "characterize" offences and it remained only to provide for penalties in the Penal Code. In that respect, under article 372 of the Code, any person who violated provisions of treaties for the protection of human rights subscribed to by Costa Rica was liable to imprisonment for a term of from 10 to 15 years: that prison term was applicable to any person who violated provisions of those treaties and not just to members of organizations of an international character.

287. The representative of Costa Rica assured the Committee that the questions asked would be brought to the attention of his Government, which would reply to them in its next periodic report.

CERD A/37/18 (1982)

435. The seventh periodic report of Costa Rica (CERD/C/91/Add.11 and 13) was introduced by the representative of the reporting State, who stressed his Government's respect for human rights and commitment to achieving the goals of the Convention. The representative stated that his country had enacted legislation prohibiting trade with South Africa; that over the past 30 years, the various Governments had made special efforts to eliminate racial discrimination in all its forms; and that those efforts stemmed from the belief that there could be no toleration of discrimination in a democratic society. The role of the National Commission for Minorities (CONAI) was to defend the rights of the original inhabitants of the territory.

436. Members of the Committee commended the Government for its continuing protection of human rights in general and for its achievements in implementation of the Convention in particular. The report was praised for following the guidelines established by the Committee and for replying to questions raised by Committee members at previous meetings.

437. With reference to the provisions of article 2, paragraph 1, of the Convention, it was pointed out that the provisions of the current Penal Code did not go far enough. Fuller information was requested on the procedure for repealing administrative or legislative measures that were contrary to the provisions of the Convention. With regard to article 2, paragraph 2, of the Convention, it was remarked that the report failed to give specific details concerning measures to achieve the integration of the indigenous communities. It was asked whether the Costa Rican Government believed that those communities should be protected from outside influence. Recalling that, at previous sessions, members of the Committee had voiced concern that measures to protect the indigenous communities might turn them into museum pieces, one member asked what was the basic philosophy behind the establishment of the National Indigenous Affairs Commission. Noting that approximate distances between the Social Security Office medical centres and the indigenous reserves exceeded 150 kilometres in some cases, a member asked how those distances compared with the nation average. It was asked why housing had been presented by the indigenous communities as one of the least urgent problems, whether they were satisfied with their housing and how their housing conditions compared with those of other communities.

438. With regard to racial minority groups, it was asked whether the National Indigenous Affairs Commission catered to the interests of black people and, if it did not, to what extent the Commission's area of concern could be extended to them. Regret was expressed at the fact that the only data on the demographic composition of the population were those of the 1950 census. The point was made that the Negro population was larger than the indigenous population and that the discriminatory Decree-Law No. 31 of 10 December 1934 had been repealed. More information was requested about the general situation of Negroes in Costa Rica.

439. In connection with article 4 of the Convention, it was stressed that the information provided did not state whether it was possible to penalize racial discrimination where the conduct of the person or group of persons perpetrating the act was not specifically mentioned in the provisions of the laws. Article 371 of the Penal Code did not completely cover article 4 of the Convention, and the hope was expressed that Costa Rica would bring its Penal Code into line with the Convention.

440. With regard to article 5, the Government was commended for the number of legislative, judicial and administrative measures which served to implement the provisions of that article. Information was requested on the voting age in Costa Rica.

441. With reference to article 6 of the Convention, it was noted that according to report fair compensation could be obtained for damage and injury caused by a punishable offence by applying the Civil Compensation Act. The question was asked whether there was any recourse available to citizens to correct an arbitrary decision on censorship by the Ministry of Justice.

442. In connection with article 7, it was requested that the next report should provide information on school curricula designed to eliminate racial discrimination.

443. In reply to the questions posed by Committee members, the representative of Costa Rica said that the National Indigenous Affairs Commission had been established on the initiative of indigenous groups, who considered their position weak and believed that unity was imperative. Under the auspices of the Government, the commission dealt exclusively with the affairs of the indigenous communities. The question of the Negro population was another matter altogether. Most of the Negroes lived on the Atlantic coast. They participated actively in the political system and were represented in the Legislative Assembly and at various levels of local government.

444. The representative pointed out that one of the concerns of the National Indigenous Affairs Commission was to protect the land rights of the indigenous communities. Legislation provided for the maintenance of reserves with a view to promoting the material and spiritual well-being of the indigenous communities in their own environment. Members of the communities were not required to remain on the reserves. There were, however, restrictions on the sale of land, which belonged to the communities as a whole. He also pointed out that the approximate distances between the Costa Rica Social Security Office medical centres and the indigenous reserves indicated in the report referred to rural area, that the average distance in urban areas was shorter, and that in many of the very remote areas, there were local clinics available.

445. As to the question of housing, the representative said that the indigenous communities themselves had presented housing as one of the least urgent problems and that they accorded higher priority to health services and land rights and felt capable of attending to their housing needs by themselves.

446. His delegation recognized that Costa Rica had made little progress in enacting legislation specifically to punish racial discrimination offences. There was little pressure for legislation in matters about which there were no complaints. His delegation realized, however, that Costa Rica had assumed certain obligations under the Convention and would continue urging the authorities to promote legislation in the area of racial discrimination. The Office of Censorship had been established because of the Catholic Church's desire to maintain certain moral values. In recent years, with the relaxation of standards, the Office had become less influential.

447. In conclusion, he stated that Costa Rica remained committed to its obligations under the Convention. In cases where internal legislation was deficient in respect of the provisions of the Convention, such legislation would be brought into line with the superior law of the Convention.

In the meantime, the provisions of the Convention would themselves be applied if internal legislation proved inadequate in specific instances.

CERD A/42/18 (1987)

718. The eighth and ninth periodic reports of Costa Rica (CERD/C/118/Add.31 and CERD/C/149/Add.15) were considered by the Committee at its 794th and 795th meetings on 13 March 1987 without the participation of a representative of the reporting State (CERD/C/SR.794-SR.795).

719. Members of the Committee expressed disappointment at the fact that neither the eighth nor the ninth periodic reports of Costa Rica added anything to what had been said in previous reports and that they did not answer the questions asked of the representative of Costa Rica during the consideration of its seventh periodic report. The next report of Costa Rica should follow the Committee's guidelines (CERD/C/70/Rev.1).

720. Members of the Committee requested updated information on the ethnic composition of the population, particularly the indigenous and the black populations of Costa Rica. It was pointed out that there were people in Costa Rica who were physically different from others and were less well treated: the Committee needed information about the extent to which such people suffered. If the Government could not provide statistics, an impressionistic picture of discrimination would be acceptable.

721. In general, members of the Committee wished to receive information on articles 2 to 7 of the Convention in order to assess the extent to which Costa Rica was implementing the Convention.

722. With regard to article 3, members of the Committee wished to know about the state of Costa Rica's relations with South Africa.

723. They said that Costa Rica should take more specific action to implement article 4 of the Convention.

724. Concerning article 5 of the Convention, information was requested regarding the percentage of the population that could take part in elections, recourse procedures available against censorship, the languages spoken by indigenous populations, their culture and levels of education, the language spoken by the black population and what was being done to preserve its cultural heritage and well-being, and the political refugees on the borders of Costa Rica. Reference was also made to the armed conflicts in Central America and it was asked how the increase in the Costa Rican budget to buy arms and the postponement of some of its economic and social programmes affected the indigenous population.

725. In relation to article 7, it was asked what Costa Rica was doing in schools to remove preconceived ideas about persons belonging to ethnic groups that were different from the majority.

CERD A/47/18 (1992)

93. The Committee considered the tenth and eleventh periodic reports of Costa Rica (CERD/C/197/Add.8) at its 941st, 942nd and 951st meetings, on 4, 5 and 11 August 1992 (see CERD/C/SR.941, 942 and 951).

94. The reports were introduced by the representative of the State party, who pointed out that Costa Rica had been one of the first States to ratify the Convention. Costa Rica subsequently became a party to almost all of the United Nations human rights instruments and did its utmost to fulfil the reporting obligations those ratifications entailed. Additionally, Costa Rica had ratified a number of ILO conventions that were relevant to the work of the Committee, namely, the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

95. Regarding a reported clash near Talamanca in February 1992 between an indigenous group and the police in which two persons had died, an official investigation had been undertaken. Initially, all of the 12 members of the police who were involved had been suspended from their duties and detained and three of them were still in prison at the present time awaiting judicial action.

96. At the international level, Costa Rica had categorically condemned apartheid. Since 1967, it had prohibited all commercial relations with South Africa and in 1986, diplomatic relations with the Government of South Africa had been broken off. Additionally, Costa Rica had not recognized the bantustans and had condemned the occupation of Namibia.

97. Members of the Committee welcomed the report of Costa Rica, which included information on a number of questions that had been raised during the consideration of its last report. Members pointed out, however, that the report did not conform to the Committee's guidelines and included information on certain issues which did not concern the Committee. The report also did not contain sufficiently detailed statistical information on the number of individuals belonging to various minority and indigenous groups. In that regard, the Committee requested information on such indicators as the rates for each group concerning unemployment, illiteracy, arrest, imprisonment, alcoholism, prostitution and suicide, as well as non-integration.

98. Members of the Committee noted with surprise that the general estimate of indigenous persons living in the reservations had changed significantly since Costa Rica's previous report. They also felt that other basic information covering the economic situation and measures undertaken to improve the situation of the least-favoured groups, particularly since the election of the new President, should have been provided in the report.

99. In regard to article 2 of the Convention, members of the Committee wished to know what measures had been taken to improve the situation of the black minority; what means of action the National Indigenous Affairs Commission had at its disposal; what measures had been taken with respect to ensuring the land rights of indigenous groups; what factors and difficulties had been encountered in ensuring the rights of the indigenous groups under the Convention; and whether the Government was considering updating the Labour Code of 1943. Members also requested

information on the impact of deforestation in Boruca on the Indians living there; whether the indigenous population had been consulted before the Costa Rican Petroleum Refining Company had entered its region and drilled for two years; and whether Indians had the same opportunity as other Costa Ricans to obtain compensation for environmental damages or the restoration of the damaged land.

100. Concerning article 4 of the Convention, members of the Committee wished to have further information on whether the publishing of racist propaganda or participation in racist organizations were activities specifically prohibited and punishable by law. Noting that the penalties established by article 385 of the Penal Code regarding the incitement to racial violence were relatively weak, members wished to know how serious such a crime was considered.

101. With reference to article 5 of the Convention, members of the Committee wished to know what percentage of the Indians and the Blacks participated in elections; at what levels and in what numbers Indians and Blacks were represented in the Government; whether Indians living on reservations fully enjoyed freedom of movement; how the right to property was exercised by Indians living in the reserves; what alternatives existed for Indians who were dissatisfied with the services of the National Indigenous Affairs Commission; how the right to nationality was ensured to Indians; and how the right to religious freedom was exercised in respect to indigenous and minority groups. Noting that previously Indians had only temporary residence permits, it was asked how the Government was proceeding with plans to issue identity cards, particularly in cases of indigenous individuals who neither spoke Spanish nor know their dates of birth. In reference to paragraph 67 of the report, members requested further information regarding the abuses cited, the criteria for the distribution of land and how the distribution had improved the situation of the Indians affected.

102. In connection with article 6 of the Convention, members of the Committee wished to know what measures of recourse and remedy were available to Indians in case of violation of their rights; how many complaints of discrimination had been filed and how many judgements had resulted in conviction; what percentage of complaints had been filed by Indians, by Blacks and by refugees; and what measures had been taken to make the population, indigenous and otherwise, aware of their right to petition under article 14 of the Convention.

103. Regarding article 7 of the Convention, members of the Committee wished to have further information on the role of the National Indigenous Affairs Commission in regard to cultural heritage; the number and types of schools attended by indigenous individuals; the level of educational attainment by Indians; any television, radio or video programmes that had been produced in local Indian languages; and measures taken to protect the cultural property of indigenous groups.

104. In his reply, the representative of the State party pointed out that the purpose of reservations was not to confine the indigenous population in any way but rather to ensure that collective land ownership by the indigenous groups would be maintained. Consequently, each indigenous family on a reservation had its own holding and could sell that holding only to other Indians. That requirement was intended to prevent loss of commonly owned property through land speculation. The system had been successful in putting an end to the constant encroachment on the indigenous territories and to the inevitable retreat of their populations. At the same time, Indians were free to

travel wherever they wished. They were legally required to give notice of their departure from a reservation, not in order to restrict their freedom of movement, but simply in order to protect the system of collectively owned property. Indians were also free to own property outside the reservation if they so wished.

105. With reference to the situation of Indians living on reservations, the representative stated that the main problem concerned health. While 96 per cent of the Costa Rican population in general had access to health services, there were problems in health-care delivery on the reservations owing to factors such as the difficulty of access to the population there and the conflict between traditional healing practices and modern medical technology. However, the Government had established programmes on nutrition, encouraged preventive medicine and was concentrating on combating cholera.

106. There were also problems on the reservation concerning education because of a lack of teachers, teaching materials and, in particular, parallel texts. There was also a conflict with regard to the very principle of teaching Spanish in view of fears that the indigenous population might lose its cultural identity. For that reason, the Government was trying to ensure that education was provided in both Spanish and local languages. In regard to mining activities, the Legislative Assembly was responsible for granting mining concessions in the reservations and all indigenous groups were represented in the Assembly.

107. In connection with the question of identity documents, the Guaymis, a nomadic tribe on the border between Costa Rica and Panama, had been asked to decide whether they preferred to settle in Costa Rica or in Panama. Legislation had been drafted with a view to providing the tribe with identity cards and bilateral agreements had been concluded between Panama and Costa Rica regulating the question of the Guaymi people. It was pointed out that other indigenous groups in the country already possessed identity documents and, in addition, were free to apply for passports.

108. While it was true that black persons had not been allowed into the central part of the country before 1948, those restrictions had been abolished long ago and today the black population enjoyed unrestricted freedom of movement throughout the country. Additionally, the black population was fully integrated in the nation's political and economic development. On the problem of refugees, the Committee was referred to the last report submitted by Costa Rica to the Committee on Economic, Social and Cultural Rights, which covered that question in detail.

109. In regard to recourse procedures available, the Office of the Ombudsman for Human Rights had been set up in March 1990 as a subsidiary organ of the Ministry of Justice. Its task was to protect the human rights of all persons on the territory of the Republic, not only Costa Rican nationals but also aliens. Safeguarding the rights of indigenous peoples was included in its mandate, which derived from the various international human rights instruments to which Costa Rica was a party. The Office would intervene by interceding in cases of threats, obstruction or violation of human rights; by taking preventive measures and making recommendations to the competent authorities; by recommending mandatory sanctions against any officials who violated citizens' rights; by advocating legal reform; and by disseminating, as widely as possible, information on human rights. Since 1990, the Office had received some 6,000 complaints, denunciations and requests for assistance. Over a two-year period, it had held some 50 seminars designed to increase

awareness of human rights issues among the police, the teaching profession and the indigenous population.

Concluding observations

110. After noting the positive aspects of the tenth and eleventh periodic reports of Costa Rica and the position occupied by that country in the field of human rights, the Committee observed that the presentation of the report did not conform sufficiently to the general and consolidated guidelines regarding the form and contents of reports.

111. There were omissions in the general part, which should have been devoted to the general background against which the Convention was being applied, but which did not concentrate sufficiently on matters specifically of interest to the Committee.

112. There were also omissions in the analytical part, which should have dealt with the application of each article of the Convention, as follows:

(a) There were too few practical examples or relevant statistics, particularly on cases of complaints and convictions for acts of racial discrimination;

(b) There were also omissions in the presentation of the actual situation of ethnic minorities, especially indigenous peoples and Blacks, the “social indicators” of the non-integration of those population groups, the difficulties and discrimination to which they were exposed (right to land, right to health, freedom of movement, education, etc.), the damage caused to the environment of the Indians and the obstacles they might encounter in claiming compensation for such damage.

113. The Committee laid special emphasis on the last-mentioned omissions. It referred, in particular, to the problem of the status of the “reservations” of indigenous peoples and the concomitant risk of social exclusion.

114. In conclusion, while welcoming the additional explanations given by the Costa Rican delegation in its oral presentation, the Committee requested the Government of Costa Rica to provide precise information on all those points in its twelfth report, the presentation of which should conform to the Committee’s general guidelines.

CERD A/54/18 (1999)

185. The Committee considered the twelfth to fifteenth periodic reports of Costa Rica (CERD/C/338/Add.4) at its 1321st and 1322nd meetings (see CERD/C/SR.1321 and 1322), on 11 and 12 March 1999, and adopted, at its 1331st meeting (see CERD/C/SR.1331), on 18 March 1999, the following concluding observations.

A. Introduction

186. The Committee welcomes the opportunity to resume its dialogue with the State party after a lapse of seven years. The Committee is satisfied with the frank and constructive approach taken by the representatives of the reporting State in their dialogue with the Committee and for the additional information provided orally.

B. Positive aspects

187. The Committee welcomes the information provided by the State party that the Convention is directly applicable in the Costa Rican legal system and that it takes precedence over domestic legislation.

188. The Committee notes with interest the State party's efforts to promote equal opportunity for the indigenous population, and in particular the ratification of ILO Convention 169 on Indigenous and Tribal Peoples (1989), the existence of the National Indigenous Affairs Commission (CONAI) and the Office of the Ombudsman and the bill for the autonomous development of the indigenous people, which has been presented before the Legislative Assembly.

189. The Committee notes with appreciation that, even in times of economic crisis or natural disaster, the State party has traditionally maintained a generous refugee and immigration policy. It notes with particular interest that a "migratory amnesty" is currently in force, from 1 February 1999 to 31 July 1999, allowing for the regularization of the situation of a large number of clandestine immigrants in order to ensure their enjoyment of social, economic and cultural rights, particularly in regard to work.

C. Principal subjects of concern

190. While noting the concern of the State party to eliminate any difference of treatment in law not based on rational elements, the Committee is preoccupied that the legislation of Costa Rica does not contain explicit norms forbidding discrimination on the grounds of national or ethnic origin.

191. While noting that Act No. 4430 of 21 May 1968 and Act No. 4466 of 19 November 1969 render punishable by a fine any racial segregation with regard to the admission of people of different races to public or private places, the Committee is concerned that the financial penalties thus provided for do not constitute a sufficiently effective measure to prevent, prohibit and eradicate all practices of racial segregation, as required by article 3 of the Convention.

192. With regard to article 4 of the Convention, the Committee is concerned about the lack of specific and adequate legislative provisions prohibiting racial discrimination by private groups or associations. It stresses that article 2, paragraph 1 (d), of the Convention makes it an obligation for States parties to prohibit racial discrimination committed not only by individuals but "by any persons, group or organization".

193. The Committee notes with concern recent manifestations of xenophobia and racial discrimination, largely focused on immigrants, in particular Nicaraguans. In this context, the Committee also expresses its concern about the vulnerable status of refugees and clandestine immigrants, who often live and work in the country in precarious conditions, and who frequently become victims of discrimination in the terms of article 5 of the Convention, in particular paragraph 5 (e).

194. The Committee remains concerned at the situation with regard to the land rights of indigenous peoples in the State party. Despite the efforts made, problems relating to the allocation of land and/or compensation persist. Of special concern have been confrontations arising over the ownership of property, in the course of which indigenous people were killed and vandalism occurred, as in the case of Talamanca.

195. Noting that few cases of racial discrimination have reached the courts or administrative bodies, the Committee is concerned about the effective access to protection and remedies against any acts of racial discrimination of, in particular, the indigenous population, the black minority, refugees and immigrants.

196. The Committee notes with concern that the report of the State party is devoted mainly to the existing legal and administrative framework for ensuring protection against racial discrimination, whereas insufficient information is given to allow an evaluation of the effective enjoyment of the rights provided for by the Convention, in particular by the indigenous population, the black minority, refugees and immigrants.

197. With respect to article 7 of the Convention, the Committee notes that limited information has been given concerning the State party's undertaking to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudice which leads to racial discrimination.

D. Suggestions and recommendations

198. The Committee recommends that the State party take all appropriate legislative measures to ensure that articles 2 and 4 of the Convention are fully reflected in domestic law. In particular, the Committee emphasizes the importance of adequately prohibiting and penalizing acts of racial segregation and discrimination, whether they are committed by individuals or associations.

199. It is also recommended that the State party intensify its measures aimed at preventing and prosecuting any act or manifestation of racial discrimination or xenophobia, including acts of violence against persons belonging to ethnic and national minorities.

200. The Committee recommends that the next periodic report of the State party should include information on the scope and the implications of the new immigration legislation.

201. It is also recommended that the State party take immediate and appropriate measures to ensure the enjoyment of the provisions of article 5 of the Convention also by the indigenous population, the black minority, refugees and immigrants.

202. The Committee recommends that the State party intensify its efforts to ensure a fair and equitable distribution of land, taking into account the needs of the indigenous population. The Committee stresses the importance that the land holds for indigenous peoples and their spiritual and cultural identity, including the fact that they have a different concept of land use and ownership. In this regard, the approval by the Legislative Assembly of the bill for the autonomous development of indigenous people would be of great importance.

203. With regard to article 6 of the Convention, the Committee recommends that the State party make additional efforts to facilitate equal access to the courts and administrative bodies, in particular for the indigenous population, the black minority, refugees and immigrants, in order to ensure equality for all persons.

204. The State party is invited to provide further information on the following issues: (a) the effective enjoyment of the rights set out in the Convention, in particular by the indigenous population, the black population, refugees and immigrants and; (b) measures taken in the field of teaching, education, culture and information in order to combat racial discrimination, in compliance with article 7 of the Convention.

205. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6 of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

206. The Committee requests that the State party give wide publicity to its report to the Committee, as well as the present concluding observations.

207. The Committee recommends that the State party's next periodic report, due on 4 January 2000, be an updating report and that it address all the suggestions and recommendations contained in the present concluding observations.

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64. The Committee considered the sixteenth periodic report of Costa Rica (CERD/C/384/Add.5), which was due on 4 January 2000, at its 1513th and 1514th meetings, held on 15 and 18 March 2002 (CERD/C/SR.1513 and 1514). At its 1521st meeting (CERD/C/SR.1521), held on 21 March 2002, it adopted the following concluding observations.

A. Introduction

65. The Committee welcomes the detailed report submitted by the State party, the contents of which correspond to the Committee's revised reporting guidelines (CERD/C/70/Rev.5), and the fact that the report was prepared in consultation with non-governmental organizations.

66. The Committee commends the State party for the regularity of its submission of its periodic reports under the Convention. The Committee expresses its appreciation for the self-critical tone of the report and for the frank and constructive dialogue held with the representatives of the State party. The Committee appreciates the substantial additional oral information provided by the delegation in response to the questions asked.

B. Positive aspects

67. The Committee notes that according to article 7 of the Constitution of Costa Rica, international human rights treaties take precedence over domestic legislation. It also welcomes the fact that such treaties, insofar as they recognize a broader range of rights or guarantees than in the Constitution, take precedence over constitutional provisions. It further welcomes the fact that international human rights treaties can be invoked directly before the courts.

68. The Committee notes the adoption in May 1999 of article 76 of the Constitution, according to which the State shall ensure that the national indigenous languages are safeguarded.

69. The Committee notes with satisfaction that during the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the President of Costa Rica publicly apologized for past errors committed against Afro-Costa Ricans. It further welcomes the commemoration of the International Day for the Elimination of Racial Discrimination in schools, in accordance with paragraph 131 of the Durban Programme of Action.

70. The Committee welcomes the recent (January 2002) adoption of a resolution by the Office of the National Control of Propaganda prohibiting any radio broadcast or transmission, or any commercial product depicting bias against women, particularly black women.

71. The Committee welcomes the State party's ratification of the amendments to article 8, paragraph 6, of the Convention.

72. The Committee welcomes the recently issued standing invitation to visit the country transmitted by the Government of Costa Rica to all mechanisms of the Commission on Human Rights, including the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and

related intolerance.

C. Concerns and recommendations

73. The Committee is concerned that under Costa Rican legislation racial discrimination is considered merely a misdemeanour subject to a financial penalty. The State party is invited to consider whether such penalties are commensurate with the gravity of the acts committed.

74. The Committee is concerned at the situation of indigenous people, in particular:

(a) Information according to which indigenous people living in remote regions suffer, inter alia, from lack of health care, education, drinking water and electricity;

(b) Problems of ownership of land; that land has reportedly been appropriated by migrants and transnational enterprises;

(c) Difficulties faced by indigenous people in obtaining public funds for the improvement of their living standards;

(d) The fact that infant mortality among indigenous communities is reportedly three times higher than the national average.

The Committee invites the State party to continue to pay due attention to the specific needs of this population. It recommends that the State party undertake the necessary measures to protect indigenous lands from being invaded and to enable the restitution of those lands that have been occupied by non-indigenous persons.

75. The Committee takes note of the fact that the draft Act for the Autonomous Development of the Indigenous Peoples, aimed at granting full autonomy to indigenous peoples and recognizing their right to enjoy their own cultures, as well as the right to administer their territories, was withdrawn in the Legislative Assembly. The Committee notes that in June 2001, a draft act, similar in content to the draft Act for the Autonomous Development of the Indigenous Peoples, was presented in the Legislative Assembly. The Committee requests the State party to provide information about developments in this regard.

76. The Committee notes with concern the shortcomings of the State party in its activities on behalf of indigenous peoples, as reported by the Office of the Ombudsman, in particular the failure on the part of the authorities to maintain communication with the indigenous population and the absence of specific government plans for them. In this context, the Committee wishes to refer to its general recommendation XXIII, in which it calls upon States parties to ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.

77. The Committee expresses concern at alleged manifestations in the media of racism, xenophobia and intolerance against minority groups. The State party should support the adoption of a code of ethics for the media.

78. The Committee is also concerned at the living and working conditions of immigrants, most of them from Nicaragua, who may become victims of discrimination in terms of article 5 of the Convention. The Committee recommends that the State party continue its efforts to ensure the rights of the immigrant population as regards discrimination on the grounds of race or ethnic or national origin. In this context, the Committee notes that a new immigration law is currently being considered by the Legislative Assembly. The Committee requests the State party to provide further information on developments in this regard in its next periodic report.

79. The Committee expresses concern at the alleged discriminatory application of legislation in force on refugee status determination procedure. According to information received, the requirements set by that legislation to determine refugee status are applied differently to different nationalities. The Committee recommends that the State party ensure equal treatment for all asylum-seekers in refugee status determination proceedings, and in particular Colombians.

80. While commending the efficiency and credibility of the Costa Rican judicial system, the Committee expresses concern at information concerning the lack of equal access to the courts, particularly by minority and ethnic groups. The Committee encourages the State party to continue to make efforts to ensure *de facto* equal access to the courts to all persons, including members of minority and ethnic groups.

81. The Committee is also concerned about the lack of representation of minorities at the judicial and governmental levels. The Committee recommends that the State party undertake affirmative action to ensure such minority representation.

82. While noting that there is no regulation of the Internet in national legislation, the Committee encourages the State party to adopt legislation in conformity with the Convention and to disseminate and promote the Convention by every means possible, including the Internet.

83. The Committee recommends that the State party continue to undertake educational campaigns to raise awareness of human rights, and in particular of issues concerning racism, xenophobia and intolerance, in order to prevent and combat all forms of discrimination.

84. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the Committee's concluding observations on them be similarly publicized. It encourages the State party to continue inserting the Committee's concluding observations on the appropriate web site.

85. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at national level.

86. The Committee recommends that the State party submit its seventeenth periodic report jointly with its eighteenth periodic report, due on 4 January 2004, as an updating report, and that it address the points raised in the present observations.

