

**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1977

Addendum

COSTA RICA

[14 August 1979]

Costa Rica ratified the Covenant by Legislative Decree 4229 of 8 November 1968 and deposited the relevant instrument with the United Nations at its headquarters in New York on 29 November 1969 without entering any reservations regarding the principles of the Covenant.

In conformity with article 7 of the Political Constitution in force, the Covenant was incorporated into positive law; the provisions of the Covenant prevail over ordinary law and their principles cannot be modified by that type of law.

Approval of the Covenant did not necessitate the enactment of special legislation, owing to the fact that the majority of the principles set forth in the Covenant are already incorporated in the legal system. Subsequent to the promulgation of the Covenant, a number of regulations came into force in order to supplement its provisions.

The first paragraph of article 1 of the Covenant enunciates the right of peoples to self-determination. In the case of Costa Rica this right is enunciated in article 1 of the Political Constitution. The article reads: "Costa Rica is a free and independent democratic republic" and article 9 of the Constitution establishes the form in which the nation has freely determined its political structure: "The Government of the Republic is of the people, representative, alternative and responsible. It acts through three separate and independent branches: the legislative, the executive and the judicial. None of these branches may delegate the exercise of its functions. Furthermore, this right is protected by article 276, paragraph I, of the Penal Code, which defines the crime of high treason as one committed with the aim of subjecting the country wholly or in part to foreign domination.

The second paragraph of article 1 of the Covenant provides for the right to the free enjoyment and use of national wealth. This right is safeguarded in a number of provisions. Article 121, paragraph 14, of the Political Constitution states: "The following may not be permanently removed from ownership by the State: (a) Energy obtained from waters of the public domain within national territory; (b) Coal fields, wells and deposits of petroleum and any other hydrocarbons, as well as any radioactive minerals existing in national territory; (c) Wireless services. Property mentioned in (a), (b) and (c) above may be exploited only by the public administration or by private individuals in accordance with the law or by a special concession granted for a limited period on the basis of conditions and stipulations established by the Legislative Assembly. National railways, docks and airports - the latter, while they are in use, may not be alienated, leased or encumbered, either directly or indirectly, nor may they be removed in any way from the ownership and control of the State". In addition to this article, other articles in the Political Constitution protect the right freely to dispose of national wealth, such as article 50, which stipulates that it is the obligation of the State to promote and organize production and to distribute wealth appropriately. Article 6 establishes the exercise by the State of complete and exclusive sovereignty over national airspace and over its territorial waters and continental shelf. Apart from the Political Constitution, there are other provisions which directly safeguard this right, i.e. article 289 of the Penal Code, which renders an alien who illegally exploits the national wealth and natural products liable to a term of imprisonment or a fine, and also the Act relating to the Protection of Wild Life, the Forestry Act and the regulations thereto and the Act relating to the Protection of Costa Rican Archaeological Treasures.

The first paragraph of article 2 of the Covenant creates an obligation on States parties to respect and to ensure to all individuals subject to their jurisdiction the rights recognized in the Covenant. Article 7 of the Political Constitution states that international conventions approved by the Legislative Assembly shall prevail over the laws. Hence the Covenant is incorporated into municipal legislation together with the obligation to observe and guarantee the rights set out in the Covenant, for Costa Rica is a State founded on the rule of law. Article 11 of the Political Constitution lays down that it is the duty of all public officials to observe and comply with the Constitution and the laws and, since the Covenant prevails over ordinary law, all public officials are obliged to respect the provisions of the Covenant. In addition to these rules at the constitutional level, another body of law contains the following provisions: article 7 of the Penal Code states that persons who commit indictable offences against the human rights established in treaties ratified by Costa Rica shall be punished in accordance with Costa Rican law and article 329 prescribes a term of imprisonment of up to two years for any public official who in abuse of his office, orders or commits any arbitrary act prejudicial to the rights of any individual.

The second paragraph of article 2 of the Covenant obliges States parties to take the necessary steps to give effect to the rights recognized in the Covenant. It has already been mentioned that, when the Covenant was ratified by the Legislative Assembly, a comprehensive legal system guaranteeing those rights was already in existence and that since the ratification of the Covenant, many regulations have been issued to safeguard the rights in question.

The third paragraph of the article has three subparagraphs and subparagraph (a) prescribes that States must ensure the right to an effective remedy when the rights recognized in the Covenant have been violated. Various constitutional provisions guarantee this right, such as article 41 of the Political Constitution, which says: "Everyone shall receive reparation for injuries or damage to his person, property or moral interests through recourse to the law. Justice must be done promptly, without refusal and in strict accordance with the law". This article makes provision for the general right of access to the courts when rights are infringed. Specific remedies for violations of individual rights are also established by the Constitution. Article 48 provides that: "Everyone has the right to the remedy of habeas corpus if he believes himself to be illegally deprived of his liberty. Claims to this remedy shall be heard only by the Supreme Court of Justice, which is empowered to order the appearance in court of the injured party, and superior orders or any other pretext may not be alleged in order to prevent it. To maintain or re-establish the enjoyment of other rights conferred by this Constitution, everyone is also assisted by the remedy of amparo, applications for which shall be heard in such courts as the law may determine". The legal regulations governing these remedies are the following: the remedy of habeas corpus by Act No. 35 of 24 November 1932 and the remedy of amparo by Act No. 1161 of 2 June 1950 relating to amparo, as amended by Act No. 1495 of 9 August 1952. Article 49 of the Constitution establishes administrative courts to review the actions of public officials and recourse to such courts is governed by the Act No. 3667 of 12 March 1966, regulating the administrative courts.

Subparagraph (b) enunciates the right that claims to the remedies referred to in subparagraph (a) shall be heard by the competent authorities and that those authorities shall determine the right thereto. In this connexion, the Political Constitution lays down in article 35 that: "No one may be tried by a commission, court or judge specially appointed for the case; he shall be tried exclusively by the courts established in accordance with this Constitution". Article 153 of the Political Constitution provides that the Judicial Power shall hear civil, commercial, criminal, labour and administrative cases and any others determined by law. From this provision it will be seen how well the legal system safeguards the right that claims to remedies should be heard by the competent authorities. Similarly, article 1 of the Code of Criminal Procedure states that no one shall be tried by courts other than those established by the Political Constitution.

Subparagraph (c) provides that the competent authorities shall enforce such remedies when granted. As regards the provisions of this subparagraph, article 153 of the Political Constitution lays down that the Judicial Power shall "execute the judgements pronounced, with the assistance of the police authorities if necessary". Article 154 also establishes that the Judicial Power is subject only to the Constitution and to the law, thereby reinforcing this right. Again, article 140, paragraph 9, of the Constitution states that it is the joint duty of the President of the Republic and the respective Minister of State: "to enforce all decisions on matters within the competence of the courts of justice and electoral organizations, at their request".

Article 3 of the Covenant enunciates the right of equality of the sexes. A number of laws establish equal rights for the sexes. Article 52 of the Political Constitution, referring to marriage, states: "Marriage is the essential basis of the family and is founded on equality of rights of the spouses". A similar provision establishing equality in more general terms is contained in article 33 of the Constitution, which states that all men are equal before the law. With regard to equal political rights, article 1 of the Electoral Code reads: "All Costa Rican nationals of either sex who are over 18 years of age and are included on the electoral roll of the civil register, are electors". Moreover, article 371 of the Penal Code prescribes penalties for any person, manager or director of a public or private institution or administrator of any industrial or commercial establishment who applies any discriminatory measure based on considerations of sex, etc. Article 2 of the recent Family Code specifies, among other basic principles for the application and interpretation of the Code, that spouses have equal rights and duties.

Article 4 of the Covenant provides for situations in which States parties may suspend some of the rights set forth in the Covenant solely in the event of an emergency or a threat to the life of the nation. In the Costa Rican legal system, similar provisions govern emergencies or threats to the life of the nation. Such provisions appear in a number of provisions. Article 121 of the Political Constitution enumerates the powers of the Legislative Assembly and states in subparagraph 7 that, it may: "suspend by a vote of not less than two-thirds of its members, in a case of clear public necessity, the individual rights and guarantees set out in articles 22, 23, 24, 26, 28, 29, 30 and 37 of this Constitution. Such suspension may include all or some of these rights and guarantees, over all or part of national territory for up to 30 days; during the suspension the Executive Power may, with respect to individuals, order them to be detained only in establishments not used for common criminals or order them to be confined in inhabited places. It must also report to the next meeting of the Assembly on the measures taken to safeguard public order or maintain the security of the State. In no case may individual rights and guarantees not listed in this subparagraph be suspended". The rights which may be suspended by way of exception are freedom of movement, the inviolability of the home, the inviolability of correspondence, the right of assembly, the right to expression of opinion, the right of free access to public buildings and to information and the guarantee that a person shall not be detained without a written order from a judge or authority responsible for the maintenance of public order. Article 140, paragraph 4, of the Constitution authorizes the Executive Power to suspend such rights when the Legislative Assembly is in recess. However, a decree of suspension of rights automatically entails immediate summoning of the Legislative Assembly, which must meet not later than 48 hours after the state of emergency has been decreed. If the Assembly does not confirm the suspension of rights, they are immediately re-established and if the Assembly is unable to meet, the rights must be re-established within the following 48 hours. Other states of emergency are provided for in the Emergencies Act and the regulations thereto, but they do not involve suspension of the rights in question.

Article 6 of the Covenant enunciates in general terms the right to life. The first paragraph specifically and unconditionally sets forth the right to life of every human being and says that no one shall be arbitrarily deprived of it. In Costa Rica, this is one of the rights which is regarded as fundamental; the death penalty was abolished in the last century and punishment of this type has never been reintroduced. Article 21 of the Political Constitution fully safeguards this right by stating that "Human life is inviolable". Human life is thus protected at the level of the Constitution. In addition, a number of laws directly protect the right to life. In this connexion, the Penal Code, Book II, title I: "Offences against life, includes a section comprising 35 articles which prescribe different penalties both for the taking of life and for attempts against life or acts which endanger it. The Code provides for the following range of offences: article 111 prohibits homicide; article 112 classifies aggravated homicide, establishing the following seven categories, i.e. parricide, assassination of important persons, poisoning, homicide involving treachery or sadism; homicide perpetrated by a means likely to cause public danger; homicide criminis causa and homicide committed by or through a hired murderer. Article 113 provides for homicide in attenuating circumstances, article 114 penalizes attempts at suicide, article 116 penalizes euthanasia and article 117 culpable manslaughter. Under the same heading of offences against life, there is a section specifying that abortion is an offence and another prescribing penalties for offences involving physical injury. Duelling is also forbidden, under article 131, and is punishable even when it has no serious consequences. There is no capital punishment in Costa Rica; article 50 of the Penal Code specifies the penalties, the most severe being imprisonment which may not exceed a term of 25 years. Article 43 of the Family Code prescribes that attempted murder of one's spouse constitutes grounds for divorce. Hence, life is amply safeguarded in the legal system. Article 373 of the Penal Code in the chapter relating to offences against human rights, specifies that genocide is a crime.

Article 7 of the Covenant forbids torture and lays down the right to integrity of the individual. The Political Constitution fully protects this right in article 40, which says: "No one shall be subjected to cruel or degrading treatment or to life imprisonment or to the penalty of confiscation. Any statement obtained by means of force shall be null and void". Any type of physical ill-treatment of individuals is expressly forbidden and persons in detention are protected by the provision that confessions obtained by force are invalid. Article 7 also states that no one shall be subjected without his consent to medical or scientific experimentation. The corresponding provision in the Costa Rican legal system is article 129 of the Penal Code, which provides that the infliction of wounds with consent is not punishable if it has been done for the benefit of the health of others. Article 329 of the Penal Code imposes penalties on any public official who abuses his office by committing an arbitrary

act prejudicial to someone's rights. Article 374 relates specifically to acts against physical integrity and prescribes penalties for a number of acts which infringe this right. Again Act No. 4762 of 8 May 1971, establishing the Directorate-General of Social Rehabilitation, stipulates in article 3, subparagraph (c), that that office is responsible for the physical safety of persons confined in penal establishments. The physical integrity of individuals is safeguarded by these laws.

Article 8 of the Covenant fully protects the right to personal freedom and specifically prohibits slavery and servitude. It consists of various paragraphs which define the rights in question.

The first paragraph forbids slavery and the slave trade. Similar provisions have been enacted in Costa Rica to prohibit slavery and the slave trade. First and foremost is article 20 of the Political Constitution, which says: "All men are free within the Republic; no one under the protection of its laws can be a slave". Article 372 of the Penal Code prescribes a term of up to 15 years' imprisonment for any one engaged in, or collaborating with organizations engaged in, the slave trade. Also, article 7 of the Code enunciates the principle that anyone engaged in the slave trade, among other international offences, will be punished in accordance with Costa Rican law, irrespective of his nationality.

The second paragraph of article 8 of the Covenant prohibits servitude. Servitude is specifically treated as a separate offence under the Penal Code, which specifies in article 189 that: "Anyone who reduces a person to, or keeps him in, servitude or a similar state shall be sentenced to imprisonment for four to 12 years". In this way, servitude is completely forbidden in national country and this right is safeguarded.

The third paragraph prohibits forced or compulsory labour. The paragraph consists of the subparagraphs described below.

Subparagraph (a) specifically forbids forced or compulsory labour, a principle which is safeguarded in Costa Rican legislation by a number of provisions. Article 193 of the Penal Code imposes penalties on anyone who, through serious threats or physical or moral force, compels another person to do, to refrain from doing, or to tolerate something for which he is not under any obligation. Articles 8 and 20 of the Labour Code protect this right and prohibit an individual being forced to carry out work that he is not obliged to do. Again, article 429 of the Commercial Code provides that, in the case of personal obligations, claims may be made only for damages resulting from failure of performance and not for compulsory performance of such obligations.

Subparagraph (b) says that prison work may not be interpreted as forced labour. In this respect, article 55 of the Penal Code gives a convicted person the option of paying off a fine imposed on him by working without remuneration for municipal authorities, the public administration and even private enterprise. Furthermore, in connexion with security measures, article 102 of the Code establishes the various types of work which different categories of offenders shall perform. In every case, such work will be performed on the understanding that the offender agrees to do it.

The first paragraph of article 9 enunciates the right to liberty and security of person, which is safeguarded by a number of provisions. Article 20 of the Political Constitution states that all men are free within the Republic and that no one under the protection of its laws can be a slave. Article 190 of the Penal Code penalizes the offence of concealment of detainees by the authorities, article 191 specifies that deprivation of liberty is an offence, article 192 enumerates the aggravated forms of the offence of deprivation of liberty and article 215 provides for the offence of abduction for purposes of extortion, i.e. when a person is deprived of his liberty in order to obtain a ransom.

The second paragraph of the article enunciates the right of a person to be informed at the time of arrest of the reasons for it. This right is guaranteed by the Code of Criminal Procedure, which affords a number of guarantees for persons under arrest, including this right, which is mentioned in Chapter II, Title IV, Book II.

The third paragraph of the article enunciates the right to prompt trial or release. This is protected in article 37 of the Constitution, which provides that: "No one may be detained without serious grounds for suspecting that he has committed an offence and without a written order from the judge or authority responsible for the maintenance of public order, unless the person concerned is a fugitive from justice or is caught in the act; in all cases he shall be brought before the competent judge within not more than 24 hours". This right is set forth in greater detail in article 1 of the Code of Criminal Procedure. Article 297 of the Code makes provision for release and the subsequent articles regulate this right.

The fourth paragraph enunciates the individual's right of access to a court when his liberty has not been respected, a right, which as stated above, is embodied in article 37 of the Political Constitution.

The fifth paragraph refers to the right to compensation of anyone who has been unjustly imprisoned; this is covered by articles 3 and 8 of the General Act relating to Social Rehabilitation, which enumerate the purposes of the Act and relate mainly to the execution of sentences and the safety and treatment of prisoners.

The second paragraph of article 10 deals primarily with the segregation of accused persons from convicted persons at places of detention. A similar provision is contained in article 292 of the Code of Criminal Procedure, which states: "Persons held in custody pending trial shall be placed in premises different from those for prisoners". The paragraph then goes on to provide for the segregation of accused juvenile persons from adults. This right is covered by article 17 of the Penal Code, which stipulates that persons under 17 years of age shall be tried under a special law, that they shall not be treated in the same way as adults and that they shall be kept apart at all times. Also, article 1 of the Organization Act relating to Juvenile Courts establishes special courts which must be different and totally separate from those for adults. The third paragraph of article 10 provides for the establishment of a penitentiary system aimed at the reformation and social rehabilitation of offenders. The penitentiary system is covered by the following legislation: the General Act relating to Social Rehabilitation, article 17 of the Penal Code, which provides for special juvenile courts, the Organization Act relating to Juvenile Courts and articles 518 and 519 of the Code of Criminal Procedure; in all cases they refer to the penitentiary system as a system for the progressive re-education and the rehabilitation of the offender in society.

Article 11 says that no one shall be imprisoned for non-performance of a contractual obligation. Article 38 of the Constitution safeguards this right as follows: "No one shall be imprisoned for debt".

The first paragraph of article 12 of the Covenant provides for the right of movement. This is safeguarded by article 22 of the Political Constitution, which states: "Every Costa Rican may move to and remain in any part of the Republic or elsewhere, provided he is free from liability, and may return when convenient to him. No requirements may be issued to prevent Costa Ricans from entering the country". As already explained, if this right is violated, article 43 of the Constitution provides for the remedy of habeas corpus, which is governed by the Habeas Corpus Act. Motor vehicles are governed by the Traffic Act.

The second paragraph provides for freedom to leave the country; this is regulated and protected by the Migration Regulations.

The third paragraph provides for restrictions on these rights and this is covered by the above-mentioned Migration Regulations.

The fourth paragraph says that nationals shall not be deprived of the right to enter their country, something which is safeguarded by articles 22 and 32 of the Political Constitution. The last sentence of article 22 of the Constitution states: "No requirements may be issued to prevent Costa Ricans from entering the country" and article 32 stipulates that: "No Costa Rican may be compelled to abandon national territory".

Article 13 protects the right of an alien to stay in national territory and enumerates the guarantees that he enjoys if he is threatened with expulsion from the country. In this respect, the Constitution lays down in article 19: "Aliens have the same individual rights and duties as Costa Ricans". In addition, article 31 of the Political Constitution provides for the right of asylum for nationals of other countries who are persecuted on political grounds and states that extradition shall be regulated in accordance with the law. A special law regulates the procedure for extradition and affords a number of guarantees for the alien involved.

Article 14 of the Covenant enunciates in its first paragraph the right to equality before the courts and procedural guarantees such as a hearing by a competent, independent and impartial tribunal and the publication of the judgements rendered by the courts. All these rights and guarantees are fully protected by legislative measures which range from articles of the Constitution to the laws included in the different Codes. Article 33 of the Constitution states: "All men are equal before the law" and it follows that, in referring to the equality of all persons before the law, the article provides for equality before the courts. Article 35 of the Constitution furnishes another procedural guarantee because it states: "No one may be tried by a commission, court or judge specially appointed for the case; he shall be tried exclusively by the courts established in accordance with the Constitution"; thus protecting the right or guarantee to the natural judge. Article 153 specifies which courts are established under the Constitution and there are two laws concerning the principle of the natural judge, i.e. the Organization Act relating to the Judicial Power and the Courts Jurisdiction Act. Article 1 of the Code of Criminal Procedure upholds these principles by stipulating: "No one may be sentenced except by virtue of a trial, conducted in accordance with this Code or be tried by courts other than those instituted by the law in accordance with the Political Constitution". As a procedural guarantee that is in conformity with the provisions of paragraph 1 of article 14 of the Covenant, it has been decreed that criminal cases shall be heard orally and in public in conformity with article 359 of the Code of Criminal Procedure, which says: "Proceedings shall be verbal and public; otherwise they shall be null and void". With regard to the rendering of judgement, article 396 of the Code prescribes that it must be read aloud to the public prosecutor and to the defendant and his counsel after the hearing and set down in a written document. The second paragraph of article 14 of the Covenant deals with the right of the accused person to presumption of innocence. This principle is set out in article 39 of the Political Constitution, which states: "A person shall be made to suffer a penalty only for a crime, a serious offence committed without criminal intent or a misdemeanour punishable under pre-existing law, by virtue of a final sentence pronounced by a competent authority after the opportunity has been given to the accused to plead his defence and upon the necessary proof of guilt". This article provides very fully for presumption of innocence, since no one can be sentenced unless his guilt has been proved through a full trial with every opportunity for a defence. Article 1 of the Code of Criminal Procedure upholds this principle of the Constitution by stipulating that no one may be deemed guilty unless so declared in a final judgement.

The third paragraph of this article of the Covenant stipulates that everyone is entitled to certain minimum guarantees during his trial.

Subparagraph (a) states that the person shall be informed of the nature and cause of the charge against him. This is guaranteed in the Code of Criminal Procedure in article 278, which is to be found in the chapter relating to statements by the accused person and specifies that, before the accused makes a statement: "The judge shall then inform the accused person in detail of the act with which he is charged and of the evidence against him, that he may refrain from making a statement without his silence being taken as a presumption of guilt and that he may request the presence of his defence counsel."

Subparagraph (b) states that the accused has the right to adequate time for the preparation of his defence and to communicate with counsel. This right is expressly safeguarded in article 80 of the Code of Criminal Procedure, which reads: "The accused person shall have the right to be defended by counsel or by the public defence counsel". Furthermore, article 278 of the Code stipulates that the accused may refuse to make a statement and may require the presence of his counsel. Before the accused makes a statement in a criminal case, a defence counsel must be appointed. This is set out in article 189 of the Code of Criminal Procedure, which states: "At the earliest opportunity, and in any case before the accused person makes a statement, the judge shall invite him to select a defence counsel".

Subparagraph (c) states that the accused has the right to be tried without undue delay. This right is protected by the Political Constitution, which establishes in article 41 the manner in which justice shall be administered: "Everyone shall receive reparation for injuries or damage to his person, property or moral interests through recourse to the law. Justice must be done promptly without refusal and in strict accordance with the law".

Subparagraph (d) establishes the right of everyone to legal assistance when proceedings are instituted against him. This right is safeguarded in article 83 of the Code of Criminal Procedure, which states: "If the accused person does not choose a counsel in due time, the court shall appoint as such a public defence counsel, except in cases where the accused is authorized to conduct his own defence". It will be seen that this article requires all accused persons to have legal assistance, either an ordinary lawyer or, failing that, a public counsel appointed by the court. Furthermore, article 189 of the Code stipulates that the accused must have appointed a defence counsel before he makes a statement.

Subparagraph (e) establishes the right of the accused to examine witnesses and to obtain the attendance of witnesses on his behalf. This right is guaranteed by article 351 of the Code of Criminal Procedure, which empowers the defence to bring or offer evidence during the hearing and also to call witnesses. Furthermore, article 383 of the Code safeguards this right in a more practical manner by stating: "The members of the Court, the public prosecutor, the parties and the defence counsel may, with the consent of the presiding judge, put questions in due course to the parties, witnesses, experts and interpreters".

Subparagraph (f) provides for the right of the parties to the assistance of an interpreter. Article 253 of the Code of Criminal Procedure provides for their appointment by the judge in cases where it is necessary to translate evidence or statements made in a language other than Spanish.

Subparagraph (g) provides for the right of everyone not to be compelled to testify against himself. This rule forms part of the individual guarantees protected by the Political Constitution in article 36, which states: "In criminal matters, no one is obliged to testify against himself". The same guarantee is contained in article 276 in the Code of Criminal Procedure, which clearly states the following: "The accused person may refrain from making a statement. Under no circumstances shall he be required to swear or affirm to tell the truth; no coercion or threats shall be used against him, nor any other means to oblige, induce or compel him to make a statement against his will. No charges or counter charges shall be made against him with a view to securing his confession."

The fourth paragraph establishes a special procedure for juveniles. This right of juveniles to be tried under a special procedure is provided for in our legislation in Act No. 3260 of 21 December 1963 relating to Juvenile Courts, as amended by Act No. 3534 of 23 July 1965. Furthermore, article 17 of the Penal Code stipulates that application of the Code to persons under 17 years of age will be determined by special legislation.

The fifth paragraph enunciates the right of anyone convicted of a crime to have his conviction reviewed by a higher tribunal. Article 472 of the Code of Criminal Procedure enumerates the kinds of sentence against which an appeal may be made. Article 474 specifically lists the following sentences against which the convicted person may appeal: "(1) A sentence by a court to two or more years' imprisonment, a fine equivalent to 180 days' imprisonment, three years' debarment from the exercise of one's profession, payment of damages in an amount of more than 5,000 colones or preventive detention for two years or more; (2) A sentence by a criminal judge to a term of imprisonment of over six months, a fine equivalent to 180 days' imprisonment, one year's debarment from the exercise of one's profession; payment of damages in an amount of more than 2,500 colones or preventive detention for two or more years; (3) A stay of proceedings or an acquittal conditional upon medical treatment and preventive measures for an indefinite period; (4) Rulings which do not permit cancellation of the sentence; and (5) Decisions which impose preventive measures for two or more years, when it is considered that serving the sentence has not been effective in rehabilitating the convicted person".

Unfortunately, the Costa Rican Code of Criminal Procedure establishes some sentences against which there is no appeal, that is to say cases which are heard in sole instance. In this connexion, legislative reforms are called for.

The sixth paragraph enunciates the right to compensation if a person has been convicted and then released because his conviction has subsequently been reversed or he has been pardoned on the ground that there has been a miscarriage of justice. Article 41 of the Political Constitution embodies this right in general terms when it states: "Everyone shall receive reparation for injuries or damage to his person, property or moral interests through recourse to the law". It is specifically protected by article 498 of the Code of Criminal Procedure, which says: "Rulings establishing that a convicted person is innocent may, at the request of the party concerned, decide on damages attributable to the conviction. These will be paid by the State provided the convicted person has not, by deceit or fault, contributed to the miscarriage of justice. Civil damages may be awarded only in favour of the convicted person or of his legal heirs".

The seventh paragraph of article 14 of the Covenant provides for the principle of non bis in idem. This is safeguarded by a number of provisions and is a constitutional guarantee. The last paragraph of article 42 of the Political Constitution states: "It is forbidden to reopen criminal proceedings and judgments rendered as res judicata, except for the purposes of the remedy of review". Article 1 of the Code of Criminal Procedure also guarantees this right by stipulating that no one may be prosecuted on a criminal charge more than once for the same act, not even if the classification in law has been changed or new circumstances have come to light.

The first paragraph of article 15 of the Covenant establishes the principle of equality in dubio pro reo. The principle that an act must be described in law to constitute an offence is contained in the Political Constitution in article 39, which lays down that: "A person shall be made to suffer a penalty only for a crime, a serious crime committed without criminal intent or a misdemeanour punishable under pre-existing law ...". This paragraph also enumerates, more indirectly, the principle of non-retroactivity of criminal law which is also set out in article 34 of the Political Constitution: "No law shall have retroactive effect to the detriment of any person or to his acquired property rights or to established legal situations". The reference to these two principles at constitutional level is reflected in the Penal Code. With regard to the principle of legality, article 1 of the Code states: "No one may be punished for an act which does not constitute an offence under criminal law or subjected to penalties or preventive measures not previously prescribed by law". As to the principle of non-retroactivity of criminal law, the Penal Code stipulates the following in article 12: "If subsequent to the commission of a punishable offence, a new law is enacted, the particular case under judgement shall be decided according to the law most favourable to the accused person". Furthermore, in keeping with the principle of in dubio pro reo, article 13 of the Penal Code stipulates that if a law more favourable to the accused is enacted when he is sentenced, the competent court shall modify the sentence in accordance with the provisions of the new law.

The second paragraph of this article of the Covenant provides for the punishment of offences established as crimes under international law. In this connexion, article 7 of the Penal Code enumerates a number of international offences as follows: "Irrespective of the provisions in force in the place at which a punishable offence has been committed and the nationality of the perpetrator, penalties will be imposed in accordance with Costa Rican law on persons who commit acts of piracy or genocide, forge coins, credit instruments, banknotes and other bearer papers, participate in the traffic of slaves or of women or children, engage in the traffic in narcotic drugs or obscene publications and persons who commit other punishable offences against human rights as defined in treaties entered into by Costa Rica or in this Code". In addition, article 6 of the Code stipulates that before this type of offender can be brought to trial, he must be in national territory. The Penal Code further prescribes a term of 10 to 15 years' imprisonment for certain offences which are described in the Code as offences of an international character and are enumerated in article 372: "Persons who direct or form part of organizations of an international character engaged in the traffic of slaves, women, children or narcotic drugs or who carry out acts of terrorism or infringe provisions laid down in treaties entered into by Costa Rica for the protection of human rights shall be liable to a term of imprisonment for 10 to 15 years". Article 373 provides for another crime which, by its nature, may be included among crimes of an international character, namely the crime of genocide.

Article 16 of the Covenant enunciates the right of every human being to recognition as a person before the law. A number of provisions in the Civil Code relate directly to the many aspects of this concept of recognition of a person before the law. Article 18 of the Civil Code establishes that: "Legal capacity is inherent in every living person in an unconditional and general manner". In this article one of the attributes of personality, namely legal capacity, is recognized. Articles 19, 20 and 21 of the Code deal with the matter of age in relation to legal capacity. The law deems adults to be persons who are over 18 years of age, but it attributes some legal capacity to those who are over 15 years of age and their acts are valid or can be validated. Title II of the Code contains a chapter relating to the rights of personality - chapter I - which is entitled "Rights of personality". Article 26 of this chapter provides that: "The rights of personality lie outside commerce by man" and thus protects many forms of legal personality. Article 27, for example, prohibits acts by the individual to dispose of his own body except as permitted by law. It is also stated that it is lawful to make arrangements for the disposal of one's own body or part of it after death. Article 28 establishes the right of individuals to refuse to undergo a medical examination or legal medical treatment, except compulsory vaccination and other health measures. Articles 29 and 30 of the Code protect the individual's right to photographic and other portraits of his image and provide a special safeguard by stipulating that it is a personal and negotiable right. Article 31 sets forth the right, which the law also regards as a duty, of every individual to bear a name. Article 36 of the Code confers on everyone the right to change his name with legal authorization. Finally, article 41 is a guarantee of protection of the rights of personality because it stipulates that: "The right to compensation for moral damage is hereby established in cases of injury to the rights of personality".

Article 17 of the Covenant enunciates the right to protection of one's honour and reputation.

The first paragraph of the article states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, correspondence, honour or reputation. This right is safeguarded by a large number of legal provisions. At the constitutional level, it is guaranteed by article 23 of the Constitution, which states that: "The home and all private premises of the inhabitants of the Republic are inviolable" and by article 24, which states that: "Private documents and written or oral communications of the inhabitants of the Republic are inviolable". The Penal Code penalizes a number of offences against this right. Article 145 covers offence of contumely if the reputation or honour of a person is attacked by word or deed either in his presence or by a communication addressed to him. The penalty is greater if the insults are proffered in public. Article 146 of the Code covers the offence of defamation and penalizes anyone who defames another or divulges matters liable to reflect on his reputation. Article 147 defines the offence of calumny if a person is falsely accused of committing a criminal act. Article 152 of the Code covers the offence of publication of defamatory material if someone in any way publishes or reproduces defamation of one person by another. Article 194 renders liable to punishment anyone who utters grave or unwarranted threats to intimidate a person. Article 195 covers the offence of aggravated threats. Other offences qualified as offences against privacy are dealt with in a number of articles. Article 196 penalizes interference with correspondence, article 197 penalizes the theft, misdirection or suppression of correspondence, article 198 covers the offence of unlawful eavesdropping, article 201 penalizes improper use of correspondence, article 202 covers the offence of spreading false rumors and article 203 the offence of disclosure of secrets. Article 204 stipulates that violation of the home is an offence and article 205 deals with the offence of unlawful search and seizure. In addition to these articles, the Code provides for a number of lesser offences which may infringe this right.

The second paragraph of this article of the Covenant provides for the right to the protection of the law against the interference or attacks mentioned in the first paragraph. By classing such interference or attacks as offences, the law provides effective protection for these rights.

The first paragraph of article 18 provides for the right to freedom of thought, conscience and religion. These rights or freedoms are protected by various legislative measures. Article 28 of the Constitution lays down that: "No one may be harassed or persecuted for expressing his opinions nor for any act which does not infringe the law". In this article, freedom of conscience and thought is guaranteed. Article 76 of the Political Constitution enunciates the right to freedom of religion. Furthermore, article 79 of the Electoral Code permits political propaganda and the expression of political opinion without harassment or persecution for one's political beliefs.

The second paragraph of this article of the Covenant states that no one shall be subject to coercion in the matter of religion and article 76 of the Political Constitution, which provides for freedom of worship, guarantees this right. Furthermore, in article 25 the Political Constitution states that no one shall be forced to join any association, which guarantees the right not to be compelled to belong to any particular religion.

The third paragraph of the article provides for freedom to manifest one's religion or beliefs. This freedom is guaranteed by article 28 of the Constitution, which reads as follows: "No one may be harassed or persecuted for expressing his opinions or for any act which does not infringe the law". Furthermore, article 206 of the Penal Code prescribes penalties for anyone who obstructs or disturbs a religious or funeral service. It thus safeguards the right to manifest one's religion.

The fourth paragraph provides for the liberty of parents to ensure the religious and moral education of their children, something that is safeguarded in the legal system as a right of parents because the Family Code states that parental authority confers on parents the right to educate their children and to administer moderate chastisement.

The first and second paragraphs of article 19 of the Covenant protect two similar rights - freedom of opinion and of expression. These two rights are protected under the Constitution. Article 28 states that: "No one may be harassed or persecuted for expressing his opinions or for any act which does not infringe the law". Again, article 20 of the Constitution provides for freedom of expression as follows: "Everyone may communicate his thoughts orally or in writing and publish them without prior censorship". This is the kind of general protection afforded for these two rights, but they are also safeguarded by such provisions as the Publication Act. Article 151 of the Penal Code also safeguards this right by stipulating that unfavourable opinions expressed in literary, artistic, historical, scientific or professional criticism are not punishable as attacks against honour. Article 79 of the Electoral Code provides for the right of political parties to publish political propaganda. Article 86 of the Code regulates the way in which political propaganda may be conducted through public printing services or periodicals which are not official organs of a particular political party.

Subparagraphs (a) and (b) of the third paragraph of this article provide for certain restrictions on the right of expression. Similar restrictions are also found in the Costa Rican legal system. Article 29 of the Political Constitution, which provides for freedom of expression, restricts it by saying: "but everyone shall be responsible for abuses committed in the exercise of this right in such cases and in such manner as may be established by law". Specific restrictions are set out in the Publication Act. Furthermore, article 152 of the Penal Code makes the publication of defamatory material an offence and thus restricts the right of expression. In addition, article 387 of the Penal Code prescribes penalties for the publication of false information and article 388 for the publication of news which may prejudice the re-establishment of public order.

The first paragraph of article 20 of the Covenant prohibits propaganda for war. In Costa Rican criminal law, there is no express prohibition on propaganda for war; nevertheless, there are various penalties for public incitement to, or advocacy of, a crime. In such cases, article 271 of the Penal Code covers the offence of public incitement whereby anyone who incites another to commit a specific crime likely to occasion a breach of the peace is liable to punishment. Furthermore, article 294 of the Penal Code makes it an offence to engage in propaganda against the constitutional order and anyone who publicly advocates the replacement by unconstitutional means of bodies established by the Constitution is liable to punishment.

The second paragraph of the article under consideration prohibits any advocacy of national, racial or religious hatred. The Penal Code, in article 296, penalizes any manifestation of contempt for national symbols and anyone who publicly abuses or reviles the national flag, coat of arms or anthem is liable to punishment. Article 385 of the Penal Code also provides for the offence of incitement to hatred against any person or institution. This is the way in which the legal system deals with the matters forbidden under this paragraph.

Article 21 of the Covenant affirms the right of peaceful assembly, but also allows for certain restrictions in order to protect public safety, order or health. In general terms, this right is recognized by the Political Constitution in article 26, which states: "Everyone has the right to peaceful and unarmed assembly, whether for private business or to discuss political affairs and to consider the public conduct of officials. Meetings on private premises require no prior authorization. Those held in public places shall be regulated by law". In addition to enunciating the right of assembly, this article of the Constitution establishes certain restrictions. This right is guaranteed by a number of legislative provisions such as articles 80, 81, 82, 83 and 84 of the Electoral Code, which set out the regulations governing political and electoral meetings and demonstrations organized by the political parties. Article 206 of the Penal Code safeguards this right by making it an offence to disturb religious or funeral services. Article 394 specifically safeguards this right by stipulating that anyone who disturbs a meeting, either by shouting, with noisy demonstrations or in any other way, shall be liable to a fine equivalent to 3 to 30 days' imprisonment.

Article 22 of the Covenant fully protects freedom of association. In the first paragraph it is stated that everyone shall have the right to freedom of association. This right is safeguarded by a number of provisions. In the first place, it is protected by constitutional rules. The general rule is laid down in article 25 of the Costa Rican Political Constitution, which says: "Inhabitants of the Republic have the right to associate for lawful purposes. No one may be compelled to join any association whatsoever". This establishes both the right of association and

freedom of association. Article 98 of the Political Constitution also provides for another right of association in the following terms: "All citizens have the right to join parties in order to participate in national politics". This is another aspect of freedom of association - the right to participate in political activities. Again, article 60 of the Constitution states that employers and workers have the right freely to form associations in order to obtain certain benefits. This same right of association is recognized in Act No. 218 of 8 August 1939 relating to Associations, as amended, more particularly in respect of article 1, by Act No. 4583 of 4 May 1970, and it is also guaranteed by Act No. 4719 of 22 August 1968, relating to Co-operative Associations and the establishment of the National Institute for the Promotion of Co-operatives, as amended, more particularly in respect of articles 2 and 3, by Act No. 5185 of 20 February 1973.

The second paragraph of the article provides for restrictions on this right in special circumstances. In this connexion, Costa Rican legislation provides for a number of restrictions on associations, as for example in articles 2 and 3 of the Act relating to Associations, in article 4 of the Act relating to Co-operative Associations, and the restrictions established in article 1197 of the Civil Code and in article 263 of the Labour Code.

The third paragraph lays down that trade union guarantees may not be prejudiced. In this connexion, article 74 of the Constitution stipulates that the labour rights and guarantees granted by the Constitution may not be withdrawn. These include the guarantee of association in trade unions. The same principle is established in article 11 of the Labour Code. Trade union freedoms cannot be prejudiced.

Article 23 of the Covenant provides for protection of the family and the first paragraph safeguards protection of the family by society. In this respect, the Political Constitution of the Republic lays down in article 51 that: "The family, as the natural unit and basis of society, is entitled to special protection by the state". This principle is worked out more thoroughly in the Family Code, which lays down in article 51 that: "It is the obligation of the Costa Rican State to protect the family". Furthermore, article 2 of the Family Code states that the family unit is one of the fundamental criteria for interpretation of the Code.

The second paragraph of the article establishes the right of men and women to marry and to found a family. This point is partly covered by article 52 of the Political Constitution, which states that: "Marriage is the essential basis of the family". Nevertheless, this principle is covered more fully by the Family Code. In article 11, the Code affirms that marriage is the essential basis of the family and that its objectives are life in common, co-operation and mutual assistance. Article 12 of the Code states that any situation contrary to the essential purposes of marriage is null and void. Furthermore, article 179 of the Penal Code states that those who contract matrimony in the knowledge that there is an impediment rendering it completely null and void are liable to a term of imprisonment for one to four years.

The third paragraph of the article affirms that no marriage shall be entered into without the free consent of the spouses. A similar principle safeguards this right in article 13 of the Family Code, which lays down that: "For the purpose of marriage, the lawful and express consent of the contracting parties is required". Furthermore, a mock marriage is punishable by law under article 179 of the Penal Code. In articles 25 and 31, the Family Code sets out this principle in the following way:

article 25 states that those who wish to contract matrimony must indicate their intention verbally or in writing to the appropriate official, which implies an express willingness to contract matrimony; article 31 states that the formalities for marriage must include an expression of the will of the contracting parties to be united in marriage, whereupon the official shall pronounce them man and wife.

The fourth paragraph provides for equal rights and responsibilities of the spouses as to marriage. Article 52 of the Political Constitution establishes the principle of this equality of spouses by stating: "Marriage is the essential basis of the family and is founded on equality of rights of the spouses".

Article 2 of the Family Code affirms that equality of rights of spouses is the fundamental principle underlying the implementation and interpretation of the Code. Article 34 of the Code states that the spouses share the responsibility and management of the family. Article 138 stipulates that the parents, both father and mother, exercise patria potestas over the children of the marriage with equal rights and duties. Article 156 of the Code states that the spouses are jointly responsible for providing them with food. In the event of dissolution of a marriage, the Court, taking into account the welfare of children who are under legal age, shall decide which spouse is to be entrusted with their custody, upbringing and education, in accordance with the provisions of article 56 of the Family Code. The first paragraph of article 24 of the Covenant affirms the right of the child to protection. The basic rights of the child are to be found in the Political Constitution. Article 51 of the Political Constitution establishes that children have the right to protection by the State. Article 53 imposes the same obligations on parents in respect of children born in or out of wedlock and affirms the right of everyone to know who his parents are. Safeguards are provided at the constitutional level by article 55 of the Constitution, which establishes the National Children's Association (Patronato Nacional de la Infancia) for the special protection of mothers and children with regard to employment and states that laws shall be enacted to protect children and women at work.

The family Code also contains many regulations protecting minors, such as article 5, which makes a special institution - the National Children's Association - responsible for the protection of minors.

A number of prohibitions and regulations also exist to afford special protection for minors with respect to marriage. Article 56 of the Code provides protection for minors in the event of dissolution of the marriage of their parents. Article 156 lays down that parents must provide food for their children who are under legal age. Article 172 of the Penal Code makes trafficking in minors for prostitution a punishable offence. Article 167 penalizes corruption of a minor with imprisonment. Article 184 makes the abduction of a minor an offence and article 17 of the Penal Code establishes special courts for minors which are governed by the Juvenile Courts Act.

The second paragraph of this article of the Covenant provides for the right of children to be registered immediately after birth and to have a name. Article 182 of the Penal Code prescribes penalties for anyone who by concealment, substitution or exposure leaves a new-born child without civil status. Article 382 penalizes individuals who, having the duty to register the birth of a child, fail to do so within 30 days after the birth. Article 31 of the Civil Code affirms the right of all individuals to bear a name. Article 32 states that the assistant registrars shall enter the names in the civil register and article 33 of the Code lays down that the registrar himself shall give a name to a child of unknown parents.

The third paragraph of this article provides for the right of all children to acquire a nationality. Under the Costa Rican Constitution, no child in national territory can be without a nationality, since article 13 of the Constitution states that an infant of unknown parents found in national territory is Costa Rican by birth. Furthermore, article 17 of the Constitution lays down that the acquisition of Costa Rican nationality includes the children who are under legal age but the loss of such nationality does not extend to the children.

Article 25 of the Covenant sets out the political rights of citizens, without any restrictions. Subparagraph (a) provides for the right to take part in public affairs either directly or through freely chosen representatives. Article 90 of the Political Constitution safeguards this right for Costa Ricans over 18 years of age and specifies that citizenship means both political rights and political duties. Article 18 of the Constitution embodies the right and also the duty of citizens to participate in public affairs by stating that Costa Ricans must serve and defend their country and contribute to public expenditure. In accordance with article 305 of the Constitution, citizens have the power to legislate, a power which is delegated by means of the suffrage to the Legislative Assembly. Article 107 establishes that deputies to the Legislative Assembly shall hold office for four years and may not be re-elected for a consecutive term. In articles 132, 133 and 138, the Constitution prescribes the manner in which the people shall elect members of the Executive Power. Article 130 stipulates that the Executive Power shall be exercised in the name of the people by the President of the Republic and the Ministers of State, who are compelled to act together. The Municipal Code prescribes the manner in which citizens may participate directly in the conduct of community affairs. It establishes bodies such as the town council through which the people take decisions of a public nature on various matters.

Subparagraph (b) of this article of the Covenant provides for the right to vote and to be elected at genuine periodic elections by universal suffrage and secret ballot. This right is safeguarded directly in article 93 of the Political Constitution, which says: "Voting is a primary and compulsory civic duty and shall be carried out by citizens whose names appear in the civil register by direct and secret ballot in the presence of the electoral boards". Similarly, article 94 of the Constitution grants a naturalized Costa Rican citizen the right to vote 12 months after he has obtained naturalization. Article 95 sets forth certain principles governing the law on the exercise of suffrage, such as the independence of electoral bodies, the obligation of the State to include citizens automatically in the civil register and to provide them with identity cards so that they may vote and to provide effective guarantees of freedom, order, honesty and impartiality on the part of government officials. Article 108 of the Constitution lays down the requirements to be elected deputy, i.e. any Costa Rican over 21 years of age, whether Costa Rican by birth or by naturalization and with 10 years of residence in the country after naturalization, may be elected deputy. The sole requirements for election as President or Vice-President of the Republic are laid down in article 131 of the Constitution: the person must be Costa Rican by birth, enjoying full civil rights, a member of the laity and over 30 years of age. Article 169 of the Constitution lays down that local government shall consist of deliberative bodies composed of municipal councillors elected by popular vote.

The third paragraph of the article under consideration provides for the right of access on general terms of equality to public service in one's country. This right is safeguarded by the Civil Service Statute. Title XV of the Political Constitution provides for this legal statute and in articles 191 and 192 lays down the way in which the civil service must function. Article 191 prescribes that the Civil Service Statute shall regulate the relations between the State and public officials, with the object of guaranteeing efficient administration. Article 192 provides, inter alia, that public officials shall be appointed on the basis of proven ability and may be dismissed only on grounds of justifiable dismissal as provided for in labour legislation. They may not be dismissed for political reasons or for their beliefs. The way in which the civil service functions is expressly regulated by the Civil Service Statute, which seeks to establish equality of access and the general conditions of service for public officials.

Article 26 of the Covenant enunciates in general terms the right of equality before the law and to equal protection of the law. This principle is fully reflected in article 33 of the Constitution, which says: "All men are equal before the law and there shall be no discrimination of any sort contrary to human dignity". Article 19 of the Constitution provides for equality as between aliens and nationals with regard to the enjoyment of individual and social rights and duties. Article 76 provides for freedom of worship and of religion, which signifies protection of individuals against any discrimination on grounds of their beliefs. Article 54, taken in conjunction with article 53, provides for equal rights for children born in and out of wedlock and prohibits any personal limitation based on the nature of filiation. Article 68 provides for equality among Costa Ricans and aliens with regard to wages, benefits and working conditions. Article 78 lays down the right to education and makes it the right of everyone by stipulating that education is free and payable by the State, which means that all individuals have access to it. Without discrimination of any kind, article 90 provides for equality of political rights, which include the equal rights set forth in article 98 of the Constitution, i.e. the right of all citizens to join parties in order to participate in national politics. Article 371 of the Penal Code prescribes penalties for any individual, manager or director of a public or private institution or administrator of any industrial or commercial establishment who applies any prejudicial discriminatory measure based on considerations of race, sex, age, religion, civil status, political opinion, social origin or economic position.

Article 27 of the Covenant enunciates the right of ethnic, religious or linguistic minorities to equality with other citizens of the States parties to enjoy their own culture, to profess and practice their own religion and to use their own language. In general terms, article 33 of the Political Constitution provides a form of protection for minorities by stipulating that all men are equal before the law and by prohibiting any type of discrimination. Subparagraph 6 of article 95 of the Political Constitution provides for "guarantees of representation of minorities" as a principle of the law regulating the exercise of suffrage. Finally, all these rights of minorities are protected by article 371 of the Penal Code, mentioned above, which renders punishable any type of prejudicial discrimination based on considerations of race, sex, age, religion, civil status, political opinion, social origin or economic position. The rights of minorities are also directly and closely protected by article 353 of the Penal Code, which defines the crime of genocide

in the following terms: "Anyone who participates with homicidal intent in the total or partial destruction of a particular group of human beings by reason of their nationality, race, religious or political beliefs shall be liable to a term of imprisonment for 10 to 25 years. A similar penalty shall be imposed on anyone who: (1) causes members of such groups serious physical or mental injury; (2) inflicts on such groups conditions of life liable to bring about the death of all or some of the members; (3) takes steps intended to prevent births within such groups; or (4) by force or intimidation transfers children from one such group to other different groups".
