



Violence against Women in Costa Rica

*Report prepared
for the Committee
on the Elimination
of Discrimination
against Women*

**The World Organisation Against Torture (OMCT)
operating the SOS-TORTURE NETWORK**

The World Organisation Against Torture (OMCT), based in Geneva, is today the largest international coalition of non-governmental organisations fighting against torture, summary executions, forced disappearances and all other forms of cruel, inhuman or degrading treatment or punishment.

OMCT coordinates a network – SOS-Torture – of more than 260 national, regional and international organisations in 85 countries. The urgent appeals issued by the network on behalf of victims or potential victims of violence reach more than 90,000 governmental institutions, non-governmental organisations, associations and interest groups.

OMCT has, since its inception, worked towards reinforcing and supporting the actions of organisations in the field, at the international level. The structure of the SOS-Torture network has enabled OMCT to reinforce local activity while favouring the access of national NGOs to international institutions.

OMCT provides support to victims or potential victims of torture through urgent campaigns (notably in favour of children, women and human rights defenders), through the provision of urgent legal, social and/or medical assistance to victims and by way of the submission of alternative country reports to the various United Nations treaty monitoring bodies.

Geneva, November 2003



**Committee
on the Elimination
of Discrimination
against Women**

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**Implementation of the Convention
on the Elimination of All Forms
of Discrimination against Women
by Costa Rica**

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The United Nations Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979. In 1981, the Convention entered into force and the Committee on the Elimination of Discrimination against Women was formally established. The major task of the Committee is to review the reports submitted by the States parties in order to oversee the implementation of the Convention.

The issue of gender-based violence is not specifically addressed in the Convention, but it is however essential to its most fundamental provisions. In the general recommendation No. 19 adopted at its eleventh session in 1992, the Committee on the Elimination of Discrimination against Women formally extended the general prohibition on gender-based discrimination to include gender-based violence. The Committee affirmed that violence against women constitutes a violation of their internationally recognised human rights, regardless of whether the perpetrator is a public official or a private person.

One becomes inevitably aware of the fact that the States present reports that show only a one-sided image of reality, which is frequently incomplete. The case being, the effectiveness of this supervision and control depends on the quality of information available to the members of the various committees. Recent information, verified by reliable sources, is consequently indispensable.

In submitting alternative reports to the Committee on the Elimination of Discrimination against Women (CEDAW), OMCT seeks to provide de facto information concerning violence against women, including torture, in a specific country as well as analyse national legislation that fosters violence against women.

OMCT's reports highlight the legal provisions, both penal and civil, of the States concerned, which discriminate against women or which, without being discriminatory as such, become so through their application. Unequal power relations between men and women have led to the domination of and discrimination against women, which in turn leads to violence against women.

Furthermore, the reports draw attention to the lack of ways for the victims of violence to obtain reparation and identify the mechanisms guaranteeing the impunity of torturers.

The reports include recommendations for reform of de facto practices and legislation aimed at reducing the incidence of violence against women in the country in question.

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I

Preliminary Observations

According to Costa Rica's Annual Census for 2000, the population is 3.8 million, of which 49.96 percent are women.¹ The 2001 United Nations Development Program ranks Costa Rica number 41 in the Human Development Index, a "high" position, with a growth rate of 1.8 percent.² According to the government's report, 70 percent of Costa Rica's population lives in the Central Region, where the capital and three most important cities are located.³ Costa Rica's population is multiethnic and multicultural, with a large diversity of migrants arriving from multiple different regions of the world over the past 100 years. Recently, migrants from bordering countries account for the largest percentage of migrants. Nicaraguans are the largest minority in Costa Rica, comprising almost 10 percent of the population according to official statistics.⁴ Others estimate that the total number of Nicaraguans in Costa Rica may be close to one half million, or one-seventh of the country's population.⁵

Costa Rica is a democratic republic with unicameral Legislative Assembly and a president, also the chief of state, elected by popular vote. Abel Pacheco, the current president, representing the conservative Social Christian Unity Party (PUSC), was elected on April 6, 2002. He defeated Rolando Araya of the National Liberation Front (PNL) in a close contest with low voter turnout.

Costa Rica ratified the Convention on the Elimination of All Forms of Discrimination against Women, on April 4, 1986. The Convention entered into force nationally on 4 May 1986. Costa Rica is also a State Party to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, ratified on September 20, 2001.

Furthermore, Costa Rica has ratified the following international conventions that provide protection to women and girls against violence

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- 1 – INAMU, Instituto Nacional de las Mujeres. *La Situación de las Mujeres en Estadísticas, Área Especializada en Información*, 2001.
 - 2 – UNDP, Human Development Report, 2001, available at <http://www.undp.org/hdr2001/>.
 - 3 – Costa Rica, Combined first, second and third periodic reports to the Committee on the Elimination of Discrimination Against Women, UN Doc. CEDAW/C/CRI/1-3, 24 July 2001, p. 8.
 - 4 – Ana Carcedo & Monserrat Sagó, "Femicidio en Costa Rica 1990-1999," San José, Costa Rica OPS, Organización Panamericana de la Salud. Programa Mujer Salud y Desarrollo, p. 46.
 - 5 – See Sarah J. Mahler, "Migration and Transnational Issues. Recent Trends and Prospects for 2020," pp. 10-12 (2000).

and other forms of discrimination: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights as well as its First and Second Optional Protocols; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; and finally, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment.

Given that trafficking in women and girls for the purposes of forced prostitution and forced labour appears to be a growing problem in the country, OMCT is concerned by the fact that Costa Rica has signed but has yet to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Supplementing the UN Convention against Transnational Organized Crime.

At the regional level Costa Rica ratified the American Convention on Human Rights on April 8, 1970. Costa Rica made declarations under articles 45 and 62 of the convention which recognize, inter alia, the competence of the Inter-American Committee on Human Rights and the Inter-American Court on Human Rights “to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention” and also recognizes the convention as “binding, ipso facto, and not requiring special agreement.”

Costa Rica has also ratified the Inter-American Convention on Women’s Civil Rights (1948), the Inter-American Convention to Prevent and Punish Torture (2000), and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, known as the Convention of Belém do Pará (1995). The latter convention defines violence against women in Article 1 as “any action or behavior that, based on gender, causes death, injury, or physical, sexual or psychological suffering, in the public as well as private spheres.” Article 8 calls upon State Parties to conduct research and compile statistics and information on the causes, consequences and frequency of violence against women with the objective of evaluating the efficacy of measures to prevent, sanction and eliminate violence against women.⁶ The Convention emphasizes that “the elimination of violence against women is essential for their social and

6 – Article 8(h), Convention of Belém do Pará. 9 June, 1994.

individual development and their full and equal participation in all areas of life.”⁷

Article 7 of the Costa Rican Constitution provides that once ratified by the Legislative Assembly, international treaties prevail over national law including the Constitution.⁸

OMCT welcomes evidence that Costa Rica has taken a number of measures at the national level to address violence against women. In 1974, the Center for the Development of Women and Family was established and in 1986, through Law No. 5988, it was renamed the Center for the Improvement of Women and Family and reconceived as an independent organ responsible for functions related to the advancement of women. Although this law clarified the center’s mandate and granted independence to the body, it did not set aside a budget particular to the center, and in this respect seriously limited its effectiveness. Later, in 1993, the National Institute for Women (INAMU) was created as a substitute for the National Center for the Development of Women and Family. This change acknowledges that women are beings independent of their families, with specific rights and needs.

OMCT notes with satisfaction that between 1994 and 1999, Costa Rica promulgated and approved the largest number of laws, policies and decrees related specifically to women, in its history. Most of these actions were taken under the auspices of the National Plans, such as the National Plan for the Equality of Opportunity between Women and Men (PIOMH) and the National Plan for the Attention and Prevention of Domestic Violence (PLANOVI).⁹ These laws include the Law for the Promotion of Social Equality of Women (March 8, 1990, Law 7142), the Law against Sexual Harassment at Work and in the Home (March 3, 1995, Law 7476), and the Law Against Domestic Violence (April 10, 1996, Law 7586). Nevertheless, OMCT notes with regret that despite these measures, violence and other forms of discrimination against women persist in Costa Rica.

7 – Ibid., Preamble.

8 – Constitución Política de la Republica de Costa Rica de 1946, actualizada con la Reforms 8106/2001. Article 7: “Public treaties, international conventions and concordances rightly approved by the state for the Legislative Assembly, will have, from their promulgation of from the day they are signed, the superior authority of the law.”

9 – Ana Isabel García et al. “Sistemas Públicos contra la violencia doméstica en América Latina: Un estudio regional comparado” Fundación Género y Sociedad (GESO) BID, Paraguas Técnico sobre Violencia Dómicistica, 2000.

Furthermore, OMCT observes that the report of the government of Costa Rica to CEDAW fails to adequately address issues concerning violence against women.¹⁰ For this reason, in accordance with the CEDAW general recommendation No. 19 and in line with the goals of OMCT's programme on Violence Against Women, this report will focus on violence against women in the family, in the community and violence against women perpetrated by the State. The report ends with a series of conclusions and recommendations for future action.

10 – Costa Rica, Combined first, second and third periodic reports to the Committee on the Elimination of Discrimination Against Women, UN Doc. CEDAW/C/CRI/1-3, July 24, 2001.

II

General Observations on the Status of Women in Costa Rica

2.1 Introduction

Women in Costa Rica are often caught between two contrary and conflicting worlds. On the one hand, women have played an innovative and pioneering role, accounting for the largest proportion of first and second vice presidents in the world, and providing the first woman representative to the Organization of American States, Mrs. Angela Acuna, in 1952. Additionally, Costa Rican women enjoy a relatively high levels of education and health compared with many women elsewhere in Latin America. However, despite this seemingly modern stance, women in Costa Rica remain oppressed, partially due to the traditional Catholic values that dominate the country.¹¹ A song taught to school children is demonstrative with regard to the expectation of Costa Rican women and their projected role in society: I want to get married to a lady in the city/ Someone who knows how to sweep/ Who knows how to clean/ Who knows how to open the door so I can go out to work/ And who knows how to cook rice pudding.¹² Gender stereotypes and discrimination still exist in Costa Rican society and most women face discrimination on a daily basis in their homes and communities due to the persistent patriarchal social structure and strong emphasis on women's reproductive and maternal roles.

Women's oppression in Costa Rica is not limited to stereotypes and discrimination, but is also evident by their disproportionate membership among poor people in Costa Rica, a phenomenon known as the "feminization of poverty." This phenomenon particularly affects women from minority groups such as the black Costa Rican population living on the Caribbean coast and immigrants coming mainly from Nicaragua. OMCT observes with concern that Nicaraguan women immigrants living in Costa Rica are particularly vulnerable to violence. The prevalence of violence against women is demonstrated by the alarming rate of "femicidios" or femicides, a term employed by two prolific Costa Rican researchers, Ana Carcedo and Monserrat Sagó, distinguishable from

11 – Roman Catholic 76.3%, Evangelical 13.7%, other Protestant 0.7%, Jehovah's Witnesses 1.3%, other 4.8%, none 3.2%. See CIA World Factbook, available at <http://www.cia.gov/cia/publications/factbook/geos/cs.html>.

12 – Julia O'Connell Davidson & Jacqueline Sanchez Taylor, "Child Prostitution and Sex Tourism: Costa Rica" ECPAT International: Thailand, 1996. p. 10.

homicide by the fact that it is caused by gender-based violence. They have shown that in Costa Rica between 1990 and 1999 gender-based violence caused more women's deaths than AIDS.¹³

2.2 Legal Status of Women

The Constitution of Costa Rica came into force November 7, 1949 and sets forth the freedom of “all men in the country” and their right to be free from enslavement in Article 20. This article was reformed by Law 7880, 13 May 1999, to read “All people are free in the Republic and anyone found under the protection of its laws cannot be enslaved” (esclavo/esclava, male and female forms used).¹⁴ By providing gendered terminology, making women present in the constitution and making them visible before the law, the government has instituted a semantic change that will hopefully incite an accompanying cultural and ideological shift.

Article 33 states that “[a]ll persons are equal before the law and no discrimination whatsoever may be practiced contrary to human dignity.”¹⁵ Article 40 states that “[n]o one will be subjected to cruel or degrading treatment...” Article 48 states that “[e]very person has the right to the recourse of habeas corpus and amparo to reestablish the enjoyment of rights conferred by the Constitution, as well as those of fundamental character established in the international instruments concerning human rights applicable in the Republic.”

Until recent reforms, the Penal Code of March 4, 1970 sanctioned discriminatory measures against women. It often allowed for increasingly lenient punishment of violence against women when relations existed between the victim and aggressor.¹⁶ Prior to the reforms, women were also

13 – Ana Carcedo & Monserrat Sagó, “Femicidio en Costa Rica 1990-1999” Ibid. Between 1990-1999 the total deaths attributable to violence against women was 184, and the total deaths attributable to AIDS was 74. See Cuadro 8, page 45, or p. 3 power point presentation “Femicidio in Costa Rica.”

14 – Note, article 20 reads in its amended form, “Toda persona es libre en la República, quien se halle bajo la protección de sus leyes no podrá ser esclavo ni esclava.” Note: Even before the constitutional reform of 1999, this article incorporated gender-neutral terminology using both the feminine and masculine words for slave.

15 – Also reformed from “All men are equal under the law...” Ley no. 7880 del 13 May, 1999.

16 – See reforms of Penal Code Article 112 instituted by the Law Promoting the Social Equality of Women. Additionally, this blatant discrimination can be seen in the Penal Code Articles 92, 93, Chapter 3 on Sexual Crimes, Articles 163- 171 on laws on Homicide, Domestic Violence and Abduction.

punished more severely than men with respect to adultery.¹⁷ However, with the Law of Social Equality of Women (1990) and the Law against Domestic Violence (1996), the Constitution and Penal Code have been modified. Even with these reforms, the UN Committee on Human Rights noted that “despite improvements, laws aimed at gender equality have not had their intended effect, in particular with regard to equal pay.”¹⁸ The Concluding Observations recommend that the state take necessary measures to implement reforms and “bring about the necessary cultural and attitudinal changes that must accompany them, through educational and other programmes.”¹⁹

2.3 Family

Following Article 51 of the Constitution, the family, “as the natural and fundamental element of society, has the right of special protection from the state. Equally, the mother, the child, the elderly and sick share this right.” These articles reveal a tendency in Costa Rican legislation to conceive of women as an extension of their role in the family and not as independent beings with needs and rights of their own.

While Article 51 of the Costa Rican Family Code establishes equal rights between husband and wife, in reality this is not always the case. Early marriages are commonplace in Costa Rica, with many girls marrying before the age of 18. OMCT notes with great concern the high and increasing rate of teenage pregnancy in Costa Rica. According to national statistics, in 1995, 14,760 babies were born to girls between the ages of 12 and 19; in 1999 this figure grew to 16,041. Adolescent births are more prevalent in impoverished and rural areas and infant mortality is reportedly three times higher among indigenous communities than the national average.²⁰ In the poorer and rural provinces of Limón, Puntarenas and Guanacaste, adolescent births were 5 percent higher than the national average.²¹ OMCT is thus encouraged by the inception of grass roots, preventative sexual education programmes such as the “Young Love” programme and the “Building Love” programme which is designed to benefit adolescent mothers and strengthen their quality of life from pregnancy onwards.

17 – Ana Carcedo, “Violence Against Women in the 1990s,” Seventh Report on the State of the Nation in Sustainable Human Development, July 2001, p. 24.

18 – UN doc. CCPR/C/79/Add.107 C. 20. 8 April 1999.

19 – Ibid.

20 – UN Doc. CERD/C/60/Misc.37/Rev.4. Article C. (d) 4-22 March, 2002.

21 – <http://primeradama.racsa.co.cr/eng/adolescentes.html>.

The Law for the Protection of Adolescent Mothers (Ley 7735, 1997) offers free institutional support (health, counselling, education, employment etc.) integrating governmental and non-governmental bodies in joint cooperation. However, while it establishes these useful links for the mother, it does not provide her with adequate legal resources nor has the law set aside an explicit amount of funds for these purposes.²² OMCT notes that redressing the problem must include acknowledgement of the phenomenon as a societal problem, borne out of the actions and conceptions of both men and women, acknowledging joint responsibility and offering legal and monetary support for the child and mother's education and development.²³

The Responsible Paternity Law allows a child born out of wedlock to seek his/her father by reporting the name to authorities and, once paternity has been proven, offers substantial legal recourse to recover financial and material obligations. Since 1995 in Costa Rica, 51.5 percent of registered births were conceived out of wedlock, the majority of these births from mothers of under 19 years of age, making paternity acknowledgment a serious problem.²⁴ The average duration of legal proceedings in the past has been three years due to costly paternity tests, long processing periods and delaying tactics often employed by defendants to prolong the case. This has resulted in many abandoned cases, and therefore many mothers and children are without financial or institutional recourse against the fathers of the children. The new law presumes paternity if the father refuses to take the genetic test, and also reimburses expenses incurred by proceedings thus offering broader economic protection for the child.²⁵

2.4 Work

Women are guaranteed equality in the work place in the Constitution and Penal Codes. Article 56 of the Constitution guarantees the right to remunerated work, honest and utile, free from discrimination and degrading treatment. Article 57 further establishes equal pay for equal work and Article 371 of the Penal Code reinforces this with fines for those

22 – See Article 4(g). Law 7735, General Law on the Protection of the Adolescent Mother.

23 – See Article 5(b) CEDAW.

24 – See the comprehensive document on the law La Gaceta No. 166 August 30, 2000. available at www.inamu.go.cr/publicaciones/responsible_paternity_law.pdf.

25 – See Historical Background on the Responsible Paternity Law, available at http://www.inamu.go.cr/publicaciones/responsible_paternity_law.pdf.

who apply discriminatory measures. Despite these legislative efforts, women earn less than their male counterparts for the same type of work, sometimes a difference of up to 75 percent.²⁶ Women comprise only 32.4 percent of the total labor force, remaining systematically relegated to the domestic sphere and excluded from remunerated work. However, it is estimated that their work in the home, if taken into account, could in fact represent 13 percent of the Gross National Product.²⁷ Women represent 69 percent of the services sector and many of these women, mostly Nicaraguan, live in dismal conditions, receiving no salary other than board, which is frequently inadequate.²⁸

Article 71 of the Constitution states (once again amalgamating women and minors as one monolithic entity): “Law will give special protection to women and minors in their work” but provides no specific elaboration on what this “protection” may entail. Article 73 develops more on this notion and states “Social insurance to benefit manual workers and intellectuals, regulated by the system of compulsory contribution by the state, patrons and workers will be established with the end of protecting these minorities against the risks of sickness, invalidity, maternity, ageing, death and other contingencies determined by law.” OMCT notes with regret that in spite of these measures women face harsh working conditions.

Banana plantations provide a good example of the unacceptable working conditions faced by women in Costa Rica. Costa Rica uses more pesticides per hectare than any other Latin American country.²⁹ In Costa Rica, women account for 20 percent of all banana workers, mainly employed in packing, 80 percent of them being single women. About one half of the workers employed on banana estates are migrant workers; mostly Nicaraguan, whose status is that of illegal immigrants.³⁰ Women workers on Costa Rican banana plantations are exposed to pesticides known to provoke serious diseases, chemical burns, throat problems, foot fungi, kidney problems, sterility, genetic mutation in pregnancy and miscarriages. SITRAP, a major banana union, has documented 13,000 cases of workers in Costa Rica who

26 – See Costa Rica, Combined first, second and third periodic reports to the Committee on the Elimination of Discrimination Against Women, UN Doc. CEDAW/C/CRI/1-3, July 24, 2001, p. 133.

27 – UNDP, “La Situación de la Violencia de Género contra las Mujeres en Costa Rica” September, 2000, p. 14-15.

28 – *Ibid.*, p.14.

29 – Organizing Banana Workers for Social Justice and Environmental Sustainability: An Interview with Gilberth Bermúdez, available at <http://www.citinv.it/associazioni/CNMS/archivio/lavoro/bermudez.html>.

30 – *Ibid.*

have become sterile as a result of DBCP (dibromochloropropane), a fungicide and nematicide, which was used extensively during the 1970s and 1980s, even though its use was forbidden in the United States, where it originated. SITRAP further reports that women workers, some pregnant, are not given time to see a doctor for non-work or work-related complications, nor compensated for days they are unable to work. In 1999, the union recorded a case of a woman who was dismissed for seeing a doctor.³¹ Also, a study carried out by the Health Research Institute of the University of Costa Rica has found that women in the country's banana packing plants suffer an abnormal rate of leukemia and birth defects. Workers on the biggest plantation, owned by Chiquita, earn the equivalent of U.S. 5 cents an hour, eat insecticide-coated crops from their gardens, and wash with water sprayed with these same chemicals.³²

2.5 Education

According to recent statistics, Costa Rican women enjoy a slightly higher literacy rate than their male counterparts, 95.7 percent to 95.5 percent respectively.³³ Education is free and obligatory for 9 years in Costa Rica. As the government points out in their report submitted to CEDAW, Costa Rica boasts one of the highest literacy rates in Latin America and the rates remain similar across the gender divide.³⁴

Although the 1997 Fundamental Law of Education made preschooler education obligatory for girls and boys, young girls between 5 and 17 abandon school with much more frequency than boys.³⁵ OMCT notes with regret that this same age group accounts for 16.8 percent of the work force, and 11 percent of all households have child workers.³⁶

With respect to higher education, more stratification and gender demarcation can be seen. Women are much more frequently trained in traditional areas with little growth potential, like the clothing industry and

31 – Carin Benninger-Budel & Anne-Laurence Lacroix, *Violence Against Women: A Report*, World Organization Against Torture (OMCT), June 1999, p. 183.

32 – “Insecticide Spraying in Costa Rica,” Oct. 14, 1999. Women-Enviro Monitor (Women-Enviro List Archive), available at <http://www.sdn.unp.org/ww/women-enviro/msg00210.html>.

33 – Costa Rica: Basic Country Health Profiles, PAHO, 2001.

34 – Costa Rica, Combined first, second and third periodic reports to the Committee on the Elimination of Discrimination Against Women, UN Doc. CEDAW/C/CRI/1-3, July 24, 2001, p.116.

35 – UNDP, “La Situación de la Violencia de Género contra las Mujeres en Costa Rica” September, 2000, p. 14.

36 – *Ibid.*, p. 19.

secretarial schools. According to a study elaborated by INAMU, the National Institute for Learning (INA) claims that the greatest gap between men and women is in the agricultural and nautical sectors where, in 1999, men represented 73 percent of the student body.³⁷ In the industrial sector, where men and women are represented equally, there was a clear gender divide in the areas of specialization. Women were over represented in the areas of artisan processes, alimentary industry, textile and clothing while men dominated the electrical, vehicle metalwork and material technology (women were less than 13 percent of the students in these areas).³⁸

2.6 Political Rights

Since women gained the right to vote in 1949, they have occupied only 17 posts as ministers, or posts of similar rank. Despite this, Costa Rica has had several women vice-presidents, including the last term of power in which women served as both the first and second vice presidents between 1998-2002. In the April 2002 elections, Ms. Libneth Saborío Chaverri was elected first Vice-President, previously serving as head of the National Investigative Police. Nevertheless, women have comprised less than 10 percent of the total Legislative Assembly since the 1980s.³⁹

2.7 Indigenous and Minority Women

OMCT is concerned that Costa Rican legislation does not contain explicit norms forbidding discrimination on the grounds of national or ethnic origin. However, OMCT commends Costa Rica's ratification of the ILO Convention 169 on Indigenous and Tribal Peoples (1989), its establishment the National Indigenous Affairs Commission (CONAI), and its promulgation of the bill for the Autonomous Development of the Indigenous People, which has been presented before the Legislative Assembly. Costa Rica also adopted a law (7878, May 27, 1999) that reforms Article 76 of the Constitution to now read "Spanish is the official language of the Nation. However, the State ensures the preservation and cultivation of national tribal and indigenous languages."

37 – INAMU, Instituto Nacional de las Mujeres. *La Situación de las Mujeres en Estadísticas, Área Especializada en Información*, 2001.

38 – *Ibid.*

39 – Ana Isabel García et. al, "Sistemas Públicos Contra la Violencia Doméstica en América Latina: Un Estudio Regional Comparado," *Ibid.*, *El Caso de Costa Rica*.

Indigenous people hold approximately 6.3 percent of land and of that small percent about 37 percent is invaded by migrants and transnational enterprises, a situation permitted by the government's lack of protection for indigenous lands.⁴⁰

According to the 2000 Census, out of Costa Rica's almost 4 million inhabitants 73,000 defined themselves as belonging to Afro-Costa Rican culture, 64,000 to indigenous culture, and 8,000 to Chinese culture. In a pioneering move, the previous president of Costa Rica, Miguel Ángel Rodríguez, apologized publicly at the World Conference Against Racism in Durban, South Africa (August 31 –September 7, 2001), for past errors committed against Afro-Costa Ricans. However, one Afro-Costa Rican NGO, Asociación Proyecto Caribe, criticized his statement claiming he “fails to acknowledge, however, that the damage done then continues today and action should be taken to protect the rights in the economic, cultural and social areas of this community. Adequate resources should be provided to change the situation.”⁴¹

There is also pervasive discrimination against gay women, as well as gay men, in Costa Rica. In 1990 during the Latin American and Caribbean Lesbian-Feminist meeting organized by local group “Las Entendidas,” a homophobic campaign by the state and the Catholic Church was propagated using the media. The archbishop of San José condemned the Meeting, one sensationalist newspaper ran a title “War against the lesbians.” On April 11, 1990 and the Minister of Security gave instructions to his subordinates and to the population to detect and expel lesbians wishing to enter the country. He announced the closing of the borders to women who traveled alone or in groups without men. One newspaper called for the mobilization of hate in order to impede the meeting.⁴² At the First encounter of Sexual workers of Latin America in 1997, a catholic priest called for a fight against the undignified women, and attempted to prevent the women from arriving at the hotel where the conference was to take place.⁴³ Furthermore, in September 1998, the Association Triangulo Rosa, an organization for homosexuals in Costa Rica, filed a complaint

40 – UN Press Release, “Costa Rica Presents Report to Committee on Elimination of Racial Discrimination on How it Gives Effect to Convention,” CERD, 60th session, 15 March 2002.

41 – World Conference Against Racism Press Release, “Non-Governmental Organizations Call For Urgent Action By State To Combat Discrimination,” 6 September 2001.

42 – Ana Carcedo, “Violence Against Women in the 1990s,” *Ibid.*, p. 31.

43 – *Ibid.*

against the Archbishop of San José and another priest regarding public statements made by these men against a scheduled gay/lesbian event. Eventually, the event was cancelled due to the participants' fear that the public would act on the priests' comments with violence. In February 1999, the Archbishop was acquitted.⁴⁴

44 – The International Lesbian and Gay Association: Costa Rica, available at http://www.ilga.org/Information/legal_survey/Americas/costa_rica.htm.

Violence Against Women in the Family



3.1 Domestic Violence

In Costa Rican society male dominance over women is prevalent despite legislative reforms that indicate otherwise. A strong patriarchy and cultural norms that encourage machismo make the combat against domestic violence even more difficult. The Costa Rican government, in their report to CEDAW, lauds advances achieved in the past five years, balancing the interests of the state and civil society. They point to the increased consciousness of the public and the legislative advances of the state with respect to domestic violence.⁴⁵ However, despite these apparent advances, domestic violence remains a serious problem in Costa Rica. In a study of 80 victims of domestic violence, UNDP reports that 49 percent of these women claimed to be beaten while they were pregnant and 7.5 percent of these women miscarried due to the beatings.⁴⁶

Following the mandate of the Beijing Platform of Action, Costa Rica took the necessary steps to complete their obligations creating the National Plan for the Attention and Prevention of Domestic Violence, (PLANNOVI) in 1994. While this program went through various diagnostic, design and planning phases it still has encountered setbacks. One of its chief limitations is that it does not pay sufficient attention to offenders in order to stop the cycle of domestic violence. PLANNOVI has promulgated the innovative Law Against Domestic Violence (1996 Law 7594), which not only defines and categorizes domestic violence, but also sets down punishments for such acts. In accordance with Article 51 of the Constitution⁴⁷ this law sets out to protect victims of domestic violence, and to offer measures of protection, including the forced removal of the perpetrator from the home. The perpetrator may also be prohibited from entering the house (for one to six months), from taking care of or visiting his children, from entering the work place of the victim or from having

45 – Costa Rica, Combined first, second and third periodic reports to the Committee on the Elimination of Discrimination Against Women, UN Doc. CEDAW/C/CRI/1-3, July 24, 2001, p. 196.

46 – United Nations Development Programme, “Health: The Risks of Gender Based Violence,” available at <http://www.undp.org/rblac/gender/genderbased.htm>.

47 – See p. 5, Family, for complete Article.

access to his possessions within the house. This law warrants the collaboration of the police and judicial authorities to successfully complete the measures enumerated in the law. The responsibility of the state police with respect to this law is further reinforced in article 330 of the Penal Code, making their intervention binding by law and their inaction punishable by law. Unfortunately, much like the problems with the previously mentioned PLANOVI, this law does not adequately address offenders or their likely recidivism. OMCT notes the strong stance of this law with respect to punishment and immediate recourse, but there is a lack of thoroughness with respect to the prevention of domestic violence. Counseling is not mandatory for the perpetrator (or victim), and is a mere suggestion at the end of the law, under Chapter V, Responsibilities of the State.⁴⁸ OMCT notes the importance of preventative measures to ensure the safety of women.

OMCT acknowledges that while the adoption of legislation specifically dealing with domestic violence is an essential first step to effectively addressing this form of violence against women, it is equally necessary to ensure that these measures are effectively implemented in practice. In this respect, the Law Against Domestic Violence has encountered resistance and difficulty in implementation. Problems include bureaucratization of the judicial processes, lack of knowledge as to the content of the law and the rights guaranteed therein, lack of resources to make judicial orders, the complicity of the police in boycotting the successful implementation of the law,⁴⁹ and a refusal to acknowledge that violence against women is a serious crime. For example, in a discussion at the beginning of 2001 concerning the proposed Law Punishing Violence Against Women, some members of the Legislative Assembly argued that those found guilty of such crimes against women should go to a special prison where they would not have to mix with the rest of the convicts because they “are not delinquents,” and this was approved.⁵⁰

Many judges retain traditional notions of family patriarchy and are unwilling to interfere in what they consider to be “private matters,” including domestic violence. In fact, only 20 percent of requests made for

48 – Ley Contra La Violencia Doméstica. Ley No. 7586. Colección Legislation No.2. INAMU: San José, Costa Rica, 1999, p.21.

49 – Ana Carcedo, “Violence Against Women in the 1990s,” *Ibid.*, p. 22. As cited from the Defensoría de los habitantes, p 248.

50 – *Ibid.* p. 52.

51 – Ana Isabel García et. al, “Sistemas Públicos contra la Violencia Doméstica en América Latina : Un estudio regional comparado,” *Ibid.*

protection are resolved in favor of the applicant.⁵¹ Several cases illustrate the need for judges to be more sensitive to the issue of domestic violence. In one case, immediately following the implementation of the Law Against Domestic Violence, a family court judge argued the unconstitutionality of the law, decrying its lack of due process, since the law grants immediate protection to women in danger.⁵² In 1999, a woman asking for protection from her husband in the Municipality of Pérez Zeledón was refused by a judge preferring conciliation. One week later she was found decapitated by her aggressor.⁵³ In fact, between 1990 and 1999, 11 homicides were committed on women who had previously filed a complaint against their aggressor, including four who had measures of protection at the time of their murders.⁵⁴ The government has requested that judges be trained to handle domestic violence cases, through the initiative of the Commission on Domestic Violence in the Judicial Power⁵⁵ approved in July 1999.⁵⁶

Due to the increased visibility given to the issue of violence against women through the promotion of the Law Against Domestic Violence, requests for protection have increased annually at a steady rate, jumping from 15,336 requests in 1997 to 20,996 in 1998.⁵⁷ Additionally, the telephone hotline, *Rompamos el Silencio*, or *Let's Break the Silence*, instituted in September 1997 as a part of the national plan, has provided a way for women in need to find help or advice. In its year of inception it received 5,030 calls, and the following year 8,640 calls, 97 percent of which were from women, and in 2000, 12,183 calls.⁵⁸

Between 1995 and 1997, the number of women calling to denounce domestic violence before the Delegation of Women increased by 200 percent.⁵⁹ Also, according to the Department of Planning of the Judicial Power, in 1999, 26,437 requests for protection were recorded, a 26 percent increase from the previous year.⁶⁰ It should be noted, however, that the real number of cases is undoubtedly much greater than the figures suggest,

52 –Ibid, p.11.

53 –Ibid.

54 –Ana Carcedo & Monserrat Sagó, “Femicidio en Costa Rica 1990-1999,” Ibid., p. 53

55 –Comisión sobre Violencia Doméstica del Poder Judicial.

56 –Ana Isabel García et. al. “Sistemas Públicos contra la Violencia Doméstica en América Latina: Un estudio regional comparado,” Ibid.

57 –Ana Isabel García, “Resumen Ejecutivo, Proyecto Regional PNUD,” Cuadro #1. Resumen de Indicadores-Costa Rica. 1999. p. 15.

58 –Ana Carcedo & Monserrat Sagó, “Femicidio en Costa Rica 1990-1999,” Ibid., p. 6.

59 –Ana Isabel García, “Resumen Ejecutivo, Proyecto Regional PNUD.” Ibid., p. 16.

60 –Ana Carcedo & Monserrat Sagó, “Femicidio en Costa Rica 1990-1999” Ibid., p. 6.

many remaining in silence and others unaware of their rights and available resources.

3.2 Femicide

A study financed by the Pan-American Health Organization, under the auspices of their Women, Health and Development Program, entitled “Femicide in Costa Rica 1990-1999” has exposed the phenomenon of femicide in Costa Rica, mentioned earlier in this report. Femicide is committed by men who kill wives, lovers, girlfriends, or acquaintances because of their female gender and is the product of a structural system of oppression against women. This tendency can be seen in Costa Rican society, which tolerates femicide, as a natural manifestation of machismo, understood positively as excessive love and respect for women, but more accurately corresponds to notions of possessiveness and control. Use of the term femicide indicates the cultural and societal roots of violence based in gender inequity and attempts to prevent individual or pathological ways of conceiving the aggressor, such as impassioned, out of control, or crazy.

This study also reveals alarming statistics of gender-based violence resulting in death, or femicide, in Costa Rica. It documented an average of 2.8 women each month murdered by their husbands, ex-husbands, boyfriends or male acquaintances. In 1997, 19 women died, in 1998, 21 died⁶¹ and in 2000, 25 died at the hands of their husbands, ex-husbands or boyfriends.⁶² The murders most frequently occurred when the women were attempting to break up with their partners (33 percent). Twenty-four percent were murdered during a sexual attack, 21 percent in “fits of jealousy”, and 7 percent because of sexual rejection. The study shows that 89 percent of these deaths occurred in the houses where the women lived.⁶³ In 54 femicides there had been previous aggressions.⁶⁴ Some of the women documented were stabbed, shot repeatedly, or violently beaten to death. Others were killed while they were sleeping (3), while they were pregnant (6), decapitated (2) or killed and then raped or raped and then killed (22).⁶⁵

61 – UNDP, “La Situación de la Violencia de Género contra las Mujeres en Costa Rica” September, 2000, p. 13.

62 – Ana Carcedo, “Violence Against Women in the 1990s,” *Ibid.*, p. 7.

63 – Ana Carcedo & Monserrat Sagó, “Femicidio en Costa Rica 1990-1999,” *Ibid.*, p. 56

64 – *Ibid.* p. 66.

65 – *Ibid.* p. 58.

OMCT is concerned with the prevalence and gravity of these crimes and points to their egregiousness as evidence of the pervasiveness and severity of discrimination and violence experienced by women in Costa Rica.

Between May 1996 and 1998, 7 Municipal Offices for Women were opened with special attention to situations of domestic violence and more recently it was reported that 35 of the 81 cantons in the country have such offices, a larger, but still insufficient ratio.⁶⁶

3.3 Marital Rape

No explicit provision exists for the punishment of marital rape under Costa Rican law. Rape is addressed in Articles 156 and 157 of the Penal Code. Because marital rape is not recognized as a crime in Costa Rica, there is a lack of information on the frequency of its occurrence. However, given the high incidence of domestic violence in Costa Rica, it seems probable that women are also victims of marital rape.

Previous rape laws exonerated the rapist if he offered to marry the victim, thus suggesting tolerance for and trivialization of violence against women. The Penal Code also previously limited sentences when the women was married to or had been living together for two years with her aggressor.

3.4 Adultery

Previous laws were openly discriminatory with respect to adultery, condemning women more severely than men, or demanding that women, and only women, demonstrate their “respectability” in order to successfully denounce crimes of violence committed against them.⁶⁷ OMCT is encouraged by the legal reforms that have been made in relation to adultery, however, it remains concerned by the persistence of the socio-cultural assumptions and stereotypes surrounding the status of women that motivated this legislation.

66 – Astrid Fishel, “La Función del Empleo y el Trabajo en la Erradicación de la Pobreza: La Potenciación y el Adelanto de la Mujer,” p. 2.

67 – Carcedo, Ana. “Violence Against Women in the 1990’s, Ibid., p. 24.



Violence Against Women in the Community

4.1 Rape

Rape is addressed in articles 156, 157 and 158 of the Penal Code. Article 156 sets out a punishment of 10 to 16 years for those who attempt oral, anal or vaginal sex with a person by force or intimidation, or with a person under 12 years of age or otherwise incapable of granting consent. Article 157, entitled “Qualified Rape,” calls for 12 to 18 years of prison when the rapist is related to the victim, or causes the death of the victim.

The August 1999 Law (No. 7899) Against the Commercial Sexual Exploitation of Minors has since reformed those articles to increase the sentence for rape of minors. American citizen Richard Curtis Baker, 50 was sentenced to 24 years and Arthur Kanev, 55 was arrested and charged with sexual abuse and corruption of minors. They were found with hundreds of pornographic photos of girls between 11 and 16 years of age. They reportedly gave drugs to and then raped young girls in Costa Rica.

4.2 Violence Against Women Migrants

The term “feminization of migration” describes both the fact that a growing number of migrants are women and, on another level, it describes the increasing rate at which women are migrating independently of other family members.⁶⁸ In Costa Rica this can be seen in the growing number of migrant women workers who come to work in the banana and coffee industries. For many migrant women this means a long period of uncertainty and increased vulnerability to exploitation. Women and child migrants are also prey to the growing sexual tourism industry. Minors between the ages of 0 and 11 constituted 16.1 percent of immigrants to Costa Rica in 1999.⁶⁹

68 – “IOM statement for LCG Group on 14 May 2002” p.1.

69 – ECPAT, “Investigación Regional sobre Tráfico, Prostitución, Pornografía Infantil y Turismo Sexual Infantil en México y Centroamérica: Un resumen,” Casa Alianza: Audrey Hepburn Children’s Foundation, p. 13.

In Costa Rica, there is significant prejudice against migrant women coming from Nicaragua to the north, and Panama to the south. These women are seen as bringing poverty and crime to Costa Rica. The government is planning a revision of the General Act on Migration and the Status of Aliens to ensure better management of the thousands of migrants who illegally enter Costa Rica each year. OMCT is concerned that while the new law provides for greater regulation of migrant labor flows it introduces harsh blanket measures to expel illegal migrants from the country, which could adversely affect poor migrant women and children. In addition, restrictions on the avenues available for legal migration to Costa Rica may well have the result of driving potential migrants, women in particular, into the arms of trafficking operations where they are particularly vulnerable to violence.

4.3 Sexual Harassment

In 1995, the Law Against Sexual Harassment in the Workplace and Home, Law 7476, was approved. OMCT is discouraged that despite the prevalence of sexual harassment, no national plan exists in Costa Rica to combat this form of aggression. Women are the majority of workers in domestic services and are already dependent due to the lack of legal protection in this domain. Frequently, domestic servants are particularly susceptible to sexual harassment by males in the homes where they work and Costa Rica is no exception in this regard.⁷⁰ While the law establishes administrative sanctions, it does not provide for penal reforms and for this reason national reports do not include statistics on sexual harassment.

Thus OMCT is discouraged by the problems that still remain and by the lack of reliable statistics in this area. The implementation of this law has been slow and women face difficulties in invoking its provisions.⁷¹ Individual cases of sexual harassment against women in the workplace have been documented by CIPAC, including those specifically directed towards suspected lesbians fired, or harassed on the job because of this suspicion.⁷² According to available statistics on sexual harassment, in

70 – Julia O’Connell Davidson & Jacqueline Sanchez Taylor, “Child Prostitution and Sex Tourism: Costa Rica,” ECPAT International, Thailand, 1996, p. 9.

71 – Ana Carcedo, “Violencia Contra La Mujeres en la Decada de los Noventa,” Séptimo Informe Sobre el Estado de la Nación en Desarrollo Humano Sostenible (2000), June 2001, p. 25.

72 – Centro Investigación y Promoción para America Central de Derechos Humanos, CIPAC, Testimonials.

1996, 17 cases were reported, 22 cases in 1997, and in 1998, 105 were reported.⁷³ This increase may be due to the growing visibility and promotion of programs advocating institutional reforms or evolving notions with respect to women's rights and entitlements. However, in Costa Rican society, there persists a stigma against women who report sexual crimes as "problematic" women, who incite and even deserve their own problems.

4.4 Trafficking in Women and Girls

Trafficking is not addressed as a separate phenomenon in the Costa Rican Penal Code, and is only prohibited when it occurs for the purposes of prostitution. Costa Rica is, however, party to the Inter-American Convention Against the International Traffic in Minors, which prohibits trafficking in children under 18 for the purposes of prostitution, sexual exploitation, servitude or any other unlawful purpose.⁷⁴

Trafficking in women and children, however, remains a serious problem in Costa Rica. On 8 April 1999, the UN Committee on Human Rights highlighted in its concluding observations and recommendations on Costa Rica its "profound preoccupation with the high incidence of sexual exploitation and commercial exploitation of children in Costa Rica." Article 172 of the Penal Code, amended in August 1999, with the Law Against the Commercial Sexual Exploitation of Minors, now more specifically addresses the issues of trafficking and prostitution with respect to minors, although the legislation is still insufficient. The Law, No. 7899, redefines what constitutes "exploitation", extends the scope of the prohibition to a larger number of situations and increases the penalties for persons found guilty of this conduct.

The first and second U.S. State Department Trafficking in Persons report, which came out in 2001 and 2002 respectively, rank Costa Rica in Tier 2 for its role as a transit and destination country. The first report mentions that while the criminal code prohibits trafficking in women and minors for the purposes of prostitution it "does not address all severe forms of trafficking."⁷⁵ The second report adds that the government does not fully

73 – UNDP, "La Situación de la Violencia de Género contra las Mujeres en Costa Rica," September, 2000, p. 17

74 – See Article 2 "Inter-American Convention on International Traffic in Minors." March 18, 1994. D.F., Mexico.

75 – U.S. Department of State. "Trafficking in Persons Report, July, 2001," available at <http://www.state.gov/inl/rls/tiprpt/2001>, p.4.

meet “minimum standards” for the elimination of trafficking. These standards include appropriately punishing acts of trafficking and making “serious and sustained” efforts to eliminate trafficking.⁷⁶ The newest report repeatedly excuses Costa Rica’s inadequate action owing to “resource constraints” or “under-funded initiatives”.⁷⁷ However, with no “law against all forms of trafficking in persons,” the government must rely on non-specific legislation and, in fact, “some traffickers have been prosecuted under related laws such as document fraud.” OMCT notes the absence of specific anti-trafficking legislation and urges the government to enact appropriate laws for the punishment of trafficking and related offences (such as forced prostitution and servitude).

The story of Enrico Cacciatore illustrates the scale of the problem of trafficking in Costa Rica. A Toronto native, Mr. Cacciatore brought 11 women from the Philippines to Costa Rica in 1999 as “ecotourists”. The women were in fact forced to work as prostitutes having been deceived into believing that following their time in Costa Rica they were to be sent to Canada with jobs as strippers.⁷⁸ Not only did this scheme bring women into the country, but under the auspices of Cacciatore’s “eco-tourism” company, Costa Rican women were trafficked out of the country with false aspirations of a better future. One Costa Rican victim of Cacciatore’s scheme, Alejandra Cordoba, filed a complaint in San José in August 1999. She explains, “They told me I’d make lots of money...Enrico told me I’d have to do table dancing but that no one would touch me because it was prohibited in Canada. I complained and was told: ‘Soon you’ll get used to it.’ I felt bad, this wasn’t what I was expecting.” Cacciatore is fully aware that it is illegal to live off of trafficking. He boasts, “I’m known to Costa Rican police, immigration and intelligence services...But I’ve never been charged.” When Ms. Cordoba’s complaint was filed, Cacciatore bribed officials and has since been left alone.⁷⁹

4.5 Forced Prostitution

Prostitution is legal in Costa Rica for persons over the age of 18 and it has been estimated today that 3,000 women work as prostitutes in San José.

76 – *Ibid.*, p. 5.

77 – *Ibid.*, p. 9.

78 – Marina Jimenez, “Trafficking from Philippines to Canada via Costa Rica”. *The National Post*. (Can.) May 17, 2000.

79 – *Ibid.*

However, forced prostitution and prostitution of minors are illegal under both national and international law. In Costa Rica, women are regarded as having reached adulthood at a young age, and prostitution is socially acceptable in very young girls. A girl who has reached physical maturity (often demonstrated by the fact she has given birth) is generally seen as an adult by local people, even if she is only 12 or 13 years old, and thus the legal distinction between adult and under-age prostitutes is not a socially meaningful one to many Costa Rican men.⁸⁰ Also, access to children is reportedly cheaper than adults. Moreover, many tourists come from societies where strong taboos exist with respect to adult-child sex, and in Costa Rica they are faced with ample opportunities and feel safe from legal action and social censure.⁸¹

In May 1997, a Swiss and a German, Michael Silvan Oehem and Marian Kieff were sentenced to four years for operating a brothel where minors were prostituted.⁸² In March 2001, Zaida and Grettel Rodas, of Guatemala and Costa Rica respectively, were found guilty of prostituting poor Costa Rican and Nicaraguan girls between the ages of 12 and 14. Their actions were facilitated by taxi drivers who would take foreign tourists and Costa Rican “clients” in search of young girls.⁸³ Although some criminals who prostitute children have been prosecuted in Costa Rica, their sentences have been grossly inadequate.

OMCT would like to reiterate that it is the responsibility of the State to prosecute traffickers and other individuals forcing women and children into sexual slavery. There is an urgent need for strong measures to be implemented in order to prosecute businesses (hotels, taxi companies, clubs) that act as fronts for the exploitation of women through trafficking or illegal prostitution.

80 – Ibid.

81 – Ibid. p. 23.

82 – “Casa Alianza warns that Central America is New Sex Tourism Destination,” November 17, 1997.

83 – “One Guatemalan and two Costa Ricans Found Guilty of Pimping children in Costa Rica,” Casa Alianza, March 9, 2001.

Violence Against Women Perpetrated By the State



5.1 Torture and Impunity

Article 40 of the Costa Rican Constitution protects all people from cruel or degrading treatment. OMCT regrets that while torture is prohibited by the Constitution, it is not characterized as a specific offence in the Costa Rican Penal Code and is therefore not a punishable crime. OMCT does note, however, the existence of the independent and autonomous office of the Ombudsman where complaints, including complaints of torture and ill treatment, can be registered.

5.2 Women in Custody

OMCT is concerned that no legal regulations concerning prisons exist in Costa Rica. OMCT also observes the presence of Costa Rica (place number 46) in the top 50 countries with the highest prison population rates (as of February 2002).⁸⁴ OMCT is particularly concerned by the 63 percent overpopulation rate in the nation's prisons, the alarming increase in the number of prisoners, a rate of 126 percent in 1997, the increase in the length of prison sentences and the repeated use of pre-trial detention.⁸⁵ In 1998, Costa Rican prisons held a total of 5,247 inmates, including 333 women, making women approximately 15 percent of the prison population.⁸⁶ Costa Rica has fourteen closed prisons, the largest of which is CAI La Reforma, holding 1,930 inmates. During 1998, 11 inmates were reportedly killed in La Reforma, making it the most violent prison in the country.⁸⁷ The only women's prison, El Buen Pastor housed 276 detainees in 2001. While the prison conditions for female inmates are reportedly fair, the women's prison (El Buen Pastor) is overcrowded by more than 40 percent.⁸⁸ OMCT thus welcomes the fact that in 2001 the government allocated an amount of 250,000 colones, a sum equivalent to \$7 million

84 – ICPS, International Centre for Prison Studies, available at www.prisonstudies.org.

85 – “Dialogo Centroamericano” No. 24 September 1997.

86 – Human Rights Watch, “Prison Conditions in Latin America and the Caribbean,” p. 6.

87 – Ibid.

88 – U.S. Dep't of State, Human Rights Practices: Costa Rica, 2001, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8329.htm>.

dollars, to be invested in the building of new prison facilities, and overhauling old ones.⁸⁹ However, OMCT is also concerned with the lack of control in prisons which is a result of inadequate investment by the state. For example, in 1998, over 10 assassinations, 10 stabbings and 6 suicides were registered in Costa Rican prisons.⁹⁰ OMCT thus hopes that a portion of the funding set aside for infrastructure will also be used for personnel in order to prevent some of the previously documented violations.

OMCT notes with great concern the absence of information on prison conditions or mention of women in custody in the State Party report and would request that in its next periodic report the government provide more information concerning conditions and rates of detention for women. OMCT is also concerned with the conditions in maximum security prisons where the detention regime includes 23 hours of confinement and one hour outside the cell per day. In addition, OMCT is preoccupied by the overrepresentation of Nicaraguans in Costa Rican prisons and, in particular, the events of May 2000, in which 40 inmates that, who were believed to be Nicaraguan, died in circumstances that have yet to be clarified by authorities.⁹¹ OMCT also recognizes cases of abuse of authority by police officers and prison personnel as described in the State Party report. However, OMCT laments the fact that the Costa Rican Criminal Code lacks provisions dealing specifically with torture or ill-treatment by public officers and the absence of statistical data with respect to abuse of authority.

89 – “Response of Costa Rica to the Committee Against Torture,” p. 3, available at <http://www.unog.ch/news2/documents/newsen/cat0119e.html>.

90 – La Nación. “Privatización Asoma en Cárceles. Mónica Nágel, ministra de justicia,” 7 December 1998.

91 – La Prensa, On the Web. “Parlamento Pide Comprobar Situación de Nicaragüences en Costa Rica.”

Violation of Women's Reproductive Rights

VI

Abortion is illegal in Costa Rica, and is allowed only in certain clearly-defined situations (see Article 121 of the Penal Code), making unwanted pregnancies and resulting economic and family difficulties common. Abortion is addressed in Articles 118 through 122 of the Penal Code providing penalties ranging from 60 days to 3 years in prison. Abortion is only allowed in order to save the life of the woman or to preserve her health and will not be permitted even in cases of rape or incest, fetal impairment, economic or social reasons or through special request.⁹² In 1993, an estimated 8,500 clandestine abortions took place in Costa Rica.⁹³ OMCT echoes the concluding observations of the UN Human Rights Committee which observed “with concern the consequences for women, including the danger to life involved in clandestine abortions...the Committee recommends that the law [criminalizing all abortions] be amended to introduce exceptions to the general prohibition of all abortions.”⁹⁴ Grassroots movements like the Campaign for the 28th of September, recognized by advocates as the Day for the Depenalization of Abortion in Latin America and the Caribbean, represent a growing women's movement to increase public awareness of the consequences of restrictive abortion laws and to recognize abortion as a public health issue and as a human rights/social justice issue.⁹⁵

92 – United Nations Population Division, *Abortion Policies: A Global Review: Costa Rica* (2002), available at <http://www.un.org/esa/population/publications/abortion/index.htm>.

93 – Ana Carcedo, “Violence Against Women in the 1990s”*Ibid.*, p. 26.

94 – CCPR/C/79/Add.107 C. 11, April 8, 1999.

95 – www.pangea.org/dona/noticias/28septiembre.htm

VII

Conclusions and Recommendations

OMCT notes with regret that although the constitution of Costa Rica provides for the equality of men and women and specifically condemns discrimination against women, much remains to be done in order to ensure that women are not subjected to violence and other forms of discrimination. Women continue to face discrimination in the home, at work, in the community, and at the hands of state agents. Women are generally confined to a subordinate role in the family and in society and there has been a failure of both policy and legislation to adequately address these problems. The government has often promulgated laws with uneven coverage and has failed to provide the relevant implementing agencies with the necessary resources or training to effectively enforce them.

OMCT is encouraged by the promulgation of the 2001 Law Punishing Violence Against Women. The law contains provisions for the prevention and punishment of physical, psychological and sexual violence and provides for important amendments to be made to the Family Code as well as to the Penal Code provisions on rape. Despite the passage of these laws, domestic violence remains a serious problem in Costa Rica and OMCT would call upon the government to ensure that the new legislation is effectively implemented and that important policy measures are put into place in order to ensure better protection for women against violence in the family.

OMCT urges the Costa Rican government to implement initiatives to combat cultural and societal barriers to eliminating domestic violence, including, but not limited to, efforts to raise awareness about relevant legal provisions, requiring police to treat domestic violence as a serious crime, and training judges and law enforcement officials in appropriate methods for handling domestic violence cases. OMCT observes that it is essential for the government to provide legal and social assistance to battered women.

Moreover, the government of Costa Rica should take steps in order to ensure that marital rape is explicitly criminalised.

OMCT is deeply concerned about the phenomenon of “femicide” in Costa Rica and recommends that the government pay special attention to the

problem. Femicide is an extreme form of domestic violence and should be addressed not only as a homicide but with a full understanding of the role that gender and the relationship between the victim and the perpetrator play in these murders.

OMCT is concerned by reports of manifestations of xenophobia and racial discrimination against immigrants, particularly against Nicaraguans living in Costa Rica. Considering the increased feminization of migration, OMCT is especially concerned about the poor living and working conditions of these women immigrants, mostly Nicaraguan. Noting as well that the immigration committee is currently considering a new law, OMCT urges that this law mainstream gender and take into account the increased feminization of migration, especially violent aspects of irregular migration, such as trafficking.

OMCT is extremely concerned about the increasing role that Costa Rica is playing as a destination for trafficked women and the accompanying rise in the incidence of forced prostitution and child prostitution. In this vein, OMCT recommends that the government enact legislation aimed at the prevention, prosecution and punishment of trafficking and sex tourism and that this legislation focus on businesses involved in the sex tourism industry. OMCT would urge the government to make a binding commitment to preventing and combating trafficking by ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention against Transnational Organized Crime. OMCT would also urge the government to consider using the Recommended Principles and Guidelines on Human Rights and Human Trafficking (UN Doc. E/2002/68/Add.1) as adopted by the Economic and Social Council in July 2002 as the basis for the development of a comprehensive legislative and policy response to the issue.

The lack of information provided in the report by the Costa Rican government concerning women in detention is of great concern to OMCT. Because of their minority status, women in detention often do not receive the attention they require from the government and OMCT would call upon Costa Rica to provide detailed statistics and other information concerning women in detention in its next periodic report to the Committee.

OMCT urges the Costa Rican government to undertake educational campaigns promoting women's rights, in order to combat violence against women, adolescent pregnancy, sexual harassment, and sexual exploitation.

Finally, OMCT would insist upon the need for the Government to fully implement all of the provisions of the UN Convention on the Elimination of All Forms of Discrimination Against Women, the Beijing Platform of Action and the Declaration on the Elimination of Violence Against Women as these instruments provide detailed protection for women against violence in the family, in the community and at the hands of State officials.



*29th session
30 June - 18 July 2003*

**Concluding Observations of the
Committee on the Elimination of
Discrimination Against Women:
Costa Rica**

(Advance Unedited Version)

1. Introduction by the State Party

1. The Committee considered the combined initial, second and third periodic report and the fourth periodic report of Costa Rica (CEDAW/C/CRI/1-3 and CEDAW/C/CRI/4) at its 612th, 613th and 619th meetings, held on 2 and 9 July 2003 (see CEDAW/C/SR. 612, 613 and 619).

2. Introducing the reports, the representative of Costa Rica informed the Committee of the progress made in the country on behalf of women within a framework of gradual reform of the State.

3. With regard to political structure, the representative of Costa Rica stated that in 1998 the National Institute for Women (INAMU) had been established, superseding the National Centre for Women and Family Development as the supervisory body for national policies relating to women. In addition, a Minister on the Status of Women had been appointed, who at the same time served as Executive Secretary of INAMU.

4. The representative of Costa Rica emphasized the progress made in relation to policies and action with the approval in 1990 of the Act Promoting the Social Equality of Women, for the purpose of protecting the human rights of women, and of the Responsible Paternity Act in 2001 to prevent discrimination against women with children born out of wedlock or not recognized by the father. That Act had made processes of recognition of paternity more flexible and introduced an obligation on the part of fathers to discharge their economic responsibility.

5. With regard to political participation by women, the representative of Costa Rica informed the Committee that the most important achievement had been the approval of the Act on Reform of the Electoral Code, which had established a minimum quota of 40 per cent for women's political participation for access to elected office. The results achieved reaffirmed the importance of minimum quotas for women's political participation.

6. The representative of Costa Rica stressed the progress made in relation to sexual and reproductive health through the formulation of the national health policy, which included the reproductive health and sexual rights area, recognizing the right of women to receive professional counselling services, and the Programme for the Prevention and Detection of Cervical, Uterine and Breast Cancer. Special attention had been paid to the need to extend the health care model for women to all health centres in the country.

7. The representative of Costa Rica informed the Committee about the progress made in relation to violence and sexual exploitation with the launching in 1997 of the National System for the Care and Prevention of Domestic Violence. That system, which involved the participation of a large number of public representatives and representatives of civil society, had established care and prevention networks on domestic violence, specialized care centres and shelters for women victims of aggression, and a telephone hotline. A high-level commission to draw up policies for preventing deaths of women, and a national policy for care and prevention of violence and maltreatment of minors affected by domestic violence had also been established. Also, there was still resistance to the implementation of the Domestic Violence Act, and the draft law penalizing violence against adult women was pending approval. Those laws aimed at highlighting impunity and gender discrimination in the Costa Rican penal system. With regard to sexual exploitation, only limited progress had been made owing to the lack of linkage between the National Plan to Combat Commercial Sexual Exploitation and the strategies for care of the victims.

8. With regard to education, the representative of Costa Rica stressed the revision of curricula to eliminate gender stereotypes, avoid sexist language and images in textbooks and increase the number of women in the state universities and their equitable access to fellowships, research, teaching posts and the academic regime. She stressed the absence of a State education policy to eliminate discriminatory practices in education.

9. The representative of Costa Rica informed the Committee of the progress made in relation to employment and the economy. She stressed the establishment of the Inter-Institutional Commission on the Labour Rights of Women and the Act on Services for Women Living in Poverty under the National Poverty Reduction Plan, whose programme “Creciendo Juntas” [Women Growing Together] was the subject of special attention. The aim of that programme was to integrate women living in poverty and extreme poverty into employment and production through individual and collective empowerment of women, technical and job training and their integration into production. The representative of Costa Rica nevertheless referred to the absence of an employment policy and the persistence of gender inequalities in relation to access to jobs and production assets.

10. With regard to rural areas, the representative of Costa Rica emphasized awareness promotion and training for the staff of institutions in the agriculture and livestock sector in order to incorporate a gender

perspective, but stressed the lack of policies for dealing with poverty among rural women and the low level of social security coverage.

11. The representative of Costa Rica informed the Committee about the progress made in relation to migration through the incorporation of the migrants -gender relationship, but stressed the inadequacy of the available data on the population in question.

12. With regard to diversity, the representative of Costa Rica stressed the incorporation in the 2000 census of an indicator on living conditions of “minority” populations, aimed at attaining more information on Afro - descendant and indigenous populations.

13. In conclusion, the representative of Costa Rica reiterated the commitment entered in to by the State of Costa Rica in 1985 to promulgate the Convention on the Elimination of All Forms of Discrimination against Women without reservation.

2. Concluding comments of the Committee

Introduction

14. The Committee expresses its gratitude to the State party for introducing its combined initial, second and third report and its fourth periodic report, which, although with rather considerable delay, provides broad information on the progress made and the problems still being encountered in implementing the Convention on the Elimination of All Forms of Discrimination against Women.

15. The Committee notes with satisfaction the high level of the Costa Rican delegation, headed by the Minister on the Status of Women, accompanied by the Minister of Health and other high-level officials, and thanks them for their frankness in introducing the report and for the replies provided to the questions asked by the Committee.

16. The Committee commends the State party on its ratification in September 2001 of the Optional Protocol to the Convention.

17. The Committee notes with satisfaction that the State party has involved civil society and non-governmental organizations in the process of drawing up the reports, particularly the fourth periodic report.

Positive aspects

18. The Committee commends the State party's establishment in 1986 of a national mechanism as the supervisory body on national policies relating to women, a mechanism which was strengthened in 1998 with the establishment of the National Institute for Women, a decentralized autonomous body. It also commends the establishment of the National Network of Ministerial, Sectoral and Municipal Offices for Women.

19. The Committee notes with satisfaction that the State party has given the Convention the status of a constitutional law, as a legally binding treaty taking precedence over national legislation. The Committee also commends the State party for the adoption of the National Policy on Gender Equality and Equity 2002-2006, for the purpose of incorporating the gender approach in the Government's national programme.

20. The Committee notes with satisfaction that the Constitution proclaims the equality of all persons before the law and prohibits discrimination, and that the Act Promoting the Social Equality of Women explicitly proclaims the equality of women and men; it also notes that national legislation includes various general laws regulating inter alia the areas of the family, employment and education, while other pieces of legislation are in the course of analysis and approval aimed at eliminating discrimination against women.

21. The Committee notes with satisfaction that the State party has adopted a substantial number of specific laws and reforms to national general laws, approved by the Legislative Assembly, with a view to ensuring the full implementation of the Convention in Costa Rica's legal framework, including Act 7142 promoting the social equality of women, the Responsible Paternity Act, the Act on Sexual Harassment in the Workplace and in Education of 1995, and the 1996 reforms to the Electoral Code providing for a minimum 40 per cent participation of women in electoral processes. The Committee notes with satisfaction the adoption of the Domestic Violence Act and the implementation of the Comprehensive Care Programme for Domestic Violence.

Principal areas of concern and recommendations

22. Although the Constitution proclaims the equality of all persons before the law and prohibits discrimination, the Committee notes with concern that the Convention is not directly invoked in legal proceedings and that social resistance and socio - cultural patterns still exist that impede the practical implementation of these legal norms.

23. The Committee recommends that the State party launch at the national level a broad programme of dissemination of the Convention and its implications for protection of the rights of women, and that it conduct legal education and training activities for women, lawyers, officials in charge of law enforcement, and judges and magistrates, with a view to ensuring that the provisions of the Convention are known and are made use of in judicial proceedings.

24. Although the Committee notes with satisfaction the efforts made by the State party since 1994 to combat and eliminate violence against women, particularly domestic violence, it notes with concern that the problem has been viewed in the context of health, and is not recognized as

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a human rights violation and as a grave discrimination against women. The Committee is also concerned that the Domestic Violence Act does not penalize domestic violence or rape in marriage, and that in applying it the courts do not employ uniform criteria, particularly with respect to the level of application of measures to protect the victims, while at the same time, the practice of holding conciliation meetings between the aggressors and the victims of family violence is promoted.

25. The Committee requests the State party to recognize that violence against women is a human rights violation and constitutes a grave discrimination against women, to promote the adoption and promulgation of the Act on the Criminalization of Violence against Women and the formulation and implementation of the requisite regulations and legal procedures for its better application, to strengthen programmes to combat violence against women, including training and awareness promotion for judges and prosecutors, and to encourage judges to reduce the utilization of “conciliation” between aggressors and victims and to ensure that the rights of women are duly protected in such “conciliation meetings”. The Committee also recommends to the State party that in carrying out the measures suggested above and in any others aimed at eliminating and penalizing violence against women, it should take into account the provisions of the Convention and of the Committee’s General Recommendation 19.

26. The Committee takes note of the Government’s efforts to combat sexual exploitation and forced prostitution through the promulgation of Act 7899 on the Sexual Exploitation of Minors and the establishment of the Special Prosecutor for Sexual Offences and of the Sexual Exploitation Unit in the Ministry of Public Security. Nevertheless, the Committee notes with concern that at political and judicial decision -making levels, and in Costa Rican society at large, there does not appear to exist an awareness of the social and cultural implications of the offence of traffic in persons and sexual exploitation of women and girls.

27. The Committee requests the State party to strengthen actions aimed at combating traffic in persons and sexual exploitation of women and girls, and to raise awareness in all sectors of Costa Rican society, particularly the judicial and public security authorities, parents and educators, with a view to the implementation of measures to prevent sexual exploitation of children, adolescents and adults. It is also recommended that vigorous measures be taken against traffic in women and girls, and that if necessary, the existing institutions responsible for dealing with this problem be

remodelled, promoting participation and cooperation by the non-governmental organizations concerned.

28. The Committee notes that the provisions of the Electoral Code establishing minimum 40 per cent quotas for women's participation have not been fully respected by political parties.

29. The Committee recommends that the State party redouble its efforts and strengthen legislative or procedural measures, as necessary, to ensure proper application of the legislation in force, and that it seek approval of the reforms to articles 5 and 6 of the Act Promoting the Social Equality of Women with the view to ensuring women's participation both in party structures and in elective posts, inter alia through alternating men and women on lists of candidates submitted for election by political parties. The Committee also recommends that the State party consider adopting temporary special measures, in conformity with article 4, paragraph 1 of the Convention, to promote the establishment of effective mechanisms designed to secure greater participation by women at the decision-making level in government bodies.

30. The Committee notes with concern that despite the measures adopted aimed at changing stereotyped social concepts and the successes achieved, views and practices still exist, particularly in education that promote segregation of women in higher education and, in general, discrimination against women throughout the educational system.

31. The Committee recommends to the State party that it continue implementing measures aimed at changing social stereotypes that encourage discrimination against women and impede their egalitarian performance in society.

32. The Committee notes with concern that although the Constitution guarantees the right to work and the principle of non-discrimination in the employment sphere, norms and practices still exist that discriminate against working women, and that there is a wage gap, to the disadvantage of women, which has greater impact in the private sector than in the civil service; it also notes with concern the precarious working and living conditions of women domestic workers, including migrant workers, as well as of salaried women workers, rural women, women in the informal sector and indigenous women.

33. The Committee requests the State party to continue promoting the approval of the reforms to the Labour Code contained in the draft Law on

Gender Equality, and requests it to include in its next report information on the results of activities aimed at neutralizing the negative effects of free-trade agreements on female employment and the quality of life of women, as indicated by the State party. The Committee also requests the State party to adopt the legislative, administrative or other measures needed to ensure that women domestic workers, including migrant workers, temporary wage earners, women in the informal sector and rural and indigenous women have access to social security and other employment benefits, including paid maternity leave.

34. The Committee notes with concern that some groups of women workers do not benefit from the application of the Act on Sexual Harassment in the Workplace and in Teaching, particularly in the private sector.

35. The Committee requests the State party to promote adequate regulations under the Act on Sexual Harassment in the Workplace and in Education in order to show that it is complied with without exception and duly implemented also by the private sector.

36. The Committee notes with concern that the impact of poverty is greater among women and that the State does not apply the gender perspective in its national activities to combat poverty.

37. The Committee requests the State party to pay specific attention to households headed by women and to groups of women in a vulnerable situation, as well as to rural women, older women, indigenous women and disabled women, in drawing up and implementing programmes to combat poverty, and to seek to ensure their access to production resources, education and technical training.

38. The Committee notes with satisfaction the comprehensive health - care programmes for women and the progress achieved, as well as the establishment of the Inter-Institutional Commission on Sexual and Reproductive Health, the 1994 Reproductive and Sexual Health and Rights Counselling Services and the new comprehensive health care model. Nevertheless, the Committee expresses its concern at the limited information dissemination of women's comprehensive health - care rights and the absence of a national sexual education and family planning information and/or education programme to permit the creation of awareness among women and men of their rights and responsibilities in relation to the reproductive process. It is also concerned that, despite the steps taken and the adoption of the Adolescent Mothers' Protection

Act, there is continued increase in teenage pregnancies and apparent lack of awareness among men, teenage or adult, of their responsibility as fathers.

39. The Committee requests the State party to strengthen its health-care programmes, including those for sexual and reproductive health, and to launch as soon as possible a national programme to provide women and men with timely and reliable information on the available contraceptive methods and those capable of allowing them to exercise their right of free and informed choice of the number and spacing of the children they wish to have, as well as to reinforce the measures for preventing sexually transmitted diseases and HIV/AIDS, including the availability of condoms. It also requests the State party to continue strengthening support programmes for pregnant teenagers and mothers and sex education programmes aimed at preventing pregnancies among the teenage population.

40. The Committee takes note of the interpretation given by the Constitutional Chamber of Costa Rica to the principle of equality and of the State party's view regarding the need to utilize the concepts of equality and equity also in the legal sphere. Nevertheless, the Committee expresses its concern over the fact that the terms "equality" and "equity" appear to be used as synonyms in the State party's plans and programmes.

41. The Committee requests the State party to take note of the fact that in the context of implementation of the Convention the terms "equity" and "equality" are not interchangeable or synonymous and that the Convention includes the obligation of States to eliminate discrimination against women and ensure de jure and de facto equality of women and men.

42. The Committee requests the State party to deposit as soon as possible its instrument of acceptance of the amendment to article 20, paragraph 1 of the Convention relating to the Committee's meeting time.

43. The Committee requests the State party to respond to the concerns expressed in the present concluding comments in its next periodic report under article 18 of the Convention. The Committee invites the State party to submit its fifth periodic report, which was due in May 2003, and its sixth periodic report, which is due in May 2007, as a combined report in 2007.

44. Bearing in mind the gender-related aspects of the statements, programmes and action platforms approved by the United Nations at its relevant conferences, summit meetings and special sessions (such as the

special session of the General Assembly on the overall review and appraisal of the implementation of the Programme of Action of the International Conference on Population and Development (the twenty-first special session), the special session on children (the twenty-seventh special session), the World Conference against Racism and Racial Discrimination, Xenophobia and Related Intolerance and the Second World Assembly on Ageing), the Committee requests the State party to include information on the implementation of the aspects of those documents relating to relevant articles of the Convention in its next periodic report.

45. The Committee requests that the present concluding comments be broadly disseminated in Costa Rica so that the Costa Rican people, and in particular senior government officials and politicians, will be aware of the measures taken in relation to the de facto and de jure equality of women, and of future measures required in this respect. It also requests the State party to continue giving broad dissemination, especially among women's and human rights organizations, to the Convention and its Optional Protocol, the Committee's general recommendations, the Beijing Declaration and Platform for Action and the results of the twenty-third special session of the General Assembly entitled: "Women in the year 2000: gender equality, development and peace for the twenty-first century".

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