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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD (PARTIAL)* OF THE 2493rd MEETING

Held at the Palais Wilson, Geneva,
on Monday, 22 October 2007, at 3 p.m.

Chairperson: Mr. RIVAS POSADA

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3.15 p.m.

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

Fifth periodic report of Costa Rica (continued) (CCPR/C/CRI/5; CCPR/C/CRI/Q/5)

1. At the invitation of the Chairperson, the members of the delegation of Costa Rica resumed their places at the Committee table.
2. Ms. THOMPSON (Costa Rica), replying to questions 10 and 11 of the list of issues, said that article 75 of the Constitution established Catholicism as the State religion. That provision did not violate the freedom of religion and worship, which guaranteed the free exercise of all other forms of worship that were not at variance with universally accepted morality and decency. Similarly, it in no way prevented couples from marrying in accordance with other religious rites. They had the same right to have children and to adopt children. However, only Catholic marriage was valid for civil purposes.
3. Her Government had taken several measures to encourage minority groups such as indigenous people, Afro-Costa Ricans and migrants to integrate more effectively into mainstream society. In the area of education, efforts were being made to ensure that cross-cutting issues such as sustainable development, sexual and health education, and human rights for democracy and peace were fully covered in the curriculum. Steps were taken to promote global dialogue for a culture of peace and tolerance, encouraging solidarity, respect, equity and equal opportunities.
4. Turning to question 12, she said that the Responsible Parenthood Act had introduced the right of children to be recognized by their parents. It had also established a new approach to children's rights in general. Since the Act's entry into force in 2001, over 12,000 cases of voluntary recognition of children by their parents had been resolved and a further 15,000 cases were currently being processed.
5. In response to question 13, she said that on 1 March 2007 legislation amending several provisions of the Family Code, the Civil Code and the Criminal Code had been enacted, imposing an absolute prohibition on marriage by persons aged under 15.
6. Referring to question 14, she said it had been found that in the 2004 judicial proceedings concerning trafficking of children from Ecuador the documents submitted in the case had been falsified. The case had therefore been dismissed. Her delegation had provided written data on the number of persons who had been investigated, tried and sentenced for offences relating to the sexual exploitation of children in the previous five years, and the number of victims and the amount of compensation they had received.
7. In reply to questions 15 and 16, she said that a new Migration and Aliens Act replacing that mentioned in paragraph 193 of the fifth periodic report had established updated criteria for

entry into the country. Those criteria were in full accordance with the provisions of the international human rights instruments that Costa Rica had ratified. In the light of the concerns raised by the Office of the Ombudsman and civil society, the Government had conducted extensive consultations with its competent agencies and members of civil society. The proposed amendments, which were currently before Congress, introduced provisions on new forms of migration.

8. Turning to question 17, she said that consideration of the bill on the autonomous development of indigenous peoples had been extended for four years in June 2005 in order to ensure compliance with the provisions of the ILO Convention on Indigenous and Tribal Peoples in Independent Countries (No. 169). Consultations had been held with indigenous peoples, international experts and the Ombudsman's Office. The bill was currently awaiting examination by the Legislative Assembly.

9. Replying to question 18, she said that national institutions and civil society were consulted, and received information regarding reports submitted to international treaty bodies and those bodies' concluding observations. The concluding observations were published on the websites of several ministries and in their press releases.

10. Mr. JOHNSON requested clarification of the rights regarding Catholic marriage and marriages conducted under other religions, given the inherent contradiction between the explanation provided in the fifth periodic report and article 75 of the Constitution. That article also appeared to be at odds with the assertion in the periodic report (para. 249) that Afro-Costa Rican religions and those introduced by new migrants were more highly regarded than had previously been the case. He asked the delegation to explain the scope of that article.

11. He asked why there had been such a long delay in passing the bill on the autonomous development of indigenous peoples and how the Government planned to proceed with that bill. He asked whether NGOs had been involved in the preparation of the periodic report.

12. Mr. KHALIL asked what progress had been made in remedying the administrative problems that had arisen regarding the registration of births. He requested clarification whether the State party's legislation still contained a loophole whereby a perpetrator of sexual abuse could marry the victim, even if the victim was aged under 15. He wished to know what measures the reporting State had taken to cooperate with other States in investigating and prosecuting cases of sexual exploitation of children.

13. He asked how the State party could justify the lack of provision for appealing against rulings affecting migrants. It would be useful to know what steps the Government had taken to improve conditions in centres for undocumented migrants.

14. Mr. AMOR requested more specific statistical information on the religious composition of the population. He asked which body was responsible for establishing the curriculum for religious education, and who taught religious education classes. It would be useful to know how important grades in religious education were in Costa Rican schools. He asked why morals and ethics were not taught in place of religious education.

15. Ms. MOTOC asked how the reporting State planned to continue its work to guarantee the right to a healthy environment. She requested additional information on the State party's position on ILO Convention No. 169 and how it planned to implement the rights enshrined in that instrument.

16. Mr. BHAGWATI asked how many cases of police violence had been investigated by the Ombudsman's Office and what the outcome had been in each case. He requested additional information on how that Office had overseen the police authorities and safeguarded human rights in that regard. Further details should be provided on the human rights education project established by that Office, particularly the scope of the project. Given that the Office appeared to serve as the State party's institution for the promotion and protection of human rights, it would be useful to know whether it complied with the Paris Principles. If not, the delegation should indicate what steps were being taken to remedy the situation.

17. He would also welcome additional information about the functions of the Special Attorney for indigenous affairs. In the report, the State party had mentioned the Council of the Judiciary's decision that it was "the court's duty to consult with the indigenous community concerning the scope of the dispute before it". The delegation should describe the nature, scope and purpose of such consultation and provide information on relevant legislation.

The meeting was suspended at 3.55 p.m. and resumed at 4.20 p.m.

18. Ms. THOMPSON (Costa Rica) said that the Constitution established the Roman Catholic religion as the State religion. At the same time, it guaranteed the free exercise of all other religions. The two concepts were fully compatible. Marriage ceremonies conducted by Catholic priests had legal standing, while an additional, civil ceremony was required for official recognition of marriages performed by non-Catholic clerics.

19. Some 20 years before, 99 per cent of all Costa Ricans had been Catholics. According to a study conducted in 2004, 47 per cent of persons consulted had self-identified as practising Catholics, 25 per cent as non-practising Catholics, 13 per cent as Protestants, 10 per cent as non-religious, and 5 per cent as adherents of other unspecified religions.

20. Faith-based educational establishments included Catholic, Methodist, Lutheran, Baptist, Jewish and other schools. In public, non-faith-based institutions, religious education was taught by regular teachers, not clerics. Religious education curricula were designed by the Ministry of Education, in consultation with the Costa Rican Episcopal Conference. There were currently no plans to replace religious education by ethics-based classes, although certain sectors of society had expressed a strong interest in separating Church and State.

21. The delay in the adoption of a law on the autonomous development of indigenous peoples was due to a complex consultation process involving indigenous associations, relevant international organizations and other stakeholders, details of which were contained in the written replies. A bill had been drafted and submitted to the Legislative Assembly's Permanent Commission on Social Affairs; it was currently awaiting adoption.

22. The periodic report had been prepared in consultation with the Ombudsman's Office, the National Child Welfare Agency, the National Institute for Women, the Public Prosecutor's Office, relevant ministries and NGOs. Delays in the submission of reports to treaty bodies were mainly due to the wide consultations involved in their preparation. Reports to treaty bodies and their concluding observations were widely published throughout the country.
23. The adoption of the 2001 Responsible Parenthood Act represented one of the most important legal advances in recent years and it was being widely implemented. To date, some 12,000 applications lodged under the Act had been processed; a further 15,000 applications remained pending. The effective implementation of the Act was hampered by its very success, since the huge influx of applications had exceeded the justice system's capacity to respond. Problems included delays in notification to appear in court or undergo a DNA test, but steps had been taken to address shortcomings.
24. Legislation had been amended to repeal provisions granting impunity to a person who had sexually abused a child under 15 years of age and subsequently married the victim. In the context of the same legal reform, marriage of persons under 15 years of age had been prohibited. The National Child Welfare Agency provided protection and counselling for child victims of sexual abuse.
25. The written replies contained detailed statistical data on the investigation and prosecution of cases involving sexual exploitation. A national action plan for the eradication of commercial sexual exploitation was being implemented with the assistance of ILO.
26. A draft proposal to amend the Migration and Aliens Act had been prepared in cooperation with the Ombudsman's Office and through relevant inter-agency mechanisms, its aim being to address the concerns raised by the Ombudsman and civil society. The proposal was currently before Parliament.
27. Costa Rica was a small country but had long been subject to large-scale immigration. Most migrants came from neighbouring Nicaragua to look for work. More recently, her country had seen a steady flow of refugees from Colombia, whose numbers far exceeded the capacity of the holding centres where they remained while their asylum applications were being processed. Measures had been taken to reduce the number of migrants in holding centres and the Government had requested assistance from UNHCR in dealing with the problem.
28. Costa Rica was firmly committed to the protection of the environment and 20 per cent of the national territory had been declared national parkland. In recent years, efforts had focused on the reduction of carbon dioxide emissions and large-scale reforestation, in accordance with the Kyoto Protocol. When Oscar Arias, former President and Nobel Peace Laureate, had taken office in 2006, he had launched the "Peace with Nature" initiative, which aimed at improving environmental protection throughout the country. The initiative was based on the notion that there could be no peace without respect for nature. Although the cost of environmental programmes was a heavy burden on developing countries, Costa Rica was deeply committed to contributing to sustainable development at the global level.

29. The main purpose of the Ombudsman's Office was the promotion and protection of human rights. The Office was competent to receive individual complaints of human rights violations and to conduct investigations into alleged violations, either on an ad hoc basis or in response to a specific complaint. It was also responsible for taking preventive measures under the Optional Protocol to the Convention against Torture and participated actively in the formulation of human rights-related policies and programmes. Its reports were available on the Internet and the Government did its utmost to promote and publicize the Office's work throughout the country.

30. Human rights education was intended to foster a culture of human rights and peace in everyday life. Human rights were understood as a cross-cutting issue to be included in all school curricula. Education was based on the principles of democracy, ethics, tolerance, justice and gender equality, inter alia. Children were taught to respect cultural, religious or ethnic differences and accept diversity. Pupils were encouraged to participate in activities relating to the promotion of human rights and peaceful coexistence at the national level.

31. Indigenous communities in Costa Rica were represented through associations, whose representatives were consulted on all matters of concern to their particular community. Customary law was applied to all civil disputes between indigenous peoples, while criminal matters were adjudicated in accordance with regular criminal legislation. Consultations regarding court cases involving indigenous peoples were conducted pursuant to the provisions of ILO Convention No. 169. The Special Attorney for indigenous peoples was responsible for coordinating the work of the National Commission on Indigenous Affairs. Since the establishment of that office in 2005, indigenous people from all over Costa Rica had submitted requests and complaints to the Special Attorney.

32. Responding to questions that had remained pending from the previous meeting, she said that under existing trade union legislation judicial proceedings could be brought only in the event of dismissal of a union leader; the proceedings tended to be long and slow. Under the new trade union freedom bill, an employer was required, before dismissing a union leader, to complete an official procedure involving the Ministry of Labour. Otherwise, the union leader could apply for reinstatement and the courts would rule on the procedure without entering into the merits of the case.

33. Mandatory arbitration was a procedure for resolving disputes in the public sector, in which there was no right to strike. It was also applicable in cases where collective bargaining failed to produce an agreement within a specified period. With regard to paragraph 269 of the report, the former Labour Code had regulated situations that arose in the private sector but not in the public sector. The courts had in fact ruled that awards in the area of public administration were unconstitutional. To address that situation, the new Code contained specific regulations governing negotiated settlements and the arbitration of economic and social disputes in the public sector that were applicable in judicial proceedings.

34. In May 2006, the office of the International Confederation of Free Trade Unions (ICFTU) had been attacked and its staff members threatened. The Judicial Investigation Department had conducted an investigation and reported its findings to the Attorney-General's Office. There had

unfortunately been an increase in violent crime in Costa Rica in recent years. The investigation had failed to identify those responsible but had concluded that the attack had not been directed against ICFTU or trade union activities as such.

35. With regard to the right to strike in both the public and private sectors, article 379 of the new trade union freedom bill limited the period for strike action to 45 days, following which, if the parties had failed to reach a settlement, arbitration pursuant to the Labour Code became mandatory.

36. The Constitutional Chamber had ruled that the question of due process was not confined to administrative law and criminal law. Due process requirements were also applicable in the private employment sector and employees must be fully informed of the grounds for their dismissal. The Court interpreted article 35 of the Constitution as requiring employers to send a letter of dismissal so that employees could exercise their right to defend themselves.

37. Unfortunately, there was no legal provision that could be invoked by the Costa Rica press to protect the confidentiality of sources of information. There was currently a bill before Congress which sought to fill that legal vacuum. Judicial proceedings in the case of the journalist who had been murdered had begun on 6 December 2005. The Public Prosecutor's Office had requested that the following penalties should be imposed on those convicted: prison terms totalling 51 years for each for the two alleged instigators of the crime and payment of a fine of 30 million Costa Rican colones; a 30-year prison term for an alleged intermediary; 30-year prison terms for three alleged perpetrators; and 20-year prison terms for two alleged accomplices. The court had decided to acquit six suspects on the grounds of reasonable doubt regarding their guilt, citing the unreliability of the evidence and the failure of the witness statements to comply with legal requirements. The judgement had been appealed to the Supreme Court by one of the defendants, who had demanded that he be fully acquitted on the ground that there was no evidence whatsoever of his involvement in the crime. At all events, she stressed that the murder had been unrelated to the journalist's professional activity.

38. The legislation prohibiting violence against women had been applied in practice in cases of murder and abuse. The number of women reporting cases of violence had risen sharply and now averaged 47,000 complaints a year. Sexual harassment was not classified as a crime but it could be prosecuted under other legislation. Commissions had been established in the country's public universities to carry out information and training campaigns regarding sexual harassment, and the Ministry of Education had issued a regulation providing for a complaint procedure.

39. Article 30 of the Constitution provided for freedom of information and the principle had been interpreted at length by the Constitutional Chamber. She drew attention to a decision on an amparo appeal against the Regional Director of Education concerning the right to receive information about the plan to improve public electricity and telecommunication services. According to the terms of the ruling, freedom of information was the right to seek, investigate, communicate or freely receive reliable and objective information through any medium, generally regarding matters of public importance.

40. On the question regarding article 143 of the Family Code, parents had the sole right to inflict moderate corporal punishment for the purpose of correcting or chastising a child. A bill that sought to prohibit all forms of corporal punishment was currently being discussed in the Legislative Assembly. The courts could be asked to authorize measures to assist in the proper upbringing of a minor, including placement of the minor in an institution for whatever period was deemed appropriate. Such measures could also be taken in the case of abandoned children, children at risk or children who were not subject to any parental authority.

41. The CHAIRPERSON, summing up the discussion with the delegation, commended Costa Rica on the role it had played in the progressive development of human rights and in creating a social environment conducive to the enjoyment of human rights and fundamental freedoms. It was regrettable, however, that the State party's delegation had not included officials with expert knowledge in areas of interest to the Committee and that some of the information requested would therefore not be available during the session. Moreover, in addition to providing information about new and amended legislation and procedures before Congress, the State party should illustrate how standard-setting activities affected the daily life of individuals.

42. The Committee continued to be concerned about safeguards for detainees under article 9 and, possibly, article 7 of the Covenant. It was particularly concerned about cases of incommunicado detention ordered solely for the purpose of preventing any impairment of the proceedings or the disclosure of information. Incommunicado detention should be resorted to only in exceptional circumstances and should be based on reasonable and objective grounds.

43. The Committee was also concerned about possible restrictions on religious freedom due to the Catholic Church's monopoly on the civil effects of marriage, a monopoly that discriminated against adherents of other religions. It was a legacy of Spanish colonialism that had been replicated throughout Latin America but was now gradually giving way to institutions that guaranteed greater freedom for the citizens of the countries concerned. He hoped that Costa Rica would be able to report in the future that it was also moving towards a less discriminatory system in that regard.

44. The recent legislation on immigration had been the subject of criticism both by domestic groups and by the international community. As the legislation on indigenous peoples was still pending, it was as yet unclear whether the Committee's reservations about certain aspects of the bill were warranted.

45. He feared that freedom of expression would continue to be a matter of concern until the legislative and practical situation was clarified. The Committee had been informed that there was no press law and that freedom of expression was governed by a law dating from 1902. As admitted by the delegation, such a law could not reflect the principles that had gradually been gaining acceptance throughout the world. Freedom of expression was not absolute but restrictions must be fully justified on the grounds set forth in the Covenant.

46. Lastly, the Committee considered that the lack of restrictions on parental chastisement, including corporal punishment, left the door open to excesses that could have a harmful effect on children and violate the provisions of the Covenant.

47. Ms. THOMPSON (Costa Rica) said her country acknowledged that a great deal remained to be done to improve its performance. In particular, it was developing a strategy to ensure that its reports would be submitted on time in the future and hoped to send a larger delegation to present the next report. As a developing country, however, it was hampered by a lack of resources. Nonetheless, she felt that Costa Rica had a solid human rights record to date and that, with the guidance of the treaty bodies, it would succeed in creating the conditions for full enjoyment of civil and political rights.

48. The delegation of Costa Rica withdrew.

The discussion covered in the summary record ended at 5.30 p.m.