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COSTA RICA

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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
2. This report illustrates the state of homeschooling in Costa Rica, highlighting that relevant restrictions violate its obligations to respect freedom of education and parental rights under international human rights law.

(a) Freedom of Education

Legal Framework

3. The Costa Rican Constitution encompasses various provisions pertaining to the right to education. Article 77 of the Constitution provides that “public education will be organized as a complete [integral] process correlated in its various cycles, from the preschool to the university”.¹ Article 78 provides that education is obligatory and, in the public system, is “gratuitous and financed by the Nation”.²
4. Article 79 guarantees the freedom of education. However, “all private educational centers will be under the inspection of the State”. It also states that “private initiative in education matter[s] will merit stimulus from the States, in the form that the law indicates”.³
5. Costa Rica enforces compulsory education through its Fundamental Law of Education.⁴ Article 29 requires educational centers to give students and parents the information necessary to participate, understand, and support the educational process.
6. In addition to its fundamental law, Costa Rica’s Code of Education does provide some limited provisions for homeschooling under its Title VII.⁵ First, a parent, tutor, or guardian who wishes to home-instruct his or her children or wards between the ages of 7 and 14 shall communicate his or her intention to the local Board of Education.⁶ Second, children of the age mentioned in the preceding article, who receive instruction at home, from the end of the second year of school, must take an examination, which shall deal with the subjects corresponding to their age, in public schools in the manner and according to the curricula of official education.⁷ Lastly, a child’s parent or guardian must send his or her child to a public or private school in the district within eight days in the event the result of the examination (from the article above) is not presented, and notify the local board of education.⁸

¹ Constitution of Costa Rica 1949 (rev. 2020) (English Translation by Maria del Carmen Gress), available at https://www.constituteproject.org/constitution/Costa_Rica_2020, Art. 77.

² *Ibid.*, Art. 78.

³ *Ibid.*, Art. 80.

⁴ Ley No. 2160, official Spanish version available at <https://mep.go.cr/ley-reglamento/ley-n%C2%BA-2160-ley-fundamental-educacion>.

⁵ Ley No. 181, official Spanish version available at <https://mep.go.cr/ley-reglamento/codigo-educacion-0>.

⁶ *Ibid.*, Art. 259.

⁷ *Ibid.*, Art. 260.

⁸ *Ibid.*, Art. 261.

7. Finally, Costa Rica's Code of Children and Adolescents contains various provisions implicating parental rights and education.⁹ Article 31 protects the right to education in the home: "Minors shall have the right to grow up and be educated within a family; They will always be assured of family and community coexistence." When fulfillment of this right is jeopardized for socio-economic, educational, and environmental reasons, competent public institutions are required to provide opportunities to overcome family problems, as well as training and employment guidance for parents.

Situations Affecting Education and Parental Rights

8. Despite constitutional and statutory protections for home education, in practice, homeschooling is not fully realized in the country and families have difficulties in homeschooling their children.
9. For example, some sources state that homeschooling is not recognized in Costa Rica, and that all minors, national or foreign, must attend an educational institution authorized by the Ministry of Public Education, which includes public or private schools.¹⁰ On the other hand, other sources state that, while not officially recognized, parents who wish to homeschool are required to register with the Ministry of Education and to submit annual progress reports.¹¹
10. This confusion may be partially due to the decentralized nature of the implementation (e.g., families' notification to local school boards), agency misinterpretation of the laws, inconsistent application of the laws, or lack of familiarity by families or local officials with any necessary legal processes needed to homeschool.
11. Apart from the applicable constitutional and statutory provisions mentioned, the Ministry of Public Education promulgated a circular in 2017 (DM-036-09-2017) that exacerbated the predicament further. That circular limited recognition of primary and secondary education degrees if the degree was acquired by the student completing them in Costa Rica under the methods of online, correspondence, homeschooling or similar terms, offered by educational institutions in foreign lands not accredited by the Costa Rican Ministry of Public education.¹²
12. In an about-face, following the outbreak of the COVID-19 pandemic, the Ministry of Public Education *allowed* for hybrid education (i.e., mixed in-person and home education).¹³ Despite the State's attempts to adapt to the then-prevailing situation, the educational progress of many students severely lagged.¹⁴ This undoubtedly

⁹ Ley No. 7739, official Spanish version available at <https://mep.go.cr/ley-reglamento/ley-n%C2%BA-7739-codigo-ninez-adolescencia>.

¹⁰ *Costa Rica, Legal Status and resources on homeschooling in Costa Rica*, Home School Legal Defense Association (last visited 5 Jan. 2024), available at <https://hsllda.org/post/costa-rica>.

¹¹ *Is there homeschooling in Costa Rica: An Informative Guide*, Costa Rica Immigration Experts (CRIE) (17 Oct. 2023), available at <https://crie.cr/is-there-homeschooling-in-costa-rica/>.

¹² Circular DM-036-09-2017, Republica de Costa Rica Ministerio de Educacion Publica (12 Sep. 2017), available at https://hsllda.org/docs/librariesprovider2/public/international/circular_dm-036-09-2017.pdf?sfvrsn=fea3fed1_3.

¹³ *Costa Rica Students Face Steep Education Setbacks Due to Covid*, Tico Times (2 Sep. 2023), available at <https://ticotimes.net/2023/09/02/costa-rica-students-face-steep-education-setbacks-due-to-covid>.

¹⁴ *Ibid.*

pressured more families to seek out homeschool opportunities to provide an adequate remedial education for their children.

13. Nevertheless, due to the continuing challenges homeschooling families face, a suit was recently filed in that country to realize their rights.
14. In the case of *Isabel Alvarez Acuna and Mauricio Alvarez Araya v. The State – Ministry of Public Education*¹⁵, a student, Isabel, and her father sued the Ministry of Public Education to declare Title V of circular DM-036-09-2017 to be unconstitutional.
15. Isabel, born 2001, was born with a congenital heart defect and has had various surgeries.¹⁶ Her condition means that she must have constant medical check-ups and surgeries. That makes homeschooling and online studies ideal for her.
16. Her parents, Mauricio Alvarez Araya and Ana Marcela Acuna Gonzalez, initially enrolled her in private school but, due to an international job change, chose alternative education via homeschool/online learning via a program, ABEKA ACADEMY.¹⁷
17. While it is accredited in the United States, the program and methodology covered strictly and adequately the key contents and educational requirements demanded for a young person, with a curriculum that contains what is covered by Costa Rica and with the support of formation in the Christian faith in greater depth. Finally, it is fully bilingual.¹⁸
18. Regrettably, upon Isabel's filing for the procedure of recognition and equalization of her studies, the Ministry of Education refused to do so, citing the circular DM-036-09-2017 to claim her program was not comparable to the Costa Rican High School Diploma or respective level, supervision by the State is not guaranteed, and that all educational offers in Costa Rica must be recognized, endorsed, and supervised by the Ministry of Education.¹⁹
19. Subsequently, the family sued and alleged, inter alia, that the circular's prohibition on the recognition and equalization of degrees, diplomas or certificates of primary and secondary education awarded to homeschooling students violated the Constitution and various provisions of international and regional human rights law (see analysis below). At the time of this submission, the case is still pending review in the court system.
20. Isabel's case is emblematic of the challenges homeschooled children and their families face, and the need for the authorities to address them without delay in order to fully realize their domestic constitutional, statutory, and international human rights.

Freedom of Education in International Human Rights Law

21. Costa Rica acceded to both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights

¹⁵ Filing in the 2nd Judicial Circuit of San Jose (23 Jun. 2023), English translation on file with author.

¹⁶ *Ibid.*, para. 4.

¹⁷ *Ibid.*, paras. 10-14.

¹⁸ *Ibid.*, para. 20.

¹⁹ *Ibid.*, paras. 32, 39, and 40.

(ICESCR) on 29 November 1968 without reservations.²⁰ Furthermore, it ratified the Convention on the Rights of the Child (CRC) on 3 August 1994.

22. Article 13(3) of the ICESCR contains explicit guarantees for the rights of parents with respect to the education of their children:

“State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.”²¹

23. Article 18(4) of the ICCPR similarly provides that States must “undertake to have respect for the liberty of parents [...] to ensure the religious and moral education of their children in conformity with their own convictions”.²²

24. Parental rights in this area are further safeguarded in the CRC. Article 18 states that “parents or, in the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child” whereas “State Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities”, not to assume those on their behalf.²³

25. Writing on the issue of home education, the former Special Rapporteur on the right to education, Vernor Muñoz Villalobos, affirmed that,

“Distance learning methods and homeschooling represent valid options which could be developed in certain circumstances, bearing in mind that parents have the right to choose the appropriate type of education for their children, as stipulated in article 13 of the International Covenant on Economic, Social and Cultural Rights. The promotion and development of a system of public, government-funded education should not entail the suppression of forms of education that do not require attendance at a school.”²⁴

26. In 2021, former Special Rapporteur on the right to education, Dr. Koumbou Boly Barry echoed this concern by stressing that “measures such as [...] prohibiting homeschooling, without legitimate justification under international law, cannot be considered compatible with the cultural dimensions of the right to education”.²⁵

²⁰ See Ratification Status for Costa Rica, UN Treaty Body Database (last visited 9 Aug. 2023), available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=41&Lang=en.

²¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1967) 999 UNTS 171 (ICESCR), art. 13.

²² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 171 (ICCPR), art.18.

²³ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art.18.

²⁴ V. Muñoz, ‘Addendum to the Report of the Special Rapporteur on the Right to Education, Mission to Germany’ (9 March 2007) UN Doc A/HRC/4/29/Add.3, 62.

²⁵ K.B. Barry ‘Report of the Special Rapporteur on the right to education, Right to education: the cultural dimensions of the right to education, or the right to education as a cultural right.’ UN Docs A/HRC/47/32, 42.

27. This interpretation is consistent with General Comment No. 13 by the Committee on Economic, Social and Cultural Rights on the right to education, which recognizes that “while the precise and appropriate application of the terms [of Article 13.2 of the ICESCR] will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels” must exhibit certain essential features such as availability, accessibility, acceptability, and adaptability.²⁶
28. Acceptability is defined to mean that the “form and substance of the education, including curricula and teaching methods, have to be acceptable to students and, in appropriate cases, parents”, while adaptability means that education has to be “flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings”.²⁷ In this regard, the principles of acceptability and adaptability are especially pertinent to homeschooling because it provides choices for families that go beyond a “one-size-fits-all” approach.
29. In sum, the measures undertaken by Costa Rica with respect to homeschooling go far beyond merely setting reasonable minimum standards for education. The confusion surrounding its legality, the lack of recognition of homeschooling curricula or degrees, and the procedural difficulties parents must overcome in order to homeschool their children not only contravene Costa Rica’s internal constitutional and statutory laws but also its obligations under international human rights law.

(b) Recommendations

30. In light of the aforementioned, ADF International suggests the following recommendations be made to Costa Rica:
- a. Fully respect, protect, and ensure freedom of education;
 - b. Review and amend the requirements set out for parents intending to homeschool their children in a manner consistent with relevant human rights obligations, particularly under Article 13 of the International Covenant on Economic, Social and Cultural Rights;
 - c. Respect the right guaranteed under international law of parents to raise and educate their children in accordance with their moral and religious convictions;
 - d. Clarify, repeal, adopt, or amend laws, regulations, policies, or practices that violate the full exercise of freedom of education and parental rights in this context;

²⁶ General Comment No. 13: The right to education (article 13) (1999) (Adopted by the Committee on Economic, Social and Cultural Rights at the Twenty-first Session, E/C.12/1999/10, 8 December 1999) at para. 6, available at <https://undocs.org/Home/Mobile?FinalSymbol=E%2FC.12%2F1999%2F10&Language=E&DeviceType=Desktop&LangRequested=False>.

²⁷ Ibid.

- e. Assuming minimum standards are met, grant recognition and accreditation of educational programs done online, via correspondence, homeschool, or under similar terms;
- f. Protect the rights of individuals and bodies to establish and direct educational institutions, including homeschooling programs;
- g. Recognize that the State has no legitimate authority under international law to mandatorily prescribe conventional education for all children, that individuals have the right to seek alternative forms of education, and that the current restrictions on home education are incompatible with international human rights law.



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