

# **PUBLIC GOVERNANCE IN COSTA RICA**



## FOREWORD

This volume consists of two background reports prepared by the OECD Secretariat in the context of Costa Rica's accession process to the OECD, which was launched in April 2015 by decision of the OECD Council (see the Roadmap for the Accession of Costa Rica to the OECD Convention, [C(2015)93/FINAL]). On 15 May 2020, the OECD Council decided to invite Costa Rica to accede to the OECD Convention and thereby become a Member of the Organisation upon deposit of its instrument of accession to the OECD Convention, which was pending at the time of publication.

These reports were prepared to support the evaluation of public governance tools and practices of Costa Rica undertaken by the OECD Public Governance Committee in the context of its accession review. The information presented in the first part of this report was accurate as at April 2017, and covered the following topics: sound structure of government; transparency and accountability; integrity and public procurement; budget performance; public employment and human resources management; digital government; and multilevel governance. The second part provides a shorter update on specific core priority areas, *i.e.* center of government coordination, budgetary governance and public employment identified by the Public Governance Committee and was accurate as at April 2019. The corresponding assessments refer to the state of affairs at these two respective moments.

The Public Governance Committee agreed on 27 July 2020 to declassify the reports in their current versions. They were published in July 2021.

The reports were coordinated by Ms Eva Beuselinck and Ms Emma Cantera, with input from the different divisions of the Public Governance Directorate.

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## **PART I – 2017 ACCESSION ASSESSMENT REPORT**



## INTRODUCTION

On 9 April 2015, the OECD Council decided to open accession discussions with Costa Rica and, on 8 July 2015, the Council adopted the Roadmap for the Accession of Costa Rica to the OECD Convention [[C\(2015\)93/FINAL](#)] setting out the terms, conditions and process for the accession of Costa Rica. In accordance with the Roadmap, Delegates of the Public Governance Committee (PGC) were asked to evaluate Costa Rica's willingness and ability to implement OECD legal instruments within the PGC's competence, as well as Costa Rica's policies and practices as compared to OECD best policies and practices, as reflected by the eight Core Principles of public governance outlined in the Appendix to the Roadmap.

The purpose of this Accession Assessment Report is to provide a basis for the PGC's evaluation of Costa Rica's legal framework and policies and practices in this area and focuses on where the country stands vis-à-vis the Core principles set out in the Appendix to the Roadmap:

- Principle 1: Sound structure of government, including the separation of powers; co-ordination, leadership and foresight capacity within the centre of government that ensures a whole of government approach to decision-making and effective interface between the political and administrative levels, accompanied by coherent enforcement frameworks and effective justice institutions, as well as robust frameworks for the governance of critical risks and of gender equality;
- Principle 2: Transparency and accountability to promote and facilitate responsibility for government action and inclusive stakeholder engagement in policy design and implementation;
- Principle 3: Integrity in the public sector, including the application of principles and high-standards of behaviour in public institutions, integrity, risk-management and sound safeguards at the intersection of the public and private sectors, including for lobbying, conflict of interest and public procurement;
- Principle 4: Budget performance, including aggregate fiscal discipline, the effective allocation and reallocation of public resources, the promotion of the efficient delivery of public services, and budget transparency and accountability;
- Principle 5: Strategic human resources management in the public sector as a whole-of-government strategic enabler for better policy-making and public-service delivery, including core values, strategic workforce planning and management, diversity, and mechanisms to ensure staff performance and capacity;
- Principle 6: The use of ICTs and electronic access to government, including the vision for digital government as a strategic enabler of public-sector performance and responsiveness to the needs of civil society, and the framework conditions for implementing digital government;

- Principle 7: Multi-level governance, including the ability of central and sub-national administrations to implement together these good-government practices and design and deliver services efficiently and effectively, and equitably across regions;
- Principle 8: The use of performance indicators and data on public governance, including performance data for eventual inclusion in the governance database published biennially in Government at a Glance.

Consistent with the approach adopted in the previous accession rounds, the eighth Core Principle is not addressed *per se* in this report. Rather, data and indicators provided by Costa Rica appear throughout this report. A substantial part of Government at a Glance (GaaG) data is collected by Directorates from across the Secretariat, notably by the Statistics and Economics Directorates, for inclusion in Public Finance and Economics Assessments and as part of their compilation of National Accounts. These directorates conduct their own assessment of this data. For its part, the Public Governance Directorate (GOV) collects data on public-management practices directly from national governments as part of its biennial cycle to update the GaaG database, and will evaluate Costa Rica's data as it is received for the 2017 and 2019 database updates. In addition, this Accession Assessment Report assesses whether the candidate country collects performance-indicator data and other quantitative information on governance practices, as well as the quality of this data as part of the assessment of the degree of coherence with OECD best standards and practices across the entire group of Core Principles.

Following the discussion with Costa Rica on accession at the November 2016 PGC meeting, the key themes the Committee wished to address at its next meeting were identified, namely:

- Highly fragmented public administration, impacting steering and co-ordination in all policy areas, in particular:
  - Budget,
  - Public procurement,
  - Human resources;
- Limited multilevel governance;
- Further assessment of the Core Principles at the sub-national level.

The Secretariat's preliminary assessment included in this Report presents key recommendations under each of these priority themes and provides summary assessments of the extent to which Costa Rica's policies and practices are in line with OECD best policies and practices in other areas under assessment. The report itself is organised by the Core Principles set out in the Appendix to the Roadmap, the benchmarked assessment of the willingness and ability of Costa Rica to adhere to PGC Instruments, and of the degree of alignment between OECD best policies and practices and Costa Rica's public governance arrangements, as a means to facilitate Committee dialogue with the country on all issues falling under the Committee's purview.

This report is organised into seven sections based on the assessment areas, providing a description of the institutions, actors, policies and programmes in Costa Rica. The main chapters are complemented by a brief background chapter on the overall country context in Costa Rica, including its geography, economy, and government.

This Report draws, *inter alia*, on two one-week accession missions by GOV officials: in June 2016 to San José and in early February 2017 to San José and three municipalities (Curridabat, Orotina and San Carlos). The findings of this Report are moreover based on Costa Rica's responses to the 2015 PGC Accession Review Questionnaire, the 2015 Public Governance Review of Costa Rica, existing OECD research and other sources listed.

## SECRETARIAT'S PRELIMINARY ASSESSMENT

The different sections in this report present evidence on the willingness and ability of Costa Rica to adhere to the OECD instruments falling under the PGC's purview and on Costa Rica's policies and practices in public governance compared to OECD best policies and practices, with reference to the Secretariat's databases and assessments of public governance in OECD countries. At the conclusion of each section, a list of recommendations is presented.

Costa Rica stands out in the region for its political and economic stability. Its Constitution of 1949 provides for a presidential system, a unicameral legislature, and an independent judicial system and electoral body. In addition, it abolished the army and reallocated these funds to be spent on human capital in sectors like education and health, fostering the creation of a solid basic social welfare system. Costa Rica's economic growth is robust and stable, with GDP estimated to have increased by 4% in 2016 and is expected to grow at a similar pace in 2017. Nevertheless, the central government fiscal deficit has grown over the last years reaching 5.2% of GDP in 2016, only slightly less than in the previous year (5.6% of GDP). The country faces challenges related to its debt rating, and gross general government debt doubled to an estimated 41% of GDP in 2016 from 20% in 2008. In addition, challenges in the economic area include the framework of competition policy, the promotion of innovation, access to finance and transport infrastructure.

The country's political decision-making capacity has come under pressure over the last decade. Due to a shift from a bi-partisan to a more fragmented multi-party system, the current Executive experiences a weakened position to put forward its legislative agenda. Furthermore, Costa Rica's public sector is characterised by a high level of institutional fragmentation with limited steering and coordination instruments to ensure overall coherence. Costa Rica's constitution distinguishes between central government and local government (i.e. "territorially decentralised public sector") and establishes the existence of autonomous institutions. This "institutionally decentralised sector" (as opposed to ministries and their subsidiary or deconcentrated bodies) encompasses autonomous institutions and their subsidiary bodies, semi-autonomous institutions, state-owned and non-state-owned public enterprises and non-state public entities that operate in the public interest. The budget of the institutionally decentralised sector – approximately 50% of the general government consolidated spending – falls outside the budget process headed by the Ministry of Finance, and is rather supervised (through a compliance check) by the Office of the Comptroller General.

### **Position of Costa Rica vis-à-vis OECD legal instruments**

At the time of the submission of the Initial Memorandum by Costa Rica in 2016, there were nine OECD legal instruments which related to public governance:

1. Recommendation of the Council on Public Procurement [OECD/LEGAL/0411];
2. Recommendation of the Council on Budgetary Governance [OECD/LEGAL/0410];
3. Recommendation of the Council on Digital Government Strategies [OECD/LEGAL/0406];
4. Recommendation of the Council on Principles for Independent Fiscal Institutions [OECD/LEGAL/0401];

5. Recommendation of the Council on the Governance of Critical Risks [OECD/LEGAL/0405];
6. Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships [OECD/LEGAL/0392];
7. Recommendation of the Council on Principles for Transparency and Integrity in Lobbying [OECD/LEGAL/0379];
8. Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service [OECD/LEGAL/0316];
9. Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service [OECD/LEGAL/0298].

In February 2016, the Government of Costa Rica formally submitted its Initial Memorandum to the OECD in accordance with the Roadmap for the Accession of Costa Rica to the OECD Convention [[C\(2015\)93/FINAL](#)], in which the country provided its position on all of the nine PGC's legal instruments. Costa Rica accordingly accepted six instruments without reservations and three with an observation or a timeframe for implementation, namely the Recommendation of the Council on Public Procurement which was accepted with the understanding that some steps would be undertaken in 2016/2017; the Recommendation of the Council on Budgetary Governance which was accepted with a timeframe for implementation until 2022; and the Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships which was accepted with a timeframe of implementation until 2018.

Since the date of the submission of the Initial Memorandum by Costa Rica, the Council adopted two new Recommendations in the area of public governance, namely:

1. Recommendation of the Council on Gender Equality in Public Life [OECD/LEGAL/0418];
2. Recommendation on Public Integrity [OECD/LEGAL/0435].

In accordance with the Roadmap, for legal instruments adopted after the submission of the Initial Memorandum, Costa Rica will be requested to take a position as soon as possible. Costa Rica submitted its position on the Recommendation of the Council on Gender Equality in Public Life on 31 March 2017 and on the Recommendation on Public Integrity on 21 July 2017.<sup>1</sup>

### ***Recommendation of the Council on Public Procurement [OECD/LEGAL/0411]***

**Position:** Acceptance with the understanding that some steps will be undertaken in 2016/2017.

Costa Rica agrees with the general principles of the Council Recommendation on Public Procurement. Article 182 of the Political Constitution (*Constitución Política de Costa Rica*) provides that all public procurement must be carried out through a procurement process. The legal framework on government procurement moreover emphasises the principles of equality, free competition and publicity, which contribute to the transparency of the procurement process.

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<sup>1</sup> An update on Costa Rica's position vis-à-vis the additional legal instruments under the responsibility of the PGC adopted after the preparation of this report in 2017 is available at p. 244.

The most important legislation regarding procurement is the Law on Administrative Procurement (LAP, 7494 of 1995) (*Ley de Contratación Administrativa*) and its regulation. The law covers most public institutions<sup>2</sup>, and defines amongst others the requirement for each institution to have a procurement plan and the procurement procedures.

Executive Decree 38830-H-MICIT seeks the "Creation of the Integrated Public Purchases System" (*Creación del "Sistema Integrado de Compras Públicas – SICOP*) as a technological platform of mandatory use for all the central government, for the management of government procurement and for the acts and contracts from which they are derived. A legal reform is moreover required so that the system is of mandatory use for all public entities. Nevertheless, in practice, SICOP is already becoming the standard at central level, and only a few framework agreements are still managed through old systems until they reach their end. Municipalities are also preparing to start using SICOP, anticipating the legal reform mentioned above that will make the use mandatory at all levels.

In addition, Costa Rica has made important progress in aligning its regulations and practices with OECD standards. First, through R-DC-114-2016, the Office of the Comptroller General (CGR) changed its regulation reducing significantly the currently required *ex ante* control for contracts above given thresholds; a more in-depth reform of the *ex ante* control is currently moved forward by the CGR. Second, there is recent progress in making framework agreements more attractive by reforming Article 115 of the Law on Administrative Procurement (40124-H *Presidencia* and *Hacienda*, October 2016). Third, transparency in public procurement has been increased by modifying Article 40 of the Law on Public Procurement, by including requirements concerning information on procurement that has to be displayed on the website of public entities.

The LAP includes a chapter of administrative sanctions for public officials as well as for individuals. These administrative sanctions do not exclude the eventual criminal sanctions that can be applicable to public officials and individuals. The referenced provision includes sanctions for public officials in case of inadequate performance of tasks related with the procurement process, as well as for receiving improper benefits. Likewise, sanctions are established for the suppliers that fail to comply with their contractual obligations, affect the development of the procurement procedures or grant gifts to public officials. Sanctions from one to ten years of prohibition are available.

Challenges remain at local level, where the Municipal Councils - according to the Municipal Code - have the power to approve procurement and contracting, yielding a strong risk of political interference in administrative matters and corruption. Clarifying the Municipal Code by separating the roles of legislative control and administration could mitigate those risks.

### ***Recommendation of the Council on Budgetary Governance [OECD/LEGAL/0410]***

**Position:** Acceptance with a timeframe for implementation until 2022.

Costa Rica accepts the Recommendation on Budgetary Governance. However, in order to meet all principles in the Recommendation, Costa Rica plans to conduct a series of reforms across the public sector. Some of the principles on budgetary governance will require constitutional and legal reforms, the former requiring support of the Legislative Assembly of two consecutive Administrations. For this reason, an extended timeframe for implementation until 2022 is requested to comply with the recommendation. Some of the reforms are related to the following aspects:

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<sup>2</sup> With the exception of non-state public entities financed by more than 50% by their own resources, contributions of its members, and public enterprises whose capital belongs mostly to private persons and not the public sector (Article 2, Procurement Act, Law 7494 of 1995).

- 95% of the central government budget is tied to constitutional and legal mandates which means the expenditure is inflexible and difficult to assign to national priorities and adapt to shifting policy priorities;
- Strengthening the budgetary governance is necessary in order to place it in a medium-term dimension, through the inclusion of components such as expenditure limits that can be the basis for annual budgeting, strengthening sectoral planning, programmatic structures and a greater coverage of medium-term expenditure frameworks;
- Around 50% of the budget is submitted for approval by the Legislative Assembly. For the other 50%, the law grants the Office of the Comptroller General the power to approve and reject the budgets of autonomous institutions and municipalities;
- Current fiscal rules are not applied. Costa Rica has been lacking an effective fiscal constraint, as well as a mechanism for facilitating and enforcing medium-term fiscal discipline regarding the central government budget.

In addition to the constitutional reform, it is necessary to develop a support programme for the Directorate General of National Budget (*Dirección General de Presupuesto Nacional*), to increase its competences and governing functions, as well as the design of a technological platform to store all the information from each phase of the budgetary process of all public sector entities.

Recently, Costa Rica has made progress in the result-based budgeting process, with the participation of the Ministry of Finance (*Ministerio de Hacienda*) and the Ministry of Planning and Economic Policy (*Ministerio de Planificación Nacional y Política Económica - MIDEPLAN*). To develop the 2016 budget, both entities worked in coordination to achieve a better connection between the National Development Plan 2015-2018 and the institutional budgets.

Costa Rica fully accepts Principle 1 and 9 regarding limits for fiscal policy and long-term fiscal sustainability. There is a need to implement a fiscal agenda that will place public finances on the path to sustainability. Effective budget procedures need to be developed to have clear fiscal limits and objectives, and enforcement mechanisms to ensure compliance.

### ***Recommendation of the Council on Digital Government Strategies*** ***[OECD/LEGAL/0406]***

***Position:*** Acceptance.

Costa Rica adhered to this Recommendation on 1 October 2014. The country accepts this instrument, as it contains the main principles needed to develop the country's digital government strategy and thus assures the widest levels of transparency and citizen participation.

The political responsibility for the digital government strategy corresponds to the Ministry of Science, Technology and Telecommunications (*Ministerio de Ciencia, Tecnología y Telecomunicaciones - MICITT*). The following laws and regulations are relevant to the Recommendation and create a broad and strong legal framework to enhance a digital government strategy that makes the life of citizens and businesses easier, promoting transparency and efficiency in the public institutions: Law 7169 “Law for Scientific and Technologic Development” (*Ley de Promoción Desarrollo Científico y Tecnológico y Creación del MICYT* (Ministerio de Ciencia y Tecnología)); Law 8220 “Protects citizens from excess on formalities and requirements” (*Ley de Protección al ciudadano del exceso de requisitos y trámites administrativos*); Law 8454 “Law of Certificates, Digital Signatures and Electronic Documents” (*Ley de certificados, firmas digitales y documentos electrónicos*). Moreover, Executive Decrees 35139-MP-PLAN 34704 “Promoting

Telework in Public Institutions” (*Promoción del Teletrabajo en las Instituciones Públicas*) and 36176 “Reform of Article 1 of Executive Decree 35139-MP-PLAN creating the Intersectoral Commission for Digital Government” (*Reforma al Artículo 1 del Decreto Ejecutivo No 37139 – MP – PLAN Comisión Intersectorial de Gobierno Digital*) are relevant documents.

Generally speaking, Costa Rica presents a healthy dynamic and is experiencing a steady trend towards convergence. Costa Rica’s policies and practices are broadly in line with the OECD Recommendation on Digital Government Strategies [[C\(2014\)88](#)]. Costa Rica has shown growing maturity in its use of digital technologies to support broader public sector modernisation efforts and help government come closer to citizens and businesses.

### ***Recommendation of the Council on Principles for Independent Fiscal Institutions*** **[OECD/LEGAL/0401]**

**Position:** Acceptance.

Costa Rica accepts the Recommendation on Independent Fiscal Institutions because it is in line with the good practices of public finance discipline and sustainability. However, Costa Rica currently does not have an Independent Fiscal Institution (IFI). In the case that Costa Rica decides to set up an independent fiscal institution, it would use this framework and comply with the mentioned principles.

### ***Recommendation of the Council on the Governance of Critical Risks*** **[OECD/LEGAL/0405]**

**Position:** Acceptance.

Costa Rica adhered to this recommendation in May 2014. The recommendation sets a framework for the management of critical risks that is consistent with Costa Rica’s legal and institutional framework. Costa Rica’s emergency management capacity has been firmly established throughout levels of government, which has led to a significant reduction in fatality rates and an ability of the country to manage larger scale emergencies without reliance on support from external partners. Costa Rica’s national policy frameworks have embraced a whole-of-society approach to risk management, putting particular emphasis on future resilience against natural disasters. There is awareness and forward-looking policy efforts are made to identify and address potential future changes to prevailing risks, including those stemming from climate change.

Costa Rica's national strategy for the governance of critical risks is rooted in the National Emergency (*Ley nacional de emergencia*), Law 4374 (1969) replaced by Law 7914 (1999); as well as the National Risk Management Policy (2016-2030) (*Política Nacional de Gestión de Riesgo*) that is anchored in the National Law 8488 on Emergencies and Risk Prevention stemming from 2006 (*Ley nacional de Emergencias y Prevención de Riesgos*). The National Law on Emergencies (Law 4374) (*Ley nacional de emergencia*) established the National Emergency Commission (*Comisión Nacional de Prevención de Riesgos y Atención de Emergencias – CNE*) as the leading institution which manages the resources of the National Emergency Fund (*Fondo Nacional de Emergencia*), drives the implementation of the National Risk Management Policy across the National Risk Management System (*Sistema Nacional de Gestión de Riesgo*) and assumes the sole mandate of actions in the area under emergency. Together with the Emergency Operations Center (*Centro de Operaciones de Emergencia - COE*), the CNE is also responsible for strengthening and monitoring emergency preparedness and response activities. The Institutional Risk Management Committees (*Comités Institucionales para la Gestión de Riesgo*) and the Municipal and Community Emergency Committees organize and plan preparedness actions and disaster response.

The National Risk Management System is used as the mechanism to coordinate actions by stakeholders involved in the management of critical risks and in the execution of the National Risk Management Plan. It convenes the institutions of central government, the decentralised institutions, local authorities, civil society and the private sector that have responsibilities in the management of critical risks. The government has issued various policy actions. In addition to post-recovery plans developed by the government, the National Meteorological Institute (*Instituto Meteorológico Nacional – IMN*), the Ministry of Farming and Livestock (*Ministerio de Agricultura y Ganadería – MAG*), the Ministry of Health (*Ministerio de Salud*), the Ministry of Environment (*Ministerio de Ambiente y Energía - MINAE*), municipalities and universities have developed anticipation capacities linked to natural threats, basins and climate change.

***Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships [OECD/LEGAL/0392]***

**Position:** Acceptance with a timeframe for implementation until 2018.

Costa Rica has relatively little experience with PPPs compared to most OECD member countries. The first public-private initiatives were carried out after the Law 7762 on Concession was enacted in 1998 (*Ley General de concesión de obras públicas con servicios públicos*). Law 7762 sets out the legal framework for concession of public works and has driven the development of public infrastructure and allowed the State to take advantage of the experience and dynamism of the private sector. To date, only four concession projects have been carried out. Most of these contracts had long delays during the procurement process and the initial execution phase, due to delays in the expropriation process, weak risks allocation, lack of trust from the financial sector, and insufficient technical capacities. As a consequence, renegotiations were needed to maintain the economic equilibrium of the contracts.

Costa Rica is in the process of developing a new framework for public private initiatives. In 2016, the government formulated a public policy for PPPs. In December 2016, the government also issued an executive decree to regulate public private collaboration initiatives (Decree 39965-H-MP “*Reglamento para los Contratos de Colaboración Público-Privada*”). The decree includes norms and procedures to implement PPP projects, including financing, economic compensations, rituality of goods and services, minimum content of PPP agreements, risk allocation and contract duration. This new regulation is in principal aligned with the OECD Recommendation. However, Costa Rica could develop a clearer vision of how this new framework will be articulated with the current institutional and legal design.

Since 1998, concession projects are managed by the National Concessions Council (*Consejo Nacional de Concesiones, CNC*), a subsidiary body of the Ministry of Public Works and Transport (*Ministerio de Obras Públicas y Transportes*) which operates in an autonomous way, independently of MIDEPLAN and the Ministry of Finance. The CNC is responsible for managing the National Concessions Fund (*Fondo Nacional de Concesiones*), carrying out the procurement process, signing the concession agreement and if needed continuing with the contract during the execution phase. More recently, in April 2014, a PPP unit was created in the Directorate of Public Credit (*Dirección General de Crédito Público*) of the Ministry of Finance (*Ministerio de Hacienda*) to coordinate with other offices and propose technical criteria and methodological guidelines to analyse possible investment projects under the public-private partnership umbrella, and control the contingent liabilities they generate. Additional efforts are needed to align and coordinate the work of these two entities.



### ***Recommendation of the Council on Principles for Transparency and Integrity in Lobbying [OECD/LEGAL/0379]***

**Position:** Acceptance.

Article 11 of the Political Constitution of Costa Rica establishes the principles of transparency, impartiality, and integrity as part of the government's work. Costa Rica currently does not have regulations in place that define lobbying and lobbying activities, or seek to enhance transparency and integrity in lobbying. However, the draft Law 19251 of 2014 proposes a Law on Lobbying in the Public Service (*Ley Reguladora del Cabildeo en la Función Pública*). Several legislative sources touch upon the principles of integrity and transparency: the Law against Corruption and Illicit Enrichment (Law 8422 of 2004) (*Ley contra la Corrupción y el Enriquecimiento Ilícito en la Función Pública*) (Article 3), Decree 32333 of 2005 - Regulations on the Law against Corruption and Illicit Enrichment (*Reglamento a la Ley contra la Corrupción y el Enriquecimiento Ilícito en la Función Pública*) (Article 1), Decree 33146 of 2006 Ethical Principles of Civil Servants (*Principios Éticos de los Funcionarios Públicos*), and Guideline D-2-2004.

### ***Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service [OECD/LEGAL/0316]***

**Position:** Acceptance.

Costa Rica's legal system contains a legislative framework and tools to prevent, detect, and sanction conflicts of interest. Internationally, Costa Rica has signed both the United Nations Convention against Corruption and the Inter-American Convention against Corruption. Those instruments provide a wide framework for the prevention of corruption and in particular to manage conflict of interests in a way that the public interest is not infringed.

To date, the Costa Rican government has not yet clearly defined what a conflict of interest constitutes. Central to Costa Rica's policy to manage conflict of interests is its Law against Corruption and Illicit Enrichment of 2004 (*Ley contra la Corrupción y el Enriquecimiento Ilícito en la Función Pública*) (Law 8422 of 2004), especially Articles 3, 14, 16, 18, 19 and 20. Its regulation and the Guideline D-2-2004 (Article 1.4) moreover contain provisions related to conflicts of interest. Other legislations with referencing to conflict of interest include the Political Constitution (especially Articles 109, 111, 112, 132, 143, 160 and 161), the Law on Administrative Procurement (*Ley de Contratación Administrativa*, (Law 7494 of 1995) (especially Articles 22 and 24), Regulations of the Law on Procurement (*Reglamento a la Ley de Contratación Administrativa*, 33411) (Article 19 and following) and the General Law of Public Administration (*Ley General de la Administración Pública*, 6227) (Articles 230 to 238).

The two main bodies in charge of overseeing the management of conflict of interest are the Office of the Attorney General for Public Ethics (*Procuraduría de la Ética Pública*, PEP) and the Office of the Comptroller General. The Office of the Attorney General for Public Ethics files administrative complaints regarding conflict of interests and provides training and guidance on the matter for public officials. The Office of the Comptroller General had a key role in defining conflict of interest policies for the public sector, especially through Guideline D-02-2004-CO which constitutes one of the main instruments that guides obligations concerning conflicts of interest. Costa Rica could further improve its efforts in providing guidance and building capacities on the management of conflicts of interests, by clarifying the definition and by better integrating the identification and management of conflict of interest situations through the work of the National Commission for the Recovery of Values (CNRV) and the HRM processes managed the General Directorate of Civil Service (DGSC).

***Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service [OECD/LEGAL/0298]***

**Position:** Acceptance.

The principles set out in the Recommendation are aligned with those included in the Costa Rican legislation as part of the country's pursuit of better ethical standards in the exercise of public service. Since 2004, specific public ethics regulations have been added to the legal system, clearly and accurately outlining the duties and obligations of public officials on this matter. Costa Rica's Law against Corruption and Illicit Enrichment of 2004 (*Ley contra la Corrupción y el Enriquecimiento Ilícito en la Función Pública*, Law 8422 of 2004), is legally binding for all public officials (complemented by Executive Decree 32333, Articles 3 and 1.14, respectively). The law sets the rules regarding the duty of integrity as well as duties and prohibitions that seek to avoid cases of conflict of interests and undue abuse of public office (see Articles 14, 16, 17, 18 and 20 of Law 8422, and paragraphs 27 to 43 of the Executive Decree 32333).

Another crucial piece of legislation establishing ethical rights and principles within public office is Directive D-2-2004 (General Directives on ethical principles and statements to be observed by senior officers, senior subordinates, officials of the CGR, internal auditors and public servants in general). The Directive puts emphasis on determining principles and rules of conduct to be followed by public officials in their interaction with private individuals, and with regards to their private interests, applicable to public procurement and other areas of administrative management.

Two good practices of Costa Rica can be highlighted. First, the National Commission for the Recovery of Values is an interesting, albeit voluntary, mechanism to mainstream public ethics in the whole of the public sector and even beyond. In particular, the guidelines of the Commission clearly separate public ethics from legal and disciplinary issues. Second, the Office of the Comptroller General has developed and successfully tested a model for ethics audits which is innovative and has been recognised internationally as a good practice. Ethics management and internal control are also quite well developed at municipal level.

The Costa Rican legal framework also describes conducts or behaviours considered general administrative offences or offences against public office duties, as well as the rules and procedures for their investigation and prosecution.

Costa Rica could improve, however, in making existing controls less legalistic and focused on compliance. These controls are largely ineffective in providing assurance that processes are efficient and effective, and are not reducing risks of corruption. Instead, Costa Rica could continue efforts to work towards management control and results-based management. Also, there is currently no dedicated law that would provide protection of employees in the public sector from discriminatory or disciplinary action once they have disclosed wrongdoing. Nevertheless, Costa Rica has a number of protection mechanisms for whistleblowers, victims and witnesses of acts of corruption that apply at the criminal and administrative levels.

***Recommendation of the Council on Gender Equality in Public Life [OECD/LEGAL/0418]***

**Position:** Acceptance.

Costa Rica established legal, policy and institutional frameworks for gender equality which are generally aligned with the provisions of the 2015 OECD Recommendation on Gender Equality in Public Life (hereinafter 2015 GEPL Recommendation). The National Women's Institute (*Instituto Nacional de las Mujeres*, INAMU) created in 1998 is the central gender equality body, responsible for fostering and promoting the national policy for gender equality and equity. In 2007, the National

Policy for Gender Equality and Equity 2007-2017 (PIEG, *Política Nacional para la Igualdad y Equidad de Género*) has been approved. In 2013, the Decree 37906 –MP-MCM created the Unit for Gender Equality and the National Network of Units for Gender Equality to support the promotion of gender mainstreaming within government institutions.

Costa Rica also established mechanisms for judicial, administrative and political oversight for gender equality: the Ombudsman has a specialised area that tracks gender-related public policies and periodically generates reports on the situation of women; the Commission for Women within the Legislative Assembly is tasked with promoting laws to strengthen gender equality and exercising a political control over government action on gender equality. Concerning the evaluation and measurement of the impacts of the PIEG, the Comptroller General of the Republic has executed two national audits on the implementation of PIEG. Moreover, INAMU publishes annually a follow up report on the progress and results of the implementation of the policy.

With regards to women's participation in public life, a 40% gender quota (Electoral Code) in internal party bodies, party delegations and nominations to popular election positions was established in 1996 to encourage gender balance in political activities as promoted by the 2015 GEPL Recommendation. The principle of equality in electoral legislation was incorporated after 2009. Advertising campaigns and trainings have also been developed by INAMU as well as the Centre for Women's Political Training, a technical body, on leadership and women's political participation. These institutional initiatives are reinforced with a legislation stating the obligation of political parties to provide permanent training including human rights and gender equality topics.

With regards to promoting gender equality in public employment, principles of equality and non-discrimination in personnel recruitment, selection and training processes are promoted by Gender Units. In this regard, the *Law against Sexual Harassment in the Workplace and Classroom* is an important achievement. In addition, INAMU promotes the Gender Equality Management System (SIGIG) that aims to incorporate gender equality consideration in daily activities of public and private organizations.

## **Policies of Costa Rica**

Overall, Costa Rica shows clear willingness to bring its public governance system in line with OECD best policies and practices. In some areas, Costa Rica's public governance system is robust and on par with best practice in OECD countries (e.g. open government or gender). In other areas, such as public procurement and digital government, substantial progress has been made recently to bring it further in line with OECD best practices. For some areas, and as further spelled out below, there is substantial need for improvement and important challenges are being faced, such as the areas of budgetary governance or human resources management, which are heavily impacted by the institutional fragmentation the country is facing. In this regard, the Committee sought evidence of planned reforms that will continue to move Costa Rica in the direction of sound public governance.

### ***Government structure and co-ordination***

Costa Rica faces substantial fragmentation of the public sector. Institutionally decentralised public entities and subsidiary bodies of central government ministries are one of the key features of the country's governance system. Formally, and regardless of the variance of the purpose, nature, legal framework and degree of independence (financially and administratively) of the institutionally decentralised entities, the Financial Administration and Public Budgets Law and the National Planning Law establish that the budget and investment projects of all decentralised institutions

must be aligned with the National Development Plan (Article 4, Law 8131 of 2001; and Article 9, Law 5525 of 1974).

Whereas most of the initial entities of the institutionally decentralised sector were created in the 1940s as autonomous institutions with a mandate of policy making as well as service delivery, such as health, energy and education, a more recent wave of newly created public institutions primarily consists of subsidiary bodies, representing “policy implementation shortcuts” to attain greater administrative and budgetary flexibility. Whereas this creates flexibility, it impacts the centre of government (CoG) co-ordination capacity subsequently.

The CoG (composed of the Presidency, MIDEPLAN and the Ministry of Finance) needs to further develop its strategic role vis-à-vis other public institutions, in general, and the institutionally decentralised sector, in particular. This would require further capacity building among the key centre of government actors, the development of a clear set of steering, co-ordination and control mechanisms, and a strategy to gradually rationalise the institutionally decentralised sector.

### *Access to Justice*

Overall, similarly to a majority of OECD countries, Costa Rica has been taking important steps to modernise its justice sector by developing Alternative Dispute Resolution mechanisms, performance appraisal for judicial officers and quality standards along with the implementation of local electronic-oral pilot projects.

Costa Rica is further among the first countries championing access to justice and open government (including in justice) initiatives. While challenges remain in those areas, its justice system offers a number of good practices including *Casas de Justicia*, growing systematisation of judicial information and integrated justice services or enforcement mechanisms of constitutional justice decisions. Clear efforts are underway to advance a cultural shift towards seeing justice as a public service, which is illustrated by the willingness of the judicial power to advance and promote Open Justice and the creation of Access to Justice Commissions.

Yet the structure of its justice system is intricate and potentially prone to functional overlapping, evidenced in the numbers of topical commissions and other bodies. Moreover, there are challenges in the co-ordination and communication channels between the judiciary and the executive, which results in limited co-ordinated service delivery strategy. This could raise an issue about the degree of coherence with OECD best practice with respect to functioning of the justice system in certain regions and municipalities. Another issue relates to the balancing of judicial independence and accountability. Transparency and safeguard mechanisms within the Judiciary still present challenges (weak regulatory framework for the appointment of judges). Furthermore, even though new mechanisms are currently under development, the lack of consistent judicial statistics and impact assessment may hinder coherent planning strategy and the evaluation of what was achieved, what worked and what is pending.

These issues need to be addressed in order to strengthen judicial services’ legitimacy and thus citizens’ confidence in Costa Rica’s justice system, in line with general practice across OECD countries.

### *Critical Risk*

As an adherent to the OECD Recommendation on the Governance of Critical Risks, Costa Rica’s core risk management policies align with those of many OECD countries. Like most OECD countries, Costa Rica maps hazards in national risk assessments, complementing the findings with local-level hazard and vulnerability analyses. Owing to its high exposure to natural disasters, Costa Rica has firmly established emergency management capacity throughout all levels of government. Early warning systems have been

installed across hazard-prone areas and emergency management plans are widely available. In line with the OECD Recommendation, Costa Rica has increasingly promoted a focus on disaster risk reduction measures in its national risk management policy documents. Building codes and land use maps, for example, have been required to take the results of hazard maps into their account, thereby guiding resilience in the development of new settlements, as well as the reconstruction of destroyed buildings. Risk communication has been embraced as a tool that not only enables risk awareness, but that can also promote investments in self-protection measures and in the development of business continuity plans for the private sector. To finance its risk management activities Costa Rica relies on a mix of different funding instruments, including a dedicated disaster fund, the National Emergency Fund, complemented by a standby credit line through the World Bank and the social protection system.

Although Costa Rica's disaster risk management policies have embraced a whole-of-society approach, contributions from the private sector and individual households remain limited and a reliance on the government for providing protection and support in the recovery phase is widespread. Regional and local authorities across the country, if they are expected to contribute to strengthening risk reduction efforts, need to be adequately equipped with the necessary financial and technical capacities to fulfil their responsibilities. A more effective steering and leadership function should be given to the National Emergency Management Commission (CNE), which is currently the lead institution in national risk management. A clear legal framework could help strengthen its national leadership role.

Costa Rica's risk financing arrangements could be revised to strengthen a whole-of-society approach to disaster risk management, but also to enhance the availability and the adequacy of funding for ex ante and ex post risk management needs. Currently, the majority of the National Emergency Fund is dedicated to financing emergency preparedness and response activities. The Fund has often been insufficient to finance disaster response needs and it has not included at all the financing of preventive measures. The level of available funds has been relatively volatile too, as the Fund's resources are tied to the annual budget surplus made by other public institutions. In addition to addressing the sources of financing the National Emergency Fund, and to increase overall funding capacity, other financing tools, such as contingent credit lines or insurance coverage could be further exploited and provisions for disaster risk-related contingent liabilities should be made. In line with this, the criteria for damage compensation should be clarified and a comprehensive picture of ongoing disaster risk management efforts drawn.

### ***Gender Equality***

Costa Rica is steadily advancing its institutional capacities and frameworks to advance gender equality. The country is also making important progress in women's access to top positions in the public sphere. It has reached 33% of women in the Parliament, 46 % in senior jobs in public administration and 40.9 % in ministerial level positions, which is above the OECD average. The governance framework for gender equality in Costa Rica is similar to those in many OECD countries, with the National Women's Institute supporting the inter-ministerial commission on the implementation of the gender equality policy and making genuine efforts to engage civil society in the policy dialogue. There is a parallel structure established to eradicate violence against women. There is a system of gender focal points across the government.

### ***Transparency and accountability***

Important progress in advancing Costa Rica's open government agenda has been made in recent years. The country has created legal, institutional and policy frameworks for open government that are mostly on par with OECD standards. Moreover, the country has shown great leadership and vision by fully embracing the move towards an Open State by signing the Declaration for the Establishment of an Open State and with the elaboration of a National Open State Policy. Costa Rica's open state approach can be considered

a global good practice that should inspire other OECD countries. The elaboration of a National Open Government Strategy and the creation of the National Open Government Commission are further positive developments that now have to be reinforced with concrete implementation efforts.

Looking ahead, Costa Rica would benefit from further improving its open government ecosystem through the adoption of laws on access to information and citizen participation and from further continuing the institutionalisation of open government and open state in order to guarantee continuity from one administration to another. In order to make the open state a reality, the country also needs to continue spreading the benefits of open government to the local level for instance by including more municipalities in the implementation of its National Open Government Strategy.

### ***Integrity in the public sector and public procurement***

Overall, Costa Rica enjoys a robust democratic institutional framework which provides an important check to corruption and explains at least in part the good scores of the country in international indicators measuring corruption and governance. In addition, the country recently has made important reforms to further strengthen its public integrity and procurement system. In the area of integrity, the following good practices can be highlighted: the promotion of values and ethics through the National Commission for the Recovery of Values (CNRV) and the Ethics Audits developed by the Office of the Comptroller General of the Republic (CGR).

In procurement, Costa Rica has made important progress. The electronic platform SICOP is becoming the standard, while there are only a few framework agreements left that are still managed through old systems. In addition, Costa Rica has undertaken serious steps towards facilitating public procurement. Firstly, the CGR reduced significantly the required ex ante control for contracts above given thresholds, and is promoting a draft law to reform the ex-ante control in more depth. Secondly, there is recent progress in making framework agreements more attractive by reforming article 115 of the Law on Administrative Procurement. Thirdly, transparency in public procurement has been increased by modifying article 40 of the Law on Administrative Procurement, including a section including requirements concerning information on procurement that has to be displayed on the website of public entities.

### ***Budget performance***

Costa Rica has developed interesting instruments for ensuring alignment of annual budgets and capital expenditure with the National Development Plan, to improve transparency of budgetary data, or moving towards performance oriented budget decisions. However, these only apply to the expenditure controlled by the central government, i.e. to about fifty percent of total public expenditure.

Costa Rica faces three main challenges in terms of budgeting: 1) Lack of effective fiscal constraints, as well as a mechanism for facilitating and enforcing medium-term fiscal discipline in the central government budget; 2) Fragmentation of public administration which reduces government's ability to reallocate funds to priority areas and ensure accountability towards central government institutions and citizens; and 3) High revenue earmarks and budget rigidities, which further hinders government's capacity to reorient resources to the priority sectors, reduces the role of the budget as an instrument to support government policy, and threaten fiscal sustainability in the long term.

Since the last assessment carried out in 2014, Costa Rica has made modest improvements in these three areas. In 2016, the Legislative Assembly passed a body of laws with a positive fiscal impact (e.g. Legislative Decree for the Efficient Management of Public Resources [*Decreto Legislativo 9371 Eficiencia en la Administración de los Recursos Públicos*], pension reform, and targeted tax reforms aiming to reduce tax exonerations). Likewise, the Treasury has improved its cash management practices, aligning transfer

of funds during the budget year with actual committed expenditures. On 13 January 2017 the government presented a bill to the Legislative Assembly to include the deconcentrated agencies in the national central budget. But this only represents 6% of non-consolidated public expenditure. In spite of these improvements, the reforms are modest compared with the challenges and the opportunities for improvement. Despite having full support from the IDB, the World Bank and the OECD in having a more robust and enforceable fiscal rule, the government has not yet been able to pass the bill. Sound macro-economic management, including responsible fiscal policies, is still a major challenge in the country.

### ***Public employment and human resource management in the public sector***

Some of Costa Rica's core Human Resource Management (HRM) practices tend to align with those of OECD countries. Costa Rica uses performance assessments in HR decisions in central government to a similar extent of the OECD average country. The delegation of human resources functions to ministries is also relatively close to the OECD average. Nevertheless, Costa Rica still faces challenges in important areas like data collection, wage imbalances and capacity at senior levels.

Costa Rican authorities have been taking steps to address these weaknesses. The draft law 19.506 (*Ley para el Ordenamiento de las Retribuciones Adicionales al Salario Base del Sector Público*) on additional pay and performance was prepared and discussed in the Legislative Assembly; the Technical Secretariat of the Budgetary Authority (*Secretaría Técnica de la Autoridad Presupuestaria*, STAP) and MIDEPLAN are developing a template to collect administrative data in a standardised way; the General Directorate of Civil Service (*Dirección General de Servicio Civil*, DGSC) is moving forward with a plan to improve the software used for HRM; Costa Rican authorities are collaborating with the Latin American Centre for Public Administration and Development (*Centro Latinoamericano de Administración para el Desarrollo*, CLAD) to develop a National Plan for Capacity Building for civil servants; and the policy to strengthen the Senior Civil Service started to be implemented.

However, these efforts have not yet materialised in tangible results. Draft law 19.506 was under discussion for a long period and finally not endorsed by the Legislative Assembly and the unions, and therefore subsequently withdrawn by the government. The initiatives to improve data collection are very recent, under development, and dispersed across different institutions. The capacity building initiatives, in particular the full implementation of the policy to strengthen the Senior Civil Service, will depend on availability of funding.

### ***Digital government***

Generally speaking, Costa Rica presents a healthy dynamic in the area of digital government and is experiencing a steady trend towards convergence with OECD standards. Costa Rica's policies and practices are broadly in line with the OECD Recommendation on Digital Government Strategies. Costa Rica has shown growing maturity in its use of digital technologies to support broader public sector modernisation efforts and help government come closer to citizens and businesses.

At this stage, Costa Rica is looking at how to achieve greater coherence and digital integration in its deployments of ICTs across the public sector. Going forward, Costa Rica could benefit from greater political support and a revision of the institutional architecture of digital government enabling the country to drive change and implement a better governance of strategic ICT projects in the public administration. Decisive efforts should be made to reduce and eliminate digital divides and stronger efforts should focus on fostering the digitalisation of public services from end-to-end and driving uptake of digital service delivery to drive down the costs per transaction.

### *Multilevel governance*

The constitutional reform of 2001 has formally allocated more power and budget to sub-national levels of government, the latter currently only representing about 4% of total general government consolidated expenditure. The government elected in 2014 has put decentralisation - and hence, multi-level governance in a broader sense - as a priority on its reform agenda, including the implementation of the 2001 constitutional reform, which has been pending for more than a decade. In addition, it has launched a number of initiatives to facilitate multi-level coordination, and policy development and implementation.

However, the delay in implementing the 2001 constitutional reform implies that subnational authorities have still limited budget, implementation capacity and impact on service delivery. As for many OECD member countries, Costa Rican local governments face an administrative capacity challenge which can hinder the provision of quality public services at the local level. In addition, it has been observed that access to basic services has territorial features, which could be better addressed by more sophisticated multi-level governance. In order to promote inclusive growth and the reduction of regional disparities, sub-national authorities need to be supported by a sound multi-level governance framework.

Costa Rica's multi-level governance arrangements are particularly complex and risk to provoke overlaps, dysfunctions and duplications. Several co-ordination mechanisms co-exist at sub-national level and there is a lack of impact assessment regarding the efficiency of those co-ordination mechanisms. Efforts made by MIDEPLAN to restructure and co-ordinate regional planning through the Regional Development Councils, COREDES, show willingness to improve the situation. In the medium term, Costa Rica should envisage to simplify and streamline the central government's presence at regional and local level.

### **Recommendations**

The recommendations proposed for the Committee's consideration are organised in two groups:

- by priority themes identified by the PGC in 2016; and
- other recommendations, which are proposed to be shared with Costa Rica for further improvement of its policies and practices in respective public governance areas under assessment.

These recommendations can also be found at the conclusion of their corresponding sections.



## Box 1. Recommendations

**Priority theme 1: Highly fragmented public administration, impacting steering and co-ordination in all policy areas, in particular: Budget, Public procurement, Human resources**

### *Priority theme 1a, Core Principle 1: Sound structure of government, including the separation of powers*

Overall, Costa Rica's Constitution provides for strong separation of powers and for strong independent institutions that guarantee the balance of powers between institutions of the state and protection of the rights and interests of the country's population. However, Costa Rica's public administration is characterised by an important number of subsidiary bodies of central government ministries and a large institutionally decentralised sector (e.g. semiautonomous and autonomous bodies), with limited steering and accountability mechanisms.

Taking into account the current situation, Costa Rica would benefit from implementing the following recommendations:

- Develop a strategy to gradually rationalise the institutionally decentralised sector;
- Develop guidelines regarding the creation of agencies, complemented with a clear definition of agency performance (i.e. going beyond quantitative indicators, and also addressing quality, effectiveness, equal access and responsiveness) and the development of a policy regarding the use of performance targets (to be used as an opportunity to improve communication, exchange, negotiation and mutual learning).

### *Priority theme 1b, Core Principle 1: Co-ordination, leadership and foresight capacity within the Centre of Government*

Costa Rica faces substantial fragmentation of the public sector. Institutionally decentralised public entities and subsidiary bodies of central government ministries are one of the key features of the country's governance system. The CoG needs to further develop its strategic role vis-à-vis other public institutions, in general, and the institutionally decentralised sector, in particular. This would require further capacity building among the key centre of government actors, the development of a clear set of steering, co-ordination and control mechanisms, and a strategy to gradually rationalise the institutionally decentralised sector.

Taking into account the current situation, Costa Rica is recommended to address the following recommendations:

- Enhance the strategic role of the Ministry of the Presidency in supporting the quality of the decision-making process of the Council of Ministers;
- Encourage structural investment in centre of government capacity building through technical training and the development of soft skills, with the Ministry of the Presidency and MIDEPLAN as primary beneficiaries; and
- Develop a clear policy and a set of instruments to ensure centre of government steering of the institutionally decentralised sector.

### *Priority theme 1c, Core Principle 4: Budget Performance*

In order to address the main challenges in the area of budgetary governance (effective fiscal constraints, impact of institutional fragmentation high revenue earmarks and budget rigidities), the following initiatives would substantially strengthen Costa Rica's budgetary practices:

- Develop a well-designed fiscal framework using fiscal rules and targets that are suitable to country-specific macroeconomic circumstances. The Fiscal Responsibility Bill presented in 2016 is a good initiative towards this objective. However, major efforts are needed to ensure that the political willingness to improve public finances is actually reflected in a clear, sound and sustainable fiscal policy.

- While it would be politically very difficult to implement, a general revision of the mandate, financing schemes and institutional framework of institutionally decentralised sector's agencies should be carried out, to evaluate whether their mandate still fits government priorities, and whether their funding is in line with their needs.
- The efforts for linking planning and budgeting go in the right direction and should be continued, and it would be important to make sure that this reform is actually implemented, with the institutionally decentralised sector really accepting to discuss their institutional plans with the central government (MIDEPLAN), and align them with the National Development Plan.
- Given the complexity of PPPs and their somewhat infrequent use, it is convenient to concentrate critical skills in one PPP unit to ensure value for money. This PPP Unit can fill gaps in terms of specific skills, lack of coordination or high transaction costs. However, it is essential that this unit has a clear mandate and that it is well articulated with the current institutional framework.
- Costa Rica could envisage creating an independent fiscal institution or assigning that role to an already existing independent institution. An effective, medium-term fiscal framework must not only rely on credible, independent macroeconomic estimations, but has to be complemented by an important role in monitoring the compliance and implementation of fiscal rules. If Costa Rica was to establish fiscal rules or reinforce its medium term fiscal framework, an independent fiscal institution could play this role. Such an independent fiscal institution could also be responsible for the evaluation of the long-term expenditure impact of proposed legislations.

**Priority theme 1d, Core Principle 3: Public Procurement**

Substantial progress has been made in this area, in order to further ensure the sustainability of these efforts, the country would benefit from implementing the following recommendations:

- Costa Rica should gradually complete the move towards a single mandatory e-procurement platform that covers the whole public sector, including the decentralised public sector and the municipal level, in order to reduce transaction costs, augment transparency and access to the system, and facilitate its evaluation. The implementation requires significant effort in building capacities, especially at municipal level, and there is a need to ensure that small local providers are not disadvantaged through this single e-procurement platform.
- The CGR's efforts to reduce its ex ante control function is an important step towards reducing bureaucratic burden and is in line with the Lima Declaration<sup>3</sup> and Costa Rica should continue in this direction. However, more generally, the existing controls tend to increase the burden of the administrative procedures, especially in public procurement, impacting on the execution of public funds. Hence, Costa Rica could focus even more on strengthening internal control and risk management, gradually shifting from the current legal compliance controls towards management control and results-orientation. In parallel, this requires significant efforts in developing planning and public management capacities.
- In order to reduce the risk of political interference in administrative matters and corruption at municipal level, Costa Rica could consider clarifying the Municipal Code by separating clearly between the roles of political control and public administration: (1) the Municipal Council should approve the yearly budget and plans, (2) the local administration should take the decisions related to public procurement, and (3) the Municipal Council should ensure ex post legislative control on the results of the administration. In addition, Costa Rica could review and strengthen the role of the internal audit function at the municipal level with the view to improve assurance over the processes, and to ensure they add value to the Municipal Council and the local administration.

**Priority theme 1e, Core Principle 5: Public Employment and Human Resource Management in the Public Sector**

<sup>3</sup> INTOSAI (1977), "The Lima Declaration of Guidelines on Auditing Precepts", International Standards of Supreme Audit Institutions 1, INTOSAI Professional Standards Committee, Copenhagen, [www.issai.org/media/12901/issai\\_1\\_e.pdf](http://www.issai.org/media/12901/issai_1_e.pdf).

Public employment and human resources management are particularly suffering from the country's institutional fragmentation. In order to address the main issues of concern, Costa Rica is recommended to address the following issues:

- Better coordinate the ongoing efforts to improve the collection of administrative data. Consistency between the initiatives of the DGSC on the one side, and MIDEPLAN, STAP and Ministry of the Presidency on the other side, is necessary to avoid duplication of efforts, reduce costs and increase chances of success. Consultation with other public sector institutions should be considered in order to make sure that the database will be relevant to institutions and to get their buy-in.
- Wage distortions in the public sector remain a broadly recognised challenge. The lack of progress to date in all draft laws that addressed this topic suggests that future reforms require early and genuine consultation and co-operation with all relevant stakeholders including unions, to ensure buy-in and long-term commitment.
- Seniority pay and bonuses depend on an inefficient performance system. Individual performance criteria are very broad and are not related to institutional objectives; in practice bonuses are awarded to all civil servants and do not act as a reward for performance. Costa Rica should consider establishing new conditions for performance-related pay and creating space to align individual performance with organisational objectives, programmes and goals.

#### **Priority theme 2: Limited multilevel governance**

Costa Rica needs to define an effective decentralisation model adapted to its territorial and administrative reality. To this end, Costa Rica may consider the following actions:

- Draw up a diagnosis of current needs and potential competencies to be transferred to municipalities. This analysis could be conducted through an open and interactive dialogue between central government and municipalities.
- In order to speed up and implement in an efficient and effective manner the transfer of competencies, a specific body at the highest level (preferably within the CoG) could be created to coordinate future transfers, establish a clear road map, and supervise and monitor the implementation.
- In parallel to the transfer of the 10% of public revenues to municipalities, Costa Rica could also consider on a medium-term basis the creation of a redistributive programme that could contribute to reducing regional disparities across the country.
- Costa Rica could develop a more comprehensive approach to the current multi-governance arrangements in particular by reinforcing the mandate of COREDES as a single regional body to gather all stakeholders including line ministries, decentralised institutions and local key stakeholders.

#### **Recommendations on other Core Principles relevant for the PGC**

##### **Core Principle 1: Sound structure of government (other aspects not covered in the PGC's priority themes)**

###### ***Access to Justice***

Some of the specific recommendations that Costa Rica may consider to further improve in the area of access to justice include:

- Simplify and strengthen the current justice system, for example by reducing the number of administrative entities (e.g. ad hoc Commissions);

- Develop and implement the Integrated Performance Appraisal System (Sistema Integrado de Evaluación del Desempeño, SIED) on specific judicial bodies in order to ensure an efficient implementation across the whole judicial system;
- Improve efficiency of administrative justice, for example by creating local administrative disputes offices and procedural tools, in order to enhance responsiveness to citizens' legal needs throughout the country;
- Develop a coordinated service delivery strategy, for example, by strengthening dialogue between judicial bodies and the Executive, especially at the regional level;
- Improve the balance and accountability of the judiciary, by for example, reinforcing transparency and safeguards against undue influence in the appointment process of High Court judges and integrity breaches;
- Enhance accessibility of justice, by implementing a strategy to reduce court delays and to ensure equitable and fair treatment of user of the justice system. This, for example, could include facilitating access to information on foreseeable timelines of court proceedings, improving legal literacy and enhancing transparency of legal documents and judicial decisions.

### **Strengthen whole-of-society risk governance**

Recommendations for enhancing the governance of critical risks in Costa Rica include:

Strengthen whole-of-society risk governance:

- Strengthen the role of the private sector and non-governmental stakeholders in risk governance, while boosting information sharing and cooperation mechanisms.
- Equip implementing authorities, including regional and local authorities, with the necessary resources to adequately fulfil their responsibilities across the country.
- Strengthen the role of local and regional authorities in passing and enforcing land use plans and building codes, including compliance of existing buildings.
- Give an effective steering and leadership function to the National Emergency Management Commission (CNE) to enable more coherent and effective whole-of-society risk prevention.
- Consider measures to enable and enforce the implementation of each stakeholder's risk reduction responsibilities (e.g. sanctions for sub-national authorities neglecting their responsibilities and continued targeted risk communication for stakeholders in the private sector).

Enable a more stable risk financing architecture and targeted investments in risk reduction

- Systematically include vulnerability and economic impact analyses in the national "Hazard Atlas" and use the results to guide investments in risk reduction and enable apt risk financing choices.
- Develop and use a standard cost-benefit analysis to determine the cost-effectiveness of investments in risk reduction measures.
- Revise the current financing arrangements to enable a more stable source of funding for both preventive measures and response activities:
  - Diversify the mix of funding tools to increase funding stability for disaster response activities, which are currently predominantly funded by the National Emergency Fund. Contingent credit lines or insurance coverage could be further exploited and provisions for disaster risk-related contingent liabilities should be

made. In line with this, the criteria for damage compensation should be clarified and a comprehensive picture of ongoing disaster risk management efforts should be drawn.

- Create new funding tools to boost whole-of-society investments in preventive measures. Innovative investment formats, such as public-private partnerships for the joint construction and maintenance of structural measures, could be a valuable option to boost available funding and whole-of-society engagement in risk reduction. Public subsidies in support of private investments in structural risk reduction measures could equally work in this way.

### ***Strengthening the Delivery of Gender Public Policies***

Some areas that would benefit from further attention are:

- Human and financial capacities of the National Women’s Institute can be further mobilised to be able to fully support the implementation of the government strategy on gender equality. The Institute could also benefit from acquiring a status of a governmental body, with the clear mandate to engage with other ministries and governmental bodies on integrating gender considerations into the policy cycle. It would also benefit from greater decentralisation of functions and a clear mandate to engage with local governments in the implementation of the gender equality strategy.
- Efforts could be focused towards raising further awareness and capacities across the administration on measuring gender impacts of different policy choices and budgetary allocations. OECD experience shows that gender impact assessments are most effective when they are stemming from clear mandates and requirements. It will be also important to raise the profile and positioning of gender units to influence sectoral policy making.
- To inform mainstream policy making, regular administrative data collected by ministries and other governmental bodies could be systematically disaggregated by gender.
- Further efforts are needed to put in place a consolidated gender equality policy within the human resources management system of the public administration to remove remaining barriers to women’s career progression. Costa Rica would benefit from collecting systematic and exploitable data on the status of gender equality within the public administration.

### **Core Principle 2: Transparency and Accountability**

Key recommendations to further enhance the effective implementation of open government policies in Costa Rica include:

- Pass an access to information law applicable to the whole public sector, including the institutionally decentralised sector (e.g. semi-autonomous and autonomous bodies).
- Consider the adoption of a law and a manual on citizen participation that would facilitate the expansion of this practice to all public institutions, at all levels of government, in line with the demands of Costa Rican citizens for greater involvement in policies and services.
- Continue the ambitious move towards an open state.
- Increase the scope of the Open Government National Commission (or transform it into an “Open State National Commission”) to promote the transition from the open government to the open state approach, ensuring that all relevant actors are included in it, including the other branches of power, independent state institutions and representatives of the sub-national level.

- Consider giving the Deputy Ministry for Political Affairs and Citizen Dialogue in the Ministry of the Presidency more human and financial resources to accomplish its tasks more successfully and to exploit the full potential of the high-level institutional anchorage of open government policies.
- Pursue efforts to develop an independent and robust monitoring and evaluation system should in order to fully link the implementation of the National Open Government Strategy and of the OGP Action Plan to the implementation of the National Development Plan and the well-institutionalised monitoring and evaluation procedures overseen by MIDEPLAN.
- Institutionalise the *Enlaces* in order to strengthen their capacities to play an effective role in the promotion and co-ordination of open government policies in their respective institutions.
- Enhance the existing efforts to promote a culture of civic engagement and participation in public matters through communication strategies, awareness raising and capacity building activities aimed at both public officials and citizens.
- Include the sub-national level in the National Open Government Policy and consider giving rotating seats in the CNGA (or a new National Open State Commission) to municipalities; lay the foundation for greater impact of good practices through monitoring and evaluation of the impact of existing initiatives at the sub-national level; provide more guidance to municipalities and spread existing good practices from certain municipalities to other areas of the administration and across the country.

### **Core Principle 3: Integrity in the Public Sector**

In Costa Rica, there is still a need for further improvements that could help in making the country's system more resilient to present and future challenges. Issues for consideration include:

- Costa Rica could improve its efforts in providing guidance and building capacities on the management of conflicts of interests, e.g. by clarifying the definition and by better integrating the identification and management of conflict-of-interest situation in the work of the National Commission for the Recovery of Values (CNRV) and in the HRM processes through the General Directorate of Civil Service (DGSC). The interviews showed that work in this area is starting and that the institutions interviewed are aware of the work that remains to be done.
- Costa Rica currently has no dedicated whistleblower protection law, nor does it have explicit legislation on lobbying. Legislative initiatives exist on both issues, but they have not yet been passed. Establishing clear regulations on these two issues would significantly strengthen Costa Rica's public integrity system.

### **Core Principle 6: Digital Government**

Costa Rica could benefit from:

- A better resourced governing body for this policy area with a stronger leadership and co-ordination role based broad political support, in particular from the centre of government.
- The development of an executive body responsible for the implementation of digital government, able to develop shared infrastructure and services as well as provide technical assistance as required.
- The establishment of an open government data policy that ensures the framework conditions for the development of a dynamic open government data ecosystem.
- Ensuring access to digital identification and authentication mechanisms for all citizens and businesses.

- 
- The development of digital government management tools and capacities to support the implementation of the digital government strategy. These include a more systematic use of business case and a more robust ICT project governance to avoid duplication of efforts and ensure benefits.

## SECTION 1: SOUND STRUCTURE OF GOVERNMENT

### Introduction

This section addresses PGC Core Principle 1: “Sound structure of government, including the separation of powers; co-ordination, leadership and foresight capacity within the centre of government that ensures a whole of government approach to decision-making and effective interface between the political and administrative levels, accompanied by coherent enforcement frameworks and effective justice institutions, as well as robust frameworks for the governance of critical risks and of gender equality.”

### Sound structure of government, including the separation of powers

The governance system of Costa Rica is built on the Constitution of the Republic (*Constitución Política de Costa Rica*) of 1949 which was enacted after the short civil war of 1948. The detailed Constitution - amongst the oldest of the Americas - has incorporated several constitutional amendments since its initial adoption (see Box 2).

#### Box 2. Constitutional Amendments since 1949

The Constitution of 1949 has incorporated numerous amendments the most relevant of which are:

- 1957: Earmarked a minimum of 6% of the National Budget to the Judicial branch;
- 1961: Universalised social security;
- 1968: Removed the sphere of constitutionally guaranteed independence of autonomous institutions;
- 1971: Established the citizenship at the age of 18;
- 1975: Established Spanish as the official language;
- 1989: Created the Constitutional Chamber as a specialised section of the Supreme Court;
- 1993: Allowed the existence of permanent commissions with legislative attributions;
- 1994: Established the right to a healthy and ecologically balanced environment;
- 2001: Ordered transfer of 10% of ordinary public income and some administrative competences from the executive branch to municipalities;
- 2002: Created the possibility of popular constitutional initiative;
- 2003: Allowed non-consecutive presidential re-election;
- 2011: Earmarked a minimum of 8% of GDP to education.

Source : CESDEPU (2014), Normas Básicas de Derecho Público, Costa Rica, <http://www.cesdepu.com/nbdp/refcon.htm>

Article 1 of the Constitution of the Republic of Costa Rica defines the country as a free and independent democratic Republic and lays down that the Government of the Republic is representative, participatory, and responsible. It is a presidential democracy with powers distributed between three distinct and independent branches: Executive, Judiciary and Legislative. In addition, Costa Rica has a Supreme



Electoral Tribunal (*Tribunal Supremo de Elecciones*), with the same rank and independence as the three branches for the areas related to electoral processes and suffrages.

The country (51.100 Km<sup>2</sup>) is divided into 7 provinces, 81 cantons, and 470 districts (Constitution Article 168). The country's administration is based on a two-tier system, i.e. the central and local level. The administration of local interests and public services in each canton corresponds to the municipal government (*Municipalidad*) which consists of a deliberative body composed of a municipal council and of a mayor, all elected by popular vote. Municipal council members and the mayor are elected for a term of four years that can be renewed indefinitely.

The public sector in Costa Rica is comprised of the three branches of government, the Supreme Electoral Tribunal, ministries, autonomous institutions and semi-autonomous institutions (each with subsidiary bodies) municipalities, and a range of state and non-state public enterprises and entities. In total, there are 330 public institutions (Table 1).

**Table 1. Public sector in Costa Rica**

Legal nature	Number	Description
Branches of government	3	They are the three fundamental branches of government: the executive, the legislative and the judiciary. Each is in charge of one of the three classic functions of the state: administer, legislate and judge.
Bodies of the Legislative Branch	2	1. The Ombudsman of the Republic is responsible for protecting the rights and interests of the country's population. One of its main functions is to ensure that government authorities act within the boundaries of morality, justice, the Constitution, legislation, conventions and general principles of law. 2. The Office of the Comptroller General of the Republic is the Costa Rican Supreme Audit Institution (More details below).
Electoral body	1	The Supreme Electoral Tribunal has the rank and the independence of the branches of government (More details below).
Ministries	18	The ministries are as follows: Agriculture and Livestock (MAG), Science, Technology, and Telecommunications (MICITT), Foreign Trade (COMEX), Culture and Youth (MCJ), Economy, Industry, and Trade (MEIC), Public Education (MEP), Interior and Police, Finance, Justice and Peace, Environment and Energy (MINAE), the Presidency, National Planning and Economic Policy (MIDEPLAN), Public Works and Transportation (MOPT), Foreign Affairs and Worship, Health, Public Security (MSP), Labour and Social Security (MLSS) and Housing and Human Settlements (MIVAH).
Subsidiary bodies of the Ministries	80	Deconcentrated agencies attached to Ministries or to autonomous institutions. These entities hold relative degrees of administrative and financial autonomy, but ultimately depend on the ministries and autonomous institutions.
Subsidiary bodies of the Presidency	3	
Subsidiary bodies of the autonomous institutions	13	
Autonomous institutions	35	The Constitution establishes two categories of decentralised entities: municipalities (territorial administrative decentralisation) and autonomous institutions (institutional administrative decentralisation). The Legislative Assembly may create an autonomous institution by a vote of no less than two-thirds of all its members. Semi-autonomous institutions do not have constitutional status and they can be created by the Legislative Assembly with simple majority vote. There are no more difference between autonomous and semi-autonomous institutions.
Semi-autonomous institutions	8	
Municipalities	81	It is the local authority (only minor territorial entity) that provides the Constitution. There is one in each canton, and it is responsible for the general administration of the interests and services of each canton. Municipalities are decentralised state entities.

State public enterprises	21	Industrial and commercial bodies that have legal personality but belong to the public sector and execute a business activity. They participate in the production, distribution and commercialisation of goods and services.
Non-state public enterprises	6	Refers to an entity dedicated to participate in the production, distribution, and marketing of goods and services with legal entity and belonging to the public sector. Examples are <i>Banco Popular Operadora de Pensiones Complementarias S.A</i> or <i>Empresa de servicios públicos de Heredia</i> .
Non-state public entities	50	These are entities that are, and act alongside, the State, and operate in the public interest. Professional associations are typical examples of non-state public entities, which have a corporate nature and are made by associate professionals.
Entity managing Public Funds	1	Entity or body that is a legal person whose primary function is the administration of a specific public asset. The only one that exists is the Governing board of the <i>Sistema de Banca para el Desarrollo</i> .
Municipal District Councils	8	They were created for those districts that are too far from the centre of the <i>cantón</i> (E.G islands or highlands) and play the role of a municipality for those districts.
Total	330	

Source: Responses during the Accession fact-finding mission.

The first important entities of the institutionally decentralised sector were created in the 1940s as autonomous institutions with a mandate of policy making as well as service delivery such as health, energy and education in order to limit state interventions in these areas as it was happening in the economy. This first set of institutionally decentralised institutions often disposed of boards of directors that provided policy and managerial guidance, acting as a steering mechanism. From 1970 to 2016, more than 70 subsidiary bodies of the ministries were established as “policy implementation shortcuts” to attain greater administrative and budgetary flexibility<sup>4</sup>. The budget of the territorially and institutionally decentralised sector, that accounts for about 50 % of general government consolidated spending, falls outside the budget process headed by the Ministry of Finance. It is the Office of the Comptroller that approves (compliance check) the budget of these institutions. (Table 2)

**Table 2. Evolution of the public sector in Costa Rica**

Entity	Before 1900	1900	1940	1950	1960	1970	1980	1990	2000	2010	Total
		1939	1949	1959	1969	1979	1989	1999	2009	2016	
Ministries	3	1	0	1	2	5	3	3	0	0	18
Subsidiary bodies of the Ministries	2	0	2	0	4	14	8	24	19	7	80
Autonomous institutions	2	4	5	6	6	6	2	3	1	0	35
Subsidiary bodies of the autonomous institutions	0	0	0	0	0	0	2	6	4	1	13
Semi-autonomous institutions	0	0	0	0	1	3	1	3	0	0	8
Municipalities	32	29	4	0	7	8	1	0	0	0	81

<sup>4</sup> OECD (2015), Costa Rica: Good Governance, from Process to Results, OECD Public Governance Reviews, OECD Publishing, Paris, dx.doi.org/10.1787/9789264246997-en.

Municipal District Councils	0	0	0	0	1	3	2	0	2		8
State public enterprises	0	0	1	1	1	4	0	8	6	0	21
Non-state public enterprises	0	0	0	0	0	1	0	1	4	0	6
Non-state public entities	0	0	6	3	12	8	5	11	2	3	50
Others including the branches of government and the bodies attached to them	0	0	5	1	0	0	0	3	1	0	10
<b>Total</b>	<b>39</b>	<b>34</b>	<b>23</b>	<b>12</b>	<b>34</b>	<b>52</b>	<b>24</b>	<b>62</b>	<b>39</b>	<b>11</b>	<b>330</b>

Source: Information provided by Costa Rica

The creation of an institutionally decentralised sector is not specific to Costa Rica, many OECD countries have created similar types of institutions which differ in size, functions, rationale for creation, who create them (executive vs legislative), funding, legal status, organisational forms, internal governance structure, accountability mechanisms and relationships to the reporting ministries. These institutions were often created to improve the efficiency and effectiveness of government entities with specialised functions in order to better respond to citizen's needs, to better focus on outputs and outcomes and to be able to escape burdensome administrative and financial rules. They moreover seek to improve the legitimacy and expertise of decision-making. The institutionally decentralised sector is known under different names in different countries<sup>5</sup>:

- In Canada: service agencies, Special Operating Agencies (SOAs), departmental service agencies, and in some cases shared governance corporations;
- In France: public establishments (*Établissements publics*) and independent administrative authorities (*Autorités administratives indépendantes*);
- In Germany: federal agencies (direct federal administration, *unmittelbare Bundesverwaltung*); bodies of public law (indirect federal administration, *mittelbare Bundesverwaltung*) and some private law administration entities (*Bundesverwaltung in Privatrechtsform*);
- In the Netherlands: independent administrative bodies (*Zelfstandig Bestuursorgaane, ZBOs*) and agencies (*Agentshappen*);
- In New Zealand: most “Crown entities” and semi-autonomous bodies;
- In Spain: autonomous bodies with administrative functions (*Organismos Autonomos, OA*), public entities providing services or goods susceptible to transactions that are different from

<sup>5</sup> OECD (2002), Distributed Public Governance: agencies, authorities, and other government bodies. <http://dx.doi.org/10.1787/9789264177420-en>.

“state-owned enterprises” (*Entidades Públicas Empresariales*, EPE), and public bodies (*Organismos Públicos*);

- In Sweden: boards and agencies;
- In the United Kingdom: “Next Steps Agencies” and “non-departmental public bodies”;
- In the United States: some agencies, independent agencies, regulatory independent commissions, and government corporations.

Most OECD countries have recognised that the creation of these types of entities has yielded a positive impact on public service delivery, however, some countries struggled to find the right balance between autonomy and accountability. In fact, the creation of autonomous institutions carries some risks such as lack of clarity about the differences between the various types of agencies, authorities and other government bodies impacting the clarity regarding roles and levels of responsibilities, which creates different types of relationships, types of control and accountability mechanisms and weak coordination mechanisms affecting the overall monitoring and control of these entities by the central government as well as government policy coherence (Box 3).

### Box 3. Oversight of the institutionally decentralised sector in New Zealand

New Zealand's Crown Entities Act of 2004 amended the indirect levers of control of the decentralised institutions. Its main purpose was two-fold: to "provide a consistent framework for the establishment, governance, and operation of Crown entities" and to "clarify accountability relationships between Crown entities, their board members, their responsible Ministers on behalf of the Crown, and the House of Representatives". The Act of 2004 among others, established different categories of Crown entities with own frameworks for governance. More specifically, these contain more tailored provisions for the composition and removal of its board members. Moreover, the Act established reporting and accountability mechanisms administered by the Treasury such as the duty to manage the funds in a responsible manner in addition to other reporting mechanisms (Part 4 of the Act). These include the obligation to prepare, present, and publish an annual report on the affairs of the Crown entity to the responsible Minister. The report is subsequently presented by a Minister of a Crown entity to the House of Representatives. On top of this Report, the Crown entities are required to submit annual financial statements which must:

- "comply with generally accepted accounting practice;
- include any other information or explanations needed to fairly reflect the financial operations and financial position; and
- include the forecast financial statements prepared at the start of the financial year, for comparison with the actual financial statements."

The Ministry of Finance can require additional reporting (156 B, Crown Entities Act 2004). In August 2013, the Act was amended with the aim to "strengthen collaboration throughout the State sector system, to improve financial flexibility, and to provide more meaningful performance information for scrutiny by Parliament." The changes mainly tightened the duties for Crown entities to collaborate with other public entities and extend the scope for "Directions to support a whole of government approach.

Source: OECD (2002), Distributed Public Governance: agencies, authorities, and other government bodies. <http://dx.doi.org/10.1787/9789264177420-en>

## *The branches of government*

### *Executive branch*

The executive branch is composed of the President of the Republic acting as head of state and head of government, two vice-presidents and the Council of Ministers. The President, simultaneously with the 2 vice-presidents, is elected every four years by universal and compulsory suffrage without the possibility of immediate renewal. The last presidential election that designated Luis Guillermo Solís as president was held on 2 February 2014.

Article 23 of the General Law of Public Administration (*Ley General de la Administración Pública*) stipulates that there are sixteen Ministries: Agriculture and Livestock (*Ministerio de Agricultura y Ganadería*, MAG); Science, Technology, and Telecommunications (*Ministerio de Ciencia, Tecnología y Telecomunicaciones*, MICITT); Culture and Youth (*Ministerio de Cultura y Juventud*, MCJ); Economy, Industry, and Trade (*Ministerio de Economía, Industria y Comercio*, MEIC); Public Education (*Ministerio de Educación Pública*, MEP); Interior and Police; Finance; Justice and Peace; Environment and Energy Policy (*Ministerio de Ambiente y Energía*, MINAE); the Presidency; National Planning and Economic Policy (*Ministerio de Planificación Nacional y Política Económica*, MIDEPLAN); Public Works and Transportation (*Ministerio de Obras Públicas y Transportes*, MOPT); Foreign Affairs and Worship; Health; Public Security (*Ministerio de Seguridad Pública*, MSP); Labour and Social Security (*Ministerio de Trabajo y Seguridad Social*, MTSS).

Article 24 provides that ministries can be created, suppressed and modified by law or decree. The Ministry of Housing and Human Settlements<sup>6</sup> (*Ministerio de Vivienda y Asentamientos Humanos MIVAH*) and the Ministry of Foreign Trade<sup>7</sup> (*Ministerio de Comercio Exterior, COMEX*) were created following this procedure. Moreover, the President can designate Ministers without portfolio (Article 23, item 2 of the General Law of Public Administration - *Ley General de la Administración Pública*), there are currently 5 ministers without portfolio (Sport; Human Development and Social Inclusion; Tourism; Communication and Women's Condition).

Costa Rica's "institutionally decentralised sector" (as opposed to ministries and their subsidiary bodies) encompasses autonomous institutions and their subsidiary bodies, semi-autonomous institutions, state-owned and non-state-owned public enterprises and non-state public entities that operate in the public interest. It represents approximately 50% of the general government consolidated spending and falls outside the budget process headed by the Ministry of Finance, and is rather supervised (i.e. compliance check) by the Comptroller General (*Contraloría General de la República, CGR*).

### *Legislative branch*

The legislative power is vested in a unicameral Legislative Assembly - *Asamblea Legislativa* composed of 57 seats. Members serve for a 4-years term and cannot be re-elected for a succeeding term. They are directly elected by proportional representation vote in multi-seat constituencies - corresponding to the country's 7 provinces. The Supreme Electoral Tribunal allocates to the provinces a number of Representatives in proportion to their population. The most recent elections were held on 2 February 2014 and the next presidential elections are scheduled for 2018.

Since its foundation in 1951, the National Liberation Party (*Partido Liberación Nacional, PLN*) has played an important role in the political life of Costa Rica. In the elections between 1950 and 1980, it competed for political power with changing political opponents. In 1983, the Social-Christian Unity Party (*Partido Unidad Social Cristiana, PUSC*) was founded and rose to be the main opponent of the PLN. Together the two parties accounted for over 90% of valid vote casts in the presidential elections of 1986, 1990, 1994 and 1998 and completely dominated the Legislative Assembly. In the elections of 2002, this bi-partisan system started to become weaker when a third party, the Citizens' Action Party (*Partido Acción Ciudadana, PAC*) received approximately 25% of the votes. The elections of 2006 were the major turning point for the political system (Cullell, 2007<sup>8</sup>). Despite the victory of the PLN, for the first time in many years, PLN (36.5%) and PUSC (7.82%) together accounted for less than 50% of the votes and an unstable and heterogeneous majoritarian coalition had to be formed in parliament. The year 2014 saw the end of the bi-partisan system shifting to a more fragmented multi-party system, which makes it more difficult for the executive to put forward its legislative agenda. The current distribution of seats is as follows: National Liberation Party (*Partido Liberación Nacional, PLN*) 18, Citizens' Action Party (*Partido Acción Ciudadana, PAC*) 13, Frente Amplio 9, Social Christian Unity Party (*Partido de Unidad Social Cristiana, PUSC*) 8, Libertarian Movement Party (*Movimiento Libertario, PML*) 4, other 5.<sup>9</sup>

<sup>6</sup> Created by Decree 10299-P of 1979.

<sup>7</sup> Created by Law 7638 on the Creation of the Ministry of Foreign Trade and Promoter of Foreign Trade of Costa Rica (*Creación Ministerio de Comercio Exterior y Promotora de Comercio Exterior de Costa Rica*) in 1996.

<sup>8</sup> Cullell (2007), Costa Rica: Fin de una era política,

[http://www7.uc.cl/icp/revista/pdf/especial2007/07\\_COSTA\\_RICA.pdf](http://www7.uc.cl/icp/revista/pdf/especial2007/07_COSTA_RICA.pdf).

<sup>9</sup> CIA factbook, n.d: <https://www.cia.gov/library/publications/the-world-factbook/geos/cs.html>.

### *Judicial branch*

The judicial power is exercised by the Supreme Court of Justice (*Corte Suprema de Justicia* [highest court]) Collegiate Courts (*tribunales* [appeals]) and Tribunals (*Juzgados* [first instance]). In 1989, the Constitution was amended and the Law of Constitutional Jurisdiction (*Ley de la Jurisdicción Constitucional*) was adopted, creating the specialised Chamber of the Supreme Court of Justice: the Constitutional Chamber (*Sala Constitucional*). The mandate of the Court is “to guarantee the supremacy of constitutional rules and principles and of international and community law and their uniform interpretation and application, and the rights and freedoms enshrined in the Constitution or in international human rights instruments in force in Costa Rica” (Law of Constitutional Jurisdiction, Article 1). Decisions on constitutional matters taken by the *Sala* are exclusive, not reviewable and are binding precedents. In the period before the creation of the Constitutional Chamber, only 347 cases of unconstitutionality were filed with the Supreme Court (Wilson, 2004<sup>10</sup>). In the first two years after the creation of the *Sala* already more than 700 cases had been filed (Ibid.). Nowadays, the Constitutional Chamber solves over 17.000 cases each year, most of which concern the right to petition (Judicial Power, 2014)<sup>11</sup>.

### *Independent Institutions*

#### *The Office of the Comptroller General of the Republic*

The Office of the Comptroller General of the Republic (CGR) is the most highly trusted<sup>12</sup> institution of Costa Rica. It is an auxiliary institution of the Legislative Assembly with wide powers and full operational and administrative independence (Constitution, Article 183). A Comptroller and an Assistant Comptroller are in charge of the CGR and both are appointed by the Legislative Assembly for a term of eight years, two years after the beginning of a presidential term. They may be removed from office by a vote of no less than two-thirds of the Legislative Assembly. The Office of the Comptroller General exercises jurisdiction over all entities and bodies receiving public funds.

Through its Organic Law 7428 (*Ley Órganica de la CGR*), the CGR has acquired several functions, expanding the initial mandate set in the Constitution (Article 184)<sup>13</sup> and including:

- Overseeing the execution and settlement of the regular and extraordinary budgets. Any payment order shall be issued only if the respective expenditure has been countersigned by the Office of the Comptroller General. It shall not constitute an obligation for the state if it has not been countersigned;
- Approving or rejecting the budgets of Municipal Governments, decentralized administration, semi-autonomous institutions and public enterprises;
- Approving the contracts signed by the State and those that are required by law (*Refrendo*);
- Carrying out financial, operational and of special character audit;
- Instructing administrative proceedings or conduct special investigations, at the request of any interested party and may apply sanctions to those that are responsible of an illegal act;
- Its provisions, regulations, policies and guidelines, within the scope of its competence are of mandatory compliance and prevail over any other available provision;
- Within the scope of its jurisdiction, it may declare the absolute nullity of administrative acts or contracts;

<sup>10</sup>Wilson, B. (2004). "The Best Laid Schemes.Gang Aft A-Gley: Judicial Reform in Latin America- Evidence from Costa Rica." *Journal of Latin American Studies* 36(3): 507-531.

<sup>11</sup> Poder Judicial (2014), <http://sitios.poder-judicial.go.cr/salaconstitucional/estadisticas.htm>.

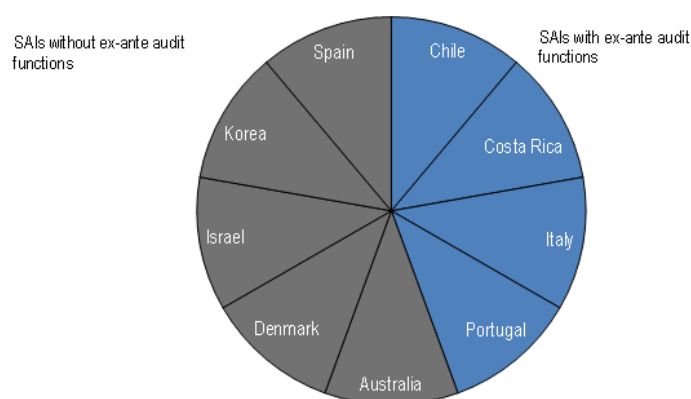
<sup>12</sup> According to responses during the Accession fact-finding mission.

<sup>13</sup> Ibid.

- Ordering external audits;
- Determining if those responsible for the collection, management, custody and deposit of public funds, fully comply with their functions and applying sanctions to those that are responsible of an illegal act.

*Ex-ante* control of legality – or *refrendo* as it is referred to in Costa Rica – is a core element of the CGR’s portfolio. *Refrendo* is a preventive, *ex ante* verification of the legality of certain administrative acts, exclusively focused on legal compliance vis-à-vis the whole spectrum of the national applicable legal framework. The *refrendo* is seen as an important control for the preservation of the law and is associated with legitimacy of the administrative action and trust in government. However, it is worthwhile to mention that this *ex-ante* control function does not exist in the majority of OECD Supreme Audit Institutions (SAIs) (Figure 1) while in the few where it is present, the scope is limited, either functionally (e.g. Italy) or financially (e.g. Portugal) (Box 4).

**Figure 1. Ex-ante audit functions by Supreme Audit Institutions in Costa Rica and selected OECD countries**



Source: Based on OECD (2014a), Chile's Supreme Audit Institution: Enhancing Strategic Agility and Public Trust, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264207561-en>

The International Organisation of Supreme Audit Institutions' (INTOSAI) “Lima Declaration of Guidelines on Auditing Precepts”, notes that *ex-ante* audit has the advantage of being able to prevent damage to the State before it occurs but may create an excessive amount of work and overlap with other responsibilities. For the past 20 years there has been a general trend to move away from *ex-ante* control assignments, where they have existed in many OECD countries, towards *ex post* audit assignments and greater focus on the functioning of internal controls and performance (Ruffner and Sevilla, 2004). Table 3 shows SAIs that had *ex ante* audit assignments at the beginning of the 1990s, have significantly reduced their *ex ante* audit assignments since. In addition, a number of other SAIs also phased out or redesigned their *ex ante* audit assignments since the 1990s as the Supreme Audit Office of Poland in 1994 (though it rarely conducted *ex ante* audit assignments after 1921); the Court of Accounts of Luxembourg in 1999 and the Court of Accounts of Belgium in 2012 (Box 5).

**Table 3. Redesign of ex ante audit assignments in supreme audit institutions**

Existence of <i>ex ante</i> audit assignment circa 1990			
Limited change in <i>ex ante</i> audit assignments since the 1990s	Significantly reduced <i>ex ante</i> audit assignments since the 1990s	Phased out or redesigned their <i>ex ante</i> audit assignments	Never had such a function
Chile	Italy, Portugal*	Belgium, Luxembourg	Poland, Australia, European Court of Auditors, Israel, Korea, Spain



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Notes: \*Portugal: While the incidence of ex ante audit has been significantly reduced, major restructuring of the ex ante audit function has led to an increase in the scope of the ex ante audit since 2009.

Source: OECD (2014), Chile's Supreme Audit Institution: Enhancing Strategic Agility and Public Trust, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264207561-en>

#### Box 4. Changes to *ex ante* audit assignments in supreme audit institutions of Italy and Portugal

A number of supreme audit institutions (SAIs) have phased out or redesigned their *ex ante* audit assignments since the 1990s. The Italian Court of Accounts (*Corte dei conti*) significantly redesigned its *ex ante* audit function during the mid-1990s in parallel with reforms to the budget act and the accounts structure (budget and financial statements). Various reforms since the early 1990s in the Portuguese Court of Accounts (*Tribunal de Contas*) have significantly varied the criteria that determine which entities and transactions are subject to *ex ante* audit, causing a reduction in the incidence of *ex ante* audit, but an increase in scope.

##### Italy 1994

The Italian Court of Accounts significantly redesigned its *ex ante* audit function during the mid-1990s in parallel with reforms to the budget act and the accounts structure (budget and financial statements). For over 130 years, until 1994, the Italian Court of Accounts carried out *ex ante* audits of almost all administrative acts in order to prevent unlawful expenditure. This amounted to approximately 5 million *ex ante* audits annually during the early 1990s. Moreover, since 1976, the Constitutional Court has recognised that the Italian Court of Accounts has the power to raise, during the procedure of *ex ante* compliance audit, interlocutory questions of constitutionality, especially with regard to violation of Article 81 of the Constitution (violation of respect of the equilibrium of the budget and of the correct funding of the spending laws) assimilating the function to a jurisdictional one.

The proposal to change the *ex ante* audit function came from the Italian Court of Accounts. In 1991, the Italian Court of Accounts, in its annual reports, urged the legislature to take action to reform its mandate in line with the reforms within the public administration. These broader reforms sought to enhance the performance management and accountability of individual public entities, including the development of internal control. Underlying the Italian Court of Accounts' request to reform its mandate was concern over duplicated work carried out by the central accounting offices located in each ministry. The Italian Court of Accounts articulated that duplication of *ex ante* audit assignments with the accounting offices weakened the responsibility of public officials, often resulting in issues being deferred to the Italian Court of Accounts to certify the legality of administrative acts.

The redesign of the Italian Court of Accounts' *ex ante* audit assignment – as established by Law 20/1994 – considerably reduced the number of acts subject to this form of control, especially those of regional governments and local authorities. The Italian Court of Accounts retained some assignments to conduct *ex ante* audit of high-value contracts as well as government acts regarding directives for the performance of administrative activities; the appointment of executive officers to the civil service and setting personnel levels; normative acts of central government with external effects; programming acts involving expenditure; acts implementing rules of the European Union; and central government acts determining the distribution or allocation of financial resources (e.g. deliberation of Economic Planning Committee).

The 1994 reform also authorised the Italian Court of Accounts to conduct *ex post* performance audit assignments to enhance the accountability of public officials. The Italian Court of Accounts became responsible for conducting *ex post* as well as concomitant compliance, financial and performance audits on all the administrative sectors and related managements. More recently, statutory reforms have enabled the executive to request the expert opinion of the Italian Court of Accounts (Law 131/2003 and Law Decree 78/2009, Art. 17, par. 30). Other important commitments concern the report to parliament on the financial account of the state (recently it has also been established the report on the financial accounts of regions to regional councils) and the related certifications, as well as the report to parliament on the co-ordination of the multilevel public finance.

##### Portugal

The Portuguese Court of Accounts has exercised its *ex ante* control powers since 1881, covering almost all administrative acts and contracts, in view of preventing unlawful expenditure. The 1990s were marked by the growing independence of the court as set out by the Court of Auditors Law 86/89 of 8 September. This began the implementation of a strategic option for strengthening, improving and expanding the court's scope of audit control to include a focus on management assessment. This coincided with a remarkable reduction of the incidence of *ex ante* audits and the establishment of a classification system for grounds of refusal for the "seal of approval" (*visto*) and declaration of conformity

Reforms in 1997, as determined by the Court of Auditors Law 98/97 of 26 August, included new legal criteria for the court to intervene based on the nature of the entity involved. In effect, the reforms extended the subjective scope of financial control powers of the court to include all entities benefiting from capital investment by public entities or receiving money or other public values, regardless of their legal status. This extension was thus considered to strengthen the effectiveness of all audit procedures, as it enabled the court to verify acts and contracts of all entities managing public funds, including public companies, associations and foundations as well as private entities.

A 2006 reform of the Court of Auditors Law again changed the jurisdiction of the Court of Auditors, forcing the first Chamber to focus on acts and contracts deemed materially relevant, regardless of the entity involved. Since then, the determining factor has been the presence, usage and management of public resources or other values in acts and contracts, not the entity itself that uses the resources. This change aimed primarily, among other reasons, to subject contracts to *ex ante* audit that were previously outside of the audit criteria. A further enlargement in 2012 added any contracts of public and private entities under public control or contracts valued at more than EUR 5 million of public resources. Furthermore, all contracts above EUR 950 000 are frozen until they obtain a seal approval.

Although the number of *ex ante* audit assignments has decreased since the 1990s, both the scope and the financial value of acts and contracts subject to *ex ante* control have increased. The court's current *ex ante* audit control ensures the legality of and the budgetary cover for acts and contracts which generate expenses or have any direct or indirect costs and responsibilities for:

- the state and its services
- the autonomous regions and its services
- local authorities, their associations or federations and services and their metropolitan areas.

Additionally, the court's *ex ante* audit control spans any entities created by the state or other public entities to carry out administrative functions originally incumbent on the public administration financed, directly or indirectly, by the state.

Source: OECD (2014), Chile's Supreme Audit Institution: Enhancing Strategic Agility and Public Trust, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264207561-en>.

### Box 5. The Belgian Court of Accounts

The Belgian Court of Accounts ended its *ex ante* audit assignments in the beginning of 2012. Through its *ex ante* audit assignments, the Belgian Court of Accounts issued a visa of payment (*visa préalable au paiement*) authorising the disbursement of funds from the treasury. All central government expenditure was subject to the *ex ante* audit by the Belgian Court of Accounts, excluding fixed costs (salaries and pensions), cash advances and municipal (*communes*) expenditure. In the 2001 fiscal year, the Belgian Court of Accounts' *ex ante* audit assignments covered:

- the federal government : 56 388 orders of expenditure (excluding debt), representing approximately 10 748.6 billion francs (EUR 266.4 billion)
- the Dutch Community : 23 909 orders of expenditure (excluding debt), representing approximately 216.4 billion francs (EUR 5 364.0 billion)
- the French Community : 9 842 orders of expenditure (excluding debt), representing approximately 81 043.0 francs (EUR 2 009.0 billion)
- the Walloon Region : 39 683 orders of expenditure (excluding debt), representing approximately 187.9 billion francs (EUR 4.7 billion).

The development follows a number of reforms within the public administration introduced since the early 2000s that gave rise to public accounting reforms (Law of 22 May 2003) and the roll out of computerised accounting systems (FEDCOM). These reforms were led by the government with the Belgian Court of Accounts participating in the General Delegation for the Reform of Public Accounts (*la Délégation générale à la Réforme de la comptabilité publique*). The reform was part of the convergence of the government of Belgium to the European System of National and Regional Accounts (i.e. ESA95). Convergence was intended to support the collection of comparable, up-to-date and reliable information on the structure and developments of the Belgian economy and its regions.

The Law of 22 May 2003 also amended the Law of 29 October 1846 on the organisation of the Belgian Court of Accounts, giving the court a number of new skills and ending the *ex ante* audit of expenditure. *Ex ante* transaction-based audits were considered as inefficient and incompatible with the desire to perform more in-depth *ex post* audits and also with the move towards performance management introduced since 2003. The focus on *a priori* expenses meant that the *ex ante* audit presented only a fragmented picture of overall management. Removing the *ex ante* audit function can also work to disempower those public officials that would have otherwise hidden behind prior approval. The reforms also gave rise to the introduction of a new organisational structure of the Belgian Court of Accounts. Prior to the abolition, the Belgian Court of Accounts estimated that 30% of its workforce was involved in *ex ante* audits.

Source: OECD (2014), *Chile's Supreme Audit Institution: Enhancing Strategic Agility and Public Trust*, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264207561-en>.

Both functions of *ex-ante* and *ex-post* controls may undermine the CGR's capability to fully audit the procurement process. While these acts are in principle independent (*Refrendo* looks at the legality of the proposed act while *ex post* audit will look at legal compliance during execution), conflict may arise and CGR's *ex post* audits may be questioned. *Refrendo* may also create a substantial opportunity cost for the CGR to conduct other audit assignments that could contribute further to strategic agility in the public administration. The sheer number of administrative acts subject to *Refrendo* may crowd out capacity within the CGR to work on other *ex post* audit assignments. Moreover, the competencies necessary for conducting *Refrendo* are different to those necessary for *ex post* audit assignments, creating internal rigidities.

Since, 2010, through the Law 8823 of 2010, Reforms to several laws on the participation of the Office of the Comptroller General of the Republic for the simplification and strengthening of Public Management (*Reforma varias leyes sobre la participación de la Contraloría General de la República para la*

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*simplificación y el Fortalecimiento de la Gestión Pública*), has been carried out efforts to reduce some of the functions that have been historically given to the CGR to focus on ex – post control.

### *Supreme Electoral Tribunal*

The Supreme Electoral Tribunal is the highest electoral authority, both at the administrative and jurisdictional level, and deals with everything related to electoral acts and procedures. It is composed of three regular members and six alternates, appointed by the Supreme Court of Justice by a vote of no less than two-thirds of its members and hold office for a term of six years. In addition to ordinary functions of any other electoral body, the Supreme Electoral Tribunal investigates directly any claims made by parties regarding the political partiality of state officials in the performance of their duties or the political activities conducted by officials who are prohibited from engaging in such activities. A verdict of guilty rendered by the Tribunal is grounds for compulsory dismissal and disqualifies the wrongdoer from holding public office for a period of no less than two years.

### *The Office of the Ombudsman*

The Office of the Ombudsman was established by Law 7319 (*Ley de la Defensoría de los Habitantes de la República*) in 1992. It is responsible for protecting the rights and interests of the country's population. One of its main functions is to ensure that government authorities act within the boundaries of morality, justice, the Constitution, legislation, conventions and general principles of law. The Office mainly receives and investigates complaints and alleged cases of infringement of rights by state institutions or bodies. The Office of the Ombudsman is also actively involved in promoting initiatives to promote transparency and fight corruption.

## Box 6. Categories of Ombudsman institutions/offices

### Classical ombudsman

The classical function of an Ombudsman Institution (OI) is to investigate complaints against the public administration, make recommendations on actions to be taken by the administration, and try to get these recommendations adopted. OIs following the classical model often have extensive powers to investigate cases submitted to them. They may work towards mediation of conflicts, but if no solution can be reached, they provide recommendations to the relevant administrative unit. The classical OI has no power of coercion and can only employ "soft" pressure to get its recommendations adopted. The OI submits an annual activity report to the parliament to draw the latter's attention to remedied grievances.

Classical OIs are common in Western Europe and some of the Commonwealth countries. Examples include Belgium, Bulgaria, Denmark, Ireland, Iceland, Israel, the Netherlands, Norway, the United Kingdom, and Australia.

In recent years, OIs with an extended legal mandate to get their recommendations adopted have started to appear. The legal powers vary between countries and may include the powers to: appeal to courts, participate in court proceedings, file applications in administrative proceedings, propose legislative amendments, and recommend disciplinary or criminal proceedings. The classical OI with extended legal powers can be found in all regions of the world, especially among younger institutions. These countries include Croatia, Estonia, Poland, Portugal, Spain, Kazakhstan, Papua New Guinea, Botswana, and Ethiopia.

### Human rights ombudsman

OIs in this category have a specific mandate to look into the observance of human rights. In some cases, the OI is restricted only to the handling of human rights issues, while in other cases, the human rights function is added to the classic mandate. The tasks of a human rights OI often include: filing of human rights violations, educating and informing the public on human rights, reporting on the general human rights situation in the country, conducting research and analysis on human rights, and monitoring the implementation of human rights within the country.

Human rights OIs are particularly common in Eastern Europe, Central Asia and Latin America. Examples of countries include all Latin American countries, Albania, Armenia, Hungary, Kyrgyzstan, Papua New Guinea, Taipei China, and Tanzania. In Colombia, El Salvador, Venezuela, Bolivia, Azerbaijan, Georgia, and Uzbekistan, the OI is restricted to only human rights issues.

### Anti-corruption ombudsman

OIs in this category have a specific mandate to curb corruption. These often operate as a combined OI and anti-corruption agency. Their specific functions may include overseeing the conduct of senior public officials, collecting and reviewing assets and income declarations, investigating instances of alleged or suspected corruption, and educating and informing the public regarding issues related to corruption.

Anti-corruption OIs are mostly found in Asia and Africa. Country examples include South Korea, Papua New Guinea, Taipei, China, Vanuatu, Rwanda, Gambia, and Ghana.

### Auditing ombudsman

A few OIs have a specific auditing mandate, which gives them the power to oversee government bodies and/or conduct audits of the administrative practices and procedures of government bodies, irrespective of whether they have received an individual complaint. OIs with an auditing mandate can be found among the Australian regional ombudsman institutions and in Ethiopia.

Source: World Bank (n.d.) Differences Between Ombudsman Institutions. World Bank. [web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/0..contentMDK:23543235~pagePK:148956~piPK:216618~theSitePK:286305,00.html](http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/0..contentMDK:23543235~pagePK:148956~piPK:216618~theSitePK:286305,00.html)

### *General Attorney of the Republic (PGR)*

The General Attorney of the Republic (*Procuraduría General de la República*, PGR) is an organizational body of the Ministry of Justice and Peace (*Ministerio de Justicia y Paz*), although it has functional independence. The General Attorney is the highest authority responsible and he is designated for a term of six years with the possibility of renewal. The Office of the General Attorney of the Republic has an advisory function on legal issues; provides legal representation of the state; protects the rights of the state in natural heritage areas, maritime-terrestrial zone, border areas and public domains; and receives, investigates and follows up the complaints about possible corruption acts, from civil servants.

### **Preliminary assessment and recommendations**

Overall, Costa Rica's Constitution provides for strong separation of powers and for strong independent institutions that guarantee the balance of powers between institutions of the state and protection of the rights and interests of the country's population. However, Costa Rica's public administration is characterised by an important number of subsidiary bodies of central government ministries and a large institutionally decentralised sector (e.g. semiautonomous and autonomous bodies), with limited steering and accountability mechanisms.

Taking into account the current situation, Costa Rica would benefit from implementing the following recommendations:

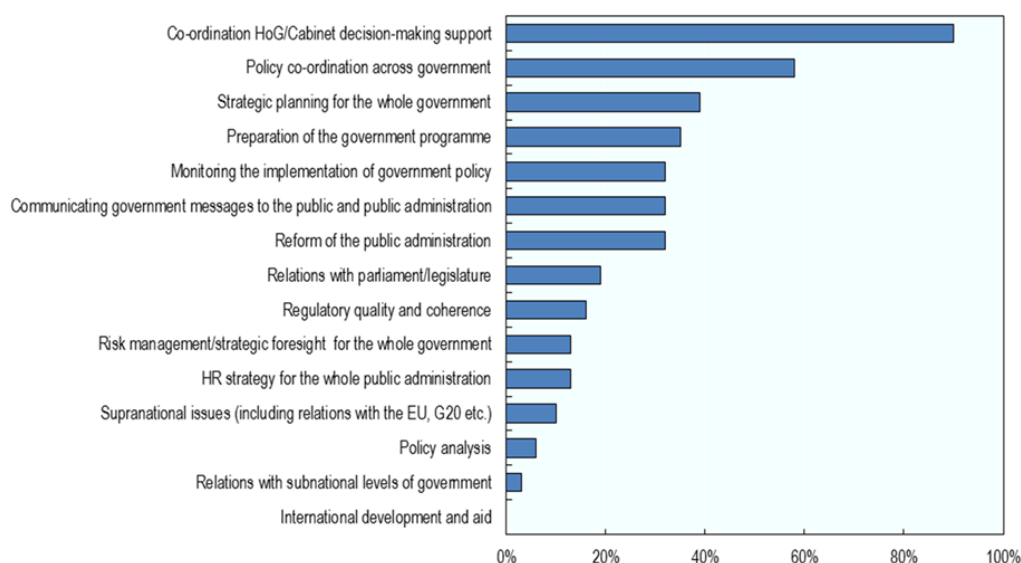
- Develop a strategy to gradually rationalise the institutionally decentralised sector;
- Develop guidelines regarding the creation of agencies, complemented with a clear definition of agency performance (i.e. going beyond quantitative indicators, and also addressing quality, effectiveness, equal access and responsiveness) and the development of a policy regarding the use of performance targets (to be used as an opportunity to improve communication, exchange, negotiation and mutual learning).

### **Co-ordination, leadership and foresight capacity within the Centre of Government**

This subsection addresses the second subcomponent of PGC Core Principle 1 related to the Centre of Government: "*Co-ordination, leadership and foresight capacity within the centre of government that ensures a whole of government approach to decision-making and effective interface between the political and administrative levels*".

The CoG is the body or group of bodies that provides support and advice to the head of government and the Council of Ministers. In a broad sense, the CoG not only refers to the Office of the Government or its equivalent, but also comprises key strategic partners of the latter who contribute to reinforced cross-governmental co-ordination. After the 2008 financial crisis, the CoGs in OECD countries have become key and strategic players to achieve government-wide objectives as the CoG is now playing a more active role in policy development and co-ordination compared to its traditional role of serving the executive from an administrative perspective. The CoG of many countries is now providing services that range from strategic planning to real-time policy advice to the implementation of government policies (OECD, 2014)<sup>14</sup>. (Figure 2)

<sup>14</sup> OECD (2014), "Centre stage: Driving better policies from the Centre of Government", <http://www.oecd.org/gov/Centre-Stage-Report.pdf>.

**Figure 2. Responsibilities of the CoG**

Source: Center Stage: Driving better policies from the Centre of Government. OECD (2014)

Leading strategic planning is important especially in those countries in which authority is highly decentralised<sup>15</sup> as it is the case for Canada and New Zealand among others as shown in Table 4. However, as shown below, this task as well as policy co-ordination, performance monitoring and policy advice functions are in practice delivered by MIDEPLAN, complemented with a relatively important role for (a limited number of) presidential councils. However, there is a substantial risk that – because of the scope of its duties, as well as its institutional embeddedness – MIDEPLAN is fully occupied with the technical and operational responsibility of policy co-ordination and performance monitoring, which does not necessarily have the same impact and leverage it would have if these responsibilities (at a strategic, rather than operational level) were embedded in a unit close to the President<sup>16</sup>.

**Table 4. Key role of the centre of government**

Country	Preparing Cabinet meetings	Communicating government messages	HR strategy for the public administration	Public administration reform	Strategic planning	Risk management strategic foresight	Preparing the government programme	Policy analysis	Policy co-ordination	Regulatory quality and coherence	Monitoring policy implementation	Relations with subnational governments	Relations with the legislature	International development and aid	Supranational co-ordination/policy
Australia	•	○	◆	○	•	○	○	○	○	○	○	•	○	○	○
Austria	•	•	○	○	○	◆	◆	•	•	○	○	•	○	◆	○
Belgium	•	•	◆	◆	•	•	•	•	•	◆	•	•	○	◆	○
Canada	•	○	○	○	•	•	•	○	•	◆	•	○	•	◆	◆
Chile	•	○	○	•	•	•	•	○	•	○	•	○	•	◆	○
Denmark	•	○	◆	○	•	○	•	○	•	○	○	○	○	◆	•
Estonia	•	•	◆	○	○	○	•	○	•	○	•	◆	•	◆	○
Finland	•	•	◆	•	•	○	○	○	•	○	•	◆	○	◆	○
France	•	•	○	○	•	•	•	○	•	○	•	○	•	◆	○
Germany	•	○	◆	◆	•	◆	•	○	•	◆	○	○	○	◆	○

<sup>15</sup> OECD (2015), Costa Rica: Good Governance, from Process to Results, OECD Public Governance Reviews, OECD Publishing, Paris, dx.doi.org/10.1787/9789264246997-en.

<sup>16</sup> Idem.



Hungary	◆	○	◆	◆	○	○	•	○	○	◆	•	◆	○	◆	○
Iceland	•	○	◆	○	○	○	•	○	•	•	•	◆	•	◆	◆
Israel	•	○	○	○	•	○	•	○	•	•	◆	•	•	◆	◆
Italy	•	•	•	•	○	○	•	○	•	•	•	•	•	○	○
Japan	•	○	○	○	○	○	○	◆	○	○	◆	◆	○	◆	◆
Korea	○	○	◆	•	○	○	○	•	•	•	•	○	○	○	○
Netherlands	•	○	◆	◆	○	◆	○	◆	•	◆	○	◆	○	◆	○
New Zealand	•	○	•	•	•	•	•	○	•	•	•	◆	•	◆	◆
Norway	•	○	◆	◆	○	○	○	•	•	◆	◆	◆	•	◆	◆
Portugal	•	•	◆	◆	•	◆	•	•	•	○	•	•	•	○	○
Slovak Republic	•	•	○	○	○	○	○	○	○	○	•	○	•	○	○
Slovenia	•	•	◆	◆	○	○	○	○	○	•	•	◆	•	◆	◆
Spain	◆	○	◆	◆	○	•	•	○	○	◆	○	○	○	◆	○
Sweden	•	○	◆	◆	•	•	•	○	○	○	○	○	○	◆	○
Switzerland	•	○	◆	○	•	◆	•	◆	○	○	○	•	○	◆	◆
Turkey	•	•	○	○	◆	◆	◆	◆	○	•	○	◆	•	◆	◆
United Kingdom	•	○	•	•	○	○	○	○	•	○	○	○	•	◆	○
United States	•	○	○	○	•	○	○	○	•	○	○	○	○	○	○
<b>OECD total</b>															
•															
Responsibility of the Centre of Government (CoG)															
○ Shared Responsibility between the CoG and another body															
◆ Responsibility of another part of government															
	25	10	3	6	14	7	16	4	19	7	15	5	14	0	1
	1	18	9	13	13	15	10	20	9	14	10	12	14	6	18
	2	0	16	9	1	6	2	4	0	7	3	11	0	22	9

Note: Data for the Czech Republic, Greece, Ireland, Latvia, Luxembourg, Mexico and Poland are not available. Only OECD countries are included in the table.

Source: OECD (2015), Slovak Republic: Better Co-ordination for Better Policies, Services and Results, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264247628-en>

The composition and tasks of the CoGs vary across OECD countries and reflect the political, administrative and local legal traditions. Therefore, the OECD brings together different experiences and approaches. It can nevertheless be observed that among OECD countries, there is a trend towards a more strategic CoG. The findings of the OECD Public Governance Review and regular contact with Costa Rican authorities have mentioned that there are limited steering and co-ordination mechanisms in place.

### **Box 7. Centre of Government co-ordination constraints and opportunities: The NDP**

A brainstorming session with MIDEPLAN on its current co-ordination capacity (i.e. including the institutionally decentralised sector) for the NDP provided an insightful overview of the coordination opportunities and challenges the institution is facing:

- importance of distinguishing between dimensions of steering, co-ordination and accountability, i.e. to understand how these differ, complement each other, can be used strategically, and how these dimensions shape the interaction between vertical and horizontal actors
- board composition of the institutionally decentralised sector (e.g. added value of having the rector for sector co-ordination as board member for strategic autonomous entities), and impact of board nomination cycle (i.e. not necessarily coinciding with political cycle)
- potential added value of “soft” instruments like a code of conduct for both the institutionally decentralised entities and their boards to foster principles of transparency and accountability, commitment to NDP goals, etc.
- importance of the capacity and credibility of actors responsible for horizontal coordination
- the added value (and limitations) of individual agencies’ performance goals in the new NDP
- the potential of performance reporting as opposed to compliance reporting (combined with reduction of the reporting burden)
- the impact of perceived sector political priority, leadership and personal relationships
- the impact of the constitutionally and legally binding budgetary allocations
- the role of ultimate decision-making power of the President (i.e. removal of head of autonomous institution)
- the potential to increase accountability of the institutionally decentralised sector towards citizens.

Source: OECD (2015), *Costa Rica: Good Governance, from Process to Results*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264246997-en>

### **Box 8. The OECD project on strengthening the Centre of Government in Costa Rica**

The project's principal aim is to strengthen the Centre of Government (in particular the Ministry of the Presidency, MIDEPLAN, the Ministry of Finance and the Budget Authority) in their role to ensure a cohesive and strategic long term vision that is supported and implemented by all relevant public entities, with an emphasis on the effective use of steering and coordination instruments, which will positively impact the strategic policy making capacity of the state and the quality of service delivery.

Building upon the key observations of the 2015 OECD Public Governance Review of Costa Rica, this project seeks to address the country's limited steering and coordination capacity by the Centre of Government in the overall context of a fragmented public administration. Based on the request of the Costa Rican government, the OECD assists the country in strengthening the Centre of Government's leadership through enhanced coordination and steering, in order to foster efficiency, effectiveness and quality of service delivery. Both coordination amongst Centre of Government actors as well as its steering vis-à-vis other actors (ministries, subsidiary bodies and the institutionally decentralised sector) are addressed. In a total of three seminars held in San José in the course of 2016 and 2017, the Costa Rican authorities developed a Roadmap to improve the co-ordination and steering capacity of the CoG.

### ***Legal and institutional framework***

In Costa Rica, the CoG operates in support of the President of the Republic and the Government Council. The President of the Republic acts as head of state and head of government and, together with the appropriate Cabinet minister, has functions including the ability (Article 140 of the Constitution) to appoint and remove employees who hold “positions of trust”; the initiative to enact laws and the right of veto; the collection and expenditure of the national revenues; the oversight of the proper operation of administrative

services and agencies, among others. The Government Council is chaired by the President of the Republic and composed of the ministers, according to Article 147 of the Constitution of 1949 and Law 6227 of 1978 –(General Law on Public Administration, *Ley General de Administración Pública*, LGAP). Its main functions include advising the President, dealing with the issues delegated by him/her and nominating ambassadors and the heads of autonomous institutions. In practice, the Government Council serves the purpose of a co-ordination body, where the President can monitor progress on strategic issues. The President has the right to revise the decision of the Council.

The CoG capacity (in the broad sense) is distributed across the following institutions: the Ministry of the Presidency (*Ministerio de la Presidencia*), the Ministry of National Planning and Economic Policy (*Ministerio de Planificación Nacional y Política Económica*, MIDEPLAN), the Ministry of Finance (*Ministerio de Hacienda*) and the Budget Authority (*Autoridad Presupuestaria*).

The Ministry of the Presidency (*Ministerio de la Presidencia*): created by Article 23 of the Public Administration General Law 6227. As defined in the Budget of the Republic Law 2015 (*Ley de Presupuesto de la República 2015*), the Ministry of the Presidency is responsible for exercising political and technical guidance to the President in its decision making, which allows greater welfare of the population through communication and co-ordination. Traditionally, the Ministry has been in charge of co-ordination between the Presidency and the legislature, as well as with other entities. Staff turn-over after elections has a high impact: whereas, on average, about 50% of the senior staff in ministries is said to change after elections, there is a 100% turn-over to be observed for the Ministry of the Presidency. These levels are high compared to OECD standards.

According to the 2013 OECD Survey on the Organisation and Functions of the Centre of Government, while in 54%<sup>17</sup> of the countries the head of CoG is normally replaced in case of a change in government as it is the case for Costa Rica, the level of turnover following elections at the CoG remains low - for 22 OECD countries between 0-25% of senior professional staff changes with a change in government. This has an impact on the CoG's ability to guide and steer line ministries and ensure long term policy coherence. (Table 5)

**Table 5. Levels of turnover following elections at the CoG**

Levels of turnover following elections at the CoG	Number of OECD countries	Countries
0-25%	22	Australia; Austria; Canada; Denmark; Estonia; Finland; France; Germany; Iceland; Israel; Italy; Japan; Korea; Latvia; Netherlands; New Zealand; Norway; Slovenia; Spain; Sweden; Switzerland; United Kingdom.
26%-50%	4	Belgium; Chile; Portugal; United States.
More 50%	2	Slovak Republic; Turkey.

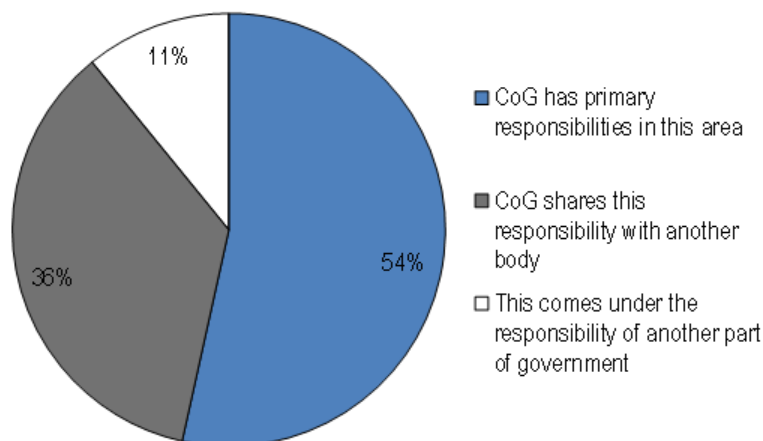
Note: Czech Republic, Greece, Hungary, Ireland, Luxembourg, Mexico and Poland did not respond to the questionnaire. Source: 2013 Survey on the Organisation and Functions of the Centre of Government, results available at [http://qdd.oecd.org/data/GOV\\_COG\\_COU\\_VERSION\\_TOP\\_RESP](http://qdd.oecd.org/data/GOV_COG_COU_VERSION_TOP_RESP)

The Ministry of National Planning and Economic Policy (*Ministerio de Planificación Nacional y Política Económica*, MIDEPLAN): its primary duties include the direction of the National Planning System

<sup>17</sup> Based on the responses to the 2013 Survey on the Organisation and Functions of the Centre of Government, results available at [http://qdd.oecd.org/data/GOV\\_COG\\_COU\\_VERSION\\_TOP\\_RESP](http://qdd.oecd.org/data/GOV_COG_COU_VERSION_TOP_RESP). Czech Republic, Greece, Hungary, Ireland, Luxembourg, Mexico and Poland did not respond to the questionnaire.

(*Sistema Nacional de Planificación*) with a focus on results-based management and the preparation of the National Development Plan (NDP); the verification that public investment projects across government entities are aligned with priorities set forth in the NDP; approval of investment projects of public agencies when such projects are externally financed or government approval is required; amongst others (Articles 9, 10 and 11, National Planning Law 5525 of 1974). In addition, it is in charge of the National Evaluation System (*Sistema Nacional de Evaluación*, SINE) as well as regional and international co-operation. Through these functions, the Ministry gives technical and political advice to the Presidency of the Republic and other public institutions, while it formulates, co-ordinates, monitors and evaluates the strategies and priorities of the government. As the CoG is ultimately accountable for overall results and effective implementation of delegated responsibilities, the central monitoring and oversight is key to enable results-based accountability. As for 53.6% of OECD countries, MIDEPLAN as part of the CoG in Costa Rica has the primary responsibility for monitoring the implementation of government policy. (Figure 3)

**Figure 3. Monitoring the implementation of government policy**



Note: Czech Republic, Greece, Hungary, Ireland, Luxembourg, Mexico and Poland did not respond to the questionnaire.

Source: 2013 Survey on the Organisation and Functions of the Centre of Government, results available at [http://qdd.oecd.org/data/GOV\\_COG\\_COU\\_VERSION\\_TOP\\_RESP](http://qdd.oecd.org/data/GOV_COG_COU_VERSION_TOP_RESP)

Several OECD countries have made explicit effort to strengthen the CoG's leverage to deliver on policy implementation. For instance, Chile established a Presidential Compliance Management Unit, which monitors the progress made on strategic priorities and unveils shortcomings of policies in cases their targets are not met. In Australia, the Cabinet Implementation Unit's mandate includes overseeing the implementation of policies, even though the respective policies were not tied to budget allocation decisions. In Latvia, the performance monitoring is conducted by the State Chancellery and Cross-Sectoral Co-ordination Centre, which is a central body with the mandate to co-ordinate the creation of a country-wide vision.

In Costa Rica, the Ministry of Finance (*Ministerio de Hacienda*) co-ordinates the budgetary cycle for the central government budget (i.e. ministries and their subsidiary bodies). The Ministry of Finance has competences regarding central government budget, public accounting, management of state property, management of the internal and external debt and public procurement, among others. In addition, responsibilities include its contribution to the stability and economic growth for social development through the collection, management, allocation, accountability and proper use of financial resources.

The Budget Authority (*Autoridad Presupuestaria*) was initially created in 1979 by decree. The current legislation is provided by Law 8131 on Financial Administration of the Republic and Public Budgets from 2001 (*Ley de Administración Financiera de la República y Presupuestos Públicos*). The law defines the Budget Authority as a collegiate body in charge of advising the President on budgetary policy. According to Article 23 of the law, the Budget Authority proposes the general and specific budgetary guidelines for the following year for the central government, including its decentralised bodies and the state-owned enterprises. The final approval of such binding guidelines is done by the President, after its presentation in the Council of Ministers. The Budget Authority has three members: the Minister of Finance (or vice-minister), as chair, the Minister of Planning (or vice-minister), a minister (or vice-minister) nominated by the President of the Republic. In addition, the Budget Authority has an Executive Directorate and a Technical Secretariat.

### *Key policy platforms and instruments*

Law 5525 on National Planning (*Ley de Planificación*, Article 2) underscores the importance of the National Planning System as a vehicle for coordination public institutions. In a similar vein, Decrees 38536 and 34582 are instrumental in establishing the basic mechanisms for sector coordination and sector councils.

Costa Rica 2030, National Development Goals was published in 2013 by MIDEPLAN with the support of the UNDP, complementary to the four-year National Development Plan. The report presents a long-term view for the country, was built upon a public consultation process and has a monitoring and evaluation framework incorporated. There is no explicit link with a (medium-term) budgeting process or with the National Development Plan.

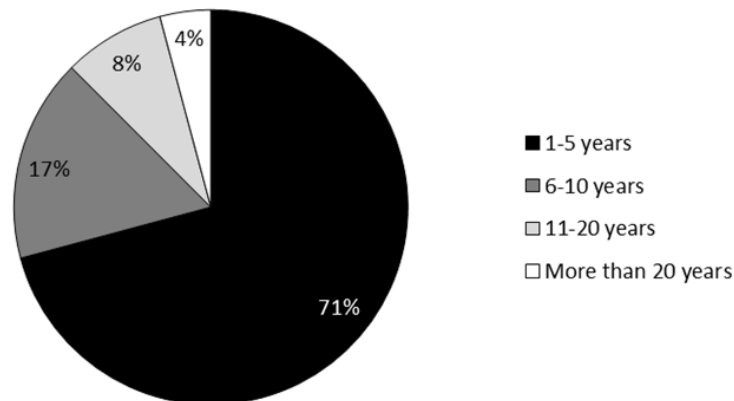
### *National Development Plan (Plan Nacional de Desarrollo, NDP)*

As for many OECD countries (86%<sup>18</sup>), Costa Rica has a strategic plan which identifies performance targets to achieve at the end of 4 years, the National Development Plan. In 64% of OECD countries the strategic document covers a relatively short period of time, similar to an electoral term. Only Japan has one that covers more than 20 years. (Figure 4)

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<sup>18</sup> Based on the responses to the 2013 Survey on the Organisation and Functions of the Centre of Government, results available at [http://qdd.oecd.org/data/GOV\\_COG\\_COU\\_VERSION\\_TOP\\_RESP](http://qdd.oecd.org/data/GOV_COG_COU_VERSION_TOP_RESP). Czech Republic, Greece, Hungary, Ireland, Luxembourg, Mexico and Poland did not respond to the questionnaire.

Figure 4. Time period covered by the document outlining a long-term strategic vision for the country



Note: Czech Republic, Greece, Hungary, Ireland, Luxembourg, Mexico and Poland did not respond to the questionnaire

Source: 2013 Survey on the Organisation and Functions of the Centre of Government, results available at [http://qdd.oecd.org/data/GOV\\_COG\\_COU\\_VERSION\\_TOP\\_RESP](http://qdd.oecd.org/data/GOV_COG_COU_VERSION_TOP_RESP)

On 17 November 2014, the NDP for 2015-18 was presented, following the change of government of Costa Rica. The elaboration of the new NDP was driven by three main guidelines: 1) strategic orientation, with strong focus on performance management, including the national, sectorial and regional dimensions; 2) public consultation and active participation of the various actors responsible for the implementation of the plan, to ensure its compliance; 3) assure that the monitoring and evaluation provides information not only on the achieved goals but also on the products, effects and impacts achieved in social welfare. MIDEPLAN co-ordinated the drafting process with the institutions, involving approximately 100 public bodies and entities, and drafted regional and sectorial proposals while taking into account the national priorities. The elaboration of the NDP is characterised by a prospective vision, a mid- and long-term approach, in order to develop the country and eradicate poverty, with increased equality and environmental sustainability. The time horizon therefore now surpasses the four-year mandate of the government, reinforcing the strategic vision to formulate national policies.

The three basic pillars of the new administration for the definition of policy goals and targets are: 1) promote economic growth and quality employment; 2) fight poverty and inequality; and 3) open government, transparency, efficiency and fight against corruption. The principles guiding the new model of development contained in the NDP 2015-18 are: promote citizen participation through dialogue roundtables; solidarity, considering the rights of the vulnerable population and local governments; environmental sustainability and risk management; equity and equality; responsibility and improved management of public investment projects; ethics, accountability; open government, transparency in public service, prevention and control of corruption; universal accessibility; the *Tejiendo Desarrollo* project (oriented towards territorial development) and employment. The 2015-2018 NDP considers it essential to promote citizen participation and foster transparency, in order to enable society to perform the function of control and surveillance of public actions. Therefore, the NDP envisages generating mechanisms, initiatives and instruments of citizen participation in decision making on public policy. Nevertheless, as mentioned previously, no explicit link is made with the 2030 National Development Goals.

#### *National Planning System (NPS)*

Regulated by Law 5525 of 1974, the National Planning System is the key entity for the monitoring and evaluation of public policies, plans, programmes, projects and strategic actions of the government in a systematic, public, independent and participative way. The general objective of the NPS is to enhance the

sustainable development of the country through the exercise of planning, with a focus on intensifying growth production and productivity, promoting a better income distribution and social services, and promoting increasing citizen participation. The NPS' responsibilities cover analytical work on socio-economic themes, development of policy proposals for economic and social development, participation in the preparation of and adopting the National Development Policy, co-ordination of the latter and the evaluation of obtained results. The General Regulations of the NPS enumerate a set of principles: adaptability, co-ordination, effectiveness, equity, impartiality, integration, legality, opportunity, participation, reasonability, simplicity, transparency, universality and binding nature. The regulations also refer to the different planning instruments existing in Costa Rica. Finally, they establish that the institutions comprising the NPS shall develop permanent actions to effectively incorporate social and productive sectors, and citizens in general, in the formulation of planning instruments. MIDEPLAN is the head of the NPS, which further comprises sectorial councils, sectorial secretariats, rector ministers and planning offices in each institution.

*Interministerial Commission MIDEPLAN-Hacienda (set up in 2011 by Executive Decree 36901)*

The commission is composed of representatives of MIDEPLAN and of the Ministry of Finance. The purpose of the Commission is to issue and standardise technical and methodological guidelines for programming, monitoring and evaluating budget execution at its different levels (strategic, sectorial and institutional), with the view of ensuring simplification of procedures, guiding the public sector during the planning-budgeting cycle. The most important accomplishments of the Commission since its creation include promoting a better understanding of the differences and similarities between the ministries' planning and budgeting mechanisms; harmonisation of a framework of strategic concepts that allow a link between planning for results and budgeting for results; incorporation of gender and inclusiveness guidelines in the planning-budgeting cycle; first attempts to elaborate a medium-term expenditure framework (MTEF) for 2013-18.

*Presidential Councils (Consejos Presidenciales)*

The Councils are regulated by the Executive Decree 38536, are attached to the President of the Republic, composed of ministers (or their representatives) and other public institutions. There are currently 5 Presidential Councils: Social, Economic, National Security, Environmental and Competitiveness. Their functions include advising, orientation and co-ordination of public policies, as well as planning and design objectives, goals, actions, indicators and control mechanisms. Additionally, they can take into account the stakeholders' views. To this end, the President can nominate leaders or intellectuals as advising bodies on specific topics. To ensure adequate feedback, representatives of the private sector, academics or civil society leaders can be involved. Ministerial councils were initially created in 2010 (Executive Decree 36024), including the establishment of the Presidential Council on Competitiveness and Innovation and the Presidential Council on Social and Family Well-being in 2011 (Executive Decree 36467). In 2014, Executive Decree 38662 further revised the structure and functioning of the Presidential Council on Competitiveness and Innovation.

*Better Regulation Commission*

The Commission is an advisory body attached to the MEIC, set up in 1995 by Law 7472 of Competition and Consumer Effective Protection. Its main functions are to co-ordinate and lead the regulatory initiatives; analyse specific proposals from public institutions or citizens for bureaucratic and regulatory simplification and reduction of administrative burdens; and recommend the implementation of corrective actions in order to increase efficiency on specific regulations. The Commission is chaired by the Minister of Economy, Industry and Trade, and is also composed of high level representatives of the Ministries of Health, Environment and Energy, Agriculture, as well as the President of the Competency Commission, and a

representative of the several sectorial chambers. For 2015, the President announced that 195 procedures (i.e. 3 procedures per institution involved) should be simplified by the end of October 2015, for which the Ministry of Economy, Industry and Trade will assure monitoring through reporting to the President every 4 months.

National Public Investment Committee (*Comité Nacional de Inversión Pública*, CONIP) is a space for inter-institutional co-ordination, with advisory functions and support for the President of the Republic, created by Executive Decree 39038. CONIP is a collegiate body comprised of the Vice President who is in charge of the Presidential Economic Council, who chairs the Committee, together with the Minister or Vice-Minister of MIDEPLAN, the Minister or Vice-Minister of Treasury, the Minister or Vice-Minister of Expenditures, and the President or the Manager of the Central Bank of Costa Rica.

Thematic cross-government co-ordination with legal basis. Examples include Law 9137 on the Creation of the National System of Information and Single Registry of State Beneficiaries (*Creación del Sistema Nacional de Información y Registro Único de Beneficiarios del Estado*) on the initiative to integrate efforts to reduce poverty into one centralised system comprising all beneficiaries of relevant programmes and institutions. In that context, an entity attached to the Mixed Institute of Social Aid was created in 2013 to constitute an updated country-wide database with information about people requesting services, assistance, subsidies and economic aid for those in poverty or vulnerable situations, eliminate duplicated actions of social protection to the families in need of assistance, determination of a single methodology to measure poverty levels. For that purpose, the entity developed a database, constituted an inter-institutional network, ensured co-ordination of different institutions working on poverty eradication, and monitored and evaluated the effectiveness of related programmes. Finally, a council was created to facilitate compliance with the objective, composed of senior civil servants of the Mixed Institute of Social Aid, MIDEPLAN and the Ministries of Education, Health, Housing, Employment and Social Security, inter alia.

The CoG has been making efforts to foster the coordination amongst its key actors, being the Presidency, MIDEPLAN and the Ministry of Finance. Streamlining of guidelines, the introduction of joint instruments vis-à-vis the rest of the central government and the institutionally decentralised sector, and enhanced mutual consultation are all part of the country's recent efforts to provide the centre of government with more strategic leverage. These efforts include amongst others:

- The revised methodology to prepare the National Development Plan 2015-8, with the intention to also establish a stronger articulation with the sector dynamics;
- The introduction of results-based management for development. The framework<sup>19</sup> was launched on September 2016. Since then, public officials from different institutions have been trained on the framework<sup>20</sup>;
- Continued efforts to strengthen the policy monitoring and evaluation capacity of MIDEPLAN. For instance, in collaboration with the German Institute for Development Evaluation (Deval)

<sup>19</sup> The document can be found here:

[https://documentos.MIDEPLAN.go.cr/alfresco/d/d/workspace/SpacesStore/e2d87d5b-74da-4e9a-ba13-e75b1f1fcb5e/Marco\\_conceptual\\_y\\_estrategico\\_para\\_el\\_fortalecimiento\\_de\\_la\\_Gestio%CC%81n\\_para\\_R esultados\\_en\\_el\\_Desarrollo\\_en\\_Costa\\_Rica.pdf?guest=true](https://documentos.MIDEPLAN.go.cr/alfresco/d/d/workspace/SpacesStore/e2d87d5b-74da-4e9a-ba13-e75b1f1fcb5e/Marco_conceptual_y_estrategico_para_el_fortalecimiento_de_la_Gestio%CC%81n_para_R esultados_en_el_Desarrollo_en_Costa_Rica.pdf?guest=true).

<sup>20</sup> Mideplan (2016), Marco conceptual y estratégico para el fortalecimiento de la Gestión para Resultados en el Desarrollo en Costa Rica,

[https://documentos.MIDEPLAN.go.cr/alfresco/d/d/workspace/SpacesStore/e2d87d5b-74da-4e9a-ba13-e75b1f1fcb5e/Marco\\_conceptual\\_y\\_estrategico\\_para\\_el\\_fortalecimiento\\_de\\_la\\_Gestio%CC%81n\\_para\\_R esultados\\_en\\_el\\_Desarrollo\\_en\\_Costa\\_Rica.pdf?guest=true](https://documentos.MIDEPLAN.go.cr/alfresco/d/d/workspace/SpacesStore/e2d87d5b-74da-4e9a-ba13-e75b1f1fcb5e/Marco_conceptual_y_estrategico_para_el_fortalecimiento_de_la_Gestio%CC%81n_para_R esultados_en_el_Desarrollo_en_Costa_Rica.pdf?guest=true).



MIDEPLAN evaluated 9 strategic programmes of the NDP out of 15. This process has helped to strengthen the capacity not only of MIDEPLAN but also of the entities from the social sector. In the case of monitoring, the quarterly, half-yearly and annual reports have been strengthened;

- In addition to this, MIDEPLAN is currently working on the National Evaluation Policy (*Política Nacional de Evaluación*) with the participation of several institutions, decision makers, the CGR and the Legislative Assembly. This is done in order to institutionalize the evaluation and deepen the culture of evaluation and to clearly define institutional roles and coordination mechanisms for the evaluation.
- The Inter-ministerial Commission Planning-Hacienda which focusses on streamlining joint procedures of both institutions, develop shared instruments. For instance, two pilots have started in the sectors of security and justice and transport to modify programme structures so that there is a true alignment of planning and budgeting, and unit costs can be established with certainty. In addition, a medium-term budgetary framework is being proposed, coupled with a methodology for an Institutional Strategic Plan for 5 years;
- An Inter-American Development Bank (IDB) -supported project to strengthen the capacity of the Ministry of the Presidency to ensure strategic management and follow-up of key projects.

Nevertheless, important challenges remain. These include the relation of the CoG with the institutionally decentralised sector, characterised by weak steering, co-ordination and accountability mechanisms; the weak sector dynamics which should facilitate strategic planning and implementation in coherence with the NDP; overall limited capacities across the CoG institutions.

### *Preliminary assessment and recommendations*

Costa Rica faces substantial fragmentation of the public sector. Institutionally decentralised public entities and subsidiary bodies of central government ministries are one of the key features of the country's governance system. Formally, and regardless of the variance of the purpose, nature, legal framework and degree of independence (financially and administratively) of the institutionally decentralised entities, the Financial Administration and Public Budgets Law and the National Planning Law establish that the budget and investment projects of all decentralised institutions must be aligned with the National Development Plan (Article 4, Law 8131 of 2001; and Article 9, Law 5525 of 1974).

Whereas most of the initial entities of the institutionally decentralised sector were created in the 1940s as autonomous institutions with a mandate of policy making as well as service delivery, such as health, energy and education, a more recent wave of newly created public institutions primarily consists of subsidiary bodies, representing "policy implementation shortcuts" to attain greater administrative and budgetary flexibility. Whereas this creates flexibility, it impacts on the CoG co-ordination capacity subsequently.

The CoG needs to further develop its strategic role vis-à-vis other public institutions, in general, and the institutionally decentralised sector, in particular. This would require further capacity building among the key centre of government actors, the development of a clear set of steering, co-ordination and control mechanisms, and a strategy to gradually rationalise the institutionally decentralised sector.

Taking into account the current situation, Costa Rica is recommended to address the following recommendations:

- Enhance the strategic role of the Ministry of the Presidency in supporting the quality of the decision-making process of the Council of Ministers;

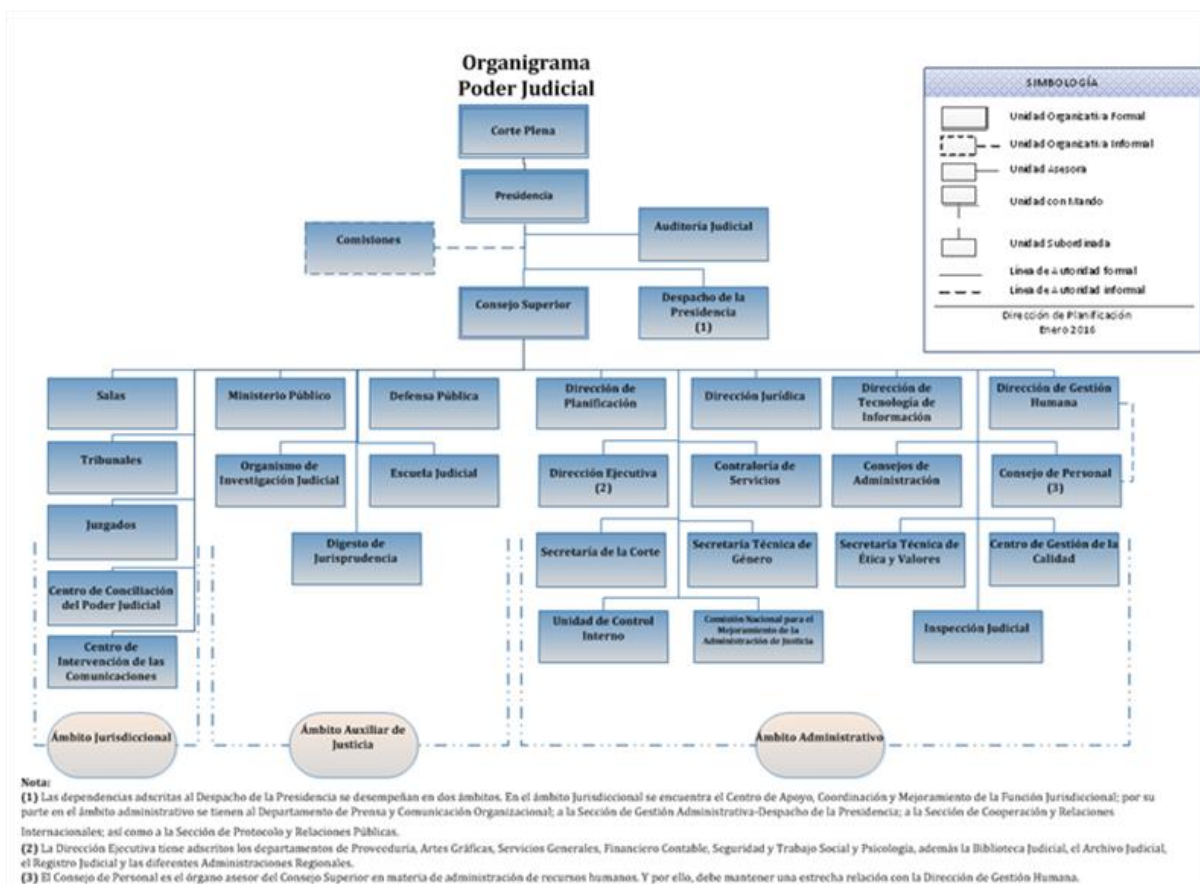
- Encourage structural investment in centre of government capacity building through technical training and the development of soft skills, with the Ministry of the Presidency and MIDEPLAN as primary beneficiaries; and
- Develop a clear policy and a set of instruments to ensure centre of government steering of the institutionally decentralised sector.

## Effective justice institutions

This section provides an overview and assessment of the effectiveness of the Costa Rican justice system and compares it to examples of good policies and practices found in OECD countries. It describes the key policies and practices affecting judicial capacity and performance. It also highlights the overall performance of the Costa Rican court system, and focuses on access to justice.

### *Structure and organisation of the Costa Rican judicial system*

Figure 5. Institutional chart of the judicial power, January 2016



Source: Poder Judicial; Planning Direction, 2016

Similar to a number of OECD countries, Costa Rica's court system (or jurisdictional scope) consists of a three-level instance (except for constitutional jurisdiction): the Supreme Court<sup>21</sup>, Collegiate Courts and Tribunals. The 47 Collegiate Courts and 275 Tribunals are organised according to their area of legal practice (civil, criminal, labour, etc.), their geographic location and the amount of the transactions involved<sup>22,23</sup>.

In Costa Rica, the justice system is centralised around the judicial power (*Poder Judicial*) and headed by the Supreme Court of Justice (*Corte Suprema de Justicia*)<sup>24</sup>. Under the purview of the Plenary Court<sup>25</sup> (*Corte Plena*) of the Supreme Court<sup>26</sup>, the judicial power is organised on the basis of a threefold scope: jurisdictional (Figure 5<sup>26</sup>), auxiliary and administrative. The auxiliary part consists of all those entities and departments that contribute daily to the administration of justice, by collaborating with the courts in activities that range from the collection and verification of evidence, to staff training<sup>27</sup>. The administrative part covers all planning and logistical aspects including human resources, budget, equipment, materials and infrastructure of the jurisdictional and auxiliary parts of judicial power. The Superior Council (*Consejo Superior*) is subordinate to the Supreme Court (*Corte Suprema de Justicia*) and carries out the administration and discipline powers of the judicial power<sup>28</sup>. The auxiliary and administrative parts are administratively subordinate to the Superior Council (*Consejo Superior*). The Public Ministry (*Ministerio*

<sup>21</sup> Art. 49, Organic Law of the Judicial Power (*Ley Orgánica del Poder Judicial*). The Supreme Court is composed of four chambers (*Salas*): three Cassation chambers, which control the legality of decisions by Collegiate Courts (*Tribunales*) and Tribunals (*Juzgados*), and a Constitutional Chamber (*Sala Constitucional*) which is the guarantor of the Constitution and of the citizens' fundamental rights

<sup>22</sup> Collegiate courts are divided into: Court of Appeals; Court of Appeals for Juvenile Criminal Judgements; Court of Flagrant Delicto; Criminal court; Juvenile Criminal Court; Administrative Court; Family Court; Civil courts; Labour Court; Labour Court for Small Claims; Agrarian Court and Notarial Disciplinary Court.

<sup>23</sup> Tribunals are classified as: Small Claims Tribunals; Misdemeanour tribunals; First Instance Tribunals in charge of civil, family, agrarian, alimony, labour, domestic violence, childhood and adolescence, and notarial issues; Criminal, Juvenile Criminal, and Execution of Sentences Tribunals and Traffic Tribunals.

<sup>24</sup> The Supreme Court of Justice currently consists of 22 judges and 37 judges or deputy judges.

<sup>25</sup> The Plenary Court (*Corte Plena*) hears conflicts of jurisdiction and determines territorial competence based on principles of adequate public service and citizen's access to justice.

<sup>26</sup> It is composed of 22 judges elected by Congress, split as follow: five judges at each of the three Cassation Chambers (*Salas de Casación*) and the remaining seven at the Constitutional Chamber (*Sala Constitucional*) (art. 158, Constitution; art. 49, Organic Law of the Judicial Power). There are also 37 alternates for substitution purposes (art. 62, Organic Law of the Judicial Power).

<sup>27</sup> This scope includes the Public Ministry headed by the Attorney General (*Fiscal General de la República*), the Office of Civil Defence (*Oficina de Defensa Civil de la Víctima*), the Office of Care and Protection of Victims (*Oficina de Atención y Protección a la Víctima del Delito*), the Judicial Investigation Department (*Organismo de Investigación Judicial*), the Public Defender's Office (*Defensa Pública*), the Judicial School (*Escuela Judicial*), the Jurisprudential Information Centre (*Centro Electrónico de Información Jurisprudencial*), as well as the Judicial Archives and Records Office (*Registro y Archivo Judicial*).

<sup>28</sup> It is assisted by a General Secretariat and an Executive Direction and its various administrative bodies including the Human Resources Department, the Planning Department, the Procurement Department, the General Services Department, the Financial Accounting Department and the Judicial Inspection Court (*Asuntos Penales*) under the Superior Court. Other entities include the Standing and Special Commissions of Judges, the Judicial Inspection Court, the Audit Department, the Planning Department, the Media and Organisational Communication Department, the Information Technology Direction, the Legal Direction, Departments and Regional Administrations of the General Secretariat, the Gender Technical Secretariat, the Ethics and Values Technical Secretariat and other programs that have staff assigned such as the Centre for Quality Management (CEGECA), The Restorative Justice Program, the Integrated Services Platform for Attention of Victims (PISAV), and The National Commission for the Improvement of Justice (*Comisión Nacional para el Mejoramiento de la Administración de Justicia*, CONAMAJ), among others.

*Público*)<sup>29</sup> and constitutional justice are under its structure and jurisdiction<sup>30</sup>, as it is the case in some OECD countries (Figure 6).

**Figure 6. Status of public prosecutors in OECD- Council of Europe countries and observers, 2014**

State/Entities	Status of public prosecutors			Regulation to prevent specific instructions to prosecute or not, addressed to a prosecutor in a court?
	Statutorily independent	Under the Ministry of Justice or another central authority	Other	
Austria				
Belgium				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Germany				
Greece				
Hungary				
Ireland				
Israel				
Italy				
Latvia				
Luxembourg				
Netherlands				
Norway				
Poland				
Portugal				
Slovak Republic				
Slovenia				
Spain				
Sweden				
Switzerland				
Turkey				
UK-England and Wales				
UK-Northern Ireland				
UK-Scotland				

Source: CEPEJ, Report on “European Judicial Systems – Edition 2016 (2014 data): efficiency and quality of justice”

Different models of court administration and governance systems exist in OECD countries reflecting their legal traditions, the balance of powers and the balance between judicial independence and accountability<sup>31</sup>.

<sup>29</sup> Costa Rica’s Public Ministry is an organ of the Judiciary that exercises its functions in the criminal justice area. It ensures the enforcement of the law before criminal courts through the execution of criminal action and by conducting preparatory investigation of public crimes (Organic Law of the Public Ministry).

<sup>30</sup> The Constitutional Court hears Habeas corpus and *amparo*; Actions of unconstitutionality; Constitutional consultations; conflicts of jurisdiction between the branches of government, including the Supreme Electoral Tribunal and the constitutional jurisdiction between these and the Comptroller General of the Republic, municipalities, decentralised entities, and other persons of public law.

<sup>31</sup> Canadian Judicial Council (2011); See also Canadian Judicial Council (2006); Lord Justice Thomas (2007).

OECD countries differ with regard to the delegation of accountability and authority over managerial and administrative tasks, which impact upon the role and responsibilities of the Judicial Council or similar institution where it exists. There appears to be a trend towards granting greater administrative autonomy and control to courts in certain civil law and common law countries to ensure a greater degree of judicial independence and accountability in court administration<sup>32</sup>. Some OECD countries are entrusting key aspects of court administration to Judicial Councils or similar bodies.

The Judicial Council (*Consejo de la Judicatura*), a body of the judicial power supervises the selection, transfers, and promotions procedure of the justice officials (except for High Court judges). Judicial Councils tend to differ across OECD countries with regard to the range of their decisional powers on the status of judges, their composition and the ways in which their members are elected or appointed<sup>33</sup>. These differences reflect the various views and approaches on the institutional means needed to protect judicial independence or to promote a better balance between independence and accountability<sup>34</sup>.

Similar to in OECD countries, judicial independence is recognised in Costa Rica. More particularly the independence of the judicial power (*Poder Judicial*) is constitutionally guaranteed<sup>35</sup> and implies a principle of self-governance and -autonomy, governed by a legal framework and guidelines<sup>36</sup>. Its budget is also constitutionally guaranteed equivalent to no less than six per cent of the revenue estimated for the fiscal year<sup>37</sup>. The budgetary process (from the preparation to the adoption, the management and the evaluation of budgetary expenditures) is, in many OECD countries, organised with the Ministry of Justice responsible for preparing the budget proposals<sup>38</sup>. In certain OECD countries, the courts themselves, the Judicial Council or the Supreme Court play a central role at the preparatory stage. National court administrations or specific bodies may also participate in the process.

Due to the principle of judicial self-governance and -autonomy, the executive and the Ministry of Justice and Peace (*Ministerio de Justicia y Paz*), play a limited to no role in the administration of justice including in judicial appointments (see also Alternative Dispute Resolutions – ADR section below). As in several OECD countries, challenges in balancing independence and accountability of the judiciary are a recurring issue.

While the justice system in Costa Rica aims to be comprehensive, the complexity of the system and the multiplicity of administrative entities render the structure and system intricate and potentially prone to functional overlapping<sup>39</sup>. As in many OECD countries, there appears to be challenges in the coordination and communication channels between the judiciary and other branches of power, and in particular the

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<sup>32</sup> Ibid.

<sup>33</sup> See, for example, ENCJ (2011)

<sup>34</sup> UNODC (2011).

<sup>35</sup> Art. 9 Constitution of Costa Rica.

<sup>36</sup> E.g. Organic Law of the Judicial Power, Law 7333 of 5 May 1993 (Organic Law of the Judicial Power).

<sup>37</sup> Law 2122 of 30 May 1957.

<sup>38</sup> UNODC (2011).

<sup>39</sup> E.g. 124 Justice Commissions as coordinating authorities within the Judicial Power are established to address specific issues in different areas: access to justice, environmental issues, criminal issues, attention and prevention for domestic violence, CONAMAJ ethics and values, performance appraisal, gender, sexual harassment and oral proceedings. They are composed and headed by magistrates from different chambers and other officials from the Supreme Court.

executive. Clear efforts are under way<sup>40</sup> including Open Justice initiatives at the local level<sup>41</sup> and joined-up services<sup>42</sup>; a trend in many OECD countries. Yet the Commission on Access to Justice (*Comisión de Acceso a la Justicia*) is often seen as lacking robust evaluation and impact assessment approaches<sup>43</sup>, creating uncertainties in policy and management planning<sup>44</sup> and overlooking administrative justice<sup>45</sup>. In Costa Rica it may result in a limited coordinated overall service delivery strategy<sup>46</sup> disadvantaging access to justice at the sub-national level (see below). In this context, the country would benefit from greater transparency in, and communication on, monitoring access to justice results and coordination efforts may help address certain critics<sup>47</sup>.

**Table 6. Summary of the main international indices and ranking on the justice sector in Costa Rica**

Index and/or dimension	Rank or Value	Year	Publication
Bertelsmann Stiftung's Transformation Index (BTI)		2016	Bertelsmann Stiftung
<i>Rule of law</i>	9/10		
<i>Separation of power</i>	10/10		
<i>Independence of the judiciary</i>	9/10		
<i>Prosecution of office abuse</i>	8/10		
<i>Civil rights</i>	9/10		

<sup>40</sup> E.g. Quarterly meetings between the supreme powers; Monthly meetings of the Access to Justice Commission (*Comisión de Acceso a la Justicia*) as well as the establishment of an Access to Justice Unit

<sup>41</sup> Trainings on Open Justice (*Justicia Abierta*) and electronic tools are conducted based on agreements between the Municipality of Cartago and local universities. Stakeholders, OECD Second Fact-finding mission, February 2017.

<sup>42</sup> In femicide cases, the Judiciary heads a meeting that includes different institutional stakeholders (INAMU, police, executive power), in the framework of the Law on Monitoring the Criminalisation of Domestic Violence (*Ley de Seguimiento de la Penalización de la Violencia Doméstica*). Another initiative is the creation of quick-response teams, through agreements with the Supreme Court, in order to provide comprehensive services in hospitals for women victims of sexual violence. Stakeholders, OECD Second Fact-finding mission, February 2017.

<sup>43</sup> However, according to the Supreme Court, the recommendations of the Access to Justice Commission are subject to monitoring and assessment process, notably by disciplinary control bodies and the Comptroller of Services. Stakeholders, OECD Second Fact-finding mission, February 2017.

<sup>44</sup> According to *Estado de la Justicia* (2015), in some cases, these Commissions act as bodies that make rather unstable decisions and recommendations on institutional policies or carry out pilot projects, not necessarily coordinated with the Corte Plena and the Superior Council (*Consejo Superior*) (that control resources and conduct middle and long term projects).. Moreover, according to Stakeholders (February 2017) administrative justice service delivery lacks leadership, visions and short; mid- and long goals.

<sup>45</sup> OECD Stakeholder Questionnaire; February 2017.

<sup>46</sup> However, according to members of these Commissions, *ad hoc* Commissions and sub-commissions of the Judiciary appear to be increasingly coordinating. They are also allegedly directly collaborating with the Ombudsperson (*Defensoría de los Habitantes*) though there is no formal mechanism yet established.

<sup>47</sup> Specialised subcommittees are part of the Commission on Access to Justice meet every month.

Doing Business		2017	The World Bank
<i>Enforcing Contract</i>	125 /189 economies		
Global Competitiveness Index		2017	World Economic Forum, Global Competitiveness report 2016-2017
<i>Judicial independence</i>	Value: 5.2/7 Rank: 31/138 economies		
<i>Efficiency of legal framework in settling disputes</i>	Value: 3.3/7 Rank: 87/138 economies		
Freedom House		2017	Freedom in the World
<i>Rule of Law</i>	13/16		
Economic Freedom Index - Rule of law		2017	Heritage Foundation
<i>Property rights</i>	51.6/100		
<i>Judicial Effectiveness</i>	55.6/100		
Rule of Law index	Score: 0.68		
<i>Rule of Law</i>	Global ranking: 25	2016	World Justice Project

Source: Summary collected by the OECD Secretariat

## ***Judicial career and conditions of services***

### ***Recruitment and promotion***

In Costa Rica, judges are appointed for an indefinite period by means of open competition for judicial career accreditation, administered by the Judicial Council<sup>48</sup>. Career officials and certified national lawyers who fulfil the specific requirements for the position of interest may apply<sup>49</sup>. Different recruitment models<sup>50</sup>

<sup>48</sup> It is composed of a Presiding Judge; a member of Superior Council (*Consejo Superior*); of the Board of Directors of the Judicial School and two Superior Judges, of different fields. All the members are appointed by the Plenary Court (*Corte Plena*) for a period of two years and are eligible for re-election.

<sup>49</sup> Art. 67, Law on Judicial Career

<sup>50</sup> There are three major alternative processes for judicial recruitment: democratic election, merit-based system and executive appointment. Democratic election modalities aside, a large majority of the OECD countries have mixed (judges and non-judges) authorities in charge of the selection process. In some

are found in OECD countries ranging from democratic elections to professional and civil service (bureaucratic) recruitment. As in Costa Rica, in several OECD countries the overriding role in managing judicial personnel from recruitment to retirement is played by centralised judicial councils usually composed in various proportions by representatives of the judges and of legal practitioners. In others, the responsibility to make decisions on the status of judges from recruitment to retirement is, in various ways and degrees, a shared responsibility of the Court President, Judicial councils or ad hoc agencies that include representatives of judges (usually higher ranking judges are overrepresented), Ministers of justice and also parliamentary commissions.

The Judicial Council conducts the public call for tender (through publication in the Official Gazette (*La Gaceta Diario Oficial*) in order to establish the list of eligible candidates, regardless of an open vacancy<sup>51</sup>. The recruitment is composed of five steps with defined and publicly available criteria: electronic registration; pre-selected candidates are interviewed according to their legal area of interest; interview with at least two judges from the Judicial Council; multidimensional examination (qualitative and quantitative: including psychological, medical and previous experiences areas) of candidates made by the recruitment and selection unit (from the personnel department); final selection of candidates, who are ranked according to their marks and desired position (grades 1 to 5 of the judicial career)<sup>52,53</sup>.

The Plenary Court (for categories 4 and 5 judges) or the Public Sector Wage Bargaining Commission (*Comisión Negociadora de Salarios del Sector Público*) (for categories 1, 2, and 3 judges) select by secret ballot the candidate from a three-person short list that is drawn by the Judicial Council. The current value given to the exam (70-75%) compared to the experience, expertise and seniority (15%) may result in new judges with limited experience named to higher grades (categories 4 or 5)<sup>54</sup>. In OECD countries, the experience of the candidates during the selection process is given increasing importance<sup>55</sup>.

The newly recruited candidates undergo a one-year probation period; this period is down to 3 months for promoted or transferred judges<sup>56</sup>. While it exists in some OECD countries for practical needs<sup>57</sup>, the probationary period in the recruitment procedure should be treated with caution, as illustrated by the Venice Commission<sup>58</sup>. Probationary periods may prevent judges from taking on complex cases<sup>59</sup> or cases that may generate public resonance. This is particularly relevant in administrative cases, where the executive is one of the parties to the case. In rare circumstances where a probationary period may be necessary to ascertain whether a judge is really able to carry out his or her functions effectively before

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Member countries, judges are chosen from among practising lawyers or experienced jurists (“professional recruitment”). In others, judges are chosen, prevalently or exclusively, from among young law graduates without previous professional experience (“civil service recruitment”). Some countries feature modalities from both selection systems by ensuring that selected young graduates accumulate a solid body of legal experience before wielding judicial power. Professional evaluation and the judicial career have different characteristics depending on the professional or civil service approach.

<sup>51</sup> Art. 73, Law on Judicial Career

<sup>52</sup> Grade 1 (*Alcalde* 1 and 2): judge of small claims court, contraventional, child support and transit; Grade 2 (*Alcalde* 3, 4 and 5): sentence enforcement judge; Grade 3 (*Juez*): judge of civil court (large claims), contentious-administrative, criminal, family court, domestic violence, enforcement of sentences; Grade 4 (*Juez Superior*): judge of collegiate court, with the exception of labour court for small claims (grade 1); Grade 5 (*Juez Superior de Casación*): judge of appeals (cf. art. 48 of the Judicial Career Regulation and 70 art.70, Law on Judicial Career).

<sup>53</sup> If one candidate did not pass the recruitment process, the decision can be appealed.

<sup>54</sup> Stakeholders (OECD Questionnaire, March 2017).

<sup>55</sup> CEPEJ (2016).

<sup>56</sup> Art. 51, Law on Judicial Career.

<sup>57</sup> Venice Commission (2007).

<sup>58</sup> *Ibid*; see also European Charter on the Statute for Judges (1998).

<sup>59</sup> This is particularly relevant in administrative cases, where the executive is one of the parties to the case.



permanent appointment”<sup>60</sup> and “ensure candidates accumulate a solid body of legal experience before wielding judicial power”<sup>61</sup>, the Venice Commission recommends to exclude the factors that could challenge the impartiality of judges: for instance, in some OECD countries<sup>62</sup> candidate judges are evaluated over a probationary period, during which they may assist in the preparation of decisions, but without taking judicial decisions, which are reserved for permanent judges”<sup>63</sup>.

In the event of a vacancy, a deputy judge is assigned to the position during the selection process of the new incumbent. This deputy judge may be a previously assigned substitute, or can be appointed for the circumstances. He or she is not required to have obtained the grade for the position, but only to figure on the list of potential substitutes of the judicial administration. In case of exceptional needs, the administration is even allowed to appoint a lawyer who did not enter the judicial career, to fill the temporary position<sup>64</sup>. Although substitute judges may not be able to continue their private professional activities<sup>65</sup>, conflict of interest may rise when they sit in the jurisdiction they used to practise<sup>66</sup>. This situation tends to not be marginal for short vacancies in rural areas that very few judges accept to take. This may also lead to procedural issues due to the lack of experience and preparation of the substitutes<sup>67</sup>. Such substitutions exist at the level of the Supreme Court.

The 22 judges of the Supreme Court are appointed for a period of eight years by Congress from a list of candidates drawn by its Nomination Committee (*Comisión Permanente Especial de Nombramientos*, CPEN) after reviewing the qualifications of the participants (e.g. academic training, experience)<sup>68</sup>. They are automatically re-elected to their posts for an equal period unless at least two thirds of the total Congress members vote otherwise. Yet the effectiveness of this check and balance is disputed<sup>69</sup>. Moreover, the overall appointment process is seen as lacking transparency (closed vote) where the Congress does not follow CPEN’s recommendation<sup>70</sup>. In a more general context, while the judiciary appears to be very independent as an institution, transparency and safeguards against undue influence in the appointment process of High Court judges seem minimal.

The Supreme Court appoints members of the Supreme Electoral Tribunal. As highlighted by the Report *Estado de la Justicia* (2015)<sup>71</sup>, the duration of appointment process of Supreme Court judges is increasing

<sup>60</sup> Venice Commission (2007).

<sup>61</sup> Transparency International (2007).

<sup>62</sup> See, for example, Japan (Transparency International, 2007) or Austria (Venice Commission, 2007).

<sup>63</sup> Venice Commission (2007).

<sup>64</sup> Art. 69, Law on Judicial Career.

<sup>65</sup> Article 9 of the Organic Law of the Judiciary.

<sup>66</sup> it must be indicated that a person litigating may make temporary appointments as a judge or judge, even before the same jurisdiction where litigates, which represents a huge risk against the duty of impartiality and judicial independence. This situation has even occurred in the substitutions of judges of the Supreme Court of Justice.

<sup>67</sup> Arguedas, C. (2009), “Cualquier abogado inexperto puede convertirse en juez”, [http://www.nacion.com/In\\_ee/2009/octubre/05/sucesos2107725.html](http://www.nacion.com/In_ee/2009/octubre/05/sucesos2107725.html). Last accessed 20 September 2016.

<sup>68</sup> The Congress also appoints the 37 deputy judges for a period of 4 years: nine are from the First Chamber, eight from the Second and Third Chambers, and 12 from the Constitutional Court.

<sup>69</sup> According to Bertelsmann Stiftung (2016). Costa Rica Country Report, Gütersloh: Bertelsmann Stiftung, 2016, “the legislature’s majority decision rejecting the automatic re-election of a Supreme Court justice in 2012, due to political partisanship, detonated a conflict [...] and revealed major differences between senior officials of the two powers in regards to their respective realms of action.[...] This episode brought an uncommon subject to public debate: the judicialisation of politics”

<sup>70</sup> Stakeholders, First fact-finding mission, June 2016.

<sup>71</sup> Primer Informe Estado de la Justicia (2015), Programa Estado de la Nación, Costa Rica.

(from a 100 days average to fill a vacancy in the 1990s to 500 days in some cases today)<sup>72</sup>. This creates risks of conflicts of interest, as while the appointment process of a judge is on hold, the Supreme Court operates with substitute judges. These substitutions can be filled by lawyers (see above).

### *Judicial performance evaluation*

Judges and judicial and non-judicial officers undergo yearly performance appraisal<sup>73</sup>. Accountability and performance of judges and staff is governed by this 2014 Integrated Performance Appraisal System (*Sistema Integrado de Evaluación del Desempeño, SIED*)<sup>74,75</sup>, which is under development as a pilot scheme since 2015<sup>76</sup> and limited to the Public Ministry and the Planning and Operation Office of the Organism of Judicial Investigation (*Organismo de Investigación Judicial*)<sup>77</sup>. The Judicial Council is in charge of judges' appraisal evaluation, the Personnel Council for staff and the respective internal hierarchies for the Public Ministry, the Judicial Investigation (*Inspección Judicial*) and the Public Defender's Office (*Defensa Pública*).

In OECD countries, professional evaluation of judges<sup>78</sup> varies from country to country with regard to methods (degree of formality)<sup>79</sup>, and assessment of quantitative<sup>80</sup> and qualitative<sup>81</sup> criteria, timing (e.g. periodically or at regular intervals)<sup>82</sup>, outcomes for the evaluated judges (e.g. disciplinary measures, promotion)<sup>83</sup>, the rigour with which reviews are conducted, and the agents that conduct the evaluations<sup>84</sup>. The process of evaluation and disciplinary measures is usually differentiated<sup>85</sup>. In Costa Rica, performance

<sup>72</sup> This is notably explained by the qualified majority voting system applied to appoint Supreme Court judges along with the multiparty formation of the Congress, which entail in-depth negotiations.

<sup>73</sup> Yearly quantitative accountability reports (including number of assumed and processed cases and number of sentences issued) are sent to the Superior Council and every three months to the Planning Department of the Judiciary. Stakeholders, , March 2017.

<sup>74</sup> Reglamento del Sistema Integrado de Evaluación del Desempeño del Poder Judicial, approved by the Plena Corte, Circular 52-2014.

<sup>75</sup> The Legislative Assembly is proposing a bill on management evaluation, performance and accountability at the initiative of the Judicial Power in order to elevate the legal status of the performance appraisal system in the institution and articulated legal standards for the effectiveness of the judicial work.

<sup>76</sup> The System has not been implemented so far. Stakeholders, OECD Second Fact-finding mission, February 2017.

<sup>77</sup> The Public Defender and the Jurisdictional branch are expected to undertake the assessment.

<sup>78</sup> The need to conduct periodic and substantial professional evaluations of judges is seen as tied to the civil service model of recruitment (UNODC, 2011).

<sup>79</sup> CCJE (2014).

<sup>80</sup> Some countries consider the number of decisions issued by the evaluated judge and/or the number of cases otherwise concluded (e.g. by settlement or withdrawal) under quantitative factors. Productivity of a judge may also be measured against a fixed quota or against the average number of decisions handed down by other judges (CCJE, 2014, Opinion 17 on the Evaluation of Judges' work, the Quality of Justice and Respect for Judicial Independence).

<sup>81</sup> The quality of a judge's analysis, organisational skills, work ethic and the way in which the judge handles complex cases is considered of great importance in some of the countries' evaluation process. In certain countries, the number or percentage of decisions reversed on appeal are considered factors while, in others, because of the principle of judicial independence, neither the numbers of decisions reversed on appeal nor its reasons are taken into account, unless they reveal grave mistakes. Other factors include: ability to mediate between parties, to draft clear and comprehensible judgments, to co-operate with other colleagues, to work in areas of law that are new to the judge and the readiness to take on extra activities within the court's administration (e.g. mentoring) (CCJE, 2014).

<sup>82</sup> In European countries, more often than not, assessment takes place on a regular basis, with a specified frequency (every 1 to 5 years) (CEPEJ, 2014).

<sup>83</sup> CCJE (2014).

<sup>84</sup> UNODC (2011).

<sup>85</sup> CCJE (2014).

indicators are based on technical, objective, and non-discriminatory criteria, with the objective of guarantying the quality of judicial services. One of the principles governing this performance appraisal system is that of judicial independence, transparency and participation<sup>86</sup>. When performance is declared deficient, the judicial officer or staff is required to follow an improvement plan supervised by his/her direct hierarchy and the Judicial School. Decisions may be appealed. If he/she is declared “deficient” during two consecutive periods, a disciplinary procedure is initiated.

### *Integrity framework*

The judicial regulatory framework in Costa Rica appears to cover some aspects of judicial integrity<sup>87</sup> (as in many OECD countries): the declaration of gifts, assets and interests, incompatibilities and accessory activities and third party contact. Yet conflict of interest safeguards are said to be limited<sup>88</sup>. Post-employment restrictions also seem to be insufficient. A “cooling-off” period is lacking in the current integrity framework which may raise questions of impropriety.<sup>89</sup> Corruption is regarded as low<sup>90</sup>, yet cases of corruption and conflict of interests involving members of local courts are highlighted<sup>91</sup>. Moreover, safeguards to integrity and impartiality are reported lax<sup>92</sup>.

The Technical Secretariat for Ethics and Values (*Secretaría Técnica de Ética y Valores*) along with the Ethics and Values Commission (*Comisión de Ética y Valores*) are responsible of the Institutional Ethics Management System (*Sistema de Gestión Ética Institucional*). This system is composed of Institutional Commissions and ethics and values technical units. A Manual of Shared Values (*Manual de Valores Compartidos*) was developed in collaboration with all 22 judicial circuits and the Superior Council and serves as a preventive mechanism.

Balancing independence and accountability of the judiciary appears to be among key issues in Costa Rica, which is also the case in several OECD countries. For example, while the judiciary appears to be very independent as an institution, transparency and safeguards against undue influence in the appointment process of High Court judges seem challenging.

<sup>86</sup> A new methodology is currently under development in order to cover all the judicial profiles (1 to 5) and law areas.

<sup>87</sup> Art.17 -21, Law 8422 of 6 October 2004 (*Ley contra la Corrupción y el Enriquecimiento Ilícito en la Función Pública*) “Law against Corruption and Illicit Enrichment in Public Service”; art. 9, Organic Law of the Judicial Power.

<sup>88</sup> Stakeholders (OECD Questionnaire, March 2017)

<sup>89</sup> The high court and lower judges that retire cannot litigate in the court s/he sat for one year; no restriction applies for transitioning to the private sector. According to Article 586b of the labour code, « public officials are not be able to hold a remunerated position in any State institution, during a period equal to the amount received as a compensation for contract cessation. If, within such period, they accept such a position, they shall be bound to refund the amount received while deducting the amount earned during the period where they were not working”.

<sup>90</sup> The Rule of Law Index (World Justice Project (2016), Rule of Law Index, Costa Rica) scores Costa Rica 0.75/1 and 0.69/1 for “no corruption” in civil justice system and Criminal justice system respectively.

<sup>91</sup> Bertelsmann Stiftung (2016), Costa Rica Country Report. Gütersloh: Bertelsmann Stiftung, 2016.

<sup>92</sup> Stakeholders, OECD First Fact-finding mission, June 2016. The existing mechanisms of investigation prior to the appointment of a judge are considered insufficient (Stakeholders, OECD Second Fact-finding mission, February 2017).

### *Disciplinary and criminal liability*

Disciplinary proceedings against officials of the judicial power can either be initiated ex-officio or following a complaint to the Comptroller of Services<sup>93</sup> (*Contraloría de Servicios del Poder Judicial*). The procedure, offenses and sanctions are established by law<sup>94</sup>. A disciplinary sanction may also be imposed for delay<sup>95</sup> or serious and unjustified errors in the administration of justice. Due process is followed where the interest party and its counsel have access to the case. Moreover, a Prosecutorial Inspection Unit (*Unidad de Inspección Fiscal*), established within the Public Ministry, is an office attached to the Attorney General's office (*Fiscalía General de la República*) and acts as a prosecuting body in disciplinary-administrative cases against officials from the Public Ministry at the national level.

Amongst OECD countries, there are substantial variations with regard to disciplinary initiative, composition of the authorities in charge of discipline (see Figure 7), and disciplinary sanctions. The number of procedures initiated against judges varies according to the countries especially as regards to the competent authority and whether it is possible to consult this authority directly, whether there is a filter system or whether this procedure is exclusively reserved for certain entities (Minister of Justice, Court President, etc.). In Costa Rica, the procedure is led by a general inspector and the Tribunal of the Judicial Inspection (*Tribunal de la Inspección Judicial*) hears the case. Its decision may only be appealed before the Superior Council if over eight-day suspension or revocation<sup>96</sup>. Yet, the procedure may be overridden and a sanction imposed under the condition that the interested party is consulted<sup>97</sup>. With respect to responsibilities of a criminal nature, its assessment is led by the authorities of the Public Ministry under criminal jurisdiction.

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<sup>93</sup> The Office of the Comptroller of Services opened 17 offices in the 7 provinces of Costa Rica. Since its creation in 2002, it has received around 80 000 complaints from users. Once the situation of the user and the issue are analysed, the Office generates an improvement opportunity report which is sent back to the office in question to have it commented. Based on this document, the Comptroller issues recommendations to the concerned organ or disciplinary body. The Office tries to determine whether it is a common or isolated issue. The complaint can also be issued by conciliators and facilitators. A virtual office will be allegedly launched in mid-2017 in order to facilitate citizens' access to the different steps of the complaint. Additionally, the Office has been providing alternative measures for users that don't have access to digital devices (e.g. information in hard copy, educational material on electronic means). Stakeholders, OECD Interviews, February 2017.

<sup>94</sup> Article 190-212 of the Organic Law of the Judicial Power The framework includes: serious offenses punishable by suspension or revocation of appointment; serious offenses, punishable by a suspension of up to two months or by written reprimand; and minor offenses, punishable by warning or written reprimand.

<sup>95</sup> According to the Office of the Comptroller of Services, most complaints concern delays in the justice response time, particularly in family and labour disputes.

<sup>96</sup> The Commission of Labour Relations may also hear the case before the Superior Council (*Consejo Superior*).

<sup>97</sup> Art. 197 of the Organic Law of the Judicial Power.

Figure 7. Authorities responsible for initiating disciplinary proceedings against judges in OECD-Council of Europe countries and observer, 2012

State/Entities	Members of the public	Relevant Court or hierarchically superior	High Court/ Supreme Court	High judicial council	Disciplinary court or body	Ombudsman	Parliament	Ex. Power	Other
Austria									
Belgium									
Czech Republic									
Denmark									
Estonia									
Finland									
France									
Germany									
Greece									
Hungary									
Iceland									
Ireland									
Israel									
Italy									
Latvia									
Luxembourg									
Netherlands									
Norway									
Poland									
Portugal									
Slovak Republic									
Slovenia									
Spain									
Sweden									
Switzerland									
Turkey									
UK-England and Wales									
UK-Northern Ireland									
UK-Scotland									

	Yes
	No

Source: CEPEJ, Report on “European Judicial Systems – Edition 2014 (2012 data): efficiency and quality of justice”

### *Court management and performance*

OECD countries are improving court functioning and governance practices supported progressively and enabled by information and communication technologies (ICT) strategies<sup>98</sup>. In Costa Rica, international studies highlight timeliness issues especially in civil justice<sup>99</sup> where only 48.1% of Costa Rican nationals perceived their judiciary system as functioning well<sup>100</sup> and 65 % of complaints relate to court delays<sup>101</sup>. Court performance may also vary between jurisdictions<sup>102</sup>, due to insufficient infrastructure or human resources (criminal justice)<sup>103</sup>. Limited access to services especially in certain municipalities or sometimes inappropriate treatment of court users by the court and officials were reported<sup>104</sup>. In rural areas, conflicts have diversified and became complex (from neighbourhood to drug trafficking issues) and the system is increasingly saturated<sup>105</sup>. Systemic issues include lack of process standardisation and of consistent data on duration of all judicial proceedings<sup>106</sup>.

To remedy this issue, the Statistics Section of the Planning Department of the judicial power (*Sección de Estadísticas de la Dirección de Planificación del Departamento Judicial*) recently started generating statistical information on the duration of trials in different justice sectors<sup>107</sup>, through a process of standardisation of judicial information carried out jointly with the Normalisation Department of the Technology and Information Directorate (*Unidad de Normalización de la Dirección de Tecnología y*

<sup>98</sup> The scope of ICT varies: the use of electronic forms, websites and electronic register are widespread while the implementation of online facilities including for legal representations to follow court proceedings is uneven (OECD, 2013). Many OECD countries are implementing ICT not only to improve justice administration, communication and proceedings in different areas of court operations (e.g. management information systems for the analysis of the length of proceedings, backlogs, delays or other steps in the proceedings) but also to facilitate citizen's awareness and access to court as well as to reinforce safeguards and principles of fair trial and procedural guarantees and ultimately trust in justice.

<sup>99</sup> According to the World Justice Project's 2016 Rule of Law Index, Costa Rica scores 0.26/1 for no unreasonable delays in civil justice and 0.44/1 for timely and effective adjudication in criminal justice; Costa Rica ranks 124 out of 189 countries under the 2016 Doing Business' Enforcing Contract where it report that it takes 852 days to enforce a contract. Efficiency of legal framework in settling disputes is declining according to the 2016-2017 Global Competitiveness Index. See also Freedom House (2016), Freedom in the World.

<sup>100</sup> While 38,8 % reported they perceived the judiciary as doing "not good" to "bad" work; Latinobarometro (2015).

<sup>101</sup> Representing 2 497 complaints, Contraloría de Servicios (2015) Informe Anual de Labores de la Contraloría de Servicios.

<sup>102</sup> Stakeholders (OECD Questionnaire, March 2017).

<sup>103</sup> Stakeholders (OECD Questionnaire, March 2017).

<sup>104</sup> Informe Anual de Labores de la Contraloría de Servicios. Poder Judicial de Costa Rica - Contraloría de Servicios (2015). More specifically, 86% (3,300 cases) of complaints entered during the first 10 months of 2014 concerned Child Support, Civil matters, labour cases, Family dispute and Criminal cases with recovery

<sup>105</sup> For instance, in the province of Limón (Atlantic Coast), trafficking undermines the attractiveness of judicial positions in the region, which allegedly has a direct impact on case-load management. Stakeholders, OECD Second Fact-finding mission, February 2017.

<sup>106</sup> Stakeholders, OECD First Fact-Finding mission, June 2016; Estado de la Justicia (2015). The former further highlights the number of trials and their duration significantly increased in the past two decades. In 1998, 4797 criminal trials were engaged with a 17 months average duration, whereas in 2013 the number of trials in this judicial area almost doubled and the average duration rose to 27 months. Regarding labour-related disputes, 1681 trials were engaged in 1990 with an average duration of 8 months. In 2015, there were 4669 trials that lasted 24 months in average.

<sup>107</sup> Until then, the only existing statistical information that covered all the judicial process starting at first instance was in criminal and labour disputes, Primer Informe Estado de la Justicia (2015), Programa Estado de la Nación, Costa Rica.

*Información*)<sup>108</sup>. The objective is to facilitate the development of broader indicators and statistics. Reforms of the labour and the civil areas are expected to contribute significantly to this process<sup>109</sup>. Yet challenges remain, most notably in terms of ICT capacity and resources (see below). It is worth noting that the creation of the Commissions of Justice substantially increased administrative workload for magistrates, detrimental to their jurisdictional functions for some of them. For instance, between 2008 and 2012, the members of the Superior Council were part of an average of seven commissions each<sup>110</sup>. Judicial training is available in Costa Rica and provided by the Judicial School<sup>111</sup>. According to their data, in 2015, they trained 2386 judges and non-staff. Yet, the judicial training is seen as insufficient<sup>112</sup> and the Judicial School with challenging resources. Next to the Judicial School, the *Unidad de Capacitación y Supervisión* (Public Ministry) provides also training.

In OECD countries, recognising the increasing importance of court quality policy has led to the development of quality standards and performance indicators considering values such as efficiency, productivity and timeliness, indicators such as cost per case and time to disposition, and supporting systems of management by objective, managerial performance<sup>113</sup>. In Costa Rica, monitoring tools and quality standards are recent (2010) and are governed by the National System of Quality and Accreditation for Justice (*Sistema Nacional de Calidad y Acreditación para la Justicia -Sinca-Justicia*). It aims at developing a model tailored to the specificities of each justice service in order to improve management and implement monitoring tools based on management indicators and a Quality Management Model (*Model de Gestión de Calidad*). It operates under the National Commission of *Sinca-Justicia* (*Comisión Nacional del Sinca-Justicia, SINCA*)<sup>114</sup>. This Commission is the authority that certifies justice services after an assessment process carried out by external audit, based on quality requirements and parameters in four different areas:

<sup>108</sup> The process is expected to be completed by 2018, as 80% of the information has been allegedly standardised so far and 4 implementation teams are currently supporting it. Stakeholders, OECD Second Fact-finding mission, February 2017.

<sup>109</sup> In the framework of the labour law reform (by July 2017), an electronic record system is being implemented in order to better analyse court delays based on detailed information on trials' duration. The same methodology should be implemented in the civil area by late 2018. In two judicial circuits, Cartago and San Carlos, the systems have been entirely automated in order to conduct a regular analysis of the judicial performance based on specific indicators. Stakeholders, OECD Second Fact-finding mission, February 2017.

<sup>110</sup> Primer Informe Estado de la Justicia (2015), Programa Estado de la Nación, Costa Rica.

<sup>111</sup> The Initial Training Program for Judiciary Applicants (*Programa de Formación Inicial para Aspirantes a la Judicatura – PFIA*) allows young graduates from law school to take an entry exam to the School and then join a one-year program with the School. The Judicial School accompanies the judges once hired, by offering them courses in order to provide them with the necessary tools, and to specialise on specific legal areas (including new areas such as organised crime). All the activities are based on diagnosis of pre-established profiles and needs. As there is only one Judicial School for all the country, it also provides trainings at the local level, through its 18 regional branches. Some courses are virtual (broadcasted in several offices at the same time) and some courses include presence. Stakeholders, OECD Second Fact-finding mission, February 2017.

<sup>112</sup> Especially important when it comes to the implementation of new oral proceedings; Training is also perceived low in ADR services by stakeholders. The Judicial School conducts assessment of their courses' results in order to adapt their trainings. This is, however, different from judges' performance assessment as it is the course that is evaluated.

<sup>113</sup> CourTools; IFCE.

<sup>114</sup> It consists of Supreme Court, Ministry of Justice, *La Defensoría de los Habitantes*, Bar Association, National System of Quality and Accreditation for Justice (*Sistema Nacional de Acreditación de la Educación Superior*), National Council of University Deans (*Consejo Nacional de Rectores*) and INCAE Business School.

organisation of judicial service, administrative office, public defence<sup>115</sup> (*Defensa Pública*), and judicial police (*Policía Judicial*)<sup>116</sup>. Despite an ongoing strategy to inform all judicial offices regarding SINCA<sup>117</sup>, this system appears to be showing some deficiencies as accreditation for a number of services was still pending<sup>118</sup>. The sustainability and applicability, both financial and operational<sup>119</sup>, of the system was questioned considering the high number of justice services to cover<sup>120</sup>. Recently the Judiciary approved a uniform methodology for the establishment of management indicators under the Process Redesign Project (*Proyectos de Rediseño*)<sup>121</sup>.

The development of e-justice and e-courts is a significant trend amongst OECD countries aimed at enhancing court performance and qualitative justice service delivery while addressing budget constraints<sup>122</sup>. In the last decade, Costa Rica's judiciary has conducted important reforms regarding national coverage of technological tools and also in developing new and better forms of judicial management. This also entailed the implementation of a set of user-oriented electronic services. ICT tools are seen as essential elements to enhance transparency and communication of the justice sector<sup>123</sup>. Approximately 80% of the judicial cases' processes are carried out through the Costa Rican Judicial Services Management System (*Sistema Costarricense de Gestión de Despachos Judiciales*). Moreover, new methods were implemented through oral proceedings in pilot courts<sup>124</sup>, despite the opposition from several judges<sup>125</sup>. An online bank for the exchange of good practices between courts and officials was also institutionalised<sup>126</sup>. Yet challenges include conducting further efforts of raising awareness of internal and external users of the judiciary (save for administrative justice), and addressing the uneven use of ICTs and implementation of the evaluation and monitoring frameworks in the judiciary, disproportionately affecting jurisdictions and regions. Issues are further reported at the local level to the quality of ICT tools and the lack of qualified staff in orality proceedings affecting procedures and generating delays<sup>127</sup>.

<sup>115</sup> The Public Defender's Office has 43 offices in the country. There are 485 defenders to cover all the legal areas (mostly crimes and juvenile delinquency). Public Defenders provide support to both plaintiffs and defendants, throughout the whole process. Stakeholders, (OECD interviews, February 2017).

<sup>116</sup> Quality and Accreditation Integral Management standards (*Gestión Integral de Calidad y Acreditación* – GICA)

<sup>117</sup> Fifteen workshops were allegedly conducted in order to inform and raise awareness regarding the development of the System. Stakeholders (OECD interviews, February 2017).

<sup>118</sup> Primer Informe Estado de la Justicia (2015), Programa Estado de la Nación, Costa Rica.

<sup>119</sup> The System is assessed by three different kinds of processes: i) Internal Quality Assessment (*Revisión Interna de Calidad*) conducted by the staff of the evaluated office; ii) Internal Quality Verification (*Verificación Interna de Calidad*) by judicial staff outside the evaluated office ; iii) External Quality Verification (*Verificación Externa de Calidad*) by persons external to the Judiciary. Stakeholders, (OECD interviews, February 2017).

<sup>120</sup> Primer Informe Estado de la Justicia (2015), Programa Estado de la Nación, Costa Rica.

<sup>121</sup> Methodology Manual for Process Redesign will facilitate the construction of performance indicators according to the principles laid down in the "Regulations of the Integrated System for Performance Appraisal of the Judicial Power" to be built in a participatory manner, objectively, and transparently with the Heads of departments

<sup>122</sup> States or entities have invested massively in court computerisation between 2012 and 2014 where in some OECD countries the budget increased by more than half court and computerisation is a budgetary priority CEPEJ(2016)

<sup>123</sup> Stakeholders (OECD Questionnaire, March 2017).

<sup>124</sup> Morales Navarro, K. (2015), « La inclusión de las tecnologías en la gestión judicial », in "El Rol de las Nuevas Tecnologías en el Sistema de Justicia", Publicación semestral del Centro de Estudios de Justicia de las Américas, Centro de Estudios de Justicia de las Américas, Año 9, N° 16

<sup>125</sup> Stakeholders, OECD Second Fact-finding mission, February 2017.

<sup>126</sup> <https://www.poder-judicial.go.cr/buenaspracticas/>.

<sup>127</sup> Stakeholders (OECD Questionnaire, March 2017).



Following OECD countries' best practices, judges should have the obligation to disclose information on foreseeable timelines of court proceedings to foster court management efficiency and ultimately raise trust in court proceedings. Similar to OECD countries, the level of trust in the judiciary is declining in Costa Rica<sup>128</sup> - although it is higher in some jurisdictions (e.g. high trust in constitutional justice). In order to address this challenge, Costa Rica's Second Open Government Plan (*Segundo Plan de Acción de Gobierno Abierto*) includes fostering citizen participation in justice policy making of the judicial power. This initiative is led by the National Commission for the Improvement of Justice (*Comisión Nacional para el Mejoramiento de la Administración de Justicia*, CONAMAJ) a public entity headed by a High Court judge and composed of representatives of different powers of Costa Rican state and civil society e.g. judicial power, Ministry of Justice and Peace, the Ombudsperson (*Defensoría de los Habitantes de la República de Costa Rica*), Attorney General (*Fiscal General de la República*), Bar Association (*Colegio de Abogados*), General Comptroller (*Contraloría General de la República*, CGR)<sup>129</sup>. Moreover, the judicial power is developing open judicial government policies, aligning them to the Open Government Plan's objectives of transparency, accountability and communication<sup>130</sup>. The final purpose is to open public information on issues such as salaries, administration, amount of litigation, resolution times, court statistics and budget execution. Furthermore, the Restorative Justice Programme of the Costa Rican Judicial Branch<sup>131</sup> aims at providing a complement to the criminal justice system, by facilitating the active participation of the perpetrator of a criminal offence to the reparation of it. The objective is notably to enhance resocialisation and reintegration of the offender and therefore help reducing potential recidivism. This multidisciplinary programme includes stakeholders both from the Judiciary and civil society organisations. Such programmes are developing in a number of OECD countries.

A Comptroller of Services (*Contraloría de Servicios del Poder Judicial*) ensures that users receive timely and adequate response at every stage of their proceedings with any branch of the judiciary and other entities<sup>132</sup>. This service contributes to the provision of justice seen as public service; a trend highlighted in certain OECD countries.

### *Access to justice*

International standards of access to justice are found in various international treaties and in the domestic legal instruments of some OECD countries. The concept of access to justice enshrines various rights<sup>133</sup> and aims to ensure that individuals exercise effectively their legal rights and secure their vested interests

<sup>128</sup> According to Latinobarometro, confidence declined from 46.6% in 2013 to 43.5% in 2015, and 53.4% of Costa Rican declared having little to no confidence in 2015 compared to 49.2% in 2013.

<sup>129</sup> CONAMAJ is responsible for coordinating some justice services and strengthening citizens' access to justice

<sup>130</sup> This initiative started with a Pilot Project within the First Judicial Circuit of Cartago, which objective is to facilitate the judicial processes and timeliness through the implementation of a process of electronic-oral redesign. Pilot Project on Open Judicial Government in the Judicial Circuit of Cartago (2015), Activity Report.

<sup>131</sup> [http://www.poder-judicial.go.cr/justiciarestaurativa/images/documentos/quienes\\_somos/EN-ProgramaJusticiaRestaurativa.pdf](http://www.poder-judicial.go.cr/justiciarestaurativa/images/documentos/quienes_somos/EN-ProgramaJusticiaRestaurativa.pdf)

<sup>132</sup> Other entities also include the Centre for Support, Coordination, and Improvement of the Jurisdictional Function under the Office of the President of the Supreme Court which aims to create an organisational high level structure to support for the management of jurisdictional offices and the Conciliation Centre of the Judicial Power. This structure has been recently created, and it has been aiming at addressing issues that judicial offices might have in terms of human resources, recruitment, performance assessment for instance.

<sup>133</sup> E.g. right to an effective remedy before a tribunal ; right to a fair and public trial within a reasonable time by an independent and impartial tribunal previously established by law; right to be advised, defended and represented; right to legal aid for those who lack sufficient resources.

including access to public services. OECD countries address these accessibility and affordability challenges through funding their legal aid sector, implementing procedural safeguards and raising legal awareness.

OECD countries recognise that legal aid<sup>134</sup> is an essential element of a functioning justice system based on the rule of law<sup>135</sup> and guaranteeing equal access to justice<sup>136</sup> while enhancing trust<sup>137</sup>. Information on access to justice and legal aid constitutes an essential precondition for the effective exercise of the right to legal aid. Moreover, countries in which citizens feel more informed tend to have higher levels of trust in justice<sup>138</sup>. In Costa Rica, access to justice for all citizens is constitutionally guaranteed<sup>139</sup> - through action such as habeas corpus<sup>140</sup> or *amparo*<sup>141</sup> although no appeal mechanism exists under the constitutional jurisdiction. The judicial power seeks to further improve access to justice through activities and commitments in its strategic plan and other policy and legal documents, with particular attention to the inclusion of vulnerable persons. The Public Defence Office (*Defensa Pública*) provides legal aid services, which are only available for criminal law (enforcement, judgement revision process, juvenile cases), agrarian, and child support issues proceeding and covers court representation, legal advice and exemption from court fees.<sup>142</sup> Access to lawyers is seen as easy<sup>143</sup> with accessible fees. *Estado de la Justicia* (2015) report<sup>144</sup> concerns over access to certain justice sectors i.e. criminal and labour justice including lack of legal advice or delays<sup>145</sup>. In administrative justice, the lack of legal aid provisions may impede this specialised justice sector with high procedural costs<sup>146</sup>. In certain cases, the private sector is therefore covering free legal assistance to parts of the population<sup>147</sup>, as it is in the majority of OECD countries (Figure 8). Furthermore the geographical coverage of administrative justice may also be problematic for part of the population especially vulnerable groups, as an administrative-dispute jurisdiction (*Tribunal contencioso-administrativo*) only exists in San José. Unlike many OECD countries, a fee is required to

<sup>134</sup> Existing human rights treaties do not provide any definition of legal aid.

<sup>135</sup> Moreover, legal representation especially in criminal proceedings is widely recognised as a fundamental component of the right to a fair trial and can be found in international Human Rights instruments and national constitutions and laws (UNODC, 2011).

<sup>136</sup> CEPEJ (2014).

<sup>137</sup> UN (2013).

<sup>138</sup> OECD (2014).

<sup>139</sup> Art.41, Constitution; Primer Informe Estado de la Justicia (2015), Programa Estado de la Nación, Costa Rica.

<sup>140</sup> Constitutional guarantee related to liberty and personal integrity.

<sup>141</sup> Constitutional right of every person to maintain or restore the enjoyment of other rights established in the Constitution (except the freedom protected by the Habeas corpus).

<sup>142</sup> For instance, the costs of an administrative dispute prevent most vulnerable parts of the population from accessing administrative justice. Moreover, the absence of public *pro bono* lawyer and the lack of specialisation in university legal offices were highlighted as obstacles to efficient access to lawyer in this area. Stakeholders, OECD Second Fact-finding mission, March 2017.

<sup>143</sup> 25,000 lawyers and accessible fees (cf. Stakeholders, OECD First Fact-finding mission, June 2016)

<sup>144</sup> Primer Informe Estado de la Justicia (2015), Programa Estado de la Nación, Costa Rica.

<sup>145</sup> For criminal justice 74% of cases correspond to rejections, especially in cases of sexual offenses, property crimes and crimes against life, or in processes with length exceeding 6 years and a half. Regarding labour justice, the effective judicial protection is challenged by the fact that almost 1/3 of conflicts are not resolved by the end of the procedure, or result in a settlement in which the complainant did not have legal advice.

<sup>146</sup> Stakeholders, (OECD Questionnaire, March 2017).

<sup>147</sup> The Social Defender (*Defensoría Social*) program, created by the Bar Association (*Colegio de Abogados*), provides free legal assistance to low-income parts of the population in family-law related issues. Stakeholders, OECD interviews, March 2017.

access the Official Gazette (*Diario Oficial*) publishing information on legal decisions, creating a barrier to justice for most citizens and NGOs<sup>148</sup>.

The Ombudsperson's Office (*Defensoría de los Habitantes*) does not hold any mandate in the protection of human rights<sup>149</sup>. The Ombudsperson belongs to the legislative branch and is aimed at controlling the legal and ethical conformity of the actions taken by the public sector, with the purpose of protecting the rights and interests of the citizens. It is part of the Inter-institutional Human Rights Commission (*Comisión Interinstitucional de Derechos Humanos*) which mandate is to coordinate the collection of information that will feed the Government's reports on the state of Human Rights in Costa Rica<sup>150</sup>. Because of its limited mandate, the Ombudsperson reports challenges from the judicial power to analyse the structural issues of its services<sup>151</sup>. Additionally to the Ombudsperson's Office, the Users' Commissions (*Comisiones de Usuarios*) also attend requests from citizens based on lack of action from public institutions<sup>152</sup>. There are allegedly three Users' Commissions currently fully developed and working<sup>153</sup>. Citizens can therefore either go to one or the other entity should they have a complaint to present.

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<sup>148</sup> Stakeholders, (OECD interviews, March 2017).

<sup>149</sup> Its Department of Promotion and Dissemination of Rights organises forums with civil society, workshops, trainings and other activities to promote human rights across Costa Rica.

<sup>150</sup> Article 6 of the Executive Order N° 36776-RE.

<sup>151</sup> If a citizen formulates a request or a complaint to a public institution which is not addressed after 6 months, he/she can attend the Ombudsperson's Office. Neither a fee nor representation from a lawyer are requested. If the institution in question belongs to the Judiciary, the Ombudsperson's Office will thus present a recommendation to the Plenary Court of the Judiciary. Stakeholders, OECD Second Fact-finding mission, March 2017.

<sup>152</sup> The first Users' Commission was created in 2010 following an investigation by the Deputy Ombudsperson on the state of access to justice in Costa Rica, which included participation of civil society organisations and a report presented to the Plenary Court of the Judiciary. Based on the recommendations of the report, a first pilot project was implemented in San Carlos and led to the creation of other Commissions in different judicial circuits. Stakeholders, OECD Second Fact-finding mission, March 2017.

<sup>153</sup> These Commissions present an Annual Work Plan in which they collect information on complaints from users. Moreover, the Commissions have a Technical Secretariat headed by the Comptroller of Services of the judicial circuit. Stakeholders, OECD Second Fact-finding mission, March 2017.

**Figure 8. Authorities responsible for granting Legal Aid and existence of private system for legal insurance in OECD-Council of Europe countries and observers, 2014**

State/Entities	Refusal possible for lack of merit of the case	Authorities responsible for granting or refusing Legal Aid			Private system of legal expenses insurance
		Court	External authority	Court and External authority	
Austria					
Belgium					
Czech Republic					
Denmark					
Estonia					
Finland					
France					
Germany					
Greece					
Hungary					
Ireland					
Israel					
Italy					
Latvia					
Luxembourg					
Netherlands					
Norway					
Poland					
Portugal					
Slovak Republic					
Slovenia					
Spain					
Sweden					
Switzerland					
Turkey					
UK-England and Wales					
UK-Northern Ireland					
UK-Scotland					

Source: CEPEJ, Report on “European Judicial Systems – Edition 2016 (2014 data): efficiency and quality of justice”

### *Vulnerable parts of the population*

In OECD countries, vulnerable and marginalised groups seem to be more prone to experiencing legal problems and additional legal hardship, whether it concerns specific ethnic groups, people with disabilities and mental illness or people facing difficult economic and social situations. Therefore, in OECD-Council of Europe countries, a majority of the states have eligibility rules for legal aid, based on either personal or household income thresholds, some of these States and entities also specify, as part of the eligibility rules, categories of persons who are eligible for legal aid without prior examination of the means of the individuals, such as socially vulnerable persons<sup>154</sup>. Past reforms on access to justice in Costa Rica were

<sup>154</sup> Bosnia and Herzegovina, Croatia, Latvia, Monaco, Montenegro, Spain, Turkey (CEPEJ, 2016)

mainly focused on gender-related issues and resulted notably in the creation of the Gender Commission (*Comisión de Género*) within the Supreme Court of Justice. Today the Access to Justice Commission develops institutional strategies under international standards<sup>155</sup> to improve access to justice conditions for vulnerable groups including elderly, persons with disabilities, children, migrants and refugees, minors in vulnerable conditions, sexual diversity and incarcerated people<sup>156</sup>. The Commission on Access to Justice has been working in coordination with the Executive Directorate to create a register of interpreters in Costa Rican Sign Language (*Lenguaje de Señas Costarricense*, LESCO), to facilitate access to justice for people with hearing impairment, as well as interpreters in various indigenous languages<sup>157</sup>. Similar to many OECD countries, Costa Rica is also developing integrated justice services in certain areas such as a one-stop shop for victims of domestic violence (*Plataforma Integrada de Servicios de Atención a Víctimas*)<sup>158</sup> and a quick response program to sexual assaults (*Equipos de Respuesta Rápida a Víctimas de Delitos Sexuales*)<sup>159</sup>. Additionally, the Judiciary launched in 2015 a smartphone application (*Empodérate*) for minors of age to have access to their rights and judicial offices' location.

Interacting with the justice system may raise additional barriers, especially for minority groups<sup>160</sup>. OECD countries are addressing cultural and discrimination challenges not only by eliminating formal legal barriers but also through awareness-raising and acknowledgment of their rights. Most OECD countries recognise the right of individuals to be informed of charges against them in a language they understand and the right to an interpreter if they cannot understand the language used in court, in line with a number of international treaties<sup>161</sup>. Court interpreters play a major role in guaranteeing access to justice for court users and are part of a high quality court system and a fair trial<sup>162</sup>. Indeed, without court interpretation and translation, some witnesses may not be able to testify or some documents may not be introduced as evidence<sup>163</sup>. In-court interpretation and translation of court documents are essential to ensuring equal protection of the laws to linguistic minorities and indigenous parts of the population. In a similar perspective, indigenous populations in Costa Rica are also subject to a growing attention in terms of access to justice opportunities, notably through the provision of interpreters to facilitate judicial processes and by using cultural expertise. Moreover, measures are being currently studied with the objective to establish judicial offices in areas close to indigenous populations, some of the material is being prepared in indigenous languages and a new position is being open to count with an interpreter in daily basis in the

<sup>155</sup> In 2008, the Plenary Court (Corte Plena) adopted the Brasilia Rules on Access to Justice for Vulnerable Persons (*Reglas de Brasilia sobre acceso a la justicia de las personas en condición de vulnerabilidad*) as institutional policy.

<sup>156</sup> In addition, from March 2016, Costa Rica's Ministry of Justice and Peace is collaborating with the Center for Justice and International Law (CEJIL) and the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), to realise a diagnosis on the conditions of incarceration faced by people considered as vulnerable, due to their sexual orientation, gender identity, disability, or ethnicity.

<sup>157</sup> Stakeholder, (OECD Questionnaire, March 2017).

<sup>158</sup> Its objective is to streamline the attention for the victims, by concentrating all the competent services (judicial administration, social services, psychological and legal assistance) under one platform.

<sup>159</sup> Operating since 2014 as a result of an agreement between the judicial administration and Costa Rica's social services (*Convenio de Cooperación para la Prestación de Servicios Médicos a las Víctimas de Delitos Sexuales*), Timely Response to Sexual Crimes Programme (*Programa de Respuesta Rápida a Delitos Sexuales*).

<sup>160</sup> IBA (2014).

<sup>161</sup> See, e.g. ICCPR, art. 14.3 (a and f); ECHR, art. 5.2 and 6.3 (a and e); American Convention on Human Rights, art. 8.2 (a); European Charter for Regional or Minority Languages, art. 9.1.

<sup>162</sup> CEPEJ (2014).

<sup>163</sup> This is problematic to the extent that material evidence, whether it is exculpatory or incriminating, may be excluded from the trial because the court simply does not understand the language in which it is presented, (UNODC 2011).

south zone (*Zona Sur*). Furthermore, a register of professionals trained to prepare anthropological and cultural surveys has been established.

### *Alternative Dispute Resolution mechanisms*

In OECD countries, Alternative Dispute Resolution mechanisms (ADR) and other alternative ways for meeting citizens everyday legal needs are generally considered as a way to enhance responsiveness to citizen needs and hence, justice accessibility, and are therefore increasingly used. Costa Rica started the use of Alternative Dispute Resolution mechanisms (ADR) in the 1990s, as part of both judicial and extrajudicial systems. Within the scope of the extrajudicial system, the Ministry of Justice and Peace through its National Directorate for Alternative Dispute Resolution (*Dirección Nacional de Resolución Alternativa de Conflictos*, DNARAC) manages the Private ADR Centres<sup>164</sup> and Justice Houses (*Casas de Justicia*). 14 Private ADR Centres operate across the country and offer mediation and arbitration services to resolve specific conflicts (trade, family, or labour cases). There are 16 Justice Houses, which aim to provide settlements through a mediation process involving an impartial third party (the mediator) (See Figure 9). They are competent to deal with community or intrafamiliar conflicts, as well as cases involving loan disputes, consumer's rights or labour law. The service is free of charge and places special emphasis on the local aspects of disputes' resolution.

**Figure 9. Geographical coverage of "Casas de Justicia", 2014**



Source: Figure provided by the Ministry of Justice and Peace

Conciliation Centres of the Judiciary (*Centro de Conciliación del Poder Judicial*) under the judicial power provide an opportunity to ADR mechanisms and particularly conciliation (which applies to different areas and during any phase of the judicial process). There are currently 9 offices throughout the country, with a central coordinating office in San José. They also work the Programme Restorative Justice (*Programa de Justicia Restaurativa*). The number of cases resolved through these mechanisms significantly increased

<sup>164</sup> Regulation n°32152, 27 October 2004, Regulation of Chapter IV of the Law on Alternative Dispute Resolution and Social Peace Promotion (*Reglamento al Capítulo IV de la Ley sobre Resolución Alternativa de Conflictos y Promoción de la Paz Social*) “N° 32152, 27/10/2004.

over the past years (e.g. 1471 cases in 2007 to 8039 cases in 2013). However, considering the overall volume of legal disputes and cases, these mechanisms do not appear to be fully exploited by users. In 2008, they only represented 3% of the resolved criminal cases and 20% of the labour-related disputes (including conciliation and extra-procedural satisfaction)<sup>165</sup>. Indeed, although nine local offices have been created across the country in addition to the San José's headquarters, the centres are still located away from certain communities<sup>166</sup>. Moreover, Costa Rican authorities further report the lack of awareness and willingness of parties to appear before Conciliators.

Facilitators (*Servicio Nacional de Facilitadoras y Facilitadores Judiciales*) help resolve minor conflicts through dialogue (*mediación comunitaria*)<sup>167</sup>. The Service is organised into 4 circuits and encompasses 396 facilitators. These facilitators are local leaders elected through an open assembly organised at the community level and certified by the local judge. In 2015, they oriented 3402 cases and mediated 160 disputes<sup>168</sup>. It is necessary to also highlight the existence of other alternative measures of conflict resolution in criminal matters, such as the Full Reparation of Damages (*Reparación Integral del Daño*) and the Suspension of Testing Process (*Supensión del Proceso a Prueba*), are only possible in judicial proceedings, because they correspond to criminal matters

As in a growing number of OECD countries, efforts in Costa Rica to develop ADR mechanism are numerous and varied from the judicial power, the Ministry of Justice and Peace and the private sector (e.g. Bar Association). Access to alternative forms of conflict resolution is recognised as a fundamental right by the Constitutional Court of Costa Rica (*Sala Constitucional*)<sup>169</sup>. Yet this diversification is prone to overlap and unforeseen gaps in service provision due to the lack of national coordination and coordinated service delivery strategy. Moreover the lack of information may reinforce a perception of mistrust in the effectiveness of these dispute resolution mechanisms<sup>170</sup>. Municipalities further report little involvement in the delivery of extra-judicial justice services. A process of improvement of the Conciliation Center is being carried out, which seeks to improve case management and monitoring systems through the Departments of Informatics and Statistics (*Departamentos de Informática y Estadística*), which supported other institutional programs related to ADR mechanisms.

### **Enforcement**

Regarding civil justice, views on the effectiveness of the enforcement of decisions, the absence of unreasonable delay and the efficiency of legal framework in settling disputes vary significantly across OECD countries. Moreover there seems to be a correlation with perceived judicial effectiveness in civil justice. In many OECD countries, the proper enforcement of civil judgements appears to be a challenge. Countries with a proper system of civil enforcement are perceived more positively in terms of effectiveness<sup>171</sup>, which may correlate to a perceived independence from undue government influence (Figure 10). Unlike most countries presented in the Figure, Costa Ricans have a low perception of civil justice enforcement, and yet civil justice is considered free of improper government. Judicial proceedings for enforcement of judgements exist for all justice systems in Costa Rica<sup>172</sup>. However, little statistical

<sup>165</sup> Primer Informe Estado de la Justicia (2015), Programa Estado de la Nación, Costa Rica

<sup>166</sup> Stakeholders, OECD First Fact-finding mission, June 2016

<sup>167</sup> They also provide information and assistance on legal procedures, organising informative meetings on justice or other topics of interest for the community, contribute to a peaceful cohabitation and establish a linkage between the locals and the Judiciary

<sup>168</sup> Informes trimestrales reportados por las Administraciones Regionales.

<sup>169</sup> Right derived from the principles and peaceful values as well as Article 43 of the Constitution; Stakeholders, (OECD Questionnaire, March 2017).

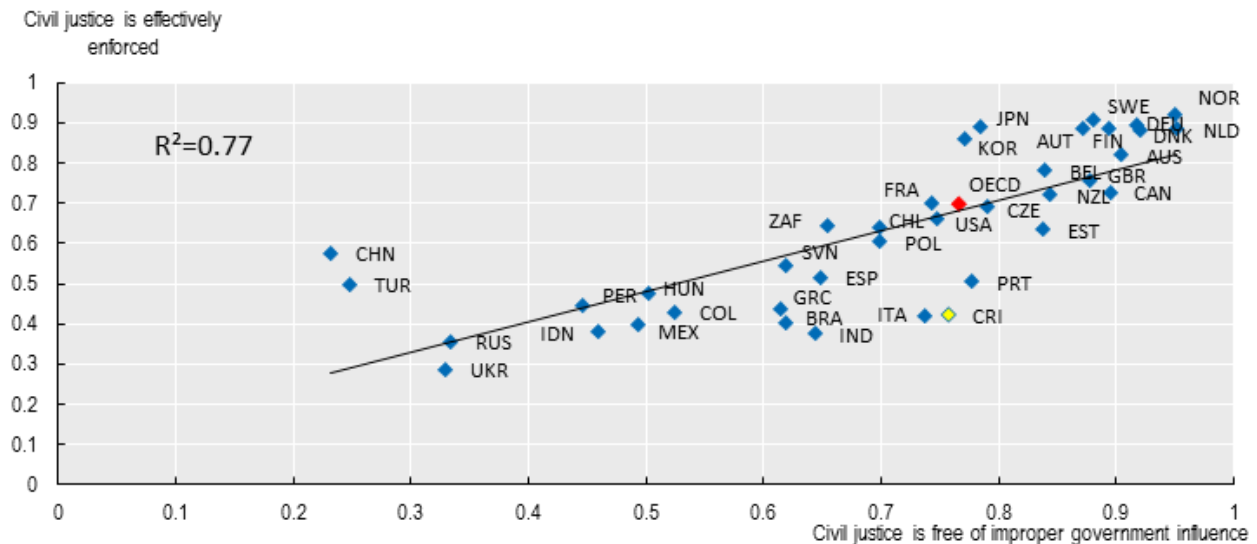
<sup>170</sup> Stakeholders, (OECD Questionnaire, March 2017).

<sup>171</sup> OECD (2014).

<sup>172</sup> Civil Procedural Code; Administrative Procedural Code; Criminal Procedural Code

evidence exists in the number of decisions that are fully or partially executed. Enforcement is also reported as weak for non-constitutional justice decisions<sup>173</sup>.

**Figure 10. Perceived enforcement of civil justice and freedom from improper government influence, 2016**



Source: World Justice Project

Conversely, enforcement of Constitutional Court decisions is described as high due to a well-devised procedure, resources and strong follow-up<sup>174</sup>. Public officials are open to disciplinary and civil and where appropriate, criminal liability for non-enforcement. A number of its decisions are also enforced by Administrative Courts.

### Preliminary assessment and recommendations

Overall, similarly to a majority of OECD countries, Costa Rica has been taking important steps to modernise its justice sector by developing Alternative Dispute Resolution mechanisms, performance appraisal for judicial officers and quality standards along with the implementation of local electronic-oral pilot projects.

Costa Rica is further championing access to justice and open government (including in justice) initiatives. While challenges remain in those areas, its justice system offers a number of good practices including *Casas de Justicia*, growing systematisation of judicial information and integrated justice services or enforcement mechanisms of constitutional justice decisions. Clear efforts are underway to advance a cultural shift towards seeing justice as a public service, which is illustrated by the willingness of the judicial power to advance and promote Open Justice and the creation of Access to Justice Commissions.

<sup>173</sup> Stakeholders, OECD First Fact-Finding mission, June 2016. For instance, in criminal disputes, the enforcement of suspended sentences or alternative measures (eg. Suspension of Testing Process -*Suspensión del Proceso a Prueba*) was highlighted as particularly low. Stakeholders, OECD Questionnaire, March 2017.

<sup>174</sup> Stakeholders, OECD First Fact-Finding mission, June 2016



Yet the structure of its justice system is intricate and potentially prone to functional overlapping, evidenced in the numbers of topical commissions and other bodies. Moreover, there are challenges in the co-ordination and communication channels between the judiciary and the executive, which results in limited co-ordinated service delivery. This could raise an issue about the degree of coherence with OECD best practice with respect to functioning of the justice in certain regions and municipalities. Additionally, this may have a stronger impact in certain regions and municipalities. Another issue relates to the balancing of judicial independence and accountability. Transparency and safeguard mechanisms within the Judiciary still present challenges (weak regulatory framework for the appointment of judges). Furthermore, even though new mechanisms are currently under development, the lack of consistent judicial statistics and impact assessment may hinder coherent planning strategy and the evaluation of what was achieved, what worked and what is pending.

These issues need to be addressed in order to strengthen judicial services' legitimacy and thus citizens' confidence in Costa Rica's justice system, in line with general practice across OECD countries. Some of the specific recommendations that Costa Rica may consider in improving these elements include:

- Simplify and strengthen the current justice system, for example by reducing the number of administrative entities (e.g. ad hoc Commissions);
- Develop and implement the Integrated Performance Appraisal System (*Sistema Integrado de Evaluación del Desempeño*, SIED) on specific judicial bodies in order to ensure an efficient implementation across the whole judicial system;
- Improve efficiency of administrative justice, for example by creating local administrative disputes offices and procedural tools, in order to enhance responsiveness to citizens' legal needs throughout the country;
- Develop a coordinated service delivery strategy, for example, by strengthening dialogue between judicial bodies and the Executive, especially at the regional level;
- Improve the balance and accountability of the judiciary, by for example, reinforcing transparency and safeguards against undue influence in the appointment process of High Court judges and integrity breaches;
- Enhance accessibility of justice, by implementing a strategy to reduce court delays and to ensure equitable and fair treatment of user of the justice system. This, for example, could include facilitating access to information on foreseeable timelines of court proceedings, improving legal literacy and enhancing transparency of legal documents and judicial decisions.

## Critical Risk Management

### *Introduction*

This section assesses Costa Rica's policies and practices that reflect implementation of the OECD Recommendation on the Governance of Critical Risks<sup>175</sup> (hereafter "the OECD Recommendation"), to which it adhered in 2014. The OECD Recommendation prescribes governance arrangements to enhance capacities to anticipate and manage critical risks, e.g. related to the conduct of national risk assessments,

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<sup>175</sup> OECD (2014), Recommendation of the Council on the Governance of Critical Risks, <http://www.oecd.org/gov/risk/Critical-Risks-Recommendation.pdf>

raising risk awareness of exposure to hazards and creating incentives for investments in risk prevention, establishing emergency preparedness capacities adequate to adapt responses to unknown or poorly understood risks, and tailoring recovery mechanisms to reduce vulnerability to future events. The recommendation also promotes the use of tools to manage financial impacts of disasters, and building transparency and accountability mechanisms into risk management decisions across the board.

### *Governance of risk management*

The first principle of the OECD Recommendation recommends the establishment and promotion of a comprehensive, all-hazards and transboundary approach to country risk governance to serve as the foundation for enhancing national resilience and responsiveness. To do so, it is recommended to develop a national strategy for the governance of critical risks that defines priorities and risk governance capabilities and clarifies governance roles. The governance of critical risks should be a shared task, with leadership assigned at the national level, adequate engagement of sub-national government actors and partnerships with the private sector. Overall, Costa Rica has taken the necessary steps to fulfil the elements recommended in this principle, with some room for enhancing the involvement of sub-national and non-governmental stakeholders.

Costa Rica's risk management policy is anchored in the National Law 8488 on Emergencies and Risk Prevention stemming from 2006 (*Ley Nacional de Emergencias y Prevención de Riesgos*). There are two key national risk management policy documents. The first is the National Risk Management Policy (*Política Nacional de Gestión del Riesgo*)<sup>176</sup>, which currently covers the period 2016 until 2030 and aims to align itself with the objectives of the Sendai Framework for Disaster Risk Reduction<sup>177</sup> (2015-2030) and the Sustainable Development Goals (2015-2030). The second is the National Risk Management Plan (*Plan Nacional De Gestión del Riesgo*)<sup>178</sup>, which was issued in 2016 and covers the period until 2020. Whereas the National Risk Management Plan spells out medium - to long-term disaster risk reduction objectives, providing a set of concrete actions and responsibilities across different institutions, the National Risk Management Policy aims at making risk management an integrated part of Costa Rica's National Development Plan.

The cooperation with neighbouring countries in terms of disaster relief takes place within the framework of the Coordination Centre for the Prevention of Natural Disasters in Central America (*Centro de coordinación para la prevención de los desastres naturales en América Central – CEPREDENAC*). Established in 1988, CEPREDENAC is the specialized institution of the Central American Integration System for natural disaster prevention, mitigation and response. Its key policy document is the Regional Disaster Reduction Plan (PRRD), which aims at advancing the inclusion of disaster risk reduction in legislation and policies to advance the region's resilience.

The National Risk Management System (NRMS) provides details of responsibilities and links across different risk management actors. The NRMS is grounded in the Law 8488 on Emergencies and Risk Prevention (*Ley Nacional de Emergencias y Prevención del Riesgo*) (specifically in Article 6). The NRMS describes the public administration of Costa Rica's risk management programs and their funding, and the responsibilities of all governmental and non-governmental stakeholders, including the private sector and civil society. Its central purpose is to reduce vulnerability to disasters, protect life and property, and

<sup>176</sup> Comisión Nacional de Prevención de Riesgos y Atención de Emergencias. *Política Nacional de Gestión del Riesgo 2016-2030/ La Comisión*. – San José, CR. CNE, 2015.

<sup>177</sup> UN ISDR (2015), *Sendai Framework for Disaster Risk Reduction 2015-2030*. United Nations Strategy for Disaster Risk Reduction.

<sup>178</sup> Comisión Nacional De Prevención De Riesgos Y Atención De Emergencias *Plan Nacional De Gestión Del Riesgo 2016-2020*.

promote a safe and supportive development. The NRMS is divided into several sub-systems that reflect phases of the risk management cycle and that spell out details regarding scope of work programs and competencies. These include, for example, risk reduction, preparedness and response or recovery.

The NRMS is structured around different coordination bodies and the key risk management stakeholders are highlighted in Table 6. The NRMS' Board of Directors (or Commission; *Junta Directiva*) dictates the general policies, which are summarised in the National Risk Management Plan. The NRMS is also composed of the National Commission for Risk Prevention and Emergency Response (*Comisión Nacional de Prevención de Riesgos y Atención de Emergencias*, CNE) and the National Risk Management Forum (*Foro Nacional de Gestión de Riesgo*) (including all stakeholders/institutions that are given a role under Law 8488), which is responsible for monitoring the risk management policies. In addition to the Board of Directors, the CNE and the Forum, the NRMS consists of the Monitoring Committees for the Subsystems; Sectorial Committees for Risk Management; Institutional Committees for Risk Management; Regional, Municipal, and Community Emergency Committees; Technical Advisory Committees; Thematic and Territorial Networks.

In line with the OECD Recommendation, the CNE plays a key role in coordinating and driving policy development and implementation across ministerial boundaries. The CNE, through the National Risk Management System, connects policy agendas and aligns competing priorities across ministries and between central and local governments, including the institutionally decentralised sectors, with competencies in disaster risk management. The CNE develops the National Risk Management Policy Document and the National Risk Management Plan. The CNE works under the Presidency of Costa Rica (*Presidencia de la República*). Its governing body is composed of five key ministries: the Ministry of Finance (*Ministerio de Hacienda*), the Ministry of Housing and Human Settlements (*Ministerio de Vivienda y Asentamientos Humanos*), the Ministry of Public Works and Transport (*Ministerio de Obras Públicas y Transportes*), the Ministry of Health (*Ministerio de Salud*), and the Ministry of Public Safety (*Ministerio de Seguridad Pública*), as well as the Presidency of the Republic (*Presidencia de la República*). In addition, two autonomous institutions, the National Insurance Institute (*Instituto Nacional de Seguros*, INS) and the Joint Institute for Social Assistance (*Instituto Mixto de Ayuda Social*, IMAS), as well as the Costa Rican Red Cross are also part of the governing body of CNE. Further strengthening of the CNE could build upon OECD best practices, such as Mexico's National Board of Civil Protection (NBCP) which regularly brings all relevant national and sub-national stakeholders together to coordinate policies and guidelines for civil protection and disaster prevention, and, when necessary, serves as a platform for dialogue with relevant non-governmental stakeholders<sup>179</sup>.

In accordance with the OECD Recommendation, sub-national governments have an important function in Costa Rica's risk management system. The CNE has nine territorially decentralised bodies, which are called the Regional Emergency Committees and whose members consist of representatives of the public institutions in the territories covered. The regional Emergency Response Committees (*Comités Regionales de Emergencia*) coordinate and plan emergency response in their territory. In addition, at the local level, all 81 municipalities have locally organised emergency committees, 77 of which allocate budgets for risk management and 20 of them have specifically designated risk management staff<sup>180</sup>. As stipulated by Law 8488, local governments have also been put into the driver's seat in terms of disaster risk prevention. Municipalities are in charge of developing urban regulatory plans that regulate land use. These plans

<sup>179</sup> OECD (2013), *OECD Reviews of Risk Management Policies: Mexico 2013: Review of the Mexican National Civil Protection System*, OECD Publishing, Paris.

DOI: <http://dx.doi.org/10.1787/9789264192294-en>.

<sup>180</sup> Mideplan (2015), Plan Nacional de Desarrollo 2015-2018- Alberto Cañas Escalante, <https://documentos.mideplan.go.cr/alfresco/d/d/workspace/SpacesStore/cd1da1b4-868b-4f6f-bdf8-b2dee0525b76/PND%202015-2018%20Alberto%20Ca%C3%B1as%20Escalante%20WEB.pdf>.

include information on risks and threats, as elaborated by the CNE at the national level, and sometimes complemented by local appraisals carried out by local government. At present, around 40 municipalities have risk-informed land use plans (CNE, 2015<sup>181</sup>). Apart from the land use plans investments in actual disaster risk prevention measures have been limited, above all because no additional resources have been made available to local governments to carry out this responsibility. In addition, there is room to strengthen the enforcement of risk-informed land use plans and building codes is limited for the time being. Best practices from OECD countries exist among others in France, where mayors are responsible for enforcing hazard zones in land use decisions and can be made liable, if they ignore hazard zones, which could serve as example for strengthening the enforcement of land use plans<sup>182</sup>.

Consistent with a whole-of-society approach to risk management, which is proposed as good practice by the OECD Recommendation, non-governmental actors play an increasingly strong role in Costa Rica's risk management system, even if there is further room for increasing their engagement. Community-based organisations participate in the local emergency committees. This includes, for example, the Costa Rican Red Cross that provides key emergency management support at the local level throughout the country. The private sector, especially through the work of business chambers has included concepts of social responsibility, business continuity and corporate sustainability into their business plans. A national strategy to promote risk management in the private sector has been elaborated that aims at fostering private sector contributions to the country's resilience against future disasters. In the current national risk management planning documents, the private sector is called upon to contribute to public-private partnerships in the areas of environmental protection, forest recovery and aquifer recharge areas, but overall partnerships with the private sector are still in their early stages.

**Table 7. Key risk management stakeholders in Costa Rica**

Stakeholder Name	Key Risk Management Responsibilities	
Governmental actors		
National Commission for Risk Prevention and Emergency Response ( <i>Comisión Nacional de Prevención del Riesgo y Atención de Emergencias</i> )	Risk management leadership and coordination function Develop national planning instruments (National Risk Management Policy Document; National Risk Management Plan) Promote, organize and coordinate risk management across sectors and levels of government through the National Risk Management System Oversee National Emergency Fund	
Presidency of the Republic ( <i>Presidencia de la República</i> )	The CNE is organized under the Presidency; the Presidency takes the lead in putting in place the legal and regulatory framework the CNE needs to operate;	Member of the Board of Directors
Ministry of Health ( <i>Ministerio de Salud</i> )	Coordination function in terms of awareness of disaster risks in the health sector;	
Costa Rican Department of Social Security ( <i>Caja Costarricense de Seguro Social, CCS</i> )	Ensures the safety of health centers and services against disaster risks; Finances reconstruction and rehabilitation of health centers, including hospitals;	
Ministry of Public Works and Transportation ( <i>Ministerio de Obras Públicas y Transportes</i> )	Ensure that all public investments are screened for disaster risks and promote the integration of resilience measures from the design stage of public works;	
Ministry of Public Safety ( <i>Ministerio de Seguridad Pública</i> )	In charge of public safety, including the police force;	

<sup>181</sup> Comisión Nacional de Emergencia (2015), Informe de Labores 2009-2014.

[https://www.cne.go.cr/index.php/informes-de-gestion/doc\\_view/3082-memoria-institucional-2009-2014\\_p.8](https://www.cne.go.cr/index.php/informes-de-gestion/doc_view/3082-memoria-institucional-2009-2014_p.8).

<sup>182</sup> OECD (*forthcoming*), Boosting Resilience through Innovative Risk Governance: The Case of the Rhône River in France, OECD Publishing, Paris.

Ministry of Environment and Energy ( <i>Ministerio de Ambiente y Energía, MINAE</i> )	Structural and non-structural measures to reduce vulnerabilities to disasters	
Ministry of Finance ( <i>Ministerio de Hacienda</i> )	Managing financial instruments for disaster risk management (such as contingent credit lines, evaluating the accession to the Caribbean Insurance Facility) Financial strategy for risk management and adaptation to climate change	
Ministry of Housing and Urban Development ( <i>Ministerio de Vivienda y Asentamientos Humanos</i> )	Urban and rural development plans Development of guidelines and restrictions of land occupation On a needs basis, organization of the relocation of households in hazard-prone areas	
Joint Social Welfare Institute ( <i>Instituto Mixto de Ayuda Social, IMAS</i> )	Identification, prioritization and support to vulnerable people located in hazard-prone areas Provides temporary housing allowances to disaster-affected people	
National Insurance Institute ( <i>Instituto Nacional de Seguros</i> )	Advising on issues of risk transfer management	
Ministry of National Planning and Economic Policy ( <i>Ministerio de Planificación Nacional y Política Económica, MIDEPLAN</i> )	Ensure the integration of risk reduction measures in public investment projects; recommend resilience measures such as avoidance of construction in hazard prone areas	
Ministry of Public Education ( <i>Ministerio de Educación Pública</i> )	Developing a culture of risk through the integration of risk management topics in school curricula	
Volcanic and Seismic Risk Observatory ( <i>Observatorio Vulcanológico y Sismológico de Costa Rica, OVISCORI</i> )	Monitoring seismic and volcanic activity	
The National Meteorological Agency ( <i>Meteorológico Nacional</i> )	Forecasting and monitoring weather, atmospheric water and climate	
Non-governmental actors		
Latin American Faculty of Social Sciences ( <i>Facultad Latinoamericana de Ciencias Sociales, FLACSO</i> ), regional organisation	Conducts studies on disaster risk management Recent program focus has been on drought Manages DESINVENTAR disaster loss database	
Costa Rican Red Cross	Emergency assistance	
Private sector	Contribute to resilience through business continuity planning Engage in public-private partnerships for specific disaster risk reduction projects	

Source: Accession Questionnaire responses; Accession fact-finding mission notes

### ***Risk assessment***

The second principle of the OECD Recommendation recommends building preparedness to better anticipate complex and wide-ranging impacts. To this end, governments should develop risk anticipation capacity across departments and agencies and create linkages between anticipation capacity and policy making. There has been significant progress in this area of risk work in Costa Rica, but there remains scope for further improvements in this area, especially in terms of strengthening the country's risk anticipation capacity.

The CNE, which is responsible for developing hazard maps covering the entire territory of Costa Rica, develops and publishes hazard information in what is called the “Hazard Atlas”<sup>183</sup>. Unlike in many OECD countries<sup>184</sup> vulnerability analysis is not systematically carried out as part of national risk assessment processes. Specific hazard studies are conducted by selected municipalities, academic institutes or NGOs to study local-level hazards and vulnerabilities in more detail. For their specific operations, insurance companies and banks carry out such analysis to develop financial protection tools. Some infrastructure operators, such as Costa Rica’s Electricity Institute (*Instituto Costarricense de Electricidad*), Costa Rica’s Institute of Aqueducts and Sewers (*Instituto Costarricense de Acueductos y Alcantarillados*), or the Costa Rican Oil Refinery (*Refinadora Costarricense de Petróleo*), carry out vulnerability analysis to the extent that is relevant to their operations. To mainstream risk assessment and risk reduction considerations across sectors, the Ministry of National Planning and Economic Policy (*Ministerio de Planificación Nacional y Política Económica*, MIDEPLAN) has developed a methodological guide<sup>185</sup> for an obligatory risk assessment for public investment projects.

In terms of assessments of the potential impact of disasters on economic activity, existing studies are confined to specific sectors and do not, as yet, systematically look at a distinction of impacts on stocks (i.e. assets at a given moment in time, such as infrastructure) versus flows (i.e. the value of (business) transactions over a period of time). Such sophisticated analyses are carried out only by specific actors for their specific interests, such as the National Insurance Institute (*Instituto Nacional de Seguros*). The risk assessment studies carried out by those latter actors typically involve probabilistic or deterministic methods to assess potential impacts of disasters on different areas of economic activity. Generally speaking there is awareness and an effort being made to improve the country’s information system to eventually being able to develop modelling and risk scenarios that allow for estimating future losses to stocks and flows caused by disasters. An increasing number of OECD countries considers the potential impact of disasters on economic activity in national risk assessments<sup>186</sup>. A good practice can be found in Australia, where the economic impact is considered as one of six factors considered in the impact analyses conducted as part of the national risk assessment. Differentiating between losses in economic activity and asset value, as well as impacts on important industry and infrastructure, economic impact is ranked along five steps, ranging from ‘insignificant’ to ‘catastrophic’.

There is an increasing awareness of the potential impacts of climate change, especially in terms of increasing the potential frequency and severity of natural disasters. For example, Costa Rica expects droughts to increase in the north of the country, and precipitation to increase on the Caribbean coast line, leading to more frequent and more intense flooding (MINAET & *Instituto Meteorológico Nacional de Costa Rica*, 2012)<sup>187</sup>. A national adaptation plan is currently being developed to ensure the country engages in the necessary actions to confront these potential future challenges.

<sup>183</sup> Comisión Nacional de Prevención de Riesgos y Atención de Emergencias (n.d.), Atlas de Amenazas Naturales, [https://www.cne.go.cr/Atlas%20de%20Amenazas/atlas\\_de\\_amenazas/atlasde.htm](https://www.cne.go.cr/Atlas%20de%20Amenazas/atlas_de_amenazas/atlasde.htm).

<sup>184</sup> OECD (*forthcoming*), National Risk Assessments: A Cross Country Perspective. [GOV/PGC/HLRF\(2016\)7](http://www.oecd.org/gov/pgc/hlrf/2016/7/).

<sup>185</sup> MIDEPLAN (2014), Metodología de análisis de amenazas naturales para proyectos de inversión pública en etapa de perfil. Convenio Interministerial Ministerio de Agricultura y Ganadería y Ministerio de Planificación Nacional y Política Económica, San José.

<sup>186</sup> OECD (*forthcoming*), National Risk Assessments: A Cross Country Perspective. Country Profiles, [GOV/PGC/HLRF\(2016\)7/ANN1](http://www.oecd.org/gov/pgc/hlrf/2016/7/ANN1)

<sup>187</sup> MINAET & Instituto Meteorológico Nacional de Costa Rica (2012), Escenarios de Cambio Climático. [http://cglobal.imn.ac.cr/sites/default/files/documentos/escenarios\\_de\\_cambio\\_climatico\\_digital\\_0.pdf](http://cglobal.imn.ac.cr/sites/default/files/documentos/escenarios_de_cambio_climatico_digital_0.pdf).



### *Risk prevention*

The third principle of the OECD Recommendation emphasises the need to raise awareness of critical risks to mobilise households, businesses and international stakeholders and foster investment in risk prevention and mitigation. To this effect, adherents should take a whole-of-society approach to risk communication, strengthen the mix of structural and organisational protection measures and encourage the private sector to take steps to ensure business continuity. In line with the Recommendation, Costa Rica implements a comprehensive mix of structural protective and organisational measures to reduce negative impacts of disasters. It thereby seeks to foster a whole-of-society approach to risk communication, but there is further scope to monitor and maximise the cost-effectiveness of public and private investments in risk reduction.

Disaster risk prevention is firmly anchored as a goal in Costa Rica's current national policy documents. The National Risk Management Policy stipulates as an objective that safe and sustainable national development needs to be based on forward-looking risk management. This should include a reduction of vulnerability, avoiding future disaster losses, creating a culture of risk prevention and promoting effective disaster recovery. Concretely these objectives entail measures to reduce risk factors for vulnerable people and reduce the number of people currently affected by disasters, but also building in resilience into public investments and local development strategies. This so-called mainstreaming of disaster risk reduction across sectors has received a strong policy focus. Although the strategic objectives for risk prevention are firmly anchored in national development documents, there is no budget measure available that indicates the overall budget envelope dedicated to risk prevention efforts. Information on the investments in risk reduction made by the private sector, notably to protect their infrastructure and ensure business continuity, are not collected by the government. The absence of comprehensive information on resources spent on disaster risk reduction is widespread among OECD countries, with only few exceptions. The Japanese Government, for example, has tracked the development of its disaster-related expenditures over the past fifty years, while in Austria the Federal Ministry of Agriculture, Forestry, Environment and Water Management has tracked the risk prevention and mitigation expenditures of the responsible federal government institution since 2002<sup>188</sup>.

Costa Rica also does not apply standard cost-benefit analyses that measure the economic value of investing in risk reduction efforts. Best practices from across OECD countries, can serve as an example for developing such instruments in Costa Rica. Standard cost-benefit analyses typically consider factors such as construction and maintenance costs and avoided damages to buildings or critical infrastructures. In some OECD countries, additional criteria are considered, ranging from intangible benefits on a point scale included in Austrian cost-benefit analyses to social and environmental aspects considered in the Swiss approach. In France, alternative methods are proposed, such as multi-criteria analysis that allow for the incorporation of non-monetary values and attaching different decision weights to them<sup>189</sup>.

Overall, this hints at difficulties for the CNE to actually steer different institutions' efforts in risk reduction towards common objectives, and to monitor what is being done across the sectors and levels of governments to reduce disaster risks.

The active engagement of Costa Rica in international disaster risk reduction efforts, including the Sendai Framework for Disaster Risk Reduction and the Sustainable Development Goals (SDGs), have contributed to the country's increasing focus on disaster risk prevention, anchored in its national risk management strategies. Costa Rica's historical exposure to large scale natural disasters has also contributed to making

<sup>188</sup> OECD (*forthcoming*), Improving the Evidence Base on the Costs of Disasters. Towards a Framework, [GOV/PGC/HLRF\(2016\)5](#).

<sup>189</sup> OECD (*forthcoming*), Implementing the Recommendation on the Governance of Critical Risks: Overview of Country Progress. [GOV/PGC/HLRF\(2016\)8](#).

risk prevention activities a longstanding part of the country's risk management policy. For example, building codes have been adapted to reduce the impacts of disasters. Since 1910, building with adobe has been banned and 1974 saw the introduction of a nation-wide seismic building code<sup>190</sup>. Environmental regulations include measures to regulate developments close to river banks or the protection of coastal marine areas. In addition, the CNE carried out several structural measures over the years, ranging from building embankments over enlarging river banks to dikes and dams. For effective disaster risk reduction management, structural and organisational measures need to go hand in hand. It is important to limit an accumulation of settlements and assets in hazard-prone areas. Hazard zone planning, risk mapping, spatial planning or building code enforcement are all important complementary measures that should be part of an optimal risk prevention policy mix. Costa Rica, like most OECD countries, prioritizes non-structural measures in their efforts for enhancing risk prevention and mitigation<sup>191</sup>. Law 8488 stipulates that the CNE has to generate information on prevailing risks at the local level so that municipalities can integrate this into their land use plans. Land use (or regulatory) plans in Costa Rica define high risk areas, where limitations or bans for construction are highlighted. Lower risk areas highlight specific risk prevention measures that should be integrated in new construction works.

The Seismic Code Commission of the Engineers and Architects Association (*Comisión Permanente de Estudio y Revisión del Código Sísmico*)<sup>192</sup> works with technical experts and scientists to develop guidelines and buildings codes that integrate seismic hazard information into new constructions. Construction permits undergo a rigorous assessment process, whereby municipalities appoint an engineer who inspects and monitors the implementation of building code prescriptions in ongoing construction works. The seismic code adoption is a requirement for obtaining a mortgage, whereby private banks ask for three types of institutions to confirm that a construction project adheres to the earthquake code. For existing buildings, chapter 15 of the seismic code establishes a set of diagnostic tools to determine buildings' seismic resilience and puts forward a set of retrofitting measures, especially also for historic monuments.

Many disasters have shown that settlements had been built in high-risk areas. In response to that, Costa Rica has engaged in efforts to resettle and rebuild houses or whole communities in areas that are safe from hazards, or, if not possible, to ensure risk prevention measures are installed to avoid future losses to houses.

Risk communication is the first, and one of the most important steps when initiating a whole-of-society engagement in risk prevention and mitigation. In line with the OECD Recommendation, like most OECD countries, Costa Rica takes a whole-of-society approach to risk communication, using various tools and to inform citizens and businesses alike<sup>193</sup>. Law 8488 puts the CNE in charge of communicating risks, but this is as much a shared task as other risk management measures. The purpose of risk communication in Costa Rica includes raising public awareness of risks, enhancing knowledge about risks through education and training, enhancing knowledge about self-protection measures and encouraging protective behaviour. Education policy has an important role to play in promoting a culture of risk prevention through effective risk communication. The media has played an important role in disseminating risk information and organising information campaigns. Recognizing the possible cascading and knock-on effects that may be

<sup>190</sup> Colegio Federado de Ingenieros y de Arquitectos de Costa Rica (2010). Código Sísmico de Costa Rica. Instituto Tecnológico de Costa Rica.

<sup>191</sup> OECD (*forthcoming*), Implementing the Recommendation on the Governance of Critical Risks: Overview of Country Progress. [GOV/PGC/HLRF\(2016\)8](#).

<sup>192</sup> Código Sísmico de Costa Rica (n.d.), Miembros de la Comisión Permanente de Estudio y revisión del Código Sísmico, <http://www.codigosismico.or.cr/miembros.htm> (accessed 24 March 2017).

<sup>193</sup> OECD (*forthcoming*), Implementing the Recommendation on the Governance of Critical Risks: Overview of Country Progress. [GOV/PGC/HLRF\(2016\)8](#).



caused by disruptions of critical infrastructure, the Costa Rican government keeps operators of critical infrastructure specifically informed of their respective exposure to critical risks<sup>194</sup>.

National Educational Plans for Risk and Disaster Management have been developed in Costa Rica, the latest of which covers the period from 2014 to 2016. Their aim is to increase risk awareness through inclusion of disaster risk management in school curricula. Schools' vulnerability is assessed by using a "traffic light system" that indicates the level of exposure of schools around the country. One of the goals of public education activities regarding risk management has been to make children become spokespersons that communicate about risks and thereby help increase community awareness of risks. Best practices from across OECD countries might serve as inspiration for further advancements of Costa Rican risk communication efforts. France's Natural Risks Mission (*Mission Risques Naturels*, MRN), for example, could serve as an example for furthering risk communication between the private and the public sectors, while transboundary approaches, such as the Joy at the River (*Freude am Fluss*) project designed and implemented by the Netherlands, France and Germany, could be an example for communicating risks across Costa Rica's borders<sup>195</sup>.

A key measure that increases the resilience of individual businesses and sectors against disruptive shocks is business continuity planning, which includes redundancy measures or back-up suppliers, among other measures. Costa Rica's national risk management policies include a set of actions to promote business continuity planning, including standards and toolkits tailored for operators of critical infrastructure. Business associations, international organisations and non-governmental organisations have contributed to promoting business continuity among private sector actors. However, much like in the majority of OECD countries<sup>196</sup>, there is no systematic collection of information on businesses' and (critical) infrastructure operators' awareness and actual investments in business continuity.

### ***Emergency preparedness, response and recovery***

The fourth principle of the Recommendation recommends for countries to develop adaptive capacity in crisis management by coordinating resources across government, its agencies and broader networks to support timely decision-making, communication and emergency responses. In Costa Rica emergency management capacity is firmly established throughout levels of government, reflected in the strong focus on funding earmarked for preparedness and response activities.

A key element of an effective emergency management is the availability of early warning systems for all prevailing hazards that allow for the timely detection and dissemination of warning messages to exposed communities. Much like in an increasing number of OECD countries, capacities to forecast, detect and anticipate hazardous events are increasing in Costa Rica. Costa Rica ensures the monitoring of hazards in identified areas of risk, such as rivers of the Atlantic and the Pacific slope, active volcanoes and areas at risk of landslides. Scientists and research centres are engaged in monitoring hazard levels and mechanisms are in place to issue warnings and alerts. Protocols and operating procedures are established under the National Risk Management System and the CNE is responsible for promoting and maintaining an active community response organisation in case of emergencies. A National Communications System that integrates radio systems of all response organisations ensures that all checkpoints in the country are integrated. Every six hours a monitoring exercise is performed, where each check point reports on the

<sup>194</sup> OECD (*forthcoming*), Implementing the Recommendation on the Governance of Critical Risks: Overview of Country Progress. [GOV/PGC/HLRF\(2016\)8](#).

<sup>195</sup> OECD (2016), OECD Reviews of Risk Management Policies. Trends in Risk Communication Policies and Practices, OECD Publishing: Paris.

<sup>196</sup> OECD (*forthcoming*), Implementing the Recommendation on the Governance of Critical Risks: Overview of Country Progress. [GOV/PGC/HLRF\(2016\)8](#).

threat level to the communications office of the CNE. The CNE has to activate alerts and the committees are responsible for disseminating information to communities, through radio operators, loudspeakers or field level visits. To engage with the centre of government, the CNE reports both directly to the Head of Government and through the responsible Minister<sup>197</sup>. Despite the strong available capacities, best practices, such as Denmark's Pandora Cell for crisis anticipation, which provides ad-hoc expertise to crisis managers, could be useful models for further enhancements.

Emergency response plans have been developed at all territorial levels in Costa Rica. Operational response procedures are described in manuals. Emergency equipment at local level is provided by the CNE. Fatality rates stemming from natural disasters have been reduced significantly over the past decades. The 2012 earthquake, whose recorded magnitude of 7.2 was the second highest in Costa Rica's history, only saw two recorded fatalities. 7 flood related deaths have been recorded since 1992 (Desinventar, n.d)<sup>198</sup>. Emergency procedures are regularly tested during emergency drills. The CNE organises an annual national drill, for which a region of the country is chosen to perform the exercises. Lessons learnt are reported after each drill. To further boost the interoperability of modules at all territorial levels, best practices, such as the United States Incident Command System<sup>199</sup>, which prescribes a standardised emergency management structure across all levels of government and the private sector, might offer valuable insights for further improving Costa Rica's crisis management system.

Law 8488 puts the CNE in the driver's seat for ensuring effective recovery. In line with the build back better approach recommended by the Sendai Framework, the CNE stipulates that works undertaken in the aftermath of a disaster should ensure that the existing vulnerability to a disaster in a geographic area or sector of economic activity is not reproduced. Ideally conditions are set so as to reduce vulnerability against future disasters. Hazard-based land use planning is specifically mentioned as a tool to achieve this end. The CNE can request measures that protect public infrastructure or the services they provide. The Ministry of Housing and Human Settlements (*Ministerio de Vivienda y Asentamientos Humanos*) provides assistance for families whose houses have been damaged or destroyed during disasters. Low-income families can receive substantial subsidies for reconstructing their houses, or for relocation, whereas more affluent households are given access to housing banks that provide subsidised loans to rebuild houses. In both instances the Ministry of Housing and Human Settlements, too, ensures that houses are only built in non-risk areas and that land use and building codes are observed during the planning and construction processes. While the ex-post disaster compensation policy is a useful tool to ensure broad disaster recovery across income groups, a continuous tolerance of houses in high risk areas by way of eligibility for post-disaster housing assistance may undermine the ongoing efforts at boosting risk-informed land use.

Hurricane Otto, which made landfall in Costa Rica in November 2016, illustrated the preparedness of the Costa Rican authorities. A category-two storm, the hurricane resulted in significant damages to buildings and infrastructure, but owing to the available preparedness measures the overall impact was much smaller than that of previous storms of the same category. Hurricane alerts sent by text messages, streamed on national television and shared online via social media and email, as well as via a special tourist hotline, warned the population of the approaching storm. 5500 people affected by the storm were evacuated, with 48 shelters created to accommodate them. Costa Rican authorities also cooperated with their Nicaraguan neighbours, providing humanitarian relief to Nicaraguans that evacuated to Costa Rica. Schools and public

<sup>197</sup> OECD (*forthcoming*), Implementing the Recommendation on the Governance of Critical Risks: Overview of Country Progress. [GOV/PGC/HLRF\(2016\)8](https://www.oecd.org/gov/pgc/hlrf/2016/8).

<sup>198</sup> *Sistema de inventario de efectos de desastres* (n.d), <http://www.desinventar.org/es/database>.

<sup>199</sup> OECD (2017), OECD Toolkit for Risk Governance. US National Incident Management System (NIMS), <https://www.oecd.org/governance/toolkit-on-risk-governance/goodpractices/page/usnationalincidentmanagementsystemnims.htm>.

administration were also suspended for two days<sup>200</sup>. In the aftermath of the storm, families received subsidies to rent housing while repairs are made to their permanent homes<sup>201</sup>. Although post-disaster reconstruction of roads and water sources started quickly, recovery funding is somewhat lagging behind, with much of the recovery funds not fully disbursed three months after the storm and the total costs of recovery expected to exceed available funding<sup>202</sup>.

### *Risk financing*

In terms of risk financing, the second principle of the OECD Recommendation recommends to allocate adequate resources to develop risk management capacities and to plan for disaster risk-related contingent liabilities. Despite existing financial arrangements for disaster response activities, there is scope to further increase the stability and availability of risk financing flows in Costa Rica.

Similar to some OECD countries, a dedicated disaster fund, the National Emergency Fund, NEF (*Fondo Nacional de Emergencia*, FNE) is the main source of risk financing in Costa Rica. The Fund is composed of mandatory transfers, public entity transfers, and donations from various sources. The Law 8488 stipulates that all public institutions should transfer 3% of budget surplus made to the NEF. Table 7 shows the annual amount available in the National Emergency Fund, and Table 8 shows the budget of the CNE. There are significant variations even in the operational budget of the CNE, which makes financial planning challenging. The fact that the NEF receives transfers to coordinate the country's efforts in the aftermath of a disaster makes it difficult to use the fund to steer Costa Rica's efforts towards more disaster risk prevention, instead of ex-post rehabilitation and reconstruction. Good practices from across the OECD, such as Austria's dedicated catastrophe fund (*Katastrophenfonds*)<sup>203</sup>, could serve as an example to realize this. The Austrian fund is financed out of a relatively stable mix of income, capital and corporate tax, which is used to fund both disaster relief and disaster prevention and preparedness. Other approaches, such as the Mexican fund for natural disasters (*El Fondo de Desastres Naturales de México*, FONDEN)<sup>204</sup>, may also serve as an example for further improving the NEF. Made up of a program for reconstruction, a trust and a revolving fund, it includes a budgetary tool to allocate funds on an annual basis, as well as a multi-year reserve fund, backed by an indemnity-based excess of loss reinsurance treaty.

In the aftermath of a disaster, the NEF has been used to recover public infrastructure and works of social interest such as housing and small-scale agricultural infrastructure. Public institutions, including sub-national levels of government managing local infrastructure have access to the Fund.

**Table 8. Annual income amount into the national emergency fund from 2008 to 1q 2016<sup>205</sup>**

Year	Budget	Deflator	Budget based on constant prices of 2015	Budget in US Dollars*
2007	33.695.964.678,47	56,30	59.854.474.912,23	110.467.258,94

<sup>200</sup> Méndez, J.C. (2016), <http://disasterdisplacement.org/staff-member/after-the-storm-a-message-from-costa-rica/>.

<sup>201</sup> The Tico Times (2016), <http://www.ticotimes.net/2016/12/09/president-solis-promises-rapid-restructuring-for-communities-left-most-affected-by-hurricane-otto>.

<sup>202</sup> La Nación (2017), [http://www.nacion.com/sucesos/desastres/Donaciones-afrentar-danos-Otto-alcanzan\\_0\\_1617038308.html](http://www.nacion.com/sucesos/desastres/Donaciones-afrentar-danos-Otto-alcanzan_0_1617038308.html)

<sup>203</sup> OECD (2016). *Boosting Resilience through Innovative Risk Governance: The Case of Alpine Areas in Austria*, OECD Publishing: Paris

<sup>204</sup> OECD (2015). *Disaster Risk Financing: A global survey of practices and challenges*, OECD Publishing: Paris

<sup>205</sup> In Costa Rican Colones (CRC), unless stated otherwise.

<b>2008</b>	18.074.943.784,45	104,95	17.222.442.647,82	31.785.694,13
<b>2009</b>	13.349.001.168,30	142,11	9.393.736.608,74	17.337.055,18
<b>2010</b>	46.311.540.670,54	40,96	113.062.685.035,62	208.668.189,35
<b>2011</b>	34.912.653.023,64	54,33	64.254.942.778,96	118.588.750,68
<b>2012</b>	23.678.845.363,53	80,11	29.557.103.976,73	54.550.512,11
<b>2013</b>	13.751.900.874,54	137,94	9.969.337.600,90	18.399.382,83
<b>2014</b>	21.323.147.019,84	88,96	23.968.642.582,95	44.236.462,70
<b>2015</b>	18.969.643.243,51	100,00	18.969.643.243,51	35.010.322,88
<b>2016</b>	8.472.127.204,46	223,91	3.783.779.085,73	6.983.332,57

Note: \* USD exchange rate of the Central Bank of Costa Rica 20/04/2016.

Source: Vallejo, MG, 2016, based on data from the Administrative-Financial Management Direction, CNE

**Table 9. Annual budget of the CNE from August 2008 to 31 march 2016<sup>206</sup>**

<b>Year</b>	<b>Budget</b>	<b>Deflator</b>	<b>Budget based on constant prices of 2015</b>	<b>Budget in US Dollars *</b>
2007	9.633.323.000,00	83,13439194	11.587.650.760,17	21.386.137,28
2008	8.207.668.000,00	97,57466433	8.411.679.462,79	15.524.573,14
2009	11.982.900.746,26	66,83360456	17.929.454.537,89	33.090.553,38
2010	8.132.511.000,00	98,47640538	8.258.334.540,70	15.241.560,16
2011	8.415.039.000,00	95,17014122	8.842.099.940,32	16.318.956,02
2012	8.906.822.000,00	89,91539856	9.905.780.481,44	18.282.081,98
2013	9.253.237.000,00	86,54922056	10.691.300.210,69	19.731.835,10
2014	9.303.331.000,00	86,08319429	10.807.371.957,94	19.946.056,80
2015	8.008.604.500,00	100	8.008.604.500,00	14.780.659,06
2016	9.540.276.000,00	83,94520766	11.364.884.625,80	20.975.000,69

Note: \* USD Exchange Rate of the Central Bank of Costa Rica 20/04/2016.

Source: Vallejo, MG, 2016, based on data from the Administrative-Financial Management Direction, CNE

A significant amount of disaster risk funding, especially also during recovery, reconstruction and rehabilitation comes from sectoral budgets or specific financing mechanisms. For example, Costa Rica has established a standby credit line through the World Bank for USD 65 million that, once triggered, supports the recovery of small- and medium-scale production activity in the country. This contingent credit line has been used twice in 2009 for an earthquake and a flood disaster. Another example is the National Banana Corporation (*Corporación Bananera Nacional*, CORBANA) that has a dedicated recovery fund that supports the recovery of banana producers. Finally, the social protection system in Costa Rica provides especially poor people with measures to recover from disasters. These include temporary subsidies, unemployment benefits, entrepreneurs and productive ideas, educational grants and credits. Overall, the compensation mechanisms, especially for citizens and businesses, are not clearly spelled out nor rendered transparent as they come from different sources, hence it is unclear what an individual household or business will or will not receive in the case of suffering damages from a disasters. This ambiguity,

<sup>206</sup> Idem.

although not unique to the Costa Rican approach to disaster compensation, can undermine effective financial planning for the state, but also the potential contribution to risk prevention by self-protection.

Private and public insurance schemes as part of vehicle, home or business insurance exist for all kinds of natural disasters. Public assets have to be insured as well. Costa Rica is currently considering its participation in the Caribbean Catastrophe Risk Insurance Facility to ensure financial protection against excessive earthquake and flood risk. No systematic information is available about insurance coverage across the country, although some information for specific events exists. Moreover, as there is no inventory of public infrastructure assets, the calculation of potential contingent liabilities for public budgets and establishing related risk financing tools (for example through insurance coverage) is rather difficult.

Generally speaking, Costa Rica provides its own sources of financing before resorting to external financing sources although the generation of own resources in response to disaster events have had negative fiscal impacts. Costa Rica has therefore started to develop more effective disaster risk financing solutions for the future. Despite the available risk financing tools, recovery funding needs are most often higher than the available funds<sup>207</sup>. The volatility of funding that predominantly depends on budget surplus of public institutions further exacerbates this. To counter this, Costa Rica participates in the World Bank's Catastrophe Deferred Draw Down Option (CAT DDO) project, set up to bridge immediate liquidity needs in the aftermath of a major natural disaster.<sup>208</sup>

### *Transparency and accountability*

The final principle of the OECD Recommendation recommends countries to demonstrate transparency and accountability in risk-related decision making by incorporating good governance practices and continuously learning from experience and science. In consonance with the OECD Recommendation, Costa Rica has measures in place to ensure the accountability of its risk management system. As for ensuring transparency, the picture is double-sided. While there is an open dialogue about the nature and likelihood of hazards, the methodologies for deciding upon risk reduction investments are unclear.

In the context of the governance of critical risks, transparency includes the honest and open dialogue about hazards and about the cost-effectiveness of risk reduction measures. In Costa Rica, information used for the assessment of critical risks is made publicly available. While the results of the assessments are communicated across society, decision-making for disaster risk management financing is less transparent. There is no budget measure available that indicates the overall budget envelope dedicated to risk prevention efforts and no standard cost-benefit analyses are applied that measure the economic value of investing in risk reduction efforts. Without sufficient information on the reasoning behind risk management decisions, public support for the necessary measures may subside, possibly impeding adequate risk management, and the integrity of the risk management decision making process might be challenged.

Evaluations of risk management policies are a key element to hold risk managers accountable to their risk management objectives. In Costa Rica, like in the majority of OECD countries, the government evaluates relevant risk management policies after a disaster hits. Like in most OECD countries, evaluation results are made publicly available and are incorporated in revisions of risk management policies to avoid making

<sup>207</sup> La Nación (2017), Donaciones para afrontar daños por el huracán Otto no alcanzan, published 20 February 2017, [http://www.nacion.com/sucesos/desastres/Donaciones-afrontar-danos-Otto-alcanzan\\_0\\_1617038308.html](http://www.nacion.com/sucesos/desastres/Donaciones-afrontar-danos-Otto-alcanzan_0_1617038308.html)

<sup>208</sup> World Bank (2017), Costa Rica Catastrophe Deferred Draw Down Option (CAT DDO), <http://projects.worldbank.org/P111926/costa-rica-catastrophe-deferred-draw-down-option-cat-ddo?lang=en&tab=overview>

the same mistakes twice. In light of this, the government provides public funding in support of scientific research to the benefit of risk management<sup>209</sup>.

### **Preliminary assessment and recommendations**

As an adherent to the OECD Recommendation on the Governance of Critical Risks, Costa Rica's core risk management policies align with those of many OECD countries. Like most OECD countries, Costa Rica maps hazards in national risk assessments, complementing the findings with local-level hazard and vulnerability analyses. Owing to its high exposure to natural disasters, Costa Rica has firmly established emergency management capacity throughout all levels of government. Early warning systems have been installed across hazard-prone areas and emergency management plans are widely available. In line with the OECD Recommendation, Costa Rica has increasingly promoted a focus on disaster risk reduction measures in its national risk management policy documents. Building codes and land use maps, for example, have been required to take the results of hazard maps into their account, thereby guiding resilience in the development of new settlements, as well as the reconstruction of destroyed buildings. Risk communication has been embraced as a tool that not only enables risk awareness, but that can also promote investments in self-protection measures and in the development of business continuity plans for the private sector. To finance its risk management activities Costa Rica relies on a mix of different funding instruments, including a dedicated disaster fund, the National Emergency Fund, complemented by a standby credit line through the World Bank and the social protection system.

Although Costa Rica's disaster risk management policies have embraced a whole-of-society approach, contributions from the private sector and individual households remain limited and a reliance on the government for providing protection and support in the recovery phase is widespread. Regional and local authorities across the country, if they are expected to contribute to strengthening risk reduction efforts, need to be adequately equipped with the necessary financial and technical capacities to fulfil their responsibilities. A more effective steering and leadership function should be given to the National Emergency Management Commission (CNE), which is currently the lead institution in national risk management. A clear legal framework could help strengthen its national leadership role.

Costa Rica's risk financing arrangements could be revised to strengthen a whole-of-society approach to disaster risk management, but also to enhance the availability and the adequacy of funding for ex ante and ex post risk management needs. Currently, the majority of the National Emergency Fund is dedicated to financing emergency preparedness and response activities. The Fund has often been insufficient to finance disaster response needs and it has not included at all the financing of preventive measures. The level of available funds has been relatively volatile too, as the Fund's resources are tied to the annual budget surplus made by other public institutions. In addition to addressing the sources of financing the National Emergency Fund, and to increase overall funding capacity, other financing tools, such as contingent credit lines or insurance coverage could be further exploited and provisions for disaster risk-related contingent liabilities should be made. In line with this, the criteria for damage compensation should be clarified and a comprehensive picture of ongoing disaster risk management efforts drawn.

Recommendations for enhancing the governance of critical risks in Costa Rica include:

- Strengthen whole-of-society risk governance:

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<sup>209</sup> OECD (*forthcoming*), Implementing the Recommendation on the Governance of Critical Risks: Overview of Country Progress. [GOV/PGC/HLRF\(2016\)8](https://www.oecd.org/gov/pgc/hlrf/2016/8)

- Strengthen the role of the private sector and non-governmental stakeholders in risk governance, while boosting information sharing and cooperation mechanisms.
  - Equip implementing authorities, including regional and local authorities, with the necessary resources to adequately fulfil their responsibilities across the country.
  - Strengthen the role of local and regional authorities in passing and enforcing land use plans and building codes, including compliance of existing buildings.
  - Give an effective steering and leadership function to the National Emergency Management Commission (CNE) to enable more coherent and effective whole-of-society risk prevention.
  - Consider measures to enable and enforce the implementation of each stakeholder's risk reduction responsibilities (e.g. sanctions for sub-national authorities neglecting their responsibilities and continued targeted risk communication for stakeholders in the private sector).
- Enable a more stable risk financing architecture and targeted investments in risk reduction:
    - Systematically include vulnerability and economic impact analyses in the national “Hazard Atlas” and use the results to guide investments in risk reduction and enable apt risk financing choices.
    - Develop and use a standard cost-benefit analysis to determine the cost-effectiveness of investments in risk reduction measures.
  - Revise the current financing arrangements to enable a more stable source of funding for both preventive measures and response activities:
    - Diversify the mix of funding tools to increase funding stability for disaster response activities, which are currently predominantly funded by the National Emergency Fund. Contingent credit lines or insurance coverage could be further exploited and provisions for disaster risk-related contingent liabilities should be made. In line with this, the criteria for damage compensation should be clarified and a comprehensive picture of ongoing disaster risk management efforts should be drawn.
    - Create new funding tools to boost whole-of-society investments in preventive measures. Innovative investment formats, such as public-private partnerships for the joint construction and maintenance of structural measures, could be a valuable option to boost available funding and whole-of-society engagement in risk reduction. Public subsidies in support of private investments in structural risk reduction measures could equally work in this way.

## **Strengthening the Delivery of Gender Public Policies**

### *Introduction*

This section provides an overview of legal and institutional arrangements for advancing gender equality in Costa Rica, in comparison to the benchmarks of the OECD 2015 Recommendation of the Council on Gender Equality in Public Life. In particular, it examines financial and human resources and capacities



across the government to design, implement and evaluate policies through a gender lens. It also maps the representation of women in key decision-making positions in public institutions (i.e., parliament, ministerial cabinets, judiciary and public service), as well as measures to facilitate equal access to public leadership.

### *Legal and institutional arrangements for gender equality*

In line with the general OECD practice, Costa Rica generally has a well-developed legal and policy framework to promote gender equality. Since 1984, the country is a signatory to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). The country also enacted Law 7142 to Promote Social Equality for Women (*Ley de Promoción de la Igualdad Social de la Mujer*) – a law exclusively dedicated to advance gender equality. This piece of legislation establishes the obligation of the State to promote and guarantee equal rights for men and women in the political, economic, social and cultural fields. It also mandates all public institutions to ensure that women are not discriminated and that they enjoy equal rights no matter their marital status. According to this Law, the state is tasked with promoting the creation and development of programs and services to facilitate full participation of women in the economic, social and cultural fields. In the framework of the National Development Plan 2015-2018, equity and gender equality are identified as some of the principles that guide the country's new development model – namely in the fields of eradication of poverty, social inclusion and security and justice.

Making progress in gender equality is much easier with a whole-of-government strategic plan. Stemming from Law 7142, Costa Rica set up a decennial strategy to promote gender equality. As in the vast majority of OECD countries, Costa Rica's gender equality strategy, the National Policy on Gender Equity and Equality (*Política Nacional para la Igualdad y la Equidad de Género*, PIEG) 2007 – 2017, establishes a strategic framework based on the priorities of Costa Rica to close the inequality gaps identified in the past decade in the country. It contains six strategic objectives including: quality public care; quality paid work that generates income; quality education and health; effective protection of women's rights against all forms of violence; increased political participation of women; and robust institutional capacities for gender equality and equity. A separate strategy, the National Plan for the Attention and Prevention of Intra-family Violence (*Plan Nacional para la Atención y la Prevención de la Violencia Intrafamiliar*, PLANNOVI) was also put in place to address gender-based violence. Similarly, gender equality strategies in OECD countries mostly focus on strengthening women's economic empowerment, combatting gender-based violence, improving work-life balance, preventing gender-based discrimination; and enhancing diversity and compliance with gender equality laws and policies<sup>210</sup>. In addition, in Costa Rica, the legislative and judiciary branches have developed their own internal gender equality policies.

Costa Rica made headway in setting up elements of an institutional mechanism for the advancement of women. While this institutional mechanism is generally in line with OECD best practices, there is room for improvement. As in the vast majority of OECD countries, Costa Rica has established a central gender equality institution. The National Women's Institute (*Instituto Nacional de las Mujeres*, INAMU) was founded by the National Women's Institute Law 7801 (*Ley de Creación del Instituto Nacional de las Mujeres*). The OECD countries' experience shows that mandates enshrined in law afford national mechanisms a greater sense of political legitimacy and stability than mandates originating from a governmental decree<sup>211</sup>. INAMU is the main public body responsible for the promotion and protection of women's human rights. It is an autonomous body headed by the Executive President with the ministerial

<sup>210</sup> OECD (2014), *Women, Government and Policy Making in OECD Countries: Fostering Diversity for Inclusive Growth*, OECD Publishing. <http://dx.doi.org/10.1787/9789264210745-en>.

<sup>211</sup> OECD (2014), *Women, Government and Policy Making in OECD Countries: Fostering Diversity for Inclusive Growth*, OECD Publishing. <http://dx.doi.org/10.1787/9789264210745-en>.



status without portfolio (and who participates in cabinet meetings). While there is no unique approach or common trend in institutional settings for gender mechanism across OECD countries, INAMU's location within the government as well as its mandate and functions is in line with the general OECD practice. The INAMU aims to<sup>212</sup>: formulate and boost the national policy on gender equality (in coordination with public institutions that develop programs for women in social organisations); protect women's rights that are enshrined in declarations, conventions and international treaties and in Costa Rican laws; and co-ordinate sector-based actions for the national policy on gender equality. The Institute also hosts two technical coordination secretariats which support inter-ministerial commissions on the implementation of the gender equality strategy, strategy on violence against women and the coordination of the follow-up of Costa Rica's commitments to implement the CEDAW.

Similar to the vast majority of central gender equality institutions in OECD countries, the INAMU is mandated to – among others – : prepare the legislative proposals and support the legislative work upon request on issues related to women's rights (especially when a dialogue is possible with the Permanent Commission on Women [*Comisión Permanente Especial de la Mujer*] in the Legislative Assembly of Costa-Rica); support the enforcement of different legislations such as the Decree creating units for gender equality<sup>213</sup>; monitor the implementation of the PIEG and PLANNOVI; provide consulting about gender disaggregated data and potential indicators; and offer technical assistance to the gender units in the development of policies (e.g., preparing guidelines to incorporate a gender focus in quality management systems, statistical systems, entrepreneurship boosting processes etc.). The INAMU also leads the political training for female community leaders and members of political parties. INAMU seems to face similar challenges as many central gender equality institutions across OECD countries regarding the limited involvement in reviewing the quality of gender mainstreaming across the government.

As in almost all OECD countries, in Costa Rica, in parallel to INAMU, a governmental decree<sup>214</sup> put in place the system of gender focal points, which facilitates the implementation of the gender equality agenda. Almost all OECD countries have indeed permanent staff members dealing with gender issues across the government, usually located in line ministries and agencies. In Costa Rica, gender units or focal points have been established within the ministries of health, security, justice and education and several other public institutions (listed in the footnote)<sup>215</sup>. These units are tasked with administering specific legislation, bylaws, public policies on gender; developing gender action plans for the ministry; providing training in the ministry; including a gender equality component in a broader action plan in the ministry; and developing a policy on gender for civil servants of the ministry. Yet there seems to be a wide disparity among the gender units, both in terms of their location and the capacities to influence the ministerial agenda. While some gender focal points enjoy high visibility by their location in the cabinet of the Minister, many of them lack political support to make the system of gender focal points genuinely operational and effective.

<sup>212</sup> The National Women's Institute Law (*Ley de Creación del Instituto Nacional de las Mujeres*), Article 3.

<sup>213</sup> Decree 37906-MP-MCM on the Creation of Gender Equality Units.

<sup>214</sup> *Idem*.

<sup>215</sup> In the Executive Branch, the Gender Units are located in: Ministry of Interior and Police, Ministry of Labour and Social Security, Ministry of Finance (Interinstitutional Gender Committee), Social Security Entity of Costa Rica CCSS, Ministry of Public Education (Gender commission-not a unit in the institutional structure), Ministry of Health (liaison, not considered in the institutional structure and located at Planning Unit), National Learning Institute, Joint Institute for Social Aid IMAS, Ministry of Justice, Ministry of Public Works and Transportation, Costa Rican Electricity Institute, Ministry of Agriculture and Livestock (unit established by decree), Ministry of Finance (gender liaison), National University, University of Costa Rica, Technological Institute of Costa Rica (gender liaison), Distance State University.

At the municipal level, Women's Offices have been established in over 68 Cantons (85% of Costa Rica's municipalities<sup>216</sup>). These offices - created in 1996 in the framework of the National Plan for the Prevention of and Care for Intra-family Violence – serve as a place for information, guidance and care for women. They also aim to ensure permanent coordination with the INAMU. Currently, efforts are underway to draft a law that would oblige local governments to develop their own gender equality plans. In parallel, gender equality secretariats are created within the legislative and judicial branches of the country.

Formalised co-ordination mechanisms are essential to ensure that individual initiatives are aligned with the broader gender equality vision and strategies. In Costa Rica, INAMU acts as the formal coordination mechanism to ensure a whole-of-government approach to gender equality. The Technical Secretariat of PIEG (located in INAMU) is advancing the work on gender equality by establishing bilateral partnerships across the government and beyond. For example, INAMU works together with the gender office of the judicial branch, Congress and its Human Rights Commission, the gender equality secretariat of the Congress, parliamentary women networks, etc. In OECD countries, the most prevalent co-ordination mechanisms at the horizontal level include establishing co-ordination units at the Centre of Government and inter-ministerial groups convened by the central gender institution.

Costa Rica is moving forward to further align its co-ordination mechanisms with general OECD practice. As such, the High level Board of PIEG is put in place as the formal mechanism to ensure the implementation of PIEG by all branches of the State. However, this Board is not yet operational, and will hold its first meeting in 7 March 2017. Some OECD countries also place emphasis on co-ordination at the analyst levels to ensure a technical co-ordination in the area of gender policies. Costa Rica is stepping up efforts to improve the existing framework for the gender machinery. The planned changes are outlined in Objective VI of the PIEG related to the institutional capacities to promote gender equality. In the framework of the PIEG, the country aims to strengthen by 2017: a) political, technical and financial capacities of INAMU through promulgation of appropriate legislation and standards to strengthen staff budgets, b) technical competences of gender offices throughout the government; c) monitoring, evaluation and accountability systems for the PIEG that involve gender offices; d) line ministries to disaggregate administrative data by gender to help make existing gaps visible.

### ***Implementation, and monitoring of the gender equality strategy***

In view of measuring progress against the objectives put forward in the PIEG, three action plans were developed since 2007. The PIEG's 3rd action plan for 2015-2018 applies to the central government level and local government level (each local government is autonomous and specific plans apply by municipality). These plans incorporate indicators and listings of institutions, social organisations and non-governmental organisations that are responsible for implementation. The indicators set forth in the action plans are monitored and followed up annually.

This monitoring exercise is realised by the technical secretariats of PIEG and PLANOS hosted by the INAMU. In doing so, the secretariats gather, systematize and analyse the information sent by other institutions related to gender equality and violence against women and provides non-binding recommendations to the parties. The recommendations derived from this process are expected to be implemented by line ministries. Further, the Ministry of National Planning and Economic Policy (*Ministerio de Planificación Nacional y Política Económica*) undertakes quarterly performance measurements when following up on the compliance with the objectives of the PIEG. However, annual

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<sup>216</sup> CEDAW (2015), Consideration of Reports Submitted by States Parties under Article 18 of the Convention. Seventh periodic report of States parties to be submitted in 2015, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Costa Rica.

monitoring about progress toward goals linked to strategic actions of the PIEG is not yet included in the managers' performance evaluation.

The PIEG technical secretariat acts as the unit responsible to ensure the coordination of the gender strategy across the government, in coordination with gender units located in various ministries. In line with the practices of numerous OECD members, the PIEG Decree also foresees the establishment of an inter-governmental committee at ministerial. At the sub-national level, OFIM (*Oficinas Municipales de la Mujer*) aims to ensure permanent coordination with the INAMU. However, formal mechanisms of coordination have not yet been established. INAMU ensure the coordination with these autonomous bodies through the Information and Orientation Centre (*Centro de Información y de Orientación*, CIO) and also by specific technical support in the framework of Regional Development Areas.

### *Accountability and oversight for gender equality*

The INAMU is tasked with monitoring the implementation of the PIEG through its technical secretariat. Yet to date, no evaluations have been performed in view of measuring progress against the objectives set forth in the PIEG. Elements of oversight functions for the PIEG are exercised by the Comptroller General of the Republic (*Contraloría General de la República*) when managing public funds used for the implementation of the PIEG policy. In this sense, the Comptroller General is tasked with exercising *after-the-fact control of compliance* with the PIEG policy. An auditing report issued by the Comptroller General of the Republic about PIEG is currently in the process of being approved by the governing Minister of Human Development and Social Inclusion and the Joint Social Welfare Institute (*Ministro/a de Desarrollo Humano e Inclusión Social e Instituto mixto de Ayuda Social*).

Another institution responsible for the oversight on gender equality and protection of women's rights is the specialised Permanent Commission on Women in the Legislative Assembly of Costa Rica (*Comisión Permanente de la Mujeres en la Asamblea Legislativa de Costa Rica*; hereinafter "the Commission"). The latter is mandated to study and give an opinion on bills related to women; propose amendments to national laws to adapt them to international treaties; examine social problems related to women's quality of life and human rights and amend local laws accordingly; and exercise oversight of the executive action on women's issues<sup>217</sup>. Around 65% of OECD countries have established similar parliamentary commissions although their oversight functions and influence over the executive action on gender equality may significantly vary. In Costa Rica, the Commission has limited capacities and resources to exercise its oversight function adequately. The Commission is composed of seven parliamentarians out of the 57 members of parliament. All members of the Commission are female and Costa Rica reported the lack of interest of male candidates to participate in the Commission. To date, no reporting requirements to the Commission have been put in place to monitor government's actions on gender equality<sup>218</sup>. There is also no legal requirement to consult with the Commission on Women during the regular law-making process. The Commission seems to be generally absent from the discussions when it comes to draft legislations that are not directly related to gender equality and women's empowerment.

A good practice example in parliamentary oversight to gender equality comes from Canada. The House of Commons in Canada adopted 2016 a motion to create the (temporary) Special Committee on Pay Equity (ESPE) to conduct hearings on pay equity and propose a plan that would enable the House to vote on

<sup>217</sup> Inter-Parliamentary Union PARLINE Database, <http://www.ipu.org/parlinee/parlinesearch.asp> (accessed 29 March 2017)

<sup>218</sup> Accession Questionnaire responses

proactive federal pay equity. As a result, the Canadian Government has committed to establish proactive pay equality in both the federal public service and the federally regulated private sector.<sup>219</sup>

### *Tools for gender mainstreaming*

Within the legal framework, the responsibility for advancing gender equality is shared among all public institutions and sectors through the incorporation of a gender perspective in their field of activities. However, there is no law which mandates the government to conduct assessments of gender impact of new laws and regulations. The Costa Rican government also made a commitment to incorporate a gender perspective in the budget process plan. Accordingly, although gender budgeting practices vary across OECD countries, it is gaining momentum with almost half of OECD countries now reporting that they have introduced (12 OECD countries), planned to introduce (1 OECD country), or are actively considering (2 OECD countries) its introduction<sup>220</sup>. For delivering on this responsibility, however, an important challenge for Costa Rica will be to raise awareness of the gender equality agenda across the administration and society, as well as to integrate the need to measure gender impacts of different policy choices and budgetary allocations.

Currently, there are specific allocations provided for women-targeted measures but the integration of gender dimensions across the mainstream budgeting process is lacking. The gender impact assessments of policies and budgets which would comprise the study of gender-disaggregated data are not yet realised. The government does not yet provide training about how to perform gender analysis. A very recent reform process has been initiated to undertake impact studies on state goods and services with the integration of gender matters in the budget plan. However, such studies have not been performed to date.

The instructions in the “Technical and Methodological Guidelines for Planning, Budgetary Scheduling, Follow-up and Strategic Evaluation in the Public Sector in Costa Rica” (*Lineamientos Técnicos y Metodológicos para la Planificación, Programación Presupuestaria, Seguimiento y la Evaluación Estratégica en el Sector Público en Costa Rica*) prepared by the Ministry of Finance and MIDEPLAN task public institutions to disaggregate information by gender. This includes both the programs and projects based on the budgetary entries<sup>221</sup>. In practice, the National Institute of Statistics and the Census (*Instituto Nacional de Estadística y Censos*) hereinafter the “Institute of Statistics”) systematically collects gender-disaggregated data only in the areas related to education and social protection<sup>222</sup>. Recently, the Institute of Statistics and INAMU joined forces to design gender indicators and develop surveys to update the existing database. In some cases, gender-disaggregated data is also collected for general public services, defence, economic matters, housing and community services and health. Yet, gender-disaggregated data and the capacity of public institutions for its collection and integration into the policy process remain uneven. There is room to improve the administrative registration systems to help disaggregate the information collected by gender to be able to make projections on policy, multi-annual budgets and social forecasts.

<sup>219</sup> Parliament of Canada (n.d.),

[http://www.parl.gc.ca/Content/HOC/Committee/421/ESPE/GovResponse/RP8474989/421\\_ESPE\\_Rpt01\\_GR/421\\_ESPE\\_Rpt01\\_GR-e.pdf](http://www.parl.gc.ca/Content/HOC/Committee/421/ESPE/GovResponse/RP8474989/421_ESPE_Rpt01_GR/421_ESPE_Rpt01_GR-e.pdf).

<sup>220</sup> OECD (2017) Gender Budgeting in OECD Countries, OECD Publishing, Paris, <https://www.oecd.org/gender/Gender-Budgeting-in-OECD-countries.pdf>.

<sup>221</sup> Article 6 of the Technical and Methodological Guidelines for Planning, Budget Programming, Monitoring and Strategic Assessment in the Public Sector” issued by MIDEPLAN.

<sup>222</sup> Accession Questionnaire responses

There is also very little co-ordination in terms of collection of gender-disaggregated statistics at the local level. The Institute of Statistics is currently piloting a project with ten selected municipalities to strengthen the collection of statistics.

To overcome identified challenges, Costa Rica issued, in 2015, guidelines to mainstream gender equality in the national statistical system of the country. These guidelines are intended to support public institutions to embed a gender lens in the design, training, collection, coding, validation, processing, analysis and dissemination of statistical operations in view of informing policy making process.

### *Engagement with civil society and citizens*

The INAMU appears to make genuine efforts to engage civil society, including through the Forum of Women and the National Forum of Indigenous Women (*Foro Nacional de Mujeres Indígenas*). The latter consists of a general meeting attended by registered civil society organisations (CSOs), a coordinating committee, a representative of the organisation to the INAMU Board of Directors and a tallying commission. The Forum is convened three times per year by INAMU. The functioning of the Forum is regulated by bylaws issued by INAMU. Currently the Forum has 27 registered CSOs.

The INAMU also aims to engage with private sector companies to improve state of gender equality. As a consequence, “equality seals” are put in place for companies in the private sector. This certification is awarded to companies that have completed a program to eliminate gender inequalities in the areas of: staff recruiting and selection; professional development; training performance; compensation; family-life and job-reconciliation; occupational health and on-the job risks; sexual and labour harassment.

### *Women’s access to strategic decision-making*

Costa Rica made headway in increasing women’s participation and representation in public decision-making. In elected positions, the country has reached 33% of women in the Parliament, which is above the OECD average of 28.6%. Many observers attribute the high levels of women’s political participation to the 2009 Electoral Law, which requires that 50% of the candidates must be of each gender and two persons of the same sex cannot be subsequently included on the list of candidates<sup>223</sup>. The electoral authorities should reject lists that do not comply with the quota rules. In OECD countries, in 2016, of the 28 OECD countries where data is available, 24 have voluntary political party quotas, 10 have legislated quotas in their single/lower houses of Parliament, 10 have adopted quotas in their electoral law, but only 3 have Constitutional quotas<sup>224</sup>. Further measures include Costa Rica’s 1990 Law for the Promotion of Social Equality for Women (*Ley de Promoción de Igualdad Social de la Mujer*) which calls on political parties to increase the number of women candidates, and earmark funds to train women and promote their participation. As a result, the statutes of many political parties include references to gender equality and the dedication of funds for women’s political development<sup>225</sup>. In addition, the office of the Assembly’s

<sup>223</sup> The lists of candidates should be governed by the principle of equality established in Article 2 of the Electoral Code, which states "(...) Participation will be governed by the principle of equality. This implies that all the delegations, rolls, and other peer bodies will be made up of fifty percent (50%) women and fifty percent (50%) men. In the delegations, rolls, or non-peer bodies, the difference between the total number of men and women may not be greater than one. All the election rolls will use the alternating gender mechanism (woman-man or man-woman) so that two people of the same gender may not be consecutive on the roll."- Tribunal Supremo de Elecciones (n.d.), Código Electoral, Ley n.8765, <http://www.tse.go.cr/pdf/normativa/codigoelectoral.pdf> (accessed 24 March 2017).

<sup>224</sup> Quota Project Database (n.d.), Quota Database, <http://www.quotaproject.org/> (accessed 24 March 2017).

<sup>225</sup> Inter-parliamentary Union (2011), Gender- Sensitive Parliaments-A Global Review of Good Practice, <http://www.ipu.org/pdf/publications/gsp11-e.pdf>.

Executive Director incorporates a technical unit on Gender Equality and Equity. The latter is mandated to “promote, plan, propose, coordinate, guide, strengthen and monitor gender mainstreaming in all functions of the Legislative Assembly, in compliance with the state’s commitments to gender equity and equality”<sup>226</sup>.

Despite important progress, the gaps still remain, in particular when it comes to accessing senior posts in parliamentary committees and the parliament. For example, out of six permanent ordinary committees, women only reach or exceed parity level in two committees (Social Committee and Government and Management Committee). Women are still underrepresented in other committees such as Legal Committee (1 out of 9 members is female) and Treasury Committee (2 out of 11 members are female). In the permanent special committees, women are well presented in the committees dealing with social and human rights issues. For example all eight members of the Gender Equality Committee, 5 out of 7 members of the Human Rights Committee, and 4 out of 7 members of the Youth, Childhood and Adolescence Committee are female. In contrast, women remain underrepresented in other committees (e.g., women make up for 1 out of 7 members of the Municipal Affairs Committee, 2 out of 7 members of the Science and Technology, and one out of 8 members of the Security and Drug Trafficking Committee). Similar challenges are faced across OECD countries where gender balance gaps increase when looking at the percentages of women serving as presiding officers in houses of Legislature (only 10 of the 54 available posts across OECD countries are held by women in 2016).<sup>227</sup> Amid these gaps, good practice examples exist in Costa Rica. For example, the Constitutional Chamber accepted the case of several deputies who claimed that the composition of the Standing Committees violated the right to equality enshrined in the Constitution and provisions of the CEDAW by not naming women in a number proportional to the overall composition of the Legislative Assembly<sup>228</sup>. Although the decision of the Chamber to pay the costs and damages has not been enforced, the case represents an important landmark in promoting women’s representation in politics.

Costa Rica elected its first female president in 2010. In 2016, in the executive cabinet, 6 out of 24 seats were held by women (25%), as compared to the OECD average of 29.3%. The portfolios held by women include the National Planning and Economic Policy as well as Justice and Peace. Nevertheless, these figures point to a significant decrease in terms of women’s representation in the Cabinet compared to 40.9% in 2015<sup>229</sup>. At the local level, only 12 out of 81 (14%) local governments have female mayors<sup>230</sup>.

In the judiciary, in 2016, women held 36% of seats in the Supreme Court and 31.8% of Courts in the Constitutional Court. Women’s access to judgeships in Costa Rica is above the OECD average of 33.5% (countries for which data is available). More than half of the prosecutors (57%) were also women in 2015. To promote gender equality within the judicial branch, the latter established its own Technical Gender Secretary in 2003 and approved its gender equality policy in 2005.

### *Gender equality in public employment*

In Costa Rica, the selection process established in the Civil Service bylaws does not include the participants’ gender as a criterion to be assessed. As a result, the country does not have systemised data about the number of women and men in the public sector. According to the Costa Rica National Home Survey prepared by the Institute of Statistics, women occupied 36.4% of managerial positions in 2014<sup>231</sup>.

<sup>226</sup> *Idem*.

<sup>227</sup> Inter-parliamentary Union, PARLINE database.

<sup>228</sup> Costa Rica Constitutional Chamber (2003), Case No. 02-004595-0007-CO, Costa Rica.

<sup>229</sup> Inter-parliamentary union Database and OECD (2016), *OECD Economic Surveys: Costa Rica 2016: Economic Assessment*, OECD Publishing, Paris.

DOI: [http://dx.doi.org/10.1787/eco\\_surveys-cri-2016-en](http://dx.doi.org/10.1787/eco_surveys-cri-2016-en)

<sup>230</sup> Information provided by INAMU.

<sup>231</sup> Responses to the OECD Accession questionnaire.



In comparison, across the OECD in 2016, women held on average 55.4% of professional positions, 43.3% of middle management positions and 33% of senior management positions<sup>232</sup>.

To date, Costa Rica did not yet develop a consolidated public policy that aims to embed a gender lens in human resource management within the public sector. There are also no targets or any affirmative policies put in place for the inclusion and promotion of women in the public administration. According to 2016 data, in OECD countries, the most common policy measure in place is the setup of hiring targets for women which are used by 29% of OECD countries. Affirmative measures to achieve equal opportunities for promotions and career advancement of under-represented groups are adopted by some OECD countries specifically targeting women: preferential right for being promoted; preference in the promotion and/or selection process; targeted information sessions; coaching; and promoting targets<sup>233</sup>. In Costa Rica, while the PIEG has some elements of gender equality in public employment, such as guaranteeing equal pay, no mechanism has been established to fulfill these objectives. The INAMU coordinates such gender equality efforts with public institutions through memorandum of agreements or institutional commitment letters, yet establishment of such commitments seems uneven.

Costa Rica recognises that various barriers are curbing women's equal access to top positions in the public sector. These mainly include absence of facilities for caring for children and the elderly; and difficulties of reconciling work and private life responsibilities. To date, there are neither flexible or part-time work solutions, nor tele-working arrangements available in the public sector. Yet, the country reported working on a tele-working policy in the public sector that can be used in determined circumstances<sup>234</sup>. While Costa Rica provides 16 weeks of paid maternity leave, paid paternity leave is only one week in the public sector. In the absence of parental leave arrangements, the available paid leave reserved for fathers in Costa Rica is significantly below the OECD average of 8.2 weeks<sup>235</sup>.

### **Preliminary assessment and recommendations**

Costa Rica is steadily advancing its institutional capacities and frameworks to advance gender equality. The country is also making important progress in women's access to top positions in the public sphere. Overall, Costa Rica appears to align with most provisions of the OECD Recommendation on Gender Equality in Public Life. It has reached 33% of women in the Parliament, 46 % in senior jobs in public administration and 40.9 % in ministerial level positions, which is above the OECD average. The governance framework for gender equality in Costa Rica is similar to those in many OECD countries, with the National Women's Institute supporting the inter-ministerial commission on the implementation of the gender equality policy and making genuine efforts to engage civil society in the policy dialogue. There is a parallel structure established to eradicate violence against women. There is a system of gender focal points across the government.

However, some areas that would benefit from further attention are:

- Human and financial capacities of the National Women's Institute can be further mobilised to be able to fully support the implementation of the government strategy on gender equality. The Institute could also benefit from acquiring a status of a governmental body, with the clear mandate to engage with other ministries and governmental bodies on integrating gender

<sup>232</sup> OECD (2016) Survey on the Composition of Employees in Central/federal Governments – preliminary data.

<sup>233</sup> *Idem*.

<sup>234</sup> Responses to the OECD Accession questionnaire.

<sup>235</sup> This average must be interpreted with caution. Only less than half of OECD countries are providing parental leave arrangements. For more information, please see [https://www.oecd.org/els/soc/PF2\\_1\\_Parental\\_leave\\_systems.pdf](https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf).

considerations into the policy cycle. It would also benefit from greater decentralisation of functions and a clear mandate to engage with local governments in the implementation of the gender equality strategy.

- Efforts could be focused towards raising further awareness and capacities across the administration on measuring gender impacts of different policy choices and budgetary allocations. OECD experience shows that gender impact assessments are most effective when they are stemming from clear mandates and requirements. It will be also important to raise the profile and positioning of gender units to influence sectoral policy making.
- To inform mainstream policy making, regular administrative data collected by ministries and other governmental bodies could be systematically disaggregated by gender.
- Further efforts are needed to put in place a consolidated gender equality policy within the human resources management system of the public administration to remove remaining barriers to women's career progression. Costa Rica would benefit from collecting systematic and exploitable data on the status of gender equality within the public administration.



## SECTION 2: Transparency and accountability

This section addresses PGC Core Principle 2: “*Transparency and accountability to promote and facilitate responsibility for government action and inclusive stakeholder engagement in policy design and implementation*”.

### Introduction

The section presents an overview of Costa Rica’s institutions, legislative instruments and practices with respect to the design and implementation of policies and initiatives on the open government principles of transparency, accountability and participation in order to provide PGC delegates with information on the country’s progress and remaining challenges in these areas. The section builds on the 2016 OECD accession questionnaire responded to by the Costa Rican government, the 2015 OECD Questionnaire on Open Government and Citizen Participation in the Policy Cycle<sup>236</sup>, the OECD Open Government Review of Costa Rica – Towards an Open State<sup>237</sup>, as well as the chapter on open government policies and initiatives in Costa Rica that was included in the OECD Report on Open Government in Latin America<sup>238</sup>.

Costa Rica stands out as one of the most stable countries in Latin America, with regular democratic elections since 1953. But levels of trust in government have decreased in the past five years<sup>239</sup>. An increasingly well-educated, informed, and active Costa Rican civil society is demanding more transparency of the public sector and to participate more in the political and policy-making processes.

It is in this context, and as a direct response to citizens’ demands, that the current government has started an ambitious move towards increased openness and, as one of the first countries worldwide, has initiated a move towards the concept of Open State<sup>240</sup>. Recognising the contribution that the open government principles of transparency, accountability and participation can make to improve the quality and impact of national policies and to foster trust in public institutions, Costa Rica has made open government a key transversal axis of its ongoing public sector reform and one of the most important enablers of the country’s development agenda. Open government is among the guiding principles of the current administration’s electoral programme and the third pillar of the country’s National Development Plan 2015-2018 (MIDEPLAN, 2014)<sup>241</sup>.

<sup>236</sup> OECD (2015), Survey on Open Government and Citizen Participation in the Policy Cycle (unpublished)

<sup>237</sup> OECD (2016), Open Government in Costa Rica, OECD Publishing, Paris. DOI:

<http://dx.doi.org/10.1787/9789264265424-en>.

<sup>238</sup> OECD (2014), Open Government in Latin America, OECD Public Governance Reviews, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264223639-en>.

<sup>239</sup> Gallup World Poll (n.d.), “Gallup World Poll”, [www.gallup.com/poll/180374/gallup-top-world-findings-2014.aspx](http://www.gallup.com/poll/180374/gallup-top-world-findings-2014.aspx).

<sup>240</sup> The OECD defines Open State as follows: “Entities from the different branches of power, independent state institutions and/or different levels of government joining forces among themselves and with civil society, academia, the media, the private sector to design and implement an agenda to make the state more open, transparent, participatory and accountable, while contributing to the country’s strategic development objectives -. In an Open State approach, actors co-ordinate their approaches, exploit synergies, build on each other’s strengths and share good practices in order to ultimately foster inclusive and sustainable growth and regain trust in the state.”

<sup>241</sup> MIDEPLAN (2014), Plan Nacional de Desarrollo 2015-2018, Alberto Cañas Escalante, San José, [documentos.mideplan.go.cr/alfresco/d/d/workspace/SpacesStore/cd1da1b4-868b-4f6f-bdf8-b2dee0525b76/PND%202015-2018%20Alberto%20Ca%C3%B1as%20Escalante%20WEB.pdf](http://documentos.mideplan.go.cr/alfresco/d/d/workspace/SpacesStore/cd1da1b4-868b-4f6f-bdf8-b2dee0525b76/PND%202015-2018%20Alberto%20Ca%C3%B1as%20Escalante%20WEB.pdf).

In line with this priority, the government developed an ambitious second Open Government Partnership (OGP) Action Plan for the period of 2015-2017 and - as one of the first countries worldwide - it issued a National Open Government Strategy (NOGS) (*Estrategia Nacional de Gobierno Abierto*) in December 2015. Costa Rica's NOGS mainstreams the existing scattered open government initiatives in a whole-of-government approach and creates synergies with the country's greater policy objectives and the National Development Plan in particular.

Moreover, in November 2015, the President of the Republic, the Presidents of the other two branches of power (legislative and the judiciary) and of the Supreme Electoral Tribunal (*Tribunal Supremo de Elecciones*) signed a Declaration for the Establishment of an Open State (*Declaración por la Construcción de un Estado Abierto*) in which they committed to “promote a policy of openness, transparency, accountability, participation and innovation in favour of the citizens” across the entire state apparatus. Furthermore, Costa Rica has designed an integrated National Open State Strategy (*Convenio marco para promover un Estado Abierto de la República de Costa Rica*) developed by the different branches of power together with civil society, which was launched in March 2017.

While acknowledging the important progress made, the Briefing Note presented to the Committee in November 2016 also outlined potential to further enhance transparency, accountability and participation. It identified issues that in some cases impede the effective implementation of open government strategies, including the lack of an access to information law, the comparatively low participation in public policy making that characterises the country<sup>242</sup>, the need for greater human and financial resources in the office of the Deputy Ministry for Political Affairs and Citizen Dialogue (the government office responsible for the horizontal co-ordination of open government initiatives) and the limited inclusion of the subnational level in the open government process, as well as the still limited understanding of open government principles and practices in the municipalities.

Acknowledging that the country needs to address these issues, the Government of Costa Rica has taken different initiatives, including the elaboration of an Open Data Decree and a Decree on the National Policy on Transparency and Access to Information, which were in the process of public consultation at the time of writing; the progressive expansion of the network of inter-institutional Open State contact points (*Enlaces Inter-institucionales*); and the advancing participation of sub-national governments in the OGP process.

## Legal framework

A vital element of a well-functioning open government ecosystem is a solid legal framework which determines the rules, sets boundaries and provides rights and obligations for stakeholders and governments alike<sup>243</sup>. Like many OECD and other Latin American countries (see Box 9), Costa Rica has enshrined the principles of transparent, accountable and participatory government at the highest legal level.

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<sup>242</sup> Alfaro-Redondo, R. and M.A. Seligson (2012), “Cultura política de la democracia en Costa Rica, 2012: La erosión de los pilares de la estabilidad política”, Vanderbilt University, [www.vanderbilt.edu/lapop/cr/Costa\\_Rica\\_Country\\_Report\\_2012\\_Reduced\\_W.pdf](http://www.vanderbilt.edu/lapop/cr/Costa_Rica_Country_Report_2012_Reduced_W.pdf).

<sup>243</sup> OECD (2016), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264268104-en>.

### Box 9. Examples of open-government and open-state-related principles found in national Constitutions across OECD members

**Norway's constitution**, first adopted in 1814, has been amended over the years to reflect an ever-deepening commitment to openness and transparency. It emphasises the citizens' right to trustworthy information, "Everyone has a right of access to documents of the State and municipal administration and a right to follow the proceedings of the courts and democratically elected bodies. (...) It is the responsibility of the authorities of the State to create conditions that facilitate open and enlightened public discourse."

**Sweden's constitution** states that citizens possess the right to freely seek information, organise and hold demonstrations and found and join political parties. These rights are part of the constitution, which is based on four fundamental laws: the Instrument of the Government, the Freedom of the Press Act, the Fundamental Law on Freedom of Expression and the Act on Succession. In 1766, Sweden became the first country in the world to write Freedom of the Press into its constitution. Freedom of the Press is based on freedom of expression and speech, which are among the most important pillars of democracy. Those in authority must be held accountable and all information must be freely available. The identities of people who work as sources and provide publishers, editors or news agencies with information are protected. The law on Freedom of Expression was passed in 1991 to expand this protection to non-print media, such as television, film and radio. The law moreover seeks to ensure an unimpeded exchange of views, information and artistic creativity.

The **1917 Mexican Constitution** includes a wide range of articles that build the constitutional basis and set the ground for an open government. The constitution includes a number of open government principles: according to Article 6 of the Constitution, "the state shall guarantee the right to information". According to Article 35 of the Constitution, citizens have the right to vote and "initiate laws in the terms and with the requirements appointed by the Constitution and the Law of the Congress (...)" (Article 35) and "to vote in the referendum on topics of national importance (...)" as included by a decree published on 9 August 2012 (Tribunal Electoral, 2013).

Sources: Thurston, A. (2013), "Openness and information integrity in Norway", Open Government Partnership Blog, [www.opengovpartnership.org/blog/dr-anne-thurston/2013/10/15/openness-and-information-integrity-norway](http://www.opengovpartnership.org/blog/dr-anne-thurston/2013/10/15/openness-and-information-integrity-norway); Government of Sweden (n. d.), "Openness shapes Swedish society", webpage, <https://sweden.se/society/openness-shapes-swedish-society/> (accessed 10 October 2016); Tribunal Electoral (2013), "Political Constitution of the United Mexican States", Diario Oficial de la Federación, 5 February 1917, [http://portal.te.gob.mx/sites/default/files/consultas/2012/04/cpeum\\_ingles\\_ref\\_26\\_feb\\_2013\\_pdf\\_81046.pdf](http://portal.te.gob.mx/sites/default/files/consultas/2012/04/cpeum_ingles_ref_26_feb_2013_pdf_81046.pdf) (accessed 5 April 2016).

The Costa Rican Constitution of 1949 includes a wide range of articles that build the constitutional basis of and set the ground for an Open State:

- Citizen participation is enshrined in Article 9, which was amended by Law 8364 from 2003. According to the constitution, "the Government of the Republic is popular, representative, *participatory*, alternative and responsible (...)".
- The Constitution further sets out the foundations for a democratic state by defining the right to privacy (Article 24), the freedom of assembly (Article 25), the right to meet peacefully and without arms (Article 28), the freedom of speech (Article 26), and equality (Article 33).
- Article 11, which was amended by Law 8003 in 2000, denotes administrative transparency and accountability and the liability of former public officials.
- Access to information is established as a fundamental. The constitution also provides the basis for the disclosure of information. Article 30 states "Free access to administrative departments is guaranteed for the purpose of obtaining information on matters of public interest."
- The constitution further ensures the "freedom of petition, individually or collectively submitted before any public officer or official entity, and the right to a prompt solution" (Article 27).

- Article 46 highlights the right to receive appropriate and truthful information.
- The representation of minorities is set out in Article 95.6.

In Costa Rica, like in OECD countries, these constitutional provisions are complemented by an extensive legislative and regulatory framework:

- Costa Rica has several laws that touch on the participation of citizens and key stakeholders in the policy cycle. For example, Law 5338 on Foundations (*Ley de Fundaciones*) regulates how civil society organisations should function. Formal citizen participation mechanisms are also protected by law (Law 8491 on Popular Initiative [*Ley de Iniciativa Popular*] and Law 8492 Regulating the Referendum [*Ley de Regulación del Referéndum*]). Law 9097 Regulating the Right of Petition (*Ley de Regulación del Derecho de Petición*) sets forth that any citizen may exercise the right of petition, without prejudice or penalty, before any public institution, administration or authority, on any subject, matter or information of public concern.
- The framework establishing the conditions for the use of information and communications technology (ICT) and open data in the public administration of Costa Rica is provided by Law 8220 on Citizen Protection against Excessive Requirements and Excessive Administrative Procedures (*Ley de Protección al Ciudadano del Exceso de Requisitos y Trámites Administrativos*) and Law 8454 on Certificates, Digital Signatures and Electronic Documents (*Ley de Certificados, Firmas Digitales y Documentos Electrónicos*).
- The Law 8968 to protect the individual against the processing of their personal data (*Ley de Protección de la Persona frente al Tratamiento de sus Datos Personales*) ensures anyone's respect for his/her right to informational self-determination in relation to his/her life or private activity and other personality rights as well as the defence of freedom and equality with regard to automatic or manual processing data for his/her person or property.
- The Law 7794, Municipal Code (*Código Municipal*), provides the legal basis for open government at the local level. It establishes for instance the Municipal Councils' obligation to promote active, conscious and democratic participation of the people in the decisions of the local government, and it strengthens the mechanisms for consulting the public (popular initiatives, referenda and town hall meetings). While these laws constitute important elements of an open government ecosystem, the system remains incomplete without a stand-alone access to/freedom of information (ATI) law. The right to access government information is a necessary legal foundation for transparency, accountability and participation in policy making (OECD, 2014)<sup>244</sup>. Such a law is “the cornerstone of an open and inclusive government and a crucial element to reduce corruption and deepen trust among citizens and their governments” (OECD, 2016)<sup>245</sup>. More than 100 countries worldwide, including all OECD countries have a stand-alone access to/freedom of information law (OECD, 2016)<sup>246</sup>.

Costa Rica had no access to information law in force at the time of writing. In June 2014, a draft law was introduced to the Legislative Assembly. The draft law was discussed in the relevant sub-commission but

<sup>244</sup> OECD (2014), Open Government in Latin America, OECD Public Governance Reviews, OECD Publishing, Paris. DOI: [dx.doi.org/10.1787/9789264223639-en](https://doi.org/10.1787/9789264223639-en).

<sup>245</sup> OECD (2016), Open Government: The Global Context and the Way Forward, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264268104-en>.

<sup>246</sup> OECD (2016), Open Government in Costa Rica, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264265424-en>.

it was never voted upon, due to resistance from different parliamentary groups. The government reports that - in line with the country's commitments under the Open Government Partnership - the National Open Government Commission and the Ministry of the Presidency (*Ministerio de la Presidencia*) are currently working on modifying the draft law and aim to submit it to Congress in May 2017. The government is further working on a decree on the National Policy on Transparency and Access to Information and on an Open Data decree which also contains provisions for access to information.

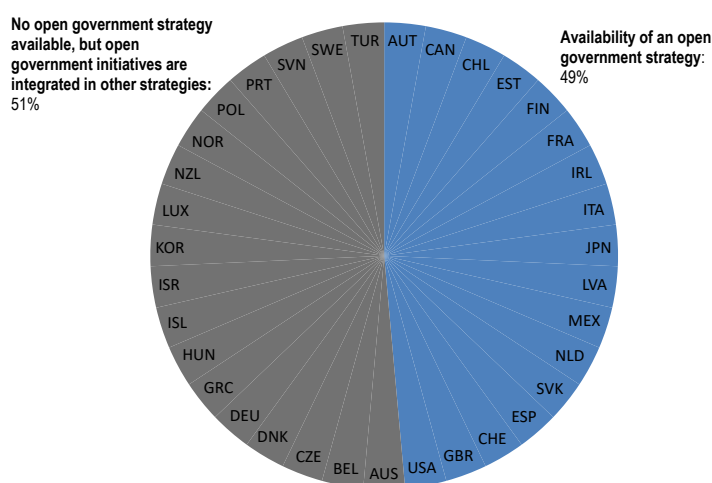
## Policy framework

Costa Rica's policy framework for open government and the Open State is, when compared to OECD standards, broad and extensive. The Declaration for the Establishment of an Open State constitutes an important milestone for democracy in Costa Rica and has the potential to mark an historic change in the way open government policies are conceived and implemented. The declaration provides the high-level anchorage of the country's Open State efforts. In order to implement the commitments made in the Declaration, Costa Rica established the first National Open State Strategy worldwide in 2017. The Strategy links initiatives to promote transparency, accountability and participation of the Executive, the Legislature, the Judiciary and the Supreme Electoral Tribunal with national development goals and includes concrete joint actions to be implemented by the different branches of power. Such a medium- to long-term, whole-of-society open government vision for the country and has significant potential to guide the elaboration of open government initiatives over the next years.

In addition to the Declaration for the Establishment of an Open State, Costa Rica's strategic vision for an Open State is defined in key policy documents. Costa Rica's second Open Government Partnership Action Plan (2015-2017) signals the continued commitment of the country to draft and implement open government policies and initiatives, in collaboration with its citizens and civil society organisations, and to expose them to international scrutiny. The second Action Plan includes a very wide variety of actors and is considerably more ambitious than the first plan (see below for a discussion of the Action Plan). The government reports that the co-creation effort for the third plan is due to start in spring 2017.

The National Development Plan (NDP) 2014-2018 "*Alberto Cañas Escalante*" highlights the government's commitments to open government by making it one of the three pillars of national socio-economic development. This choice bears great importance for the streamlining of the principles of open government in all national policies and is a testimony of the administration's commitment to deeply change the machinery of government works and its relations with its constituency. The NDP further includes several constitutive elements of this new culture of inclusive policy-making such as national dialogues and the promotion of gender equality in public life.

According to data from the 2015 OECD Open Government Survey, Costa Rica is one of the very few countries to have elaborated a single and comprehensive national open government strategy that goes beyond its OGP action plan. Survey results show that – while 49% of OECD members reported that they have single national open government strategy in place (see Figure 11), 76% were actually referring to their Open Government Partnership (OGP) Actions Plans.

**Figure 11. Existence of a single open government strategy in OECD countries**

Source: OECD (2016), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264268104-en>.

## Institutional framework

### *The National Open Government Commission*

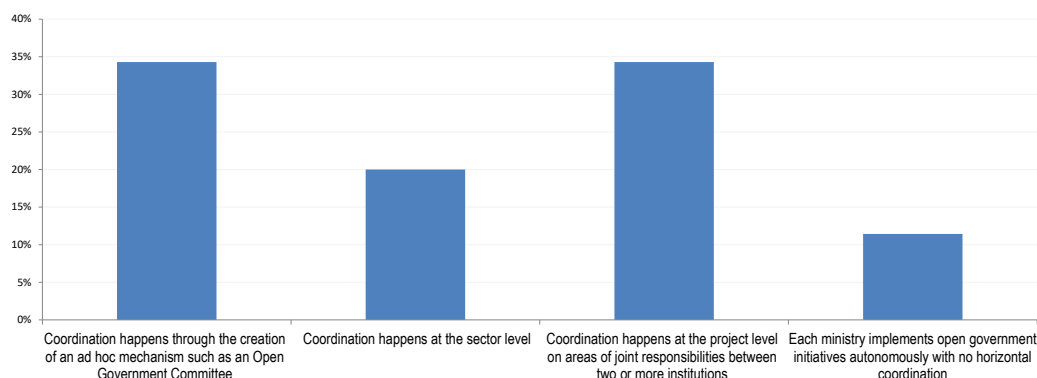
The co-ordination of open government initiatives can take place at different levels: ad hoc mechanisms, sector level, project level, ministerial level, etc.<sup>247</sup>. According to the 2015 OECD Survey, in 34% of OECD countries, co-ordination happens through the creation of an ad hoc mechanism, such as an Open Government Committee, which is usually composed of a wide range of stakeholders (see Figure 12). In Costa Rica, Decree 38994-MP-PLAN-MICITT from April 2015 created the National Commission for Open Government (*Comisión Nacional por un Gobierno Abierto*, CNGA)<sup>248</sup> as the main mechanism to co-ordinate the country's open government process.

The CNGA facilitates the implementation of open government reforms in the public sector and it accompanies the design and evaluation of national open government action plans and proposes public policies in this area to the Presidency of the Republic<sup>249</sup>. The creation of the CNGA reflects the current administration's broader understanding of open government, including the areas of citizen participation, transparency, accountability, digital government and integrity/anti-corruption. Previously, the Inter-Sectoral Commission for Digital Government (*Comisión Intersectorial de Gobierno Digital*) had been responsible for open government policy co-ordination and for designing and planning public policies on digital government matters (which at that time also included open government matters).

<sup>247</sup> OECD (2016), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264268104-en>.

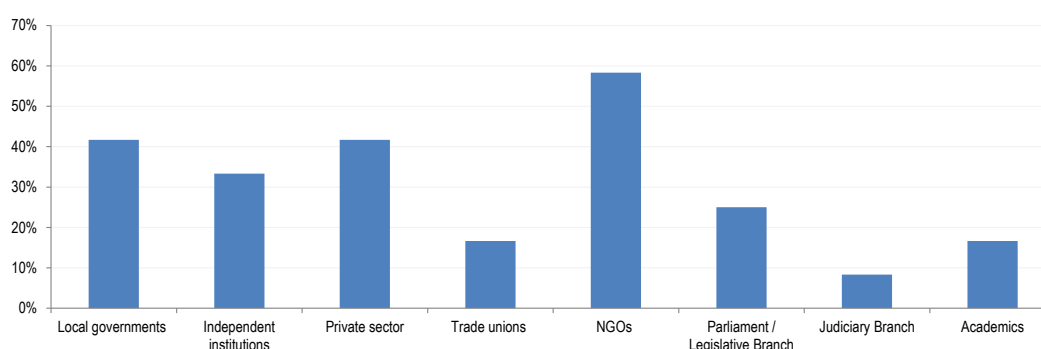
<sup>248</sup> La Gaceta (2015), Decree 38994-MP-PLAN-MICITT, <https://www.imprentanacional.go.cr/pub/2015/05/13/COMP13052015.pdf>.

<sup>249</sup> Idem.

**Figure 12. Mechanisms used to co-ordinate open government initiatives in OECD countries**

Source: OECD (2016), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264268104-en>.

The composition of the CNGA is comparable to other existing open government committees or commissions across the OECD (see Figure 13). The Costa Rican commission includes members from Centre of Government (CoG)-institutions, the wider central government, civil society, academia and the private sector being composed of representatives from the Ministry of the Presidency (*Ministerio de la Presidencia*), the Ministry of Planning and Economic Policy (*Ministerio de Planificación Nacional y Política Económica*), the Ministry of Finance (*Ministerio de Hacienda*), the Ministry of Justice and Peace (*Ministerio de Justicia y Paz*) and the Ministry of Science, Technology and Telecommunications (*Ministerio de Ciencia, Tecnología y Telecomunicaciones*) respectively. In addition, two representatives from civil society organisations (*Abriendo Datos* and *Costa Rica Íntegra*), one representative from the National Council of University Directors (*Consejo Nacional de Rectores, CONARE*) and one representative of the Union of Costa Rican Chambers of Commerce and Associations of the Private Sector (*Unión Costarricense de Cámaras y Asociaciones del Sector Empresarial Privado UCCAEP*) are part of the CNGA.

**Figure 13. Members of the horizontal co-ordination mechanism on open government in OECD countries**

Note: Only countries that responded that coordination happens through the creation of an ad hoc mechanism such as an Open Government Committee were asked this question.

Source: OECD (2016), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264268104-en>.

The founding decree of the CNGA also establishes sub-commissions in charge of supporting systems, participation, education, transparency and collaboration and allows for additional sub-committees to be

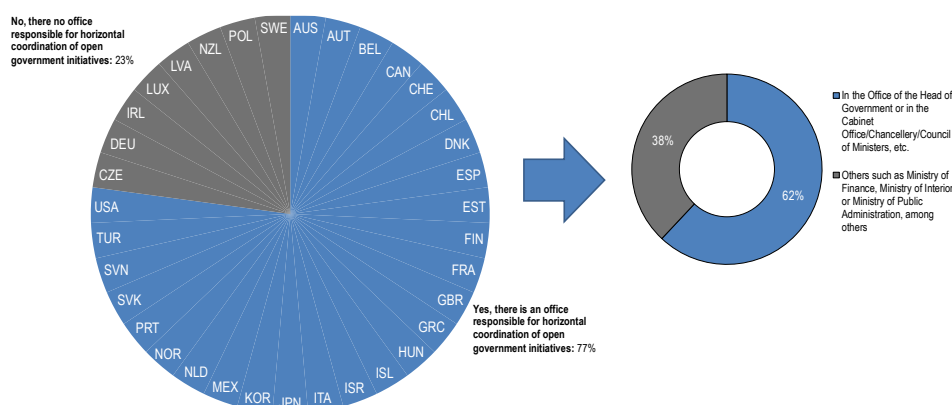
created if necessary<sup>250</sup>. The commission and its sub-commissions respectively provide the high level leadership as well as the technical support for Costa Rica's open government agenda and create a forum in which key stakeholders can define and elaborate a vision on open government for the country, as successfully done in the elaboration of the National Open Government Strategy.

In line with the ambitious move towards an Open State and the current process to elaborate a National Open State Strategy, the government is considering a further expansion of the scope of the Open Government National Commission (or transforming it into an “Open State National Commission”).

### *The Office of the Deputy Minister of the Presidency for Political Affairs and Citizen Dialogue in the Ministry of the Presidency*

According to results from the 2015 OECD Open Government Survey, a large majority of OECD countries (77%) have an office in the government responsible for the horizontal co-ordination of open government initiatives (see Figure 14). In Costa Rica, since 2014, open government policies have been coordinated by the Ministry of the Presidency, an existing institution which in the recent past added open government to its portfolio and which also constitutes the Secretariat of the National Open Government Commission. The Ministry has for instance co-ordinated - on behalf of the CNGA - the elaboration of both the second OGP Action Plan and the National Open Government Strategy and has led the design process of the National Open State Strategy.

**Figure 14. Existence of a dedicated office responsible for horizontal co-ordination of open government initiatives and its location**



Note: Only countries which answered to have a dedicated office in place were asked about the location of this office. Australia on the location of the office: "To be determined pending the finalisation of machinery of government changes."

Source: OECD (2016), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264268104-en>.

In fact, in most OECD countries the office dealing with the open government agenda from a horizontal perspective has its institutional anchorage either at the level of the Office of the Head of Government (27% in OECD countries) or in the Cabinet Office/Chancellery (35% in OECD countries) (OECD, 2016)<sup>251</sup>. This also applies to Costa Rica, as the Office of the Deputy Minister of the Presidency for Political Affairs and Citizen Dialogue (*Viceministerio de la Presidencia en Asuntos Políticos y Diálogo Ciudadano*) is institutionally located within the centre of government (i.e. within the Ministry of the Presidency).

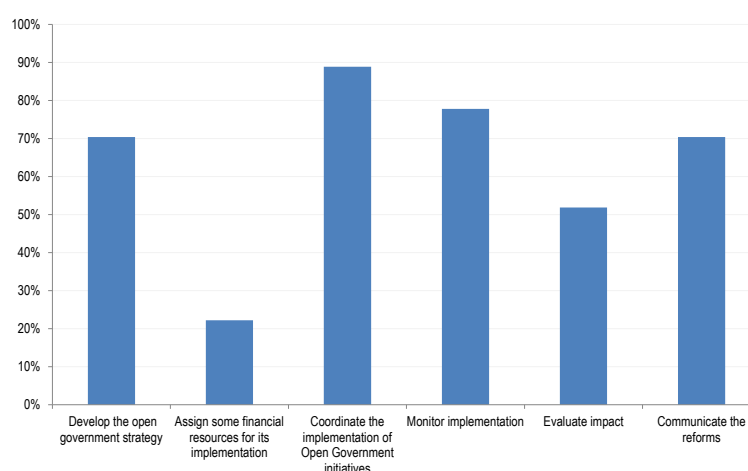
250 La Gaceta (2015), Decree 38994-MP-PLAN-MICITT, [https://www.imprentanacional.go.cr/pub/2015/05/13/COMP\\_13\\_05\\_2015.pdf](https://www.imprentanacional.go.cr/pub/2015/05/13/COMP_13_05_2015.pdf).

251 OECD (2016), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264268104-en>.



Generally, according to the 2015 OECD Survey, the offices in charge of co-ordinating open government initiatives across OECD countries typically have different functions which go from developing the open government strategy to evaluating its impact (Figure 15). In Costa Rica, the portfolio of the Deputy Ministry of the Presidency is quite broad: it has the responsibilities to “develop the open government strategy”, “assign some financial resources for its implementation”, “coordinate the implementation of Open Government initiatives”, “monitor implementation” and “communicate the reforms”<sup>252</sup>. However, it is not responsible for the evaluation of impact (see below for a discussion on monitoring and evaluation of open government initiatives in Costa Rica). This range of tasks in the area of open government taken on by the Deputy Ministry should be reflected in the appropriate allocation of human and financial resources as “the long-term sustainability and continuity of efforts are affected by the capacity in terms of the skills, human resources and financial means of the main office in charge of open government”<sup>253</sup>.

**Figure 15. Responsibilities of the co-ordinating office**



Note: Question was only asked to countries which responded that they have an office responsible for horizontal co-ordination of open government initiatives.

Source: OECD (2016), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264268104-en>.

Results from the 2015 OECD Open Government Survey show that many OECD countries face a human resources challenge to implement open government initiatives (see Table 10). In its responses to the survey, the Costa Rican government also acknowledged that it is confronted with capacity constraints in implementing its open government agenda, both financially and in terms of human resources.

**Table 10. Human resources challenges to implement open government initiatives**

Challenge	Of total OECD 35	Countries
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<sup>252</sup> Costa Rica's answer to the 2015 OECD Survey of Open Government Co-ordination and Citizen Participation in the Policy Cycle (unpublished).

<sup>253</sup> OECD (2016), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264268104-en>.

Lack of, or insufficient, communication/ awareness of the benefits of open government reforms among public officials	22	Australia, Belgium, Canada, Chile, Finland, France, Greece, Hungary, Israel, Japan, Latvia, Luxembourg, Mexico, Netherlands, Norway, Poland, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom.
General resistance to change/reforms in the public sector	19	Australia, Canada, Chile, France, Germany, Greece, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, Netherlands, Slovak Republic, Slovenia, Switzerland, Turkey, United Kingdom, United States.
Lack of, or insufficient, human resources	16	Belgium, Czech Republic, Finland, Germany, Japan, Korea, Latvia, Netherlands, New Zealand, Norway, Poland, Portugal, Slovenia, Spain, Switzerland, United States.

Source: Country responses to OECD (2015), "2015 OECD Survey on Open Government Co-ordination and Citizen Participation in the Policy Cycle" (unpublished)

### *The Ministry of National Planning and Economic Policy*

The Ministry of National Planning and Economic Policy (*Ministerio de Planificación Nacional y Política Económica*, MIDEPLAN), a member of the CNGA, is a key actor in Costa Rica's open government process. The Ministry is in charge of the elaboration, implementation and evaluation of the country's overarching policy document, the National Development Plan (NDP), and has, as such, important competences that should help Costa Rica move further towards an Open State. In the framework of the CNGA, MIDEPLAN has started co-operating with the Office of the Deputy Minister to elaborate an adequate monitoring and evaluation mechanism for the country's OG efforts. Following the recommendation of the OECD Open Government Review of Costa Rica<sup>254</sup>, the government developed indicators to monitor the implementation of its OGP Action Plan and the National Strategy. However, it remains unclear whether these indicators are fully linked to MIDEPLAN's monitoring and evaluation system designed for the National Development Plan.

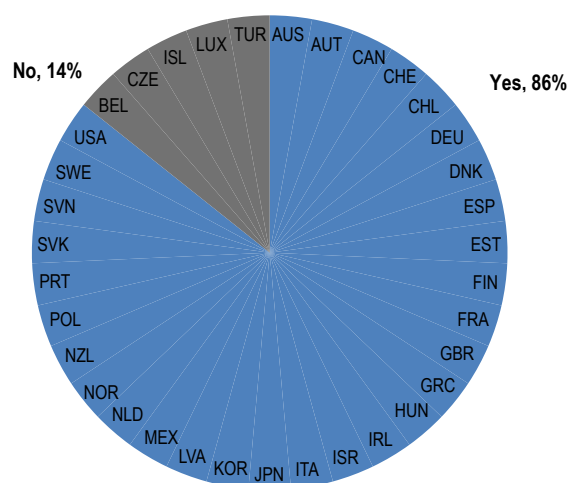
Monitoring and evaluation (M&E) is an essential feature of the open government policy cycle, as it can ensure accountability and continuous improvements of the policy process through feedback loops<sup>255</sup>. In fact, 86% of OECD countries monitor their open government initiatives (see Figure 16). It is important to point out that most countries identified that their main mechanism to monitor open government initiatives are the normal monitoring activities of each public institution (77% in OECD countries) indicating that, to a large extent, open government initiatives are treated as "any other" activity of the government<sup>256</sup>. This is also the case in Costa Rica: as of now, the existing M&E framework of MIDEPLAN and the Independent Reporting Mechanism (IRM) of the OGP partially perform the monitoring and evaluation function.

<sup>254</sup> OECD (2016), *Open Government in Costa Rica*, OECD Publishing, Paris.

DOI: <http://dx.doi.org/10.1787/9789264265424-en>

<sup>255</sup> OECD (2016), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264268104-en>.

<sup>256</sup> OECD (2016), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264268104-en>.

**Figure 16. OECD countries that monitor open government initiatives**

Source: OECD (2016), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264268104-en>.

### *Inter-institutional Open Government Contact Points*

The *Enlaces Inter-institucionales* (i.e. open government contact points) were established for the design and implementation of the Second OGP Action Plan (see below). An initiative taken by the centre of government, they are a good practice that could inspire other countries. The *Enlaces* are an important tool to ensure interinstitutional co-ordination of open government and open state initiatives as they constitute the contact points for the Deputy Ministry of the Presidency with the different central government ministries; decentralised institutions; some municipalities; the Ombudsman; the judiciary, etc. The government reports that it aims to create at least one *Enlace* in each institution that is involved in the implementation of its open government agenda. The *Enlaces* have met regularly over the past months and have received capacity-building co-operation from the OGP Support Unit. While the *Enlaces* do not formally report to the Deputy Ministry of the Presidency, they volunteer to collaborate and have the potential to provide the centre of government with an effective co-ordination tool, both horizontally and vertically.

### *Independent state institutions - The Costa Rican Ombudsman and the Office of the Comptroller General*

The Ombudsman (*Defensoría de los Habitantes de la República*) was established by Law 7319 of the Office of the Ombudsman (*Ley de la Defensoría de los Habitantes de la República*) from 1992 after a legislative process started as early as 1985. The Ombudsman is responsible for the protection and interests of the population<sup>257</sup>. The Office mainly receives and investigates complaints and alleged cases of infringement of rights by state institutions or bodies.

Apart from the daily tasks of collecting and investigating appeals from the population, which provide the office with an in-depth understanding of the systemic problems in Costa Rica's public administration, the

<sup>257</sup> OECD (2015), Costa Rica: Good Governance, from Process to Results, OECD Public Governance Reviews, OECD Publishing, Paris. DOI: [dx.doi.org/10.1787/9789264246997-en](http://dx.doi.org/10.1787/9789264246997-en).

Ombudsman is an active member of Costa Rica's open government ecosystem and has started the following initiatives to promote open government:

- Preparation – together with the University of Costa Rica – of a Public Sector Transparency Index (*Índice de Transparencia del Sector Público*) which gathers together all information available on the institutions' websites, including public procurement planning, a salary index, contracts of public workers, tenders, annual reports, minutes, agreements and circulars etc;
- Involvement in the drafting of the National Open Government Strategy, published in 2015;
- Participation in the development of the policies of Equality and Gender Equality, Childhood and Adolescence, and the National Policy for a Racism-Free Society;
- Establishment of the Inter-institutional Transparency Network (*Red Interinstitucional de Transparencia*) (OECD, 2016)<sup>258</sup>.

### ***The Judicial Branch***

Costa Rica's judiciary is among the first judicial branches in the world to have created its own open judiciary and citizen participation strategy. The judiciary is further involved in the country's OGP process: the country's second OGP Action Plan includes a commitment on a "Policy for civic participation in judiciary processes"<sup>259</sup> and the country reports that the judiciary will be fully engaged in the drafting of its third Action Plan in 2017. In addition, the Presidents of the Supreme Court (*Corte Suprema*) and of the Supreme Electoral Tribunal (*Tribunal Supremo de Elecciones*) have signed the Declaration for the Establishment of an Open State.

The judiciary defines citizen participation as "*a democratic process, which guarantees a responsible, active and sustainable contribution of the citizens in the design, decision making and implementation of the policies of the judiciary, in a way which responds to the reality of the population, the common good and complies with the aims of the judiciary*"<sup>260</sup>. Citizen participation is seen as "*a transparent intervention, regardless of any personal interests and policies, which includes the participation of different sectors of civil society in the open spaces of the judiciary as forms of executing social control and transparency in the judicial function.*"<sup>261</sup> The judiciary's citizen participation policy aims at achieving the following goals:

- enhancing the legitimacy of the judiciary;
- strengthening trust in the democratic institutions of Costa Rica;
- ensuring the application of the right of the citizens to obtain access to information;
- including citizens throughout the entire policy cycle;

<sup>258</sup> OECD (2016), *Open Government in Costa Rica*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264265424-en>.

<sup>259</sup> OGP (2015), *Costa Rica, Second Action Plan, 2015-2017*, <https://www.opengovpartnership.org/costa-rica-second-action-plan-2015-17>

<sup>260</sup> Judiciary (2015), *Política de Participación Ciudadana en el Poder Judicial*, [www.conamaj.go.cr/images/libros/pdf/041.pdf](http://www.conamaj.go.cr/images/libros/pdf/041.pdf).

<sup>261</sup> *Idem*.

- making use of new technological advances in the ICT sector.

In order to achieve these goals, the judiciary, in co-operation with the National Commission for Improving the Administration of Justice<sup>262</sup>, has worked out an Action Plan to Strengthen Citizen Participation. The Action Plan has three pillars: raising awareness of the judiciary's work among the population; improving the interaction and dialogue between citizens and the judiciary; and enhancing citizens' advocacy.

### *The Legislative Branch*

Costa Rica's legislative branch has taken different initiatives to become more open, transparent and participatory. In 2015, six civil society organisations and the *Autoridades del Directorio Legislativo* set up the Alliance for an Open Legislative Assembly (*Alianza por una Asamblea Abierta*, AAA) which includes commitments to legislative openness and the implementation of a Plan of Priority Actions for Legislative Openness. The plan includes concrete commitments to:

- improve the *Portal Legislativo*;
- create pedagogic material and offer capacity building to civil society;
- expand the coverage of the legislature on television;
- strengthen the mechanisms for participation in the legislative process to improve the relationship between civil society and members of Congress;
- foster popular legislative initiatives;
- promote the discussion of legislation on transparency and access to information in the legislative assembly<sup>263</sup>.

The action plan establishes clear aims and includes deadlines, concrete indicators and defines the people responsible for their implementation. It is too early to evaluate the actual impact of the plan but according to information received from civil society during OECD missions to Costa Rica implementation is only advancing slowly.

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<sup>262</sup> Decree 34798 from 2008 defines the National Commission for Improving the Administration of Justice (Comisión Nacional para el Mejoramiento de la Administración de Justicia, CONAMAJ) as a public body made up of representatives of the different branches of the Costa Rican state and of representatives of civil society. The Commission is composed of the following entities: the Judiciary, the Ministry of Justice and Peace, the Ombudsman, the Attorney General, the Faculty of Law of the University of Costa Rica, Bar Associations and Lawyers, the Legal Affairs Committee of the Legislative Assembly, the Comptroller General and the Supreme Electoral Tribunal. Hence, it includes representatives of the three branches of the state.

<sup>263</sup> ACCESA (2015), Directorio Legislativo y Alianza por una Asamblea Abierta presentan el Plan de Acciones Prioritarias para la Apertura Legislativa, <http://accesa.org/2015/10/20/directorio-legislativo-presenta-junto-con-alianza-por-una-asamblea-abierta-el-plan-de-acciones-prioritarias-para-la-apertura-legislativa/>.

## Implementation of transparency, accountability and citizen engagement initiatives

### *Citizen engagement*

According to the United Nations Development Program (UNDP) National Human Development Report, Costa Rica's levels of citizen participation are rather low<sup>264</sup>. In order to address this, the current administration has made increasing citizen participation one of its key priorities. The 2015-2018 National Development Plan recognises that “*moving towards a new model of development based on equity requires citizen participation as a substantive condition*”<sup>265</sup> and the second OGP Action Plan has an important focus on participation.

Different initiatives have been taken to address the challenge of low citizen engagement. For instance, in the process of designing the NDP, the government had made substantial efforts to strengthen the participatory dimension<sup>266</sup>. More than 100 authorities participated in the development of the plan, including sectorial technical secretariats and officials of multiple institutions. However, while the efforts to involve all relevant public sector stakeholders in the initial drafting of the plan were clear and praiseworthy, according to civil society organisations, the participation of citizens and CSOs remained limited.

The government has also made efforts to identify the needs of specific groups of society such as indigenous communities and involve them in the policy process. The Network of the Indigenous Bribri-Cabecar Communities (*Red Indígena Bri Bri y Cabecar*, RIBCA) was founded in 2005 to empower and strengthen the organisational representation of the Bribri and Cabecar communities. The network's initiatives are aimed at improving the communities' living conditions and their institutional bargaining leverage and foster the effective political participation of the indigenous population. Moreover, the network has brought people together to fight for respect, the right to land ownership, the right to be recognised as indigenous and to strive for development while respecting their own traditions<sup>267</sup>.

Under the current administration, citizens further have the opportunity to participate in development processes in the context of a new government initiative. The *Tejiendo Desarrollo* (Weaving Development) programme supports community-led development projects (see Box 10).

<sup>264</sup> UNDP (2013), *La Equidad en Costa Rica: Incidencia de la Política Social y la Política Fiscal*, United Nations Development Programme, [www.cr.undp.org/content/dam/costa\\_rica/docs/undp\\_cr\\_equidad\\_2014.pdf](http://www.cr.undp.org/content/dam/costa_rica/docs/undp_cr_equidad_2014.pdf).

<sup>265</sup> MIDEPLAN (2015), *Costa Rica National Development Plan 2015-2018*, <https://www.mideplan.go.cr/component/content/article?id=1273>.

<sup>266</sup> OECD (2015), *Costa Rica: Good Governance, from Process to Results*, OECD Public Governance Reviews, OECD Publishing, Paris. DOI: [dx.doi.org/10.1787/9789264246997-en](https://doi.org/10.1787/9789264246997-en).

<sup>267</sup> Alianza Mesoamérica de Pueblos y Bosques (n.d.), *Red Indígena Bri-Bri Cabecar*, [www.alianzamesoamericana.org/ribca/](http://www.alianzamesoamericana.org/ribca/).

### Box 10. Tejiendo Desarrollo: Inter-institutional co-ordination and citizen participation throughout the policy cycle

The *Tejiendo Desarrollo* (Weaving Development) programme was created by Executive Decree 38536-MP-PLAN. It is promoted by the Presidency of the Republic, through the Office of the First Lady, the Ministry of National Planning and Economic Policy (MIDEPLAN), the Institute for Rural Development (INDER), the Institute for Municipal Development and Consulting (IFAM) and the National Directorate for Community Development (DINADECO), with the purpose of promoting the development and articulation of inter-institutional actions and citizen participation in the regions, territories, municipalities and communities in the framework of the Network of Territorial Development and Citizen Participation (*Red de Desarrollo Territorial y Participación Ciudadana*).

*Tejiendo Desarrollo* is a policy framework supporting community-led development processes. The objectives of the network are the following:

- to promote the participation of civil society in development processes
- to articulate the sectoral organisation of the government
- to design policies that respond to the priorities of local actors.

The National Development Plan describes the network and its two key components and two transversal lines of work: to promote development processes in specific territories (10 territories which comprise 34 cantons) and to develop a National Policy on Regional and Territorial Development with civil society participation led by the Ministry of National Planning and Economic Policy. The transversal lines are training (building capacities) and communication.

The component of creating development processes in specific territories includes various stages: preparation and building capacities in territories and institutions, implementation of subnational institutions, construction of agreements and prioritized plans, project management and evaluation of the development process. The process for the formulation of the National Policy for Regional and Territorial Development with Citizen Participation is made up of several stages: **diagnosis, identification of the problem, definition of the target population, approaches, principles, characteristics of the public policy, definition of axes and guidelines, management model, visualization of actors, proposal for the evaluation, monitoring and accountability**, all parts of the policy cycle.

*Tejiendo Desarrollo* responds to the need of the State to develop strategies, programs and projects that are linked to comprehensive and coherent plans, bodies and instruments from subnational planning (regional, territorial, cantonal, district, municipal), initiatives that respond to the needs and priorities identified by local actors. Given its systemic nature, it is conceived as an innovative and challenging undertaking that must be taken on by all the institutions of the executive branch. One of the main objectives of the programme is to deepen citizen participation in the construction and management of these policies, as well as to generate local capacities as a strategy to ensure more sustainability, ownership and empowerment of stakeholders in the projects.

Source: OECD (2015), Costa Rica: Good Governance, from Process to Results, OECD Public Governance Reviews, OECD Publishing, Paris, [dx.doi.org/10.1787/9789264246997-en](https://dx.doi.org/10.1787/9789264246997-en).

### Costa Rica's membership in the Open Government Partnership (OGP)

Costa Rica joined the Open Government Partnership (OGP) in January 2012, declaring that this international platform would enable the country to consolidate the efforts made over recent years in relation to transparency, access to information and the fight against corruption.

Table 11. Costa Rica's participation in the Open Government Partnership

OGP Member since	2012
1 <sup>st</sup> OGP Action Plan	January 2013 (-2014)

Self-assessment	No self-assessment report has been published
Independent Reporting Mechanism	February 2015
2 <sup>nd</sup> OGP Action Plan	October 2015 (-2017)
Self-assessment	September 2016
Independent Reporting Mechanism	Spring 2017

Source: OGP (2016), "Costa Rica", Open Government Partnership, [www.opengovpartnership.org/country/costa-rica](http://www.opengovpartnership.org/country/costa-rica).

Like many other members of the OGP, Costa Rica experienced difficulties in defining a process to design its first OGP Action Plan. The draft action plan that was presented to the public was not co-created with civil society. Once elaborated by the Digital Government Technical Secretariat (DGTS), the draft plan was available for online public consultation for a short period of time. However, only a limited number of CSOs commented on the draft <sup>268</sup> and the process did not involve civil society organisations from outside of the metropolitan area, nor did it involve the private sector, the sub-national level or the institutionally and the territorially decentralised sector. Finally, as also observed in the first Action Plan cycle of other OGP countries, most commitments were comparably easy to implement and were already completed or in development as part of the ongoing digital government agenda led by the DGTS.

The government managed to significantly improve the process for the second OGP Action Plan. The elaboration of the second Action Plan – led and co-ordinated by the Deputy Ministry of the Presidency and the CNGA – counted with the active participation of various stakeholders, including the *Red Indígena RIBCA*, as well as different social organisations representing for instance disabled people. The process involved more civil society organisations and incorporated the views and input from the sub-national level thanks to the organisation of workshops in different regions of the country. During the design process, the Deputy Ministry of the Presidency also created the abovementioned network of approximately 40 inter-institutional contact points (*Enlaces Inter-institucionales*) which had the opportunity to present their proposals for the second Action Plan. The resulting plan includes transformative commitments in three areas: transparency and access to information, public participation, and direct fight against corruption.

According to the Independent Reporting Mechanism of the OGP <sup>269</sup>, Costa Rica has made important progress in its OGP process. The commitments in the second action plan involve traditional open government issues and are focused at both the national and local levels. However, the IRM also identifies areas for improvement, particularly when it comes to the levels of participation and to the scope of the plan. The main recommendation provided by the IRM is to broaden the scope of participation in the plan's initiatives so as to include non-traditional actors and to present relevant initiatives that are not directly related to open government.

The methodological proposal for the design of the third action plan is supposed to involve more elements of co-creation and to be more ambitious in terms of scope, aiming to include more commitments from other state actors as well as the local level.

<sup>268</sup> Martínez, E. (2013), OGP Consultation Process under way in Costa Rica, [www.opengovpartnership.org/blog/emilene-martinez-morales/2013/02/27/ogp-consultation-process-under-way-costa-rica](http://www.opengovpartnership.org/blog/emilene-martinez-morales/2013/02/27/ogp-consultation-process-under-way-costa-rica).

<sup>269</sup> Aragon, I. (2017), "Mecanismo de Revisión Independiente (MRI): Informe de Avances de Costa Rica 2015-2016", available at [http://www.opengovpartnership.org/sites/default/files/Costa-Rica\\_Midterm-Progress\\_2015-2017for-public-comment1.pdf](http://www.opengovpartnership.org/sites/default/files/Costa-Rica_Midterm-Progress_2015-2017for-public-comment1.pdf).



### *Open government at the local level*

In recent years, most of Costa Rica's 81 municipalities have started implementing their own open government initiatives and OECD analysis<sup>270</sup> shows that the legal and institutional framework in Costa Rica could be conducive to open local government. The legal framework for open government at the local level provided by the Constitution of the Republic of 1949, the Municipal Code (Law 7794 from 1998) and the General Law on the Transfer of Competences to Municipalities (Law 8801 from 2010) is in line with that of OECD countries and is conducive to open local government. As discussed above, the Municipal Code, for instance, establishes the Municipal Council's obligation to promote active, conscious and democratic participation of the people in the decisions of the local government and gives a prominent role to popular consultations such as popular initiatives, referenda and town hall meetings.

Pockets of excellence exist in different areas of open government across the Costa Rican territory. For instance, some municipalities have set up their own digital platforms and open data portals, while others have created new institutional mechanisms for participation, and most are now working on citizen budgets. The analysis of open government at the local level in Costa Rica included in the 2016 OECD Open Government Review<sup>271</sup> shows that some Costa Rican municipalities have competent and dedicated officials in charge of open government, and that the President's priorities in terms of transparency and participation have clearly trickled downwards into the municipalities, albeit in a fragmented and episodic way. Municipalities seem aware of the digital divide and of the need to improve municipal websites and use of social media, and there are ongoing projects to address these challenges. In line with OECD recommendations, the central government has started providing more guidance to municipalities. In March 2017, Letters of Understanding (*Cartas de Entendimiento*) were signed between the Presidency of the Republic and the Municipalities of Curridabat and Montes de Oca. In these letters, the central government and municipalities commit to jointly move forward an agenda to promote transparency, accountability and participation.

### **Preliminary assessment and recommendations**

Important progress in advancing Costa Rica's open government agenda has been made in recent years. The country has created legal, institutional and policy frameworks for open government that are mostly on par with OECD standards. Moreover, the country has shown great leadership and vision by fully embracing the move towards an Open State by signing the Declaration for the Establishment of an Open State and with the elaboration of a National Open State Policy. Costa Rica's open state approach can be considered a global good practice that should inspire other OECD countries. The elaboration of a National Open Government Strategy and the creation of the National Open Government Commission are further positive developments that now have to be reinforced with concrete implementation efforts.

Looking ahead, Costa Rica would benefit from further improving its open government ecosystem through the adoption of laws on access to information and citizen participation and from further continuing the institutionalisation of open government and open state in order to guarantee continuity from one administration to another. In order to make the open state a reality, the country also needs to continue spreading the benefits of open government to the local level for instance by including more municipalities in the implementation of its National Open Government Strategy.

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<sup>270</sup> OECD (2016), Open Government in Costa Rica, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264265424-en>.

<sup>271</sup> Idem

Key recommendations to further enhance the effective implementation of open government policies in Costa Rica include:

- Pass an access to information law applicable to the whole public sector, including the institutionally decentralised sector (e.g. semi-autonomous and autonomous bodies).
- Consider the adoption of a law and a manual on citizen participation that would facilitate the expansion of this practice to all public institutions, at all levels of government, in line with the demands of Costa Rican citizens for greater involvement in policies and services.
- Continue the ambitious move towards an open state.
- Increase the scope of the Open Government National Commission (or transform it into an “Open State National Commission”) to promote the transition from the open government to the open state approach, ensuring that all relevant actors are included in it, including the other branches of power, independent state institutions and representatives of the sub-national level.
- Consider giving the Deputy Ministry for Political Affairs and Citizen Dialogue in the Ministry of the Presidency more human and financial resources to accomplish its tasks more successfully and to exploit the full potential of the high-level institutional anchorage of open government policies.
- Pursue efforts to develop an independent and robust monitoring and evaluation system should in order to fully link the implementation of the National Open Government Strategy and of the OGP Action Plan to the implementation of the National Development Plan and the well-institutionalised monitoring and evaluation procedures overseen by MIDEPLAN.
- Institutionalise the *Enlaces* in order to strengthen their capacities to play an effective role in the promotion and co-ordination of open government policies in their respective institutions.
- Enhance the existing efforts to promote a culture of civic engagement and participation in public matters through communication strategies, awareness raising and capacity building activities aimed at both public officials and citizens.
- Include the sub-national level in the National Open Government Policy and consider giving rotating seats in the CNGA (or a new National Open State Commission) to municipalities; lay the foundation for greater impact of good practices through monitoring and evaluation of the impact of existing initiatives at the sub-national level; provide more guidance to municipalities and spread existing good practices from certain municipalities to other areas of the administration and across the country.

## SECTION 3: Integrity in the public sector and public procurement

This section addresses PGC Core Principle 3: “Integrity in the public sector, including the application of principles and high-standards of behaviour in public institutions, integrity risk-management and sound safeguards at the intersection of the public and private sectors, including for lobbying, conflict of interest and public procurement”

### Introduction

The section offers an overview of Costa Rica’s institutional framework and policies to promote integrity in its public sector based on the following instruments within the purview of the PGC:

- Recommendation of the Council on Improving Ethical Conduct in the Public Service including the Principles for Managing Ethics in the Public Service [OECD/LEGAL/0298];
- Recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service [OECD/LEGAL/0316];
- Recommendation of the Council on Principles on Public Procurement [OECD/LEGAL/0411];
- Recommendation of the Council on Principles for Transparency and Integrity in Lobbying [OECD/LEGAL/0379].

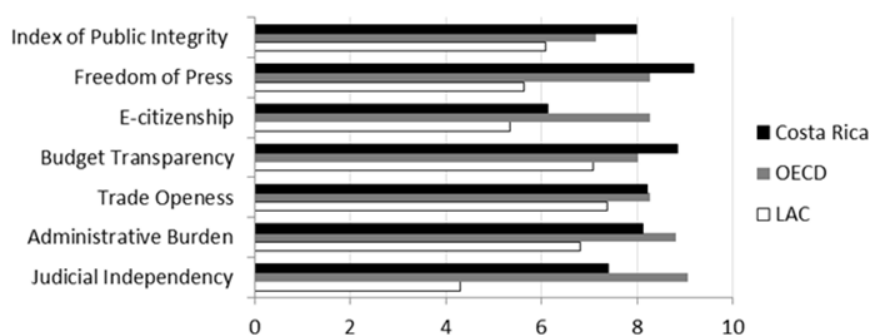
### General characteristics

Compared with the region and with the OECD average, Costa Rica is displaying good results in international integrity indicators with a score of 7.98 out of 10, Costa Rica’s composite Index of Public Integrity is higher than the average of Latin American countries and higher than the average of OECD countries for which the index is available.<sup>272</sup> The country scores above the Latin American and Caribbean (LAC) average in all subcomponents, performing particularly well in the category of Judicial Independency from a comparative perspective. For the subcomponents on Freedom of Press and Budget Transparency, Costa Rica scores higher than the OECD average. With respect to Trade Openness and Administrative Burden, Costa Rica’s score comes quite close to OECD average. Only on the subcomponent of e-Citizenship, the country performs relatively weak, but still better than the regional average, (Figure 17).

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<sup>272</sup>The IPI aims to assess a country’s capacity to control corruption based on composite scores in six subcomponents: Freedom of the Press, Administrative Burden, Trade Openness, E-Citizenship, Judicial Independency and Budget Transparency. The IPI correlates strongly with the CPI, the WGI and other indicators. Available at <http://integrity-index.org/>.

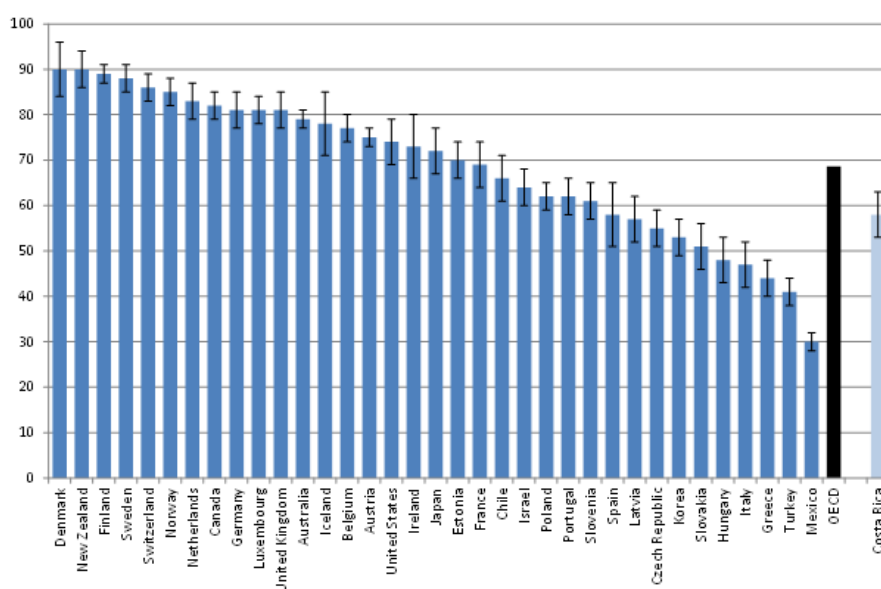
**Figure 17. Index of Public Integrity for Costa Rica, compared with OECD and Latin America and Caribbean averages**



Source: European Research Centre for Anti-Corruption and State-Building (2015). Index of Public Integrity Available at <http://integrity-index.org/>. Last accessed 22 September 2016.

With respect to corruption, Costa Rica performs very well compared with the Latin American and Caribbean average, looking at Transparency International Corruption Perception Index 2016. Compared to OECD countries, Costa Rica would be among the bottom 10 OECD countries, slightly below the OECD average (Figure 18). Data from the 2016 Latinobarometer show that only 5% of the citizens consider corruption as the most important problem of the country, after unemployment (25%), political problems (15%), the economy (12%), insecurity (12%), other (8%) and poverty (6%). Also, when asked whether they or a close relative have knowledge of an act of corruption in the past 12 months, 84.2% responded no (Latinobarometer, 2016).

**Figure 18. Corruption Perception Index (CPI) 2016, OECD and Costa Rica**

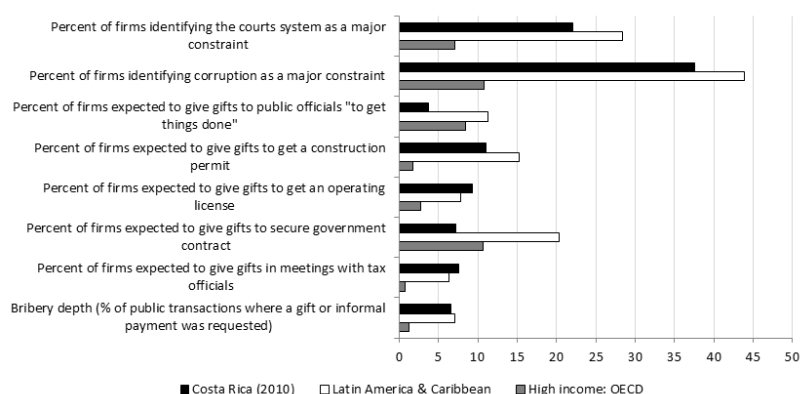


Source: Transparency International

The business perspective provided by the World Bank Enterprise Surveys reveals a slightly more nuanced view and a larger gap compared to OECD countries, while maintaining in almost all categories an advantage over the LAC average. Nevertheless, almost 38% of the companies surveyed consider corruption

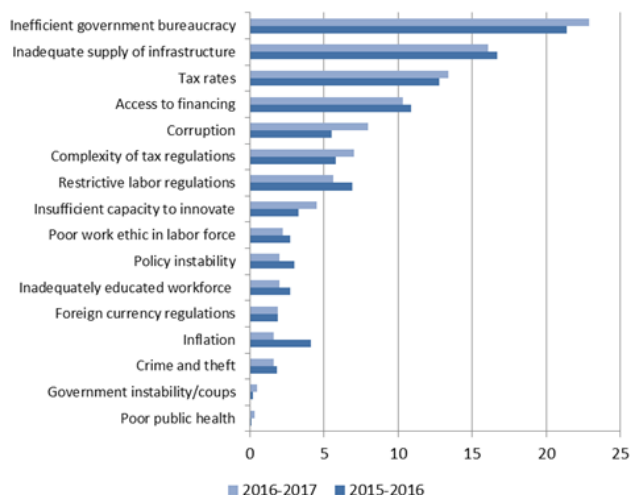
to be a mayor constraint in doing business. However, the percentage of companies saying that they are expected give gifts to “get things done” is, with 3.7%, lower than the average of OECD countries covered in the Enterprise Surveys (Figure 19). Also, the surveys conducted for the Global Competitiveness Report 2015-2016 and 2016-2017 shows that, when compared to other problems for doing business, corruption ranks relatively low, although it has increased slightly over the last few years (Figure 20). Amongst others, the WEF Global Competitiveness Report survey constructs scores for the following two categories “Undue Influence” and “Ethics & corruption”. Again, Costa Rica scores better than the regional average in both categories, while displaying scores that are no too far away from OECD averages, especially in the category on Undue influence (Figure 21).

**Figure 19. Results from World Bank Enterprise Surveys, Costa Rica**



Source: The World Bank Group

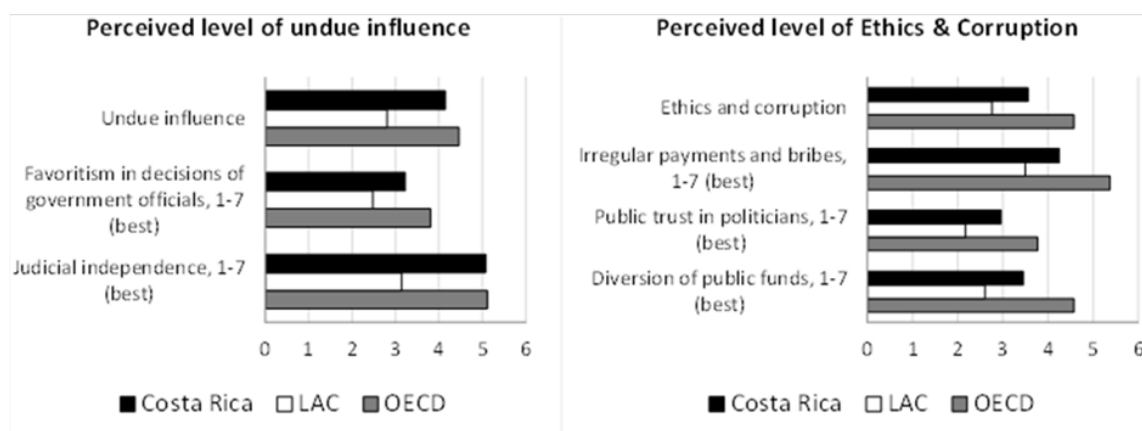
**Figure 20. Costa Rica: The most problematic factors for doing business, 2015-2016 and 2016-2017**



Note: From the list of factors, respondents were asked to select the five most problematic for doing business in their country and to rank them between 1 (most problematic) and 5. The score corresponds to the responses weighted according to their rankings.

Source: World Economic Forum, Global Competitiveness Report 2015-2016, and 2016-2017.

**Figure 21. Public institutions in Costa Rica: Perceived Levels of Ethics and Corruption and Undue Influence (and sub-components)**



Source: The Global Competitiveness Report 2015-2016, World Economic Forum

### Institutional arrangement of the Costa Rican Public Integrity System

The institutional arrangement of a Public Integrity System comprises the formal rules (laws and regulations) as well as the organisations and mechanisms in place to enforce them. OECD practice shows that a coherent and comprehensive system of public integrity involves demonstrating political and management commitment, establishing clear institutional responsibilities, developing a strategic risk-based approach as well as setting high standards of conduct.

In Costa Rica, the 1949 Constitution of the Republic (*Constitución Política de Costa Rica de 1949*) states the fundamental principle of public service (Article 11). Jurisprudence of the Constitutional Chamber (*Sala Constitucional*) has derived from Article 11 the principles of responsibility, accountability, probity and impartiality, and calls all public servants to act “with prudence, austerity, integrity, honesty, earnestness, morality and righteousness in the performance of their functions and the use of public resources entrusted to them.”

Costa Rica ratified the Inter-American Convention against Corruption (IACC) in April 1997 through Law 7670, and signed the United Nations Convention against Corruption (UNCAC) in 2003. The UNCAC was later approved by Law 8557 in 2006, and eventually ratified officially in March 2007. In addition to that, the country passed a series of relevant reforms related to integrity and anti-corruption between 2000 and 2006. These key laws and regulations include:

- Criminal Code (Law 4573 of 4 May, 1970 [*Código Penal*]); Title XV defines crimes against the duties of public service (various forms of bribery, embezzlement, illicit enrichment, extortion, abuse of authority, illegal appointments, among other corruption offences).
- General Law on Internal Control (*Ley General de Control Interno*, LGCI), Law 8292 of 31 July, 2002.
- Law 8275 for the Creation of the Criminal Jurisdiction of Finance and Public Service (*Creación de la Jurisdicción Penal de Hacienda y de la Función Pública*).

- Law 8221 for the Creation of the Criminal Prosecutor of Finance and Public Service (*Ley de Creación de la Fiscalía Penal de Hacienda y de la Función Pública*).
- Law 8422 against Corruption and Illicit Enrichment in Public Service (*Ley contra la Corrupción y el Enriquecimiento Ilícito en la Función Pública*, LCCEI), and its regulation (Decree 32333-MP-J of 12 April, 2005).
- “General Guidelines on Ethical Principles and Statements on Ethics to be followed by commanding officers, subordinate incumbents, officials of the Office of the Comptroller General of the Republic (*Contraloría General de la República*), internal audits and public servants in general” (Guideline D-2-2004 22 November, 2004).
- Law 8131 on Financial Administration of the Republic and Public Budgets from 2001 (*Ley de Administración Financiera de la República y Presupuestos Públicos*), of 18 September, 2001, and its regulation (Decree 32988 of 31 January, 2006).
- Decree 33146 of 24 May of 2006 on “Ethical Principles of Civil Servants”( *Principios Éticos de los Funcionarios Públicos*) (
- Law 8242 for the Creation of the Office of the Attorney General for Public Ethics (*Creación de la Procuraduría de la Ética Pública*).

The laws ratifying the conventions and the Law against Corruption and Illicit Enrichment in Public Service (LCCEI) are the key legal texts in anti-corruption matters, and are applicable to all public officials. The LCCEI and its regulations include rules to prevent corrupt practices and ensure probity, impartiality and transparency in the public sector; e.g. the obligation to declare assets and the administrative, civil and criminal liability regimes. Since 2013, there have been efforts to further reform the LCCEI (Bill of Law 18.348), proposing to strengthen the normative framework with respect to conflicts of interests, whistleblower protection, asset disclosure, as well as the disciplinary regime.

The main institutions shaping the Public Integrity System in Costa Rica at central level are the Office of the Attorney General for Public Ethics (*Procuraduría de la Ética Pública*, PEP), the Office of the Comptroller General of the Republic (CGR), the National Commission for the Recovery of Values (*Comisión Nacional de Rescate de Valores*), the Office of the Ombudsman (*Defensoría de los Habitantes de la República*), the Deputy Prosecutor of Probity, Transparency and Anti-Corruption (*Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción*, FATPA), and, to a lesser degree, the General Directorate of Civil Service (*Dirección General de Servicio Civil*, DGSC) through the policies related to human resources management.

- The Office of the Attorney General for Public Ethics (*Procuraduría de la Ética Pública*, PEP) is a unit created within the Office of the Attorney General ( PGR) in 2002 by Law 8242. The PEP is the main responsible body for anti-corruption prevention and prosecution. The PGR is attached to the Ministry of Justice and Peace (*Ministerio de Justicia y Paz*), but the law recognizes the PGR’s functional independence in the exercise of its powers, which covers the work of the PEP. Currently, the PEP is composed of 15 officials, who are appointed based on proven ability and enjoy stability. Removal can only take place on grounds of justified dismissal, or in the case of a forced reduction of services, as provided in Article 192 of the Political Constitution.
- The Office of the Comptroller General of the Republic (*Contraloría General de la República*, CGR) has full functional and administrative independence in the performance of its duties.

Article 184 of the Political Constitution grants the Comptroller General the power to supervise the execution and liquidation of the regular and extraordinary budgets of the Republic and to examine and approve or not approve the budgets of the municipal governments and the autonomous institutions, and supervise their execution and liquidation. In addition, the Comptroller General establishes guidelines regarding internal control units within each institution, including supervision of procurement procedures. Furthermore, it elaborates and updates the registry system for public finance sanctions, which keeps record of disciplinary sanctions to public servants and penalties applicable for non-justifiable equity increases. The CGR has developed electronic tools to promote transparency and accountability of the public administration.

- The National Commission for the Recovery of Values (*Comisión Nacional de Rescate de Valores*, CNRV) was established in 1987 by Executive Decree 17908-J. The CNRV is responsible for promoting, developing and strengthening ethics and values in the public sector, in private organisations and the Costa Rican society as a whole. Specifically, one of the core values promoted by the CNRV - next to respect, solidarity and excellence - is integrity, defined as acting consistently with the principles of truth and honesty in daily work, and with transparency, justice and honourableness as guides on the path of doing what's just, correct and adequate.
- The Office of the Ombudsman (*Defensoría de los Habitantes*, DH) is responsible for protecting the rights and interests of the country's population. One of its main functions is to ensure that government authorities act within the boundaries of morality, justice, the constitution, legislation, conventions and general principles of law. In that regard, the Ombudsman participates in a wide range of anti-corruption activities including the Interinstitutional Transparency Network, and delivers trainings, courses and workshops on corruption prevention and aimed at informing the general public on how to file a complaint for corruption cases.
- The Deputy Prosecutor of Probity, Transparency and Anti-Corruption (*Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción*, FATPA) is a specialised unit within the Office of the Public Prosecutor (*Ministerio Público*, MP) of the Judiciary branch.
- The General Directorate of Civil Service (*Dirección General de Servicio Civil*, DGSC), the central co-ordinating agency for public employment and human resources management (HRM), sets policies for the 47 entities of the civil service regime, covering approximately one-third of all public employees (OECD, 2015<sup>273</sup>); its mandate does not extend to the decentralised sector. Indeed, outside the CSR, most public institutions have their own legislation regulating public employment and HRM practices.

The PEP, the CGR, the FATPA, and the Costa Rican Institute on Drugs (*Instituto Costarricense sobre Drogas*) have agreed in 2012 to implement an inter-institutional commission as an informal co-ordination mechanism in the fight against corruption and in order to promote inter-institutional programmes. Despite some of the leaders of the participating institutions having changed since then, the commission has been maintained active. The commission established a working group at the technical level conformed by one representative of each entity and that holds monthly meetings. These representatives are also functioning as contact persons facilitating the inter-institutional communication whenever needed. While there is a formal agreement signed by the leaders of the institutions, the decision made was not to further formalise

<sup>273</sup> OECD (2015), Costa Rica: Good Governance, from Process to Results, OECD Public Governance Reviews, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264246997-en>.



the mechanism to maintain its flexibility. As a consequence, no official agenda exists, but the commission reportedly has led to various joint efforts and has improved the coordination between the institutions involved.

At the policy level, Costa Rica does not have a specific national strategy or plan designed to prevent corruption and promote a culture of integrity. However, anti-corruption is one of the three strategic pillars of the National Development Plan 2015-2018 (*“An open, transparent, efficient, government in a frontal fight against corruption”*<sup>274</sup>). The National Development Plan is the guiding framework of the Government, binding for all public entities, and constitutes the overall framework for the Sectoral and Regional Strategic Plans and the Institutional Operational Plans (POI). The National Development Plan states that, *“it is essential to promote a national culture of ethics, transparency and accountability, a task that must go hand in hand with organized contribution of the population in the exercise of citizen control. Transparency is related, among other things, to access to public information, which will be facilitated by implementing a model of open government, in order to allow a closer relationship and audit by Costa Rican citizens.”*

In accordance with the National Development Plan (*Plan Nacional de Desarrollo*, NDP), the country’s Second Action Plan 2015-2017 under the Open Government Partnership defines the fight against corruption as one priority area. Through the Action Plan, the government acquires the following commitments: (i) to publish reports on the recommendations of internal audits and the degree of compliance with these recommendations, (ii) to promote legal reforms needed to prevent, detect and punish corruption more effectively; (iii) to make available any information related to the processes of recruitment and selection civil servants; (iv) to establish transparent management processes in infrastructure projects throughout their life cycle<sup>275</sup>.

### Values and standards of conduct

Beyond the aforementioned constitutionally derived principles through jurisprudence of the Constitutional Chamber (see paragraph 177), the Law against Corruption and Illicit Enrichment (LCCEI) and its regulations are setting the general rules related to the expected standards of conduct in the public sector. In Article 3, the law establishes probity as the primary obligation of a public official and that his actions should always be aimed at fulfilling the general interest. Guiding principles are legality, effectiveness, economy and efficiency, and accountability.

The 2004 Guideline D-2-2004 (hereinafter, the Guideline), issued by the CGR, lists the ethical principles governing the exercise of the public service. The Guideline applies to all public servants, including the decentralised public sector (institutional and territorial) and describes the obligation to ensure objectivity and impartiality, political neutrality and a set of duties and prohibitions related to the management of conflicts of interest. It further lists the principles of constitutional legality, equality, regularity, efficiency, effectiveness, austerity, transparency, loyalty, probity, responsibility, integrity, honesty and leadership. The Guideline includes a special section with stricter regulations for internal auditors and officials of the CGR.

The General Directorate of Civil Service (DGSC), in turn, has enacted in 2013 two documents defining expected behaviour and providing guidance to civil servants belonging to the Civil Service Regime. The

<sup>274</sup>Mideplan (2015), Plan Nacional de Desarrollo 2015-2018- Alberto Cañas Escalante", <https://documentos.mideplan.go.cr/alfresco/d/d/workspace/SpacesStore/cd1da1b4-868b-4f6f-bdf8-b2dee0525b76/PND%202015-2018%20Alberto%20Ca%C3%B1as%20Escalante%20WEB.pdf>.

<sup>275</sup>Open Government Partnership Second Action Plan 2015-2017 available at <http://www.opengovpartnership.org/costa-rica-second-action-plan-2015-17>

“Declaration of Ethical Commitments of DGSC Staff” (*Declaración de Compromisos Éticos del Personal de la Dirección General de Servicio Civil*) is a document explaining in detail the ethical commitments every public servant should adhere to. The document has to be signed by the public servant. The “Manual of Ethics for Civil Servants” (*Manual de Ética en la Función Pública*) is a code of conduct displaying the expected behaviour and prohibitions applying to public servants. Both were disseminated in printed form in all 47 Offices of Institutional Human Resources Management of the Civil Service Regime, and are electronically available at the DGSC’s website.

While the abovementioned Guideline issued by the CGR applies to all public officials, and the documents issued by the DGSC only apply to the central government civil service, other public organisations that belong to the decentralised public sector are enjoying autonomy with respect to the internal management of public ethics. There is no requirement to implement a code of conduct or ethics and no specific guidance on how to develop such a code, or to train and provide guidance to the staff. The PEP is offering courses on request, the CGR, the DH, the National Commission for the Recovery of Values (CNRV) or other institutions have developed trainings as well. Overall, the training methods, the scope and content of guidance provided, and the internal unit in charge of the task of promoting values and guidance on ethics may therefore differ widely.

Even if issuing non-mandatory guidance, the CNRV, and the system of (voluntary) Institutional Commissions on Ethics and Values, can be considered as a good practice for being an interesting, mainly non-binding, mechanism to mainstream public ethics in the whole of the public sector and even beyond, including the central government, the autonomous bodies and decentralised sector and municipalities. The Institutional Commissions on Ethics and Values are implementation units of the CNRV that should exist in each ministry or agency of the executive branch, and that are optional in the rest of the public administration (Executive Decree 23944-JC). The decree establishes that the objective of these institutional Commissions is to promote ethics and to contribute to the efficiency of the public sector. The individuals of these Institutional Commissions are carrying out their work ad honorem. Currently, 65 institutions have implemented such an Institutional Commission with support and guidance from the CNRV.<sup>276</sup> Five of these Institutional Commissions count, in addition, with a technical unit supporting the members of the commission. Additionally, the CNRV is currently implementing an Ethical Management System, which includes, amongst others, periodic assessments of institutional ethics, communication campaigns, and advice to the Institutional Commissions in designing training programs on ethics and moral education, as well as support on how to include ethics into human resource management such as staff recruitment and selection or performance evaluations.

In particular, and in accordance with good practices in OECD countries, the guidance provided by the CNRV clearly separates public ethics from legal and disciplinary issues, seeking to promote a culture of integrity based on shared common values. Also, the development of organisational codes or ethics manuals, steered by the Institutional Commissions, has to be based on a previous diagnostic of the status quo in ethics management in the organisation. Good practices at organisational level can be found, for instance, in the Costa Rican Department of Social Security (*Caja Costarricense de Seguro Social*, La Caja) and in the Judiciary (e.g. the Judicial School, *Escuela Judicial*). However, the Commission lacks capacities to play a more effectively role in mainstreaming and providing guidance on public ethics, including the management of conflict-of-interest situations. In a similar vein, the opportunities of tracking existing practices<sup>277</sup>, to ensure learning and information exchange, are not fully exploited. Incentives for implementing the Institutional Commissions are indirectly provided through the CGR’s Institutional

<sup>276</sup> See: <https://cnrvcr.wordpress.com/sistema-nacional-de-etica-y-valores/>

<sup>277</sup> It has been estimated that around 70 % of the public organisations have an ethics code, but the Ministry of Foreign Trade (Ministerio de Comercio Exterior, COMEX) and the Office of the Attorney General (PGR), for instance, have no ethics code.

Management Index (*Índice de Gestión Institucional*, IGI)<sup>278</sup>, where having such a commission in place is improving the score.

At local level, the implementation of guidance on public ethics and conflict-of-interest management is incipient. However, an increasing number of municipalities are making first steps in implementing ethics manuals and/or codes following the CNRV guidelines and some have implemented Commissions. Since no binding rules exist and no institution is responsible for overseeing this policy, it is difficult to assess in how far the efforts observed during the mission are representative for the local level in Costa Rica. However, as a first to overview this policy, the IGI asks whether institutions have issued ethics manuals and regulations to promote ethics and prevent corruption. This is the current mechanism to follow up on such efforts.

Conduct of public servants that breach the values and ethical standards can lead to criminal, civil and disciplinary liability. The three types of liability may be applied simultaneously, if the same action has breached the different systems. The standard procedure under the General Law of the Public Administration (*Ley General de la Administración Pública*), Law 6227, applies to the imposition of disciplinary and civil liability on public officials (Article 308). The procedure respects the guarantees of due process and the right of defence (Articles 308 to 341 of Law 6227), and provides for the possibility of appealing the final decision. Each public entity is competent to impose disciplinary sanctions under the LCCEI. The Office of the Comptroller General (CGR) is also authorised to sanction in cases related to public finance (Article 40 of the LCCEI). The following disciplinary sanctions are contemplated: a) written reprimand published in the Official Gazette; b) suspension, without the corresponding pay, allowance or stipend, fifteen to thirty days; and c) removal from public office, without employer's liability or cancellation of credential as city council member, as appropriate.

### Conflict of interest

Ensuring that conflicts of interests are identified and managed adequately is among the first steps towards safeguarding integrity and transparency in the public sector. While especially the Law against Corruption and Illicit Enrichment in Public Service, Law 8422 (Articles 3, 14, 16, 18, 19 and 20), its regulation, and the Guideline D-2-2004 (Article 1.4) contain provisions related to conflicts of interest, no clear definition of a conflict of interest is provided in the Costa Rican laws. Further laws and regulations making reference to conflict of interest situations are, amongst others:

- Constitution (*[Constitución]* Articles 109, 111, 112, 132, 143, 160 and 161)
- Law 7494 on Administrative Procurement [*Ley de Contratación Administrativa*] (Articles 22, 22bis and 24)
- Regulations of the Law on Procurement 33411 [*Reglamento a la Ley de Contratación Administrativa*] (Articles 19 and following)
- General Law of the Public Administration 6227 [*Ley General de la Administración Pública*] (Articles 230 to 238).

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<sup>278</sup> The Institutional Management Index collects information on the progress of institutions in establishing measures to strengthen their management, particularly in the areas of internal control, planning, financial and budgetary management, service to the users, and administrative contracting (for the 2015 IGI, see: <https://cgrfiles.cgr.go.cr/publico/jaguar/Documentos/cgr/estrategia/documentos/resultados-igi-2015.pdf>).

Accordingly, the two bodies that are playing a key role in framing conflict of interest policies at central level are the PEP and the CGR. The PEP is responsible for the tasks specified under Article 3(h) of the Organic Law of Office of the Attorney General of the Republic (*Ley Orgánica de la Procuraduría General de la República*, Law 6815 of 1982, concerning the prevention of corruption and increasing public ethics. As such, the PEP files administrative complaints regarding conflict of interest, and provides training and guidance on the subject to public officials. Additionally, the Office of the Attorney General (PGR) issues administrative jurisprudence on the matter of conflicts of interest which is of mandatory compliance. The CGR, in turn, played a key role in defining conflict of interest policies to the public sector, subject to it through the Guideline D-02-2004-CO, which is one of the main instruments that guide obligations with regard to conflicts of interest as mentioned above. Furthermore, the CGR handles administrative complaints and solves legal enquiries with respect to the scope of the obligations of public servants and the regulation of conflicts of interest in administrative procurement procedures.

Beyond the obligations stated in the two documents, public officials in the executive branch are not provided with practical examples of concrete steps to be taken for resolving conflict of interest situations, and there are no clear guidelines on how public managers should exercise judgment in individual cases to determine the most appropriate solution to resolve or manage the actual conflict situation. According to the interviews conducted, specific trainings and guidance on how to recognise and manage conflict of interest situations are still incipient.<sup>279</sup> In 2015, the PEP has designed a training course on “Conflicts of interest of a public nature” and included it in its training program that can be delivered on demand. Also, the PEP can provide ad-hoc guidance on issues related to the management of conflicts of interests. In case of doubts, public officials reportedly usually recur to the Judicial Division in their public organisation in order to get a legal opinion. The CNRV, in turn, is starting to incorporate the issue of identifying and managing conflict of interest situations not as a legal issue, but as a situation that requires ethical guidance.

Public officials who are not resolving a conflict of interest when it arises or are accepting or holding prohibited assets (e.g. gifts or outside employments) are facing both criminal and disciplinary and administrative sanctions. Public officials who are not reporting known conflict of interest of co-workers, as well as managers who are not resolving or managing conflicts of interest of staff, are subject to disciplinary and administrative sanctions. However, statistical information on the number of public officials with disciplinary sanctions for violating the conflict of interest regulations is not available. Indeed, such disciplinary sanctions are not under the responsibility of a single centralised body, but are competence of the respective public entity in which the violation took place. Information regarding such breaches is neither specifically recorded nor centralised.

Similar to the majority of OECD countries, the asset disclosure requirements for public officials follow a risk-based approach, where not all public officials are required to declare (Figure 22). The Costa Rican Constitution, under Article 193, establishes the obligation of the President of the Republic, Ministers of Government, and all officials who manage public funds to declare their assets. Additionally, the LCCEI (Articles 21 to 36) and its Regulation (paragraphs 54-83) provide the details regarding the sworn disclosure of assets to be submitted by public officials. With the reform in 2012, the LCCEI expanded the public officials set forth under the Political Constitution. The public servants required to declare assets now also include judges and prosecutors (temporary and permanent officials), as well as all public officials issuing licenses or permits, custom officials or officials overseeing public works or services. The CGR is the entity

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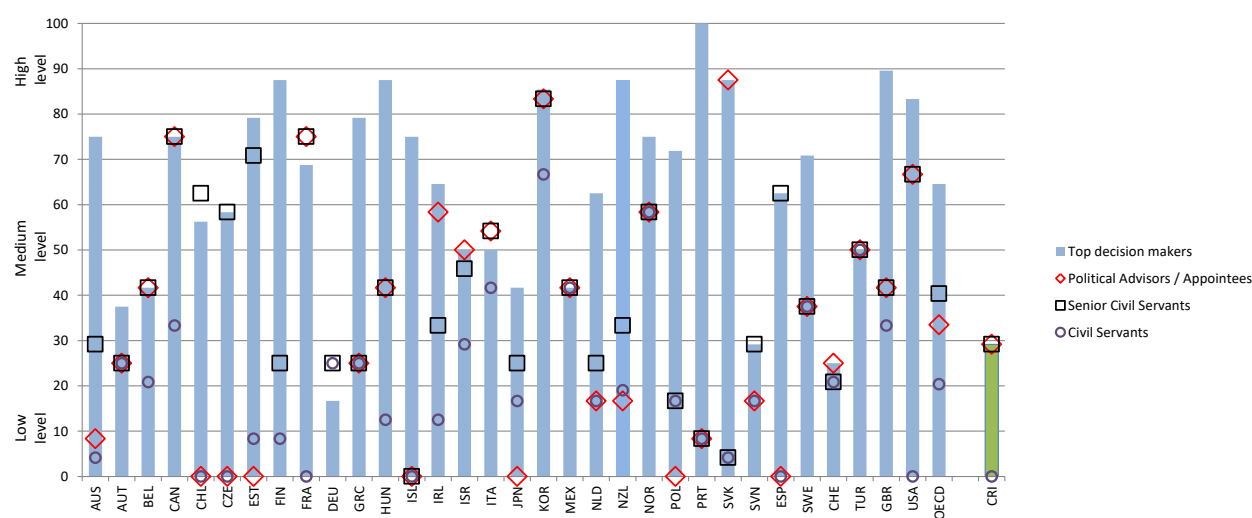
<sup>279</sup> For example, despite being a good example of public ethics management, the Costa Rican Department of Social Security (La Caja) has not yet issued clear guidance or specific trainings on how to deal with conflict of interest situations.

responsible for receiving and auditing the asset declarations. According to the CGR, approximately 18.000 public officials<sup>280</sup> are currently required to submit a sworn asset declaration.

In comparison to the majority of OECD countries, the asset declarations are not publicly available and as such the level of disclosure and public availability for each category of public official is below the OECD average, however (Figure 22). Indeed, asset declarations are, without any exception, all confidential, are not published, and are therefore out of reach for externals wishing to exercise social control; citizens can only ask for the status of the declaration, i.e. whether it has been submitted.

Assets, liabilities, income sources and amounts, paid outside positions as well as gifts received have to be declared by all public officials that fall under the scope of the law. In turn, non-paid outside positions and previous employments do not have to be declared. The CGR has to ensure the fulfilment of the obligation and that all the required information is provided. All asset declarations are submitted electronically, which has allowed the creation of an automated database that enables a more efficient verification process. The verification is, however, limited to the timely and complete submission of the declaration. If declarations are submitted late or incomplete a preliminary investigation is started, but the declarations are not verified systematically. On a voluntary basis, public servants can grant the CGR access to their banking information; reportedly, most public servants allow this access. However, no automatic cross-checking with other related databases (internal and external) is undertaken if there is no indication of wrong-doing. The CGR also randomly verifies the content of selected declarations, and reviews asset declaration in more detail in case there are indications or additional information pointing towards cases of illicit enrichment. In 2015, there have been reportedly two cases of illicit enrichment, and both cases were not detected through the asset declarations<sup>281</sup>. Failure to submit or late submission of the asset declaration is subject to administrative sanctions, while the submission of false information can be subject to criminal sanctions.

**Figure 22. Level of Disclosure and Public Availability of Private Interests within the Executive Branch**



Note: Data not available for Latvia. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.

Source: OECD (2015), Government at a Glance 2015, OECD Publishing, Paris, [http://dx.doi.org/10.1787/gov\\_glance-2015-en](http://dx.doi.org/10.1787/gov_glance-2015-en)

<sup>280</sup> Information provided during the Accession fact-finding mission.

<sup>281</sup> Information provided during the Accession mission.

## Internal control

OECD practice shows that an effective internal control, with internal audit and risk-management functions, is an essential part of the public integrity systems enhancing planning, management and accountability. In Costa Rica, the General Law 8292 on Internal Control (*Ley General de Control Interno*), defines the minimum standards for the establishment, operation, maintenance, improvement and evaluation of internal control systems in public sector organisations. The Office of the Comptroller General (CGR) is the governing body of the supreme control and audit system; given this condition, it has the capacity to issue regulations on internal control and internal audit. The law requires all public entities and bodies that are subject to oversight by the CGR to have an internal control system. This should be applicable, complete, reasonable, integrated and consistent with their competencies and institutional powers. The Law further requires implementing a system to assess institutional risks as well as an independent internal audit unit. Article 8 defines the objectives of the internal control system as (a) to protect and preserve public assets against any loss, waste, misuse, irregularity or illegal act; (b) to demand reliability and timeliness of information; (c) to ensure efficiency and effectiveness of operations; and (d) to comply with the legal and technical systems.

The CGR has the mandate to issue provisions or orders to the entities, bodies or persons under its control (Article 12 of Law 7428), and to conduct financial, operational and special audits on taxable persons. The Organic Law 7428 of the Office of the Comptroller General of the Republic (*Ley Orgánica de la Contraloría General de la República*) empowers the CGR to instruct administrative inquiries or conduct investigations at its own initiative, upon request of a taxable person or any interested party, and when requested by the parliamentary bodies of the Legislative Assembly. Also, the CGR issues guidelines on internal control and for the internal audit units. As such, internal audit units must prepare a general audit plan that must include, at least, information on: the reference framework of the audits; the viability of the audits; the relevance of the audits; the purpose of the audits; the scope and period under review; the summary of the results and selection of test areas; the resources required for the task; and the evaluation's schedule.

The internal audit units are granted independency by law and reports directly to the head of the public organisation. The head of the internal audit unit is appointed by the head of the public institution from 3 candidates selected through a public vacancy and based on merit and nominated by the CGR, once it has validated the process, to assert its technical and legal compliance. It is a public servant without term limit, and the CGR is involved in case of a removal process. The internal audit units have the task to evaluate and improve the effectiveness of risk management, control and governance processes of the organisation in line with international standards. In 2014, the CGR updated the general auditing standards through resolution no. R-DC-064-2014.

The Law on Internal Control, in Article 14, also establishes the duty to identify and assess risks associated with achieving the institutional goals and objectives defined in the annual operating plans as well as in the medium and long term plans. For that purpose, the Specific System for Institutional Risk Assessment (*Sistema Específico de valoración de Riesgos Institucionales, SEVRI*) must be implemented as part of the internal control system in all public organisation under the provisions of Law 8292 (Articles 18 and 19). In addition, the CGR issued General Guidelines for the Establishment and Operation of the SEVRI (resolution no. R-CO-64-2005) aimed at ensuring the production of relevant information to support public decision-making. Integrity and corruption risks are currently not explicitly addressed.

The framework for internal control is consistent with international standards. Also, responses during the first and second accession fact-finding mission showed a sound level of understanding amongst the heads of the internal audit units and efforts invested in mainstreaming internal control. Nevertheless, challenges

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persist in guaranteeing an adequate staffing of the internal audit units, and in promoting the understanding of internal control as a shared responsibility of all levels in the organisation.

In addition, it can be highlighted that the CGR issued in 2008 a “Technical Guide for Conducting Ethics Audits (*Guía Técnica para el Desarrollo de Auditorías de la Ética*). It is a non-binding guideline for performing assessments of the institutional ethical framework in public entities, looking at three components: (1) The ethical program, which includes the formal factors regarding ethical matters set out in the organization, (2) the ethical environment, which comprises the shared values, beliefs and behaviours of the organization’s members, and (3) the integration of ethics within the institution’s management systems. The Ethics Audits are currently revised and implemented based on voluntary participation, although their implementation is fostered by including their existence as a criterion for calculating the score in the CGR’s Institutional Management Index (*Índice de Gestión Institucional*). The experience has received international attention as a good practice, e.g. at meetings of the Latin American and Caribbean Organization of Supreme Audit Institutions (OLACEFS) and the European Organization of Supreme Audit Institutions (EUROSAI).

### Box 11. Ethics Audit in Costa Rica

In 2008 the Office of the Comptroller General of the Republic of Costa Rica (CGR) developed a technical guide (*Guía Técnica para el Desarrollo de Auditorías de la Ética*, or Guide) to support internal auditors in performing ethics audit, which the CGR defines as the systematic, objective and professional process for evaluating the functioning and effectiveness of the institution's ethical framework, in order to promote its strengthening. Such guidance was provided after realizing that there was little knowledge about the audit of ethics both among Costa Rica's auditors as well as within the world's audit community.

The legal basis and standards supporting ethics audit in Costa Rica lays in several domestic and international instruments such as the Internal Control General Law (*Ley General de Control Interno*), the Manual to conduct internal audit in the Public Sector (*Manual de normas para el ejercicio de la auditoría interna en el Sector Público*), the International Standards for the Professional Exercise of Internal Audit (*Normas Internacionales para el Ejercicio Profesional de la Auditoría Interna* 2100, 2130, 2130 A1) and the Institute of Internal Auditor Practice Advisory 2130-1 (*Consejo para la práctica* 2130-1).

Ethics audit are carried out by those responsible of internal audit function within their competences and duties. Object of the audit is the institutional ethical frameworks, which includes the following three components:

- The ethical program: formal factors regarding ethical matters set out in the organization, such as the statement of institutional values, the code of ethics, the vision and mission, the definition of indicators of ethical management, and a formal strategy for strengthening ethics.
- The ethical environment: shared values, beliefs and behaviours of the organization's members. It includes observable informal factors such as the organizational climate, the management style, the models of decision making, the verbal expressions, and the behaviours of individuals.
- The integration of ethics within the institution's management systems: incorporation of ethical controls in the systems and procedures used in processes that are particularly sensible and exposed to ethical failure and corruption, such as human resources, financial management, administrative contracting and activities with potential political interference.

Considering the sensitiveness and complexity of the issues surrounding ethics, the Guide stresses the importance of the ethics auditors' professional competence and expertise. At the same time, the audited entity is also called to ensure a set of basic conditions for the ethics audits to be possible such as high management commitment with ethics, as well as support and an open-mind attitude prior to, during and after the audit process.

Next to the Guide, which sets out the methodology of ethics audit, the CGR has put at disposal of auditors a set of additional tools to support them in the systematic development of evaluations on ethical frameworks and which include:

- General work plan;
- Guide for evaluating the institutional ethical framework;
- Guide for the analysis of strengths, opportunities, weaknesses and threats;
- Ethics maturity model;
- Guides for interviewing high and middle management and others;
- Survey on the institution's ethical environment;
- Summary sheet of findings.

Although the users of the guide are internal auditors, it is also directed to the management when deciding to perform a self-evaluation of ethical issues as well as to external auditors.

Source : CGR (2008), *Guía Técnica para el Desarrollo de Auditorías de la Ética*, [https://cgrfiles.cgr.go.cr/publico/jaguar/Documentos/control\\_interno/secretaria/2009/Auditoria%20de%20la%20etica/mo\\_aud\\_etica\\_fi\\_nal.doc](https://cgrfiles.cgr.go.cr/publico/jaguar/Documentos/control_interno/secretaria/2009/Auditoria%20de%20la%20etica/mo_aud_etica_fi_nal.doc); CGR's website: <https://www.cgr.go.cr/04-documentos/normativa/auditoria-etica.html>

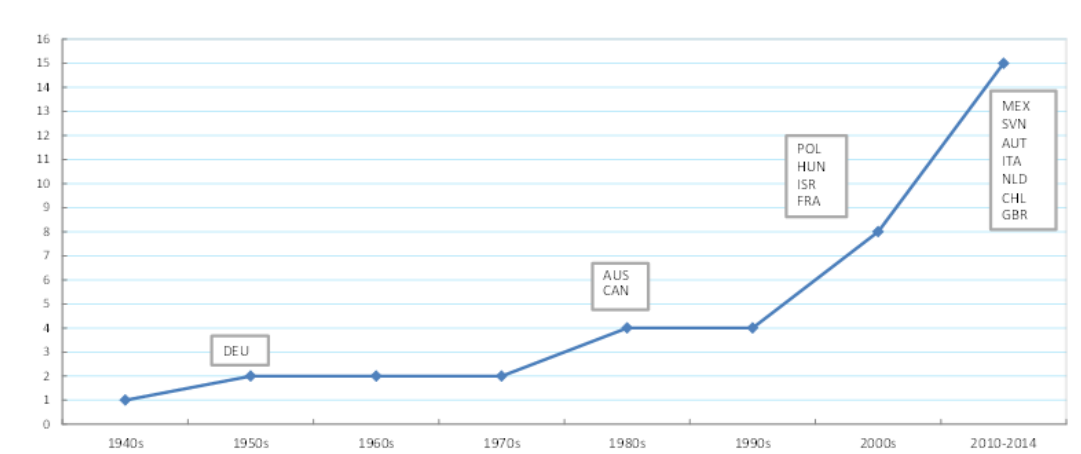


In the municipalities visited during the mission, internal control was quite advanced too; risk assessments are undertaken by the risk owners, and the value of an internal control system seems to be recognised by the decision-makers. Ethics management is understood as contributing to improving the control environment. However, in contrast to the interviews conducted at national level, the internal audit function at local level seems to be less clear and ineffective. At this level, the internal auditor reports, in theory, to the Municipal Council, but in all municipalities visited, internal audit was perceived as contributing very little value to the municipality. Actually, the term of internal audit seems to be misleading as it is de facto an extension of the CGR at local level, therefore rather playing a role of external control than the traditional role of an internal audit unit providing assurance over processes (third line of assurance). In addition, according to responses during the second accession fact finding mission, the high independence and autonomy of the Internal Auditor, which is intended to shield the Auditor from political interference and reprisal, seems come along with the risk of to certain abuses. Also, in all three municipalities the procurement units were never subject to an audit. Taking into account that ex ante control of procurement is currently being reduced (see the section on procurement below), the role of an effective audit functions becomes more important.

## Lobbying

Lobbying can provide decision-makers with valuable insights and data, as well as grant stakeholders access to the development and implementation of public policies. However, non-transparent and unregulated lobbying can also lead to policy capture by allowing for undue influence and unfair competition to the detriment of the public interest and effective public policies. A sound framework with high standards for transparency and integrity in lobbying is therefore crucial to safeguard the integrity of the public decision-making process. An increasing number of OECD countries have introduced lobbying regulations (Figure 23).

**Figure 23. Introduction of lobbying regulations, OECD countries**



Note: Data not available for Latvia. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.

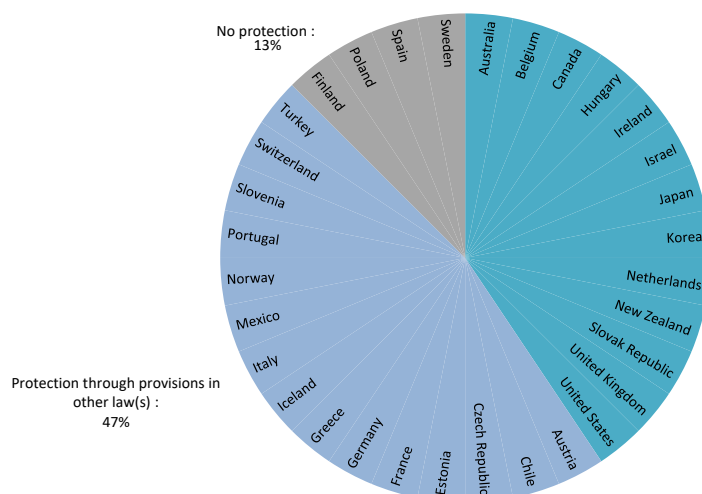
Source: OECD (2015), *Government at a Glance 2015*, OECD Publishing, Paris, [http://dx.doi.org/10.1787/gov\\_glance-2015-en](http://dx.doi.org/10.1787/gov_glance-2015-en)

Costa Rica currently does not have regulations in place that define lobbying and lobbying activities, or that seek to enhance transparency and integrity in lobbying. However, since 2014 the draft Law 19.251 proposes a Law on Lobbying in the Public Service, but no progress has been made in this area.

## Whistle-blower protection

Whistle-blower protection is the ultimate line of defence for safeguarding the public interest. Protecting whistle-blowers promotes a culture of accountability and integrity and facilitates the reporting of misconduct, fraud and corruption. Over the last decade, an increasing number of OECD countries have developed a specific legal framework to protect whistleblowers, and only a minority of countries do not provide any type of protection (Figure 24).

**Figure 24. Legal protection of whistleblower in OECD countries, 2014**



Note: Data not available for Latvia. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.

Source: OECD (2015), Government at a Glance 2015, OECD Publishing, Paris, [http://dx.doi.org/10.1787/gov\\_glance-2015-en](http://dx.doi.org/10.1787/gov_glance-2015-en)

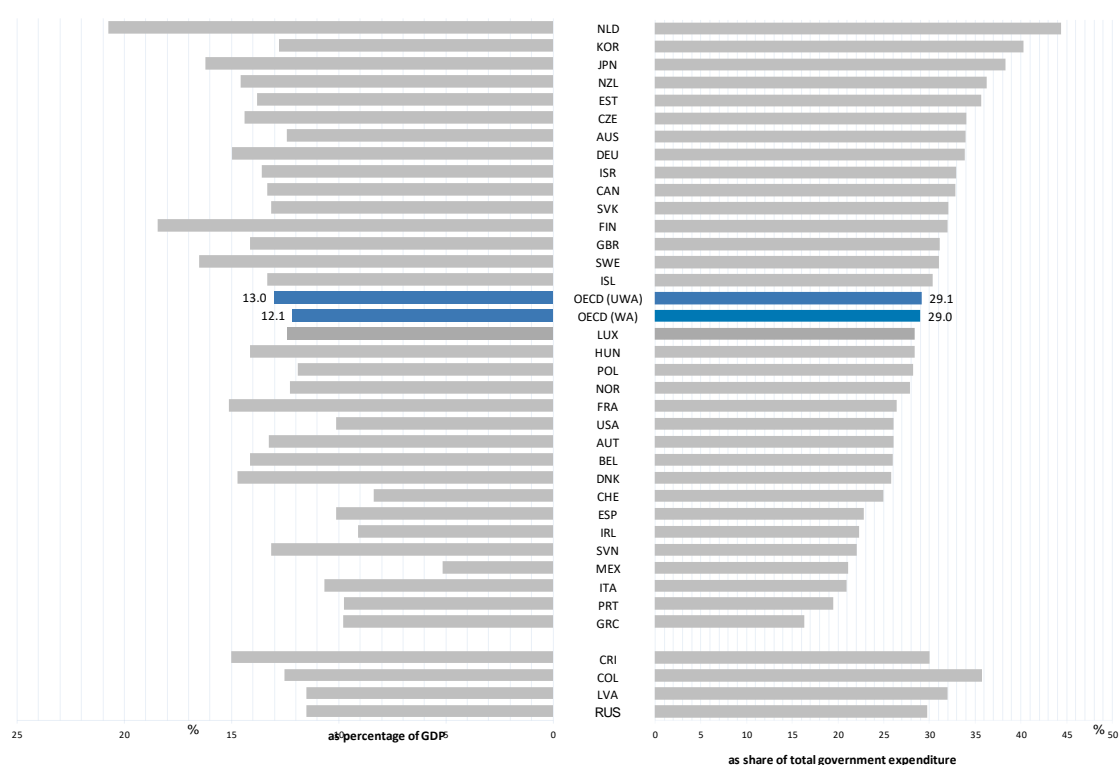
In Costa Rica, there is currently no dedicated law that would provide protection of employees in the public sector from discriminatory or disciplinary action once they have disclosed wrongdoing. However, Costa Rica has a number of protection mechanisms for whistleblowers, victims and witnesses of acts of corruption that apply at the criminal and administrative levels. Specifically, the “Law 8720 to protect victims, witnesses and other parties involved in criminal proceedings, reforms and additions to the Code of Criminal Procedure and the Criminal Code” (*Ley de protección a víctimas, testigos y demás sujetos intervinientes en el proceso penal, reformas y adición al Código Procesal Penal y al Código Penal*) provides for protection measures operating within criminal proceedings. Such protection measures are applicable to whistle-blowers, victims or witnesses in criminal proceedings for corruption offenses. Also, Article 6 of the General Law on Internal Control, and Article 8 of the LCCEI regulate confidentiality of the identity of whistle-blowers as a mechanism for their protection in administrative investigations. The LCCEI also provides for the possibility of using administrative law enforcement authorities for the protection of whistle-blowers in administrative courts. Finally, in accordance with this existing legislation, the DGSC issued in 2014 an official letter (DG-015-2014) that aims at establishing a policy of confidentiality for the treatment of information on whistle-blowers and their allegations, submitted to the different bodies of the DGSC.

Currently, a proposal aimed at reforming the Law against Corruption and Illicit Enrichment in Public Service considers incorporating mechanisms to protect whistleblowers against retaliation in the workplace (Draft Law 18348).

## Public procurement

Public procurement usually accounts for a substantial portion of the taxpayers' money in OECD member and partner countries. In Costa Rica, in 2014 general government public procurement accounted for approximately 15% of GDP (excluding oil revenues) and 30% of general government expenditure (Figure 25).<sup>282</sup> In Latin American and Caribbean (LAC) countries, procurement spending represented in 2011 26% of general government expenditures, and in 2014, OECD governments spent, on average, 30% of the total general government expenditure on public procurement, and 13.1% of GDP (OECD, 2015<sup>283</sup>).

**Figure 25. General government procurement as percentage of GDP and as share of total government expenditures, 2013**



Source: OECD (2015), Government at a Glance 2015, OECD Publishing, Paris. [http://dx.doi.org/10.1787/gov\\_glance-2015-en](http://dx.doi.org/10.1787/gov_glance-2015-en)

With the creation of the Courts of Accounts by Congress in 1825, and the creation of the Office of the Comptroller General (CGR) in 1950, Costa Rica has a long-standing and continuous tradition concerning effort to safeguard an efficient and effective use of public funds. The most important legislation regarding procurement is the Law 7494 of 1995 on Administrative Procurement, LAP (*Ley de la Contratación Administrativa*) and its Regulation. The LAP covers most public institutions, and defines amongst others the procurement plan and procurement procedures.

<sup>282</sup> OECD (2015), Costa Rica: Good Governance, from Process to Results, OECD Public Governance Reviews, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264246997-en>.

<sup>283</sup> Idem.

Exceptions to the law are non-state public entities financed by more than 50% by their own resources, contributions of its members, and public enterprises whose capital belongs mostly to private persons and not the public sector (Article 2, LAP). For instance, the Costa Rican Electricity Institute (*Instituto Costarricense de Electricidad*, ICE) or the Costa Rican Department of Social Security (*Caja Costarricense de Seguro Social*, La Caja) have special procurement regulations; differences include shorter times for the different stages of the procurement process. For some of the institutions, these specific regulations are explained by the fact that these sectors are facing higher levels of competition and therefore demand greater flexibility and efficiency in their procurement processes. The major buyers in Costa Rica are autonomous institutions, especially the Costa Rican Electricity Institute (*Instituto Costarricense de Electricidad*, ICE), the National Road Council (*Consejo Nacional de Vialidad*), the Department of Social Security (*La Caja*), the Costa Rican Oil Refinery (*Refinadora Costarricense de Petróleo*, RECOPE), and the National Bank of Costa Rica (*Banco Nacional de Costa Rica*). Overall, 92% of purchases are carried out by these autonomous institutions, with their own procurement procedures, 6% by the (budgetary) central government and about 2% by municipalities and other non-state entities (Banco Nacional de Costa Rica, 2010<sup>284</sup>). Other relevant legislation includes the Concession of Public Works General Act (*Ley General de Concesión de Obras Públicas con Servicios Públicos*), Law 7762 of 1998.

Currently, in Costa Rica there is no procurement authority with a strategic mandate to provide a cohesive procurement vision, guidelines, co-ordination and performance management of procurement for the whole of government. In general, the competencies for procurement procedures are not centralised; each entity or agency maintains its authority to do so. Only for the centralised sector, the General Directorate of Assets and Administrative Procurement (*Dirección General de Administración de Bienes y Contratación Administrativa*, DGABCA) of the Ministry of Finance exercises stewardship and defines purchase schemes that should be promoted centrally as, for example, through framework agreements. Therefore, most institutions have their own resources management, procurement vision and procedures, and e-procurement platform, with the result that the Costa Rican procurement system is fragmented (OECD, 2015<sup>285</sup>). However, with the move towards the mandatory use of a single e-procurement platform (see below), Costa Rica is taken an important step towards a more coherent approach towards meetings OECD standards (Table 12).

**Table 12. Functionalities provided in e-procurement systems, 2014**

	Mandatory and provided	Not mandatory but provided	Not provided
Publishing procurement plans (about forecasted government needs)	AUS, BEL, CHL, DMK, GRC, HUN, IRL, KOR, MEX, NLD, NZL, NOR, PRT, GBR, USA, CRI	AUT, CAN, FIN, DEU, ISL, ITA, JPN, POL, SVN, ESP, SWE, CHE, TUR	EST, FRA, LUX, NLD, SVK
Announcing tenders	AUS, AUT, BEL, CAN, CHL, DNK, EST, FIN, FRA, DEU, GRC, HUN, IRL, ITA, KOR, LUX, MEX, NLD, NZL, NOR, POL, PRT, SVK, SVN, ESP, SWE, CHE, TUR, GBR, USA, CRI	ISL, JPN	
Provision of tender documents	AUS, AUT, BEL, CHL, EST, FIN, FRA, DEU, GRC, HUN, IRL, KOR, MEX, NLD, NZL, NOR,	CAN, DNK, ISL, ITA, JPN, LUX, ESP	

<sup>284</sup> Banco Nacional de Costa Rica (2010), “¿Qué es el mercado en línea Mer-link?”, ABC de Mer-Link, [www.bncr.fi.cr/BNCR/Proveeduria/PDF/BNCR%20-%20ABC%20MerLink.pdf](http://www.bncr.fi.cr/BNCR/Proveeduria/PDF/BNCR%20-%20ABC%20MerLink.pdf).

<sup>285</sup> OECD (2015), Costa Rica: Good Governance, from Process to Results, OECD Public Governance Reviews, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264246997-en>.

	POL, PRT, SVK, SVN, SWE, CHE, TUR, GBR, USA, CRI		
Electronic submission of bids (excluding by e-mails)	BEL, CHL, EST, FRA, GRC, ITA, MEX, PRT, USA, CRI	AUS, AUT, DNK, FIN, DEU, IRL, JPN, KOR, LUX, NLD, NZL, NOR, SVK, SVN, ESP, SWE, TUR, GBR	CAN, HUN, ISL, POL, CHE
e-tendering	BEL, CAN, CHL, EST, GRC, IRL, ITA, MEX, CHE, USA, CRI	AUT, DNK, FIN, FRA, DEU, JPN, KOR, NLD, NZL, NOR, PRT, SVK, SVN, ESP, SWE, TUR, GBR	AUS, HUN, ISL, LUX, POL
e-auctions (in e-tendering)	GRC, MEX, SVK, SVN, USA, CRI	AUT, DNK, EST, FIN, FRA, DEU, IRL, ITA, NLD, NZL, NOR, PRT, SWE, CHE, GBR	AUS, BEL, CAN, CHL, HUN, ISL, JPN, KOR, LUX, POL, ESP, TUR
Notification of award	AUS, AUT, BEL, CAN, CHL, DNK, EST, FIN, DEU, GRC, HUN, IRL, KOR, MEX, NLD, NZL, NOR, POL, PRT, SVK, SVN, ESP, SWE, CHE, TUR, USA, CRI	FRA, ITA, JPN, GBR	ISL, LUX
Ordering	CHL, ITA, NLD, CHE, USA, CRI	AUT, BEL, CAN, DNK, FIN, FRA, DEU, JPN, KOR, NZL, NOR, SVN, ESP, SWE, TUR, GBR	AUS, EST, GRC, HUN, ISL, IRL, LUX, MEX, POL, PRT, SVK
Electronic submission of invoices (excluding by e-mails)	AUT, DNK, FIN, ITA, NLD, ESP, SVN, SWE, CHE, USA	FRA, DEU, ISL, JPN, KOR, NZL, NOR, GBR	AUS, BEL, CAN, CHL, EST, GRC, HUN, IRL, LUX, MEX, POL, PRT, SVK, TUR, CRI
Ex-post contract management	CHE, TUR, USA	DNK, FIN, DEU, ITA, JPN, KOR, NZL, NOR, SVN, SWE	AUS, AUT, BEL, CAN, CHL, EST, FRA, GRC, HUN, ISL, IRL, LUX, MEX, NLD, POL, PRT, SVK, ESP, GBR, CRI

Note: Data unavailable for the Czech Republic Israel and Latvia. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.

Source: OECD (2014) Survey on Public Procurement,

The main actors framing the public procurement in Costa Rica are the Office of the Comptroller General (CGR), the above-mentioned Ministry of Finance's General Directorate of Asset Management and Administrative Procurement), the Digital Government Technical Secretariat and specialised units within each institution. The DGABCA covers less than 20% of the public procurement spending, covering only 61 institutions (i.e. ministries and subsidiary bodies). The CGR carries out three main functions related to public procurement processes: (1) ex ante control through the approval of the legality of the contracts of public entities and territorially and decentralised public sector (referred to as *refrendo*) and the approval of exceptions for public bidding; (2) ex post control; and (3) bid protests resolution.

### *E-procurement*

Several consecutive governments actively supported the implementation of digital government. In 2001, the Ministry of Finance launched Compr@Red, a digital platform for procurement procedures in the central government. In 2009, the Digital Government Technical Secretariat of the ICE developed an e-procurement system known as Mer-Link, which has been implemented also in several autonomous entities and municipalities in 2009 and 2010. Some institutions, such as the Costa Rican Oil Refinery, the National

Insurance Institute and the National Training Institute, have developed their own procurement platforms, and other procurement units are using paper-based systems.

Mer-link's e-procurement is using the SUN servers with the Solaris operating environment, the data base works with Oracle, and the application has been developed in Java. All Mer-link modules work in an integrated manner and are covering the entire process of public procurement, except the execution phase. The modules are: (1) the web portal, through which buyers and suppliers interact, the electronic registry of providers, (2) the single standardised product catalogue using the United Nations Standard Products and Services Code (UNSPSC) for generic categories and includes subcategories for specific goods and services that may require more details, (3) the electronic tendering module that allows to realise the whole procurement process, from the request, tender, electronic receipt of bids, and evaluation, to the award of the contract, (4) the electronic procurement module that allows to develop an electronic contract between the parties, (5) a module that allows to manage objections, revocation and appeals, (6) a reverse auctions system, (7) a purchase catalogue where public institutions can purchase goods and services that are commonly used through framework agreements, and (8) an electronic payment module covering the process of receipt of goods and services contracted and the respective payment.

Early 2015, an Executive Decree mandated Mer-Link and Compr@Red to be merged into a single e-procurement system named SICOP (*Sistema Costarricense de Compras Públicas*). The new platform is based on and essentially identical to Mer-link, and is managed by the company *Radiográfica Costarricense – RACSA* under the lead of the General Directorate of Asset Management and Administrative Procurement. SICOP introduced some minor changes to Mer-Link, mainly by making adjustment to the forms used for framework agreements, adjustments related to the implementation of the International Accounting Norms of the Costa Rican Public sector (*Normas Internacionales de Contabilidad del Sector Público Costarricense*, NICSP), as well as adding an interface with the financial management system for the central government (*Sistema Integrado de Gestión de Administración Financiera*, SIGAF) from the Ministry of Finance. Through the SICOP/Merlink electronic platform, suppliers can enroll online using a digital signature certificate. According to data provided by Costa Rica, currently 102 out of 330 institutions are using SICOP/Merlink; the biggest user of the system is the ICE. Compr@Red is still used by some municipalities, as well as the some entities of the central government, which are using SICOP and Compr@Red in parallel for those contracts that started before SICOP or for some framework agreements; however, new contracts have to be managed through SICOP.<sup>286</sup> Reportedly, some municipalities are also using both systems, depending on the type of service or supplier they need. Interviews conducted at municipal level showed that municipalities are preparing themselves to implement SICOP.

Legislative decree 9395 on Transparency on Public Procurement (*Decreto Legislativo sobre la Transparencia de las Contrataciones Administrativas*)” sets the mandatory use of SICOP for the whole public sector including the autonomous institutions. Yet, the bylaws are still being designed and the implementation is gradual as some existing framework agreements have to be managed with the old platforms until they end.

Both SICOP and Compr@Red allow obtaining information with respect to the percentages of purchases awarded by institution, the purchases by type of supplier, the number of procedures awarded by type and procurement mechanism, the number of lines awarded, and the procedures by institution, amongst others. The information available may span up to 5 or 6 years, which is useful to perform projections of consumption or analysing sales per supplier and purchases per institution. However, much of the

<sup>286</sup>El Financiero (2016), Entidades de Gobierno operan CompraRed y Sicop para compras públicas, published 11 September 2016, [http://www.elfinancierocr.com/tecnologia/Sicop-CompraRed-Hacienda-Comex-MEP-Micitt-compras\\_publicas\\_0\\_1027697234.html](http://www.elfinancierocr.com/tecnologia/Sicop-CompraRed-Hacienda-Comex-MEP-Micitt-compras_publicas_0_1027697234.html)

information provided by the Mer-link System (SICOP platform) is available in PDF format only, not providing the information in open data form, which does not facilitate using the data for statistical purposes.

### *Access to procurement opportunities*

Facilitating access to procurement opportunities for potential suppliers of all sizes is crucial to ensure competition and thus the efficiency of the system. Access is facilitated and promoted by having in place coherent and stable institutional, legal and regulatory frameworks, delivering clear and integrated tender documentation and using competitive tendering.

In Costa Rica, the use of e-procurement, as described above, and framework agreements (FA), as will be described below, aim at increasing access by facilitating and encouraging a broad participation of suppliers to procurement opportunities. However, during the interviews, municipalities have voiced concern with respect to potential negative effects of SICOP on access to procurement opportunities for small local providers, and thus on local development. Many local firms lack the technological knowledge and capacities to register and need to travel to San José to get the digital signature, which can be complicated for some small providers. In addition, it is feared that small local providers may have problems competing with big firms from the national level and that this may come along with negative consequences for local development and employment. Municipalities therefore emphasised the need to support these local firms in building capacities and in registering as providers in SICOP.

More generally, access is guaranteed by clear procedures. The decision to initiate a procurement process in Costa Rica must be commensurate with the program budget, as well as with the planning done by the procurement manager, who is responsible for carrying out the pre-feasibility and market studies to know in advance the estimated cost of the goods and services to be procured. The procurement manager prepares the initial decision of the administrative procurement procedures based on the Institutional Procurement Plan, the Annual Operating Plan, the Institutional Strategic Plan, and, ultimately, the National Development Plan, from which all other plans are derived. Furthermore, due diligence during the phases of formalisation, effectiveness (through internal approval or endorsement, as required by the contract), and contract execution, is under the responsibility of the procurement manager. Regarding the possibility of increasing the level of participation, the Procurement Law provides the possibility to challenge procurement documents (e.g contract awards or tender documents), in order to remove unjustified limitations for participation. The complaint should be addressed to the Comptroller General in the case of public bidding or to the Administration itself in the case of an abbreviated procurement procedure.

Article 58 of the Law on Administrative Procurement specifies that in the case of public works, participating companies that wish to subcontract works, machinery, equipment or materials must submit, along with the bid, an outsourcing list. This document must state the names of all subcontracting companies. Additionally, a certificate of the shareholders and legal representatives of the companies must be provided. Also it is not permitted to subcontract more than 50% of the total work, unless prior express authorisation has been given by the procurement unit. Subcontracting does not relieve the contractor of his responsibility for the overall execution of the works. Procurement of supplies is not considered subcontracting.

For public tenders, Article 42 of the Law on Administrative Procurement states that the invitation must be published in the Official Gazette (*La Gaceta, Diario Oficial*), which is also the channel to inform on any amendments to the procurement documents and the award process. All procedures must be published and access to all technical studies, including the records and minutes of hearings, must be guaranteed. If electronic means are used, the security and integrity of information must be ensured. A period of at least 15 working days is established by the Law to receive bids, counted from the day following the publication of the invitation and including the day of the opening of bids. Article 43 authorises the procurement unit

at institutional level to make international public tenders, in which the procurement unit, besides making the regular publication, may invite to tender, by publishing a notice in foreign newspapers or via communication to the commercial delegations accredited in the country.

The award of public tenders must be justified and contain the requirements set out under Article 42bis of the Law on Administrative Procurement, which states that the award must be issued within the period set out in the bid specifications, which may not exceed twice the deadline to invite tenders. This deadline may be extended for an equal period and only once, by reasoned resolution, substantiating the grounds of public interest to warrant such extension. If no award has been issued upon expiration of the deadline stated in the preceding paragraph, bidders are entitled to render their proposal unenforceable, and to the return of the bid, without any sanction applicable to them. The procurement official responsible for not issuing the award in a timely manner is subject to the penalties provided under Articles 96 of the Law, for breach of statutory deadlines.

For abbreviated tenders, in accordance with Article 45 of the Law on Administrative Procurement, at least five suppliers of goods or services must be invited to participate; all must be accredited in the Register of Suppliers. If the number of suppliers included in the Register of Suppliers for the purposes of the procurement is less than five, the administration must extend the invitation by publication in the Official Gazette. Procurement unit are authorised to omit the use of the Register of Suppliers for abbreviated tenders and can use only the Official Gazette, when it deems appropriate to satisfy the public interest. The procurement unit has to consider all bids submitted for the tender, whether they were invited or not. The deadline for bids needs to be between five and twenty working days, except in special cases, where the deadline can be extended to a maximum of ten additional days. The reasons for such extension must be stated in the record. The award for abbreviated tenders must be issued within the period set out in the procurement documents, which may not exceed twice the deadline to invite tenders and must comply with the requirements established for public tenders.

After the deadline for receipt of bids, it is not possible to change or remove them, although clarifications may be submitted on the initiative of the participants or upon request of the procurement unit, provided this does not involve altering essential elements of the bid. After bid opening, bids must be publicly available for any interested party. A bid is eligible when, upon completing all the technical, legal, economic and financial studies, it meets the requirements of the tender documentation. Bids are subject to a rating system, previously established in the tender documentation. The bid with the highest score receives the award.

Bidders can participate in tenders alone or as a joint bid, in which two or more bidders come together to participate in a tender, but separating their obligations for the purpose of accountability during the implementation phase of the contract. This form of joint bidding must be expressly authorised by the tender documentation. Bidders can also submit a bid as a consortium, which occurs when two or more participants come together to complete the requirements of the tender documentation, or to reduce their weaknesses and enhance their strengths against the competition for a particular procurement. Likewise, participants can submit more than one bid to the procurement unit, e.g. with technical variations, or with differences in terms or prices and quality.

### ***Transparency and effective stakeholder participation***

As a general principle, all administrative procurement records are public in Costa Rica. The principle is underpinned by the fact that purchases are paid for with public funds, which derive from the taxes paid by all citizens. Therefore, anyone can request an administrative procurement record, with no other requirement besides being duly identified with an ID card. Procurement officials have to provide access to all documents included in the file. Otherwise, they would be engaged in gross misconduct in the provision



of services, which may also, in certain cases, constitute the criminal offense of abuse of authority. However, the rule contemplates the following exception in case of national security or national catastrophe: *“Documents submitted by bidders for the sole purpose of clarifying particular requirements of the Administration shall be excluded from access by the parties and the general public, provided that it is so requested by the interested party and if the procuring entity, by reasoned act, so agrees. A separate docket shall be comprised of any documents classified as confidential, in order to guarantee free access to the rest of the record.”* (DGCA-217-96). As such, the rule calls for a properly motivated administrative act, which can be subject to control both in the courts and administratively, for example when it is necessary to make the record available to exercise the right to challenge the final act and when requested by the Comptroller General.

Transparent and effective stakeholder participation enhances the results of the public procurement system. Transparency in public procurement has been increased recently by modifying article 40 of the Law on Public Procurement, including a section that requires the display of information on procurement on the website of public entities, in addition to the link to SICOP. Some concerns were raised, however, that this requirement is duplicating the information that is already available through SICOP and may thus lead to additional bureaucracy.

The Law on Administrative Procurement sets out the publicity of the procurement plan, of the initial decision, the appointment of a person in charge of contractual verification and the resources available for procurement. During the pre-tendering stage, the procurement units in the public entities have to provide requested information and free access to the administrative procurement files has to be guaranteed. Also, Article 53 of the Regulation of the Law on Administrative Procurement states that consultation sessions (public hearings) with potential bidders can be held prior to the bid specifications. At this stage of the process, potential bidders may make recommendations or suggestions to the conditions or requirements stipulated in the tender documentation by the procuring unit. The invitation to participate in hearings before the bid specifications must be published in a national newspaper, indicating the place and time when such hearing will be held. This is aiming to ensure the widest publicity and participation of potential bidders at the hearing. However, this participation is not binding and in many cases the procurement unit is not obliged to provide for this opportunity.

Consultation with the private sector on public procurement reforms can provide important feedback for the government. In Costa Rica, additionally, the General Law of Public Administration provides that, when issuing administrative acts of general scope (regulations), stakeholders should be consulted, either providing a timely public hearing or by informing about the draft standard in the Official Gazette. The CGR, when taking initiatives to develop or modify regulations on procurement, has sought to provide for the necessary feedback, with reasonable deadlines and creating opportunities to listen to concerns or proposals, making draft documents available in the web page. In addition, there have been work sessions or workshops with private sector stakeholders, such as centralised and decentralised public sector, as well as chambers, trade associations, and law firms.

### ***Integrity of the public procurement system, risk assessments, and accountability***

Public procurement is at-risk to integrity breaches, and safeguarding the integrity of public procurement processes is essential to ensuring quality and efficient delivery of public goods and services. As presented above, there is currently no single public entity or framework in Costa Rica which defines integrity policies for the entire public sector. Rather, each institution defines their integrity policies according to their internal control schemes, e.g. with respect to codes of conduct or ethics, conflict of interest policies or integrity trainings. As such, there is also no specific code of conduct for all procurement officials, nor are specialised trainings courses offered to public procurement officials. However, the Office of the Comptroller General

offers the possibility to file electronic reports of wrongdoings involving public funds on its website, including orientation on how to file complaints.

In addition to preserving integrity, the OECD recommends also to integrate risk management strategies for mapping, detection and mitigation throughout the public procurement cycle. In Costa Rica, risk management should be administered according to the regulations of the Law on Internal Control, as presented above. The Internal Control General Act, as presented above, requires all entities and bodies subject to oversight by the Comptroller General to have an internal audit unit within their organisational structure to oversee, amongst others, the procurement process. Also, each public institution has to define adequate internal control in accordance with their situation. Procurement processes are a key area covered by the internal control system, because if procurement risks are not managed adequately, no reasonable assurance would be provided. As discussed above, integrity and corruption risks are however not yet systematically integrated into the risk assessment methodology.

By law, the Office of the Comptroller General (CGR) is responsible for ensuring accountability through external control by two mechanisms: firstly, through prior control through the endorsement of contracts, budget approval, recourses to objection and appeals; and secondly, through subsequent control, dealing with complaints as well as through financial audits, performance audits, and general (compliance) audits. Additional external control on public procurement is exercised by the Commission for Control of Income and Public Spending of the Legislative Assembly, as well as by the Judicial Branch, through the Administrative Court and the Constitutional Chamber.

However, the CGR has been making efforts to reduce the amount of contracts under its ex ante approval, returning part of this responsibility to the procuring entity. In 2012, a reform was enacted to increase the economic threshold applicable to contracts subject to the CGR's review, in order to help the Procurement Division of the CGR focus primarily on highly complex procurement procedures and ex post audits. Through R-DC-114-2016, the CGR further changed its regulation and reduced significantly the required ex-ante control (*refrendo*) for contracts above the given thresholds. The changes became effective on February 17, 2017. In addition, a Project Law to reform the ex-ante control in more depth is currently being discussed.

Despite these ongoing reforms, nevertheless, remaining ex-post controls are mainly legalistic, focusing on normative compliance, and leading to delays and even fear amongst public officials responsible for procurement processes due to the relative high risk of committing small technical errors. At the same, these controls are largely ineffective in providing assurance that procurement processes are efficient and effective, and are not reducing risks of corruption. In addition, interviews revealed that there is a lack of strategic planning, especially in infrastructure and construction projects, which renders difficult to control for results. Both aspects are part of the explanation of why there are problems in executing projects effectively.

At local level, the Municipal Councils, according to the Municipal Code, have the power to approve procurement and contracting. This yields a strong risk of political interference in administrative matters which was confirmed during the interviews. It seems that conflicts between mayors and municipal councils are frequent. Nevertheless, the Municipal Council has the right to delegate the procurement decisions to the local administration, and only exert an ex post control; some municipalities are making more or less use of this possibility to delegate, e.g. by establishing thresholds. Below the threshold, the local administration carries out the procurement, while contracts above the threshold require previous approval by the Council.

### *Secondary strategic policy objectives*

While delivering goods and services necessary to accomplish government mission in a timely, economical and efficient manner is considered as the primary procurement objectives of public procurement, governments are also increasingly using it to pursue additional secondary policy objectives including promoting sustainable green growth, the development of small and medium-sized enterprises, innovation, standards for responsible business conduct or broader industrial policy objectives (Table 13). Public procurement in Costa Rica is used to pursue secondary policy objectives for the promotion of Small and Medium Enterprises (SME) and for green (sustainable) procurement.

**Table 13. Development of strategic public procurement by objective, 2014**

Country	Green public procurement	Support to SMEs	Support to procure innovative goods and services
Australia	●	●	●
Austria	●	◆	●
Belgium	◆●	●	●
Canada	◆●	●	●
Chile	◆●	◆●	●
Denmark	●	●	●
Estonia	○	○	○
Finland	●	◆	◆
France	◆●	◆●	◆●
Germany	●	●	●
Greece	◆●	●	○
Hungary	◆	●	●
Iceland	●	○	○
Ireland	●	●	●
Italy	◆	◆	◆
Japan	●	●	●
Korea	●	●	●
Luxembourg	◆●	◆●	◆
Mexico	●	●	●
Netherlands	●	●	●
New Zealand	◆●	◆●	◆●
Norway	■	◆●	◆●
Poland	●	●	●
Portugal	●	◆	◆
Slovak Republic	○	○	○
Slovenia	◆●	●	●
Spain	◆●	◆●	◆●
Sweden	◆●	●	●
Switzerland	◆●	◆●	◆
Turkey	●	●	●

United Kingdom	●	●	●
United States	●	●	◆●
OECD total			
◆ A strategy/policy has been developed by some procuring entities	13	11	10
● A strategy/policy has been developed at a central level	27	25	23
■ A strategy/policy has been rescinded	1	0	0
○ A strategy/policy has never been developed	2	3	4
Costa Rica	●	●	○

Source: OECD (2014) Survey on Public Procurement, Data unavailable for the Czech Republic, Israel and Latvia. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey. In November 2014, the Norwegian Parliament decided that green public procurement will once again be under the responsibility of the Agency for Public Management and eGovernment (Difi).

In 2015, the General Directorate of Asset Management and Administrative Procurement issued Technical Standards for the Application of Sustainable Criteria in Public Procurement and the Guide for Implementation (Article 29 of Law 8839, *Ley para la Gestión Integral de Residuos*). The provision seeks to promote the use of sustainability criteria in public procurement, and establishes the basis on the sustainable indicators best suited for every contract can be determined. It also contains a section intended to serve as a guide for the promotion of innovation in procurement activities. Environmental considerations are gradually integrated into tender documentation as qualification or evaluation criteria, for example for the procurement of cleaning services, which establishes requirements on the products used, the garbage collection service, and the acquisition of vehicles, amongst others.

With respect to the participation of SMEs, an amendment incorporated regulations into the Regulations of the Law on Administrative Procurement that seek to encourage SME participation in procurement procedures. These regulations include advantages related to the surrender of bid and performance bonds, advance payments, methods of payment, and the evaluation system. When a payment is given in advance, current regulations require the surrender of collateral for one hundred percent of the sum drawn in advance, whether real or personal guarantee, in addition to the performance guarantee, in order to protect the Administration and to ensure proper contract execution. Also, the status as SME was established as a tiebreaker in the evaluation system: in the event of a tie, an SME will receive additional points (industry SMEs receive 5 points; service SMEs, 5 points; and trading SMEs 2 points). According to data from the General Directorate of Asset Management and Administrative Procurement, about 30% of awarded suppliers in consolidated procurement are SMEs.

### *Efficiency throughout the public procurement cycle*

Driving efficiency throughout the public procurement cycle is crucial to enhance the performance of the system. Currently, in Costa Rica there is no centralised purchasing body or procurement authority with a strategic mandate to provide a cohesive procurement vision, guidelines, co-ordination and performance management of procurement. Most institutions have their own resources management, procurement vision and e-procurement platform.

The Procurement Act underwent a review in 2006 which promoted the adoption of framework agreements and consolidated procurement (article 115 of the Regulations of the Law on Administrative Procurement). Recent progress in simplifying the procedures of framework agreements to make them more attractive has been achieved by reforming article 115 of the Law on Administrative Procurement (No. 40124-H Presidencia and Hacienda, October 2016).

Framework agreements are permitted for procurement units that share the same procurement office, the same system of physical or electronic acquisition, or where there is an agreement between at least two

public procurement units. The agreements can hold for a period of up to four years. The obligations of the members of the framework agreement entail the consultation of the agreement before carrying out other procedures for the procurement of goods or services covered by the agreement, except in cases where the potential for better conditions than those covered in the framework agreement is proven. Successful bidders, in turn, are obliged to maintain the conditions and quality initially offered throughout the term of the agreement. In the case of the central government, the General Directorate of Asset Management and Administrative Procurement, or its designee, is responsible for conducting the procurement. The regulation allows for second stage competition between suppliers within a framework agreement, but there are no specific rules for this second stage competition; prices are the most common criteria for the second stage, although in some agreements other criteria beyond prices are used.

Framework agreements are used, for example by hospitals or healthcare centers in the procurement of medicines or medical equipment, by state universities for office supplies, equipment and teaching materials, or in the central government for the procurement of vehicles, vehicle tires, airline tickets, computer equipment, as well as for certain services such as cleaning services. In 2014, according to data from the System of Contracting Activities (*Sistema Integrado de la Actividad Contractual*, SIAC), 1816 framework agreements were initiated in 54 public institutions, from which 996 were awarded. On average, the awarded framework agreements had 6.5 suppliers, the largest agreement having 14 suppliers (two agreements: one for cleaning materials, and one for office supplies), the smallest only 2 suppliers (for gloves). On average, about 30% of the suppliers in framework agreements were SMEs. The highest shares of SME suppliers were achieved for cleaning materials (85.71%), followed by furniture (75%), gloves (50% - i.e. one company), catering (40%), tickets (33.33%), and cleaning services (25%).

In 2015, 83.5% of the 68282 procurement procedures were carried out through direct procurement award, representing 46.2% of the total value of all contracts awarded, followed by 10.15% through procedures on procurement principles (representing 5% of the total value of contracts), 5.6% through abbreviated tenders (21% of total value of contracts), 0.72% through national public tenders (17.3% of total value of contracts), and 0.02% through international public tenders (10.25% of total value of contracts).<sup>287</sup> It is important to note that in Costa Rica, procurement units have different thresholds to carry out their procurement. The threshold to carry out different procedures differs among institutions is related to its allocated budget: the higher the budget, the higher the threshold to carry out the direct awards.

### *Capacity of the procurement workforce*

In Costa Rica public procurement is currently not recognised as a strategic profession but considered rather as an administrative function. As a consequence, there is no professionalised procurement workforce or special recruitment process for procurement units. Rather procedures can vary across the public administration depending on the public organisation. Procurement units are staffed in relation to the size of the institution and the complexity of its procedures, and they include public administration professionals, lawyers, economists and industrial engineers, among others.

With respect to training and professionalisation, each institution is responsible for implementing the necessary measures according to its budget and the decision by the authorities. Institutions choose to include their staff in training opportunities on administrative procurement or related thereto, which are provided by public and private universities, or online trainings. Reportedly, a large number of public officials assume their own training, bearing the costs themselves. The CGR offers a free online training on administrative procurement. In 2016, two editions of the training took place. Per edition, around 90 participants can participate.

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<sup>287</sup> Based on responses to the Accession questionnaire.

### *Evaluation of the effectiveness of public procurement*

The evaluation of the procurement system, from individual procurement to the system as a whole, is crucial to ensure its effectiveness and efficiency, as well as to allow for constant improvement and evolution. At the individual procurement level, key performance indicators (KPI) can lead to tailor public procurement strategies and targets to achieve. However, mainly due to the decentralised and fragmented system in Costa Rica, there are currently no KPI measuring the performance of administrative procurement, and no systematisation of the performance of public procurement in Costa Rica.

Information that could be used to evaluate the procurement system such as amounts invested, number of suppliers, or procedures used, could be retrieved through the Comptroller General's Integrated System of Contracting Activities (SIAC), which can be consulted on the corporate website of the Office of the Comptroller General of the Republic. However, although the information in the SIAC covers the entire public sector, it is not necessarily consistent with all the information required by the government, as the information in SIAC is systematised primarily for the exercise of the CGR's external control function. Therefore, to get a complete overview of the relevant information it would be necessary to consult each single procurement system used in the public administration.

### *Integration of public procurement into overall public finance management, budgeting and services delivery processes*

According to Article 7 of the Regulations of the Law on Administrative Procurement, every public entity has to prepare and publish the Acquisitions Programme on the first month of each budget period. The programme must include: a) the type of asset, service or work to be contracted; b) the project or programme under which the procurement will be made; c) the estimated amount of purchase; d) the estimated period to initiate procurement procedures; e) the source of funding; and f) any additional information that contributes to the identification of the goods or services.

In principle, at the beginning of every procurement process, the public entity should have all the resources required to fulfil the obligations that will be executed in that budget year. If there are not have sufficient resources available, the procedure must be authorised by the Office of the Comptroller General, in accordance with Article 8 of the Law on Administrative Procurement, provided that all necessary resources can be obtained before the award stage.

### **Preliminary assessment and recommendations**

Overall, Costa Rica enjoys a robust democratic institutional framework which provides an important check to corruption and explains at least in part the good scores of the country in international indicators measuring corruption and governance. In addition, the country recently has made important reforms to further strengthen its public integrity and procurement system. In the area of integrity, the following good practices can be highlighted: the promotion of values and ethics through the National Commission for the Recovery of Values (CNRV) and the Ethics Audits developed by the Office of the Comptroller General of the Republic (CGR).

In procurement, Costa Rica has made important progress. The electronic platform SICOP is becoming the standard, while there are only a few framework agreements left that are still managed through old systems. In addition, Costa Rica has undertaken serious steps towards facilitating public procurement. Firstly, the CGR reduced significantly the required ex ante control for contracts above given thresholds, and is promoting a draft law to reform the ex-ante control in more depth. Secondly, there is recent progress in making framework agreements more attractive by reforming article 115 of the Law on Administrative Procurement. Thirdly, transparency in public procurement has been increased by modifying article 40 of

the Law on Administrative Procurement, including a section including requirements concerning information on procurement that has to be displayed on the website of public entities.

In Costa Rica, there is still a need for further improvements in both areas that could help in making the country's system more resilient to present and future challenges. Issues for consideration include:

- Costa Rica could improve its efforts in providing guidance and building capacities on the management of conflicts of interests, e.g. by clarifying the definition and by better integrating the identification and management of conflict-of-interest situation in the work of the National Commission for the Recovery of Values (CNRV) and in the HRM processes through the General Directorate of Civil Service (DGSC). The interviews showed that work in this area is starting and that the institutions interviewed are aware of the work that remains to be done.
- Costa Rica currently has no dedicated whistleblower protection law, nor does it have explicit legislation on lobbying. Legislative initiatives exist on both issues, but they have not yet been passed. Establishing clear regulations on these two issues would significantly strengthen Costa Rica's public integrity system.
- Costa Rica should gradually complete the move towards a single mandatory e-procurement platform that covers the whole public sector, including the decentralised public sector and the municipal level, in order to reduce transaction costs, augment transparency and access to the system, and facilitate its evaluation. The implementation requires significant effort in building capacities, especially at municipal level, and there is a need to ensure that small local providers are not disadvantaged through this single e-procurement platform.
- The CGR's efforts to reduce its ex ante control function is an important step towards reducing bureaucratic burden and is in line with the Lima Declaration<sup>288</sup> and Costa Rica should continue in this direction. However, more generally, the existing controls tend to increase the burden of the administrative procedures, especially in public procurement, impacting on the execution of public funds. Hence, Costa Rica could focus even more on strengthening internal control and risk management, gradually shifting from the current legal compliance controls towards management control and results-orientation. In parallel, this requires significant efforts in developing planning and public management capacities.
- In order to reduce the risk of political interference in administrative matters and corruption at municipal level, Costa Rica could consider clarifying the Municipal Code by separating clearly between the roles of political control and public administration: (1) the Municipal Council should approve the yearly budget and plans, (2) the local administration should take the decisions related to public procurement, and (3) the Municipal Council should ensure ex post legislative control on the results of the administration. In addition, Costa Rica could review and strengthen the role of the internal audit function at the municipal level with the view to improve assurance over the processes, and to ensure they add value to the Municipal Council and the local administration.

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<sup>288</sup> INTOSAI (1977), "The Lima Declaration of Guidelines on Auditing Precepts", International Standards of Supreme Audit Institutions 1, INTOSAI Professional Standards Committee, Copenhagen, [www.issai.org/media/12901/issai\\_1\\_e.pdf](http://www.issai.org/media/12901/issai_1_e.pdf).

## SECTION 4: Budget performance

This section addresses PGC Core Principle 4: “*Budget performance, including aggregate fiscal discipline, the effective allocation and reallocation of public resources, the promotion of the efficient delivery of public services, and budget transparency and accountability*”.

### Introduction

This section outlines the legal and institutional budgetary framework for the central government, the institutionally decentralised public sector and, albeit to a lesser extent, the municipal budget process. The section aims to highlight the dynamics, challenges and improvements related with the highly fragmented public administration and its impact on steering and co-ordination of the budget process. It discusses Costa Rica’s practices in terms of the annual budget process, planning, intergovernmental co-ordination, fiscal space, transparency and citizen engagement, capital budgeting, fiscal risks, performance and evaluation, as well as budget execution, accountability and audit; comparing vis à vis with the OECD and its member countries and referring to the following high-level principles:

- Recommendation of the Council on Budgetary Governance [OECD/LEGAL/0410]; as well as to other related OECD legal instruments:
- Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships [OECD/LEGAL/0392],
- Recommendation of the Council on Principles for Independent Fiscal Institutions [OECD/LEGAL/0401].

### Legal and institutional framework

Costa Rica has a distinctive political, legal and administrative governance framework born of a democratic tradition that values the social and economic rights of citizens, and safeguards against excessive accumulation of power in the executive branch. In particular, Costa Rica was an early pioneer of comprehensive national planning, oriented towards identifying and advancing the social and economic interests of its citizens. However, Costa Rica is finding it more and more challenging to finance and implement the priorities set out in the National Development Plan (*Plan Nacional de Desarrollo*, NDP) with the currently available revenues. In addition, as the political system has matured with the passage of time, the institutional framework has had the unintended effect of not just keeping the executive in check, but of constraining the system of government from effectively taking decisions.

The main characteristic of Costa Rica’s institutional framework is its fragmentation. On the one hand, about 50% of public expenditure follows a classical budgetary process, where estimated revenues are assigned to the different spending priorities in a budget document prepared by the executive, and discussed and approved by the Legislative Assembly (*Asamblea Legislativa*). The other half of public expenditure is carried out by the institutionally decentralised public sector (around 41%), the deconcentrated agencies (less than 5%) and municipalities (less than 4%) (See section 1 for a more detailed explanation of the governance system of Costa Rica). These institutions prepare their own budget, which is approved (compliance check) by the Office of the Comptroller General (*Contraloría General de la República*, CGR).



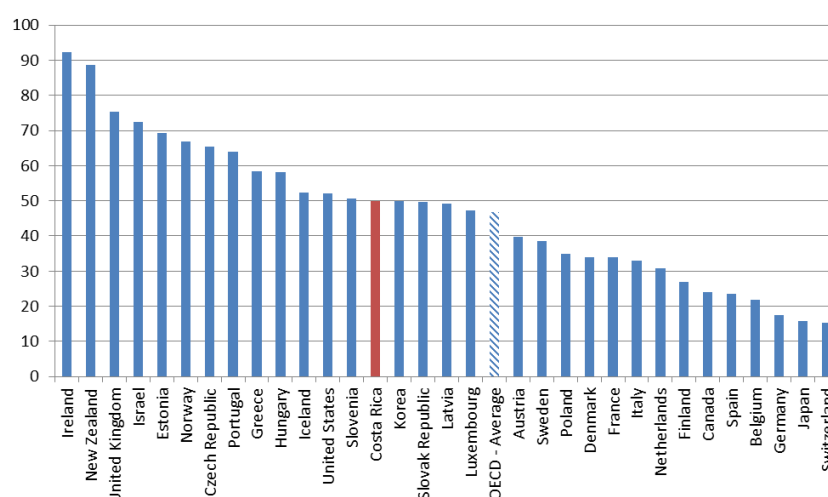
It is therefore important to assess to what extent these institutionally decentralised public institutions, deconcentrated agencies and municipalities also comply with OECD high-level principles.

### *Institutional setting*

#### *A fragmented public sector*

A large share of the Costa Rican budget (about 50% of total consolidated general government spending) falls outside the budget preparatory process headed by the Ministry of Finance (*Ministerio de Hacienda*). However, when comparing the share of public expenditure included in the national budget in Costa Rica with practices in OECD members, it appears that Costa Rica is largely in line with OECD practices for this specific issue. In OECD countries, central government represents on average 46.3% of general government expenditure<sup>289</sup> (Figure 26). The remainder represents expenditure by the sub-national governments (state and local) and by social security institutions. In very decentralised member states such as Belgium, Canada, Germany, Spain or Switzerland, the share of central government controlled expenditure is below 30% of general government expenditure (and as low as 15% in Switzerland). In such administratively decentralised environments, it is crucial to have strong governance instruments to co-ordinate government policies across public institutions, as well as monitoring and evaluation tools.

**Figure 26. Central government expenditure as a share of general government expenditure (2014 or latest year available)**



Notes: Inter-governmental transfer expenditure is excluded from central government expenditure. No information available for Australia, Latvia, Mexico and Turkey. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.

Source: OECD.stat Dataset: Government at a Glance

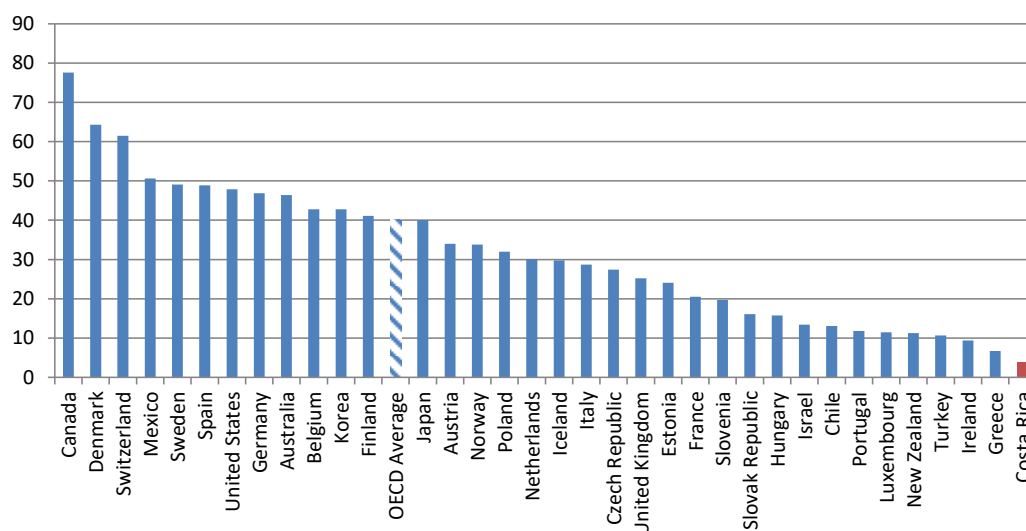
#### *A highly centralized government from a territorial point of view*

Only 3.8% of public expenditure is carried out by subnational governments in Costa Rica (Figure 27). This percentage contrasts with practices in OECD countries where subnational governments' expenditure is on average 40%. This percentage of public expenditure at the subnational level is expected to increase in Costa Rica in the future, due to the implementation of recent reforms transferring additional resources to

<sup>289</sup> Average does not include Australia, Mexico and Turkey.

municipalities. However, for the time being, the country continues to be highly centralised from a territorial point of view and competences transferred to municipalities are limited (See Section 7).

**Figure 27. Subnational expenditure as a percentage of general government expenditure in OECD countries**



Note: Data from Latvia is not available. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.

Source: OECD stat dataset: Subnational Government Structure and Finance (2014)

### Legal framework

The budget process in Costa Rica is well-institutionalised and regulated by the Political Constitution (Republic of Costa Rica, 1949), the Financial Administration of the Republic and Public Budgets Law 8131 (*Ley de Administración Financiera de la República y Presupuestos Públicos*, LAFRPP), and the National Planning Law 5525 (*Ley de Planificación Nacional*), and the Internal Control General Law 8292 (*Ley General de Control Interno*).

The LAFRPP establishes the public sector Financial Administration System, which consists of a set of rules, principles and procedures, and also indicates which entities and bodies participate in the planning, securing, allocation, utilisation, recording, control and evaluation of financial resources. According to Article 2, this law applies to the central government, and part of the institutionally decentralized public sector, excluding universities, the Costa Rican Department of Social Security (*Caja Costarricense de Seguro Social*) and municipalities.

According to Article 176 of the Constitution, the national budget is issued for a one-year term from 1 January to 31 December. According to the LAFRPP, it should be aligned with the National Development Plan.

### Actors involved in the budget process

The budget process for the central government is supervised by the Ministry of Finance (General Directorate of National Budget, *Dirección General de Presupuesto Nacional*, DGPN), and covers the executive branch (18 ministries), the Legislative Assembly, the CGR, the Ombudsman Office (*Defensoría de los Habitantes*), the judiciary and the Supreme Electoral Tribunal (*Tribunal Supremo de Elecciones*).

The annual central government budget is based on goals and priorities that must be linked to the National Development Plan. It is prepared by the General Directorate of National Budget in the Ministry of Finance and must comply with guidelines issued by the Budgetary Authority (*Autoridad Presupuestaria*) on budget policy, wage, employment, and investment and debt.

The General Directorate of National Budget (hereinafter, Budget Directorate) is composed of four units of budget analysis; a unit of fiscal revenue and multi-annual programming; a monitoring unit of the budget execution; and a management unit. Each unit has between four and eight professionals and/or technicians.

The national budget does not cover the institutionally decentralised sector. Budgets of the institutionally decentralised sector are submitted by each institution to the CGR, who analyses, approves and monitors these (compliance check).

Deconcentrated agencies are attached to Ministries or to autonomous institutions but hold relative degrees of financial and budget autonomy. Given their instrumental legal personality (*personalidad jurídica instrumental*) they have their own independent budget that is approved by the CGR. Around 45% of their budget comes from transfers from the central budget.

**Table 14. Actors involved in the budget process**

Ministry of National Planning and Economic Policy ( <i>Ministerio de Planificación Nacional y Política Económica, MIDEPLAN</i> )	Prepares the National Development Plan which guides the budget
General Directorate of National Budget ( <i>Dirección General de Presupuesto Nacional</i> ), Ministry of Finance	Prepares the annual budget and issues a medium-term fiscal framework (current year plus four years) for the central government
Budgetary Authority ( <i>Autoridad Presupuestaria</i> )	Issues “guidelines” on budget policies, wage, employment, debt and investment matters
Technical Secretariat of the Budgetary Authority ( <i>Secretaría Técnica de la Autoridad Presupuestaria, STAP</i> ), Ministry of Finance	Provides technical reports to support the discussions and decisions of the Budgetary Authority
Central Bank ( <i>Banco Central de Costa Rica</i> )	Prepares macroeconomic assumptions
Office of the Comptroller General	Certifies the revenue estimations used in the budget; Analyses, approves and monitors budgets of the institutionally decentralised institutions
Treasury ( <i>Tesorería Nacional de la República</i> )	Elaborates, with the General Directorate of National Budget, the financial programming of the budget execution.

The Budgetary Authority is a collegiate body, which is not common in OECD countries. It is comprised of the Minister of Finance (chair), the Minister of Planning and the Minister of the Presidency (*Ministro de la Presidencia*) (or their vice-ministers which can replace them). The Budgetary Authority meets once a month and holds extraordinary sessions when required.

The Budgetary Authority issues “guidelines” (*lineamientos*) on public wages, public employment, budget policies (decisions to increase expenditure ceilings), investment and debt (any public institution needs the approval of the Budgetary Authority to issue debt). These guidelines must be approved by the President of the Republic, and are used by the National Budgetary Authority when preparing the national budget.

The Budgetary Authority is served by the Technical Secretariat of the Budgetary Authority (*Secretaría Técnica de la Autoridad Presupuestaria, STAP*), located in the Ministry of Finance. The STAP prepares reports which are submitted to the Budgetary Authority. Based on these reports, the Budgetary Authority takes decisions, which are communicated to and applied by the relevant institutions.

### *Central government budget timeline*

In January and February, the Ministry of Finance carries out projections on the fiscal scenario for the coming year. By the 15<sup>th</sup> of April, it must have defined the budget ceilings for line ministries, and communicated these to them. Based on these ceilings, line ministries prepare their budget submissions from April to June, with the technical assistance of the Ministry of Finance. These budget submissions take into account the operational needs of the institution, and the priorities set out in the national development plan. Resources are allocated by purpose of the expenditure (*objeto de gasto*), financial resources, economic classification and functional classification.

By the 15<sup>th</sup> of June, each institution presents its budget submission to the Budget Directorate of the Minister of Finance, which consolidates each individual budget into one. From mid-June to mid-August, the Budget Directorate integrates these submissions in a draft budget law which will be submitted to the Legislative Assembly. During this period, it is frequent that line ministries make additional funding requests, above their initial ceilings. Negotiations then take place with the Ministry of Finance, Presidency and the Budget Directorate, to determine the possibility and size of these additional funding requests.

In parallel, the Ministry of Finance prepares the revenue projections, and analyses different spending scenarios. The Office of the Comptroller General certified the revenues and the Central Bank provides macroeconomic projections.

Every August, the Budget Directorate integrates the national budget, and prepares the Medium-Term Fiscal Framework (*Marco fiscal Presupuestario de Mediano Plazo*). The draft budget law is presented to the Legislative Assembly on the 1<sup>st</sup> of September that has until the 29 of November to discuss and approve it.

**Table 15. Budget process**

<b>Steps</b>	<b>Dates</b>
Analysis and definition of fiscal scenario	25 January - 12 February
Definition of budget ceilings	18 January - 15 April
Development and communication of technical and methodological guidelines for budget formulation	11 -15 April
Advice and support to institutions for the formulation of the budgets drafts	15 April-15 June
Filing and review of preliminary list of posts	06 June- 13 August
Filing of tentative expenditures	29 November
Development of draft expenditure budget	15 June- 16 August
Development of draft revenue budget	14 July- 11 August
Drafting of Budget Project Submission document	08-31 August
Development of Mid-Term Fiscal Framework	11-23 August
Submission of the budget bill to the Legislative Assembly	01 September
Budget discussion and approval	01 September-29 November

Source: Ministry of Finance

### *Budgeting for the institutionally decentralised sector and deconcentrated agencies*

As mentioned before, 50% of public expenditure falls outside the central budget process. In particular, the institutionally decentralised sector and the deconcentrated agencies have their own budget process. According to the Constitution, these budget documents should be approved by the Office of the Comptroller General (compliance check) rather than by the Legislative Assembly (political approval). All deconcentrated agencies and part of the institutionally decentralised public sector have to comply with the

guidelines issued by the Budget Authority (Article 21, Law 8131)<sup>290</sup>, as well as the technical guidelines formulated by the Office of the Comptroller General. Some institutions of the institutionally decentralised public sector, such as the National Insurance Institute, the Costa Rican Social Security Fund, and the Costa Rican Energy Institute are not under the scope of the Budgetary Authority.

There are approximately 100 institutions (out of 330) under the scope of the Budgetary Authority, which belong to different institutional classifications. For the institutions under its responsibility, including some of those belonging to the institutionally decentralised sector, the Budgetary Authority verifies compliance with the budgetary guidelines and provides a copy of its report to the Office of the Comptroller General. It must consider the review of the Budgetary Authority as part of its budgetary approval. The Budgetary Authority is also responsible for setting the budget ceilings for deconcentrated agencies. The Office of the Comptroller General ensures that highly deconcentrated agencies respect these ceilings during the budget approval phase.

Furthermore, the institutionally decentralised bodies fall formally under the authority (*rectoría*) of their parent Ministry, which is designated by the President of the Republic. The reference Minister (*Ministro rector*) assumes the main political responsibility for orienting, coordinating, monitoring, evaluating and sometimes regulating the decentralised institutions under his authority. In practice, instruments to achieve these objectives are limited in number and in level of enforcement.

The CGR does not check whether the goals, objectives and expected results of the institutionally decentralised sector or the deconcentrated agencies are in line with the NDP. The Ministry of National Planning and Economic Policy (*Ministerio de Planificación Nacional y Política Económica, MIDEPLAN*) is in charge of verifying that the entities comply with the NDP's goals and objectives, but does not have instruments to enforce this. It is therefore very difficult to ensure that institutionally decentralised sector's objectives are in line with overall government's objectives. Likewise, a large institutionally decentralised sector reduces government's ability to reallocate funds to priority areas and ensure accountability towards central government institutions and citizens.

There have been some recent attempts towards reducing fragmentation in the budget process. In January 2017, the government proposed a bill aiming to strengthen budget control of deconcentrated agencies (Bill No. 20.203). The objective of this bill is to include 61 deconcentrated agencies (defined by the Ministry of Finance) in the national central budget, aiming to increase budget execution, eliminate administrative duplications in the preparation of the budget, increase coordination and internal coherence in the public administration, increase legislative's capacity to prioritize and program public spending, and strengthen ministries capacity to control sectorial budget formulation and policy implementation. The bill is currently under debate by the Legislative Assembly.

This type of initiatives is well aligned with OECD best practices for budgetary governance, reducing administrative fragmentation, helping the government to align the budget with the government's medium-term strategic priorities, strengthening ministries capacity to control sectorial budget formulation, and offering opportunities for the Legislative Assembly to engage with the deconcentrated agencies budget process. However, the reform is at a very early stage of debate and is modest compared with the challenges and the opportunities for improvement for the country. The budget of all deconcentrated agencies is less than 6% of the non-consolidated total government expenditure.

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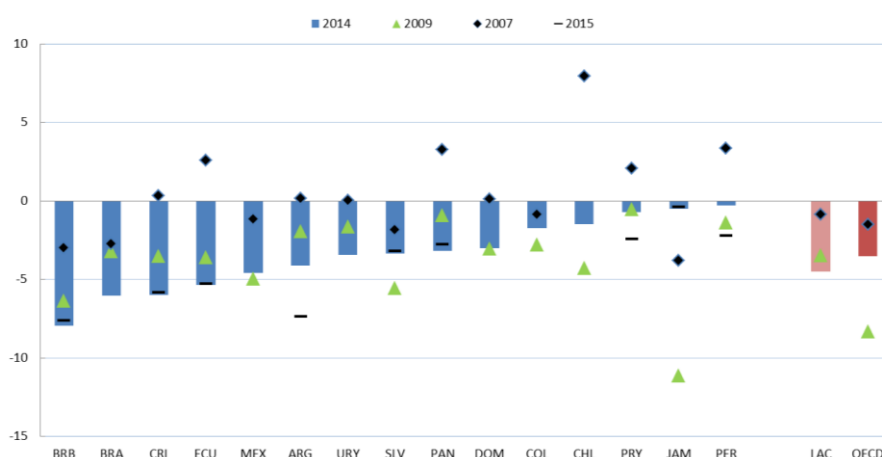
<sup>290</sup> Article 1 of Law 8131 specifies the applicability (i.e. scope) of Law 8131 and, more specifically, of the Budget Authority.

## Managing budgets within clear, credible and predictable limits for fiscal policy

Sound macro-economic management, including responsible fiscal policies, is an essential element to achieve robust, resilient and inclusive growth. Effective budget procedures need to be in place to support commitment to sound and sustainable fiscal policy. Most OECD countries use fiscal rules or policy objectives to commit to a fiscally sustainable policy, and to make it easier for people to understand and anticipate government's fiscal policy course through the economic cycle. Top-down budgeting techniques are also widely used.

Costa Rica's budget deficit is amongst the largest in the LAC region and larger than the OECD average, and it is one of the few countries where the deficit did not decrease between 2009 and 2011 (Figure 28). Furthermore, estimations for the next years are not positive. According to the Nation State Program (*Programa Estado de la Nación*) deficit will reach 8.2 % of GDP in 2019. This is due to the mix between low tax revenue to GDP ratio, weak fiscal constraints, and important budget rigidities. Budget deficits in Costa Rica mainly concern the central government: while there is no rule forbidding deficits for the institutionally decentralised sector, these are rare. Actually, many institutions of the institutionally decentralised sector tend to generate surpluses, and have accumulated substantial reserves.

**Figure 28. General government fiscal balance as a percentage of GDP in Latin American countries**



Note: Data for the LAC countries: IMF, World Economic Outlook Database (IMF WEO) (October 2013). Data for the OECD average: OECD National Accounts Statistics (database).  
Source: OECD (2016), *Government at a Glance: Latin America and the Caribbean 2017*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264265554-en>

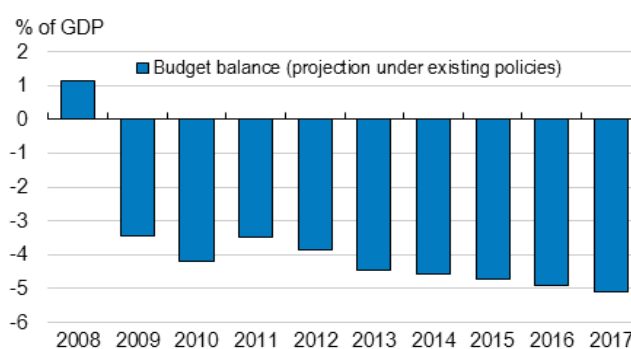
### *Fiscal policy limitations*

Principle 1 of the Recommendation of the Council on Budgetary Governance states that budgets should be managed with clear, credible and predictable limits for fiscal policy. At minimum, governments should have a stated commitment to pursue a sound and sustainable fiscal policy. The Council of Budgetary Governance identifies two main tools that can help enhancing the credibility of such a commitment: 1) the use of clear and verifiable fiscal rules or policy objectives which make it easier for people to understand and to anticipate the government's fiscal policy course throughout the economic cycle, and 2) the implementation of institutional mechanisms to provide an independent perspective in this regard. Likewise, the OECD recommends applying top-down budgetary management, within clear fiscal policy objectives, to align policies with resources for each year of a medium-term fiscal horizon.

Articles 176 and 179 of the Political Constitution of Costa Rica state that public finances should be balanced and sustainable, and provide tools for this. The first article states that: “the ordinary budget of the Republic includes all the estimated revenues and all the expenditure authorised by the public administration during the economic year. Under no circumstances could the value of budgeted expenditure exceed the value of the estimated revenues”. Article 179 also states that: “*the Legislative Assembly cannot increase the amount of expenditure budgeted by the executive, unless it specifies the new revenues which shall finance these, and for which the CGR will have issued a report on the fiscal effectiveness of these*”.

In practice though, these two articles are not applied and Costa Rica has been lacking an effective fiscal constraint, as well as a mechanism for facilitating and enforcing medium-term fiscal discipline in the central government budget. This has resulted in systematic budget deficits and the building up of public debt, in particular since 2008 (Figure 29).

**Figure 29. Costa Rica Central Government budget balance**



Source: OECD (2016), OECD Economic Surveys: Costa Rica 2016: Economic Assessment, OECD Publishing, Paris. [http://dx.doi.org/10.1787/eco\\_surveys-cri-2016-en](http://dx.doi.org/10.1787/eco_surveys-cri-2016-en)

Despite recent efforts to develop a more robust framework, Costa Rica has not yet been able to have effective fiscal constraints and mechanisms for facilitating and enforcing medium-term fiscal discipline. In 2015, the government designed a comprehensive fiscal reform, including measures to increase tax levels, reduce fraud, and control expenditure levels. However, after two years, the reform is only partially implemented and the results of concrete reforms are still limited.

One of the most relevant initiatives included in this comprehensive fiscal reform is the fiscal responsibility Law (Bill No. 19952 of 2016), aiming to define a more robust and enforceable fiscal rule to manage public finances and ensure sound and sustainable budgetary policies<sup>291</sup>. Despite having full support from the IDB, the World Bank and the OECD, the bill has not moved forward in the legislative debate since it was first presented in the beginning of 2016.

Developing a well-designed fiscal framework using fiscal rules and targets that are suitable to country-specific macroeconomic circumstances is a key objective of the recent reforms introduced in most OECD countries. The number of OECD countries that have adopted fiscal rules has increased substantially since 2007. 94% of the OECD countries that participated in the 2012 survey for Budgeting Practices and Procedures reported to have adopted at least one fiscal rule. Governments have also set objectives to govern fiscal policy at the national level (Figure 30). In fact, the Czech Republic is the only country where fiscal policy course is not governed by fiscal rules or fiscal policy objectives at present. The use of fiscal rules

<sup>291</sup> The rule defines expenditure ceilings, taking into account central government debt as a percentage of GDP and real GDP growth in the last 4 years. It only considers operating expenditure, leaving public investment out.



has also increased in the LAC region. According to the OECD Budgeting Practices and Procedures Survey (2013), 59% of LAC countries have adopted some type of fiscal rule.

**Figure 30. Fiscal rules and objectives in OECD countries**

		Description
Australia	○	Budget Repair Strategy to achieve 1% surplus by 2023-24
Austria	●	Euro-area fiscal rules, with domestic "debt brake"
Belgium	●	fiscal balance targeted for 2018, in SGP context
Canada	○	federal debt target of 25% GDP by 2021; balanced budgets by
Chile	○	structural fiscal balance targeted for 2018; previous reliance on expenditure cap now replaced with structural balance
Czech Republic	-	fiscal targets de-emphasised as government prioritises growth
Denmark	●	European Fiscal Compact measures operational under new law, structural fiscal balance targeted by 2020
Estonia	●	Euro-area fiscal requirements transposed into domestic law
Finland	●	Government aims to bring debt ratio onto downward path by the end of its term; European Fiscal Compact transposed into domestic law
France	◐	SGP fiscal requirements in domestic law, applied as part of, and in balance with, the government's multi-dimensional agenda
Germany	●	Debt brake rule operates as an "anchor" for SGP-related framework
Greece	●	Euro-area fiscal requirements transposed into domestic law
Hungary	◐	fiscal targets de-emphasised as government prioritises growth; debt brake introduced, will not apply in times of economic contraction
Iceland		
Ireland	●	Euro-area fiscal requirements transposed into domestic law
Italy	◐	Euro-area fiscal requirements transposed into domestic law, applied in balance with requirement to avoid unduly pro-cyclical measures
Japan	○	Halving of primary deficit by 2015; primary surplus targeted by 2020
Korea	○	Fiscal Management Plan sets objectives, with National Assembly input
Luxembourg	●	Euro-area fiscal requirements transposed into domestic law
Mexico		
Netherlands	●	Euro-area fiscal requirements transposed into domestic law, with fixed expenditure framework and revenue-side stabilisation
New Zealand	○	return to fiscal surplus in 2014/15; reduce expenditure to 30% of GDP; reduce net debt to 20% of GDP by 2020
Norway		Rule insulates fiscal policy from oil-price volatility, and promotes cyclical smoothing
Poland	●	domestic Stabilising Expenditure Rule; also subject to EU 3% deficit
Portugal	●	Euro-area fiscal requirements transposed into domestic law
Slovak Republic	●	Continued steady fiscal correction in line with Euro area rules
Slovenia	●	Urgent fiscal correction now underway in line with Euro area rules
Spain	●	Urgent fiscal correction now underway in line with Euro area rules
Sweden	●	Fiscal policy aligned towards target of fiscal surplus of 1% of GDP
Switzerland	●	Debt brake limits expenditure growth
Turkey	○	Plan to maintain tight fiscal control and achieve surplus in 2017
United Kingdom	○	Government sets out its objectives in Charter for Budget Responsibility; current target is structural balance and falling debt by 2016/17
United States	○	Adventitious budgetary goal-setting between branches of government

**LEGEND**

- Fiscal rules significantly determine fiscal policy course
- ◐ Fiscal rules significantly influence fiscal policy course but balanced with other objectives
- Fiscal policy objectives are under control of government and/or parliament
- Fiscal policy course is not governed by fiscal rules or fiscal policy objectives at present

Note: Data from Latvia is not available. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.

Source: OECD (2015), *The State of Public Finances 2015: Strategies for Budgetary Consolidation and Reform in OECD Countries*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264244290-en>

A longstanding issue concerning fiscal rules has been how to implement enforcement mechanisms in cases of non-compliance. In the OECD, and mainly driven by countries belonging to the European Union, standardised procedures known as excessive deficit procedures (EDF) are frequent. These procedures have been reinforced for the Eurozone member countries, in the context of the new economic governance framework established after the recent global economic and financial crisis. For example, a non-interest-



bearing deposit or a fine has been created. In general terms, in OECD countries, the enforcement procedures are mostly related to budget balance rules and debt rules, as 54% of the expenditure rules and 20% of the revenue rules are not linked to specific enforcement mechanisms.

In LAC countries, the most common enforcement procedure is the presentation to the legislature of a proposal aimed at correcting the imbalances. Another relatively common mechanism consists in obliging the entity generating the deficit to implement corrective measures. OECD countries like Mexico and Chile also dispose of enforcement mechanisms, obliging the entity generating the deficit to implement corrective measures or to present a proposal with corrective measures to the legislature, respectively. In Costa Rica, however, there are no enforcement mechanisms to ensure compliance.

### *Mandatory spending and earmarked revenues*

The OECD Principle on Budgetary Governance number 7 states that earmarking of revenues should be kept to a minimum, as this does not allow governments to reorient resources to the priority sectors, and reduces the role of the budget as an instrument to support government policy. In addition, these can threaten fiscal sustainability (in particular spending floors based on a share of GDP), and distort relative priorities. Excessive amounts of earmarks can compromise macroeconomic stability by making it difficult for governments to adjust fiscal aggregates to changing macroeconomic perspectives, leading to further indebtedness in cases of sudden macroeconomic shocks.

In Costa Rica, the room for manoeuvre of the budget is very limited. About 95% of central government expenditures are pre-allocated. Indeed, an important share of the budget consists of mandatory spending such as interest payments or wages, over which the government has little control in the short run. While this is also the case in most OECD Members, Costa Rica also has a high share of earmarked revenues and expenditures.

More than half of central government spending in Costa Rica is constrained by constitutional and legal mandates (Table 16). For example, the Political Constitution of Costa Rica states that at least 6% of ordinary revenues (*ingresos ordinarios*) shall be allocated to the judicial branch, and 8% of GDP to education. This high share of earmarked revenues and expenditure hinders government's capacity to reorient resources to the priority sectors, reduces the role of the budget as an instrument to support government policy, and could threaten fiscal sustainability in the long term.

**Table 16. Earmarked funds and mandatory expenditure in 2014 national budget**

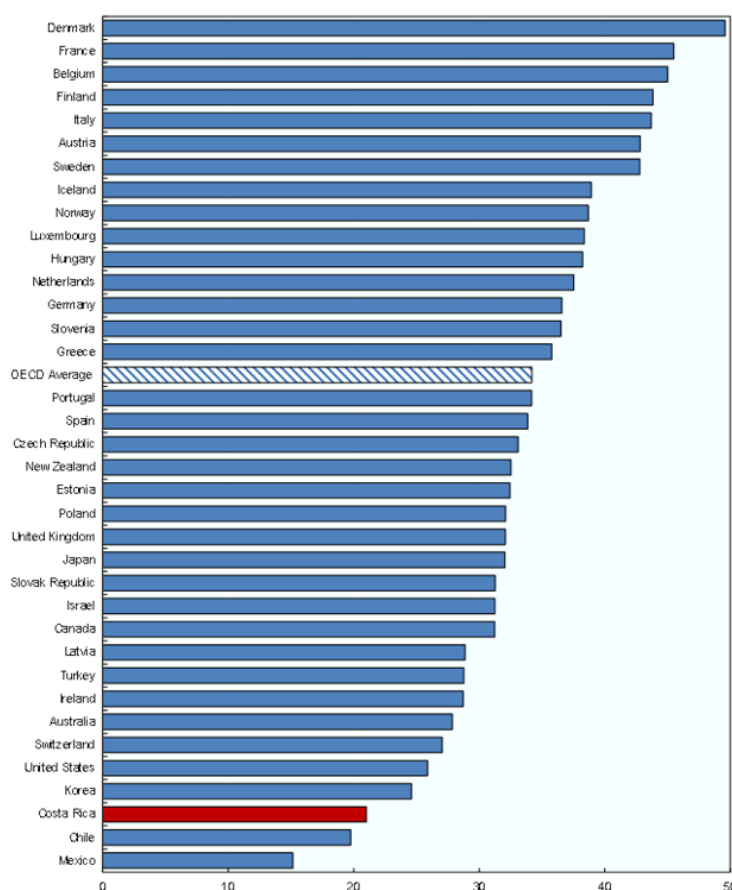
	Billion Colones	Share (%)	Share of GDP (%)
<u>Ordinary revenues</u>	3,810		14.2
<u>Total budgeted expenditure</u>	6,649	100.0	24.7
By constitutional mandate	2,290	34.4	8.5
By legal mandate	1,497	22.5	5.6
Mandatory expenditure	2,528	37.9	9.4
<i>Debt service</i>	1,933	29.1	7.2
Interests	774	11.6	2.9
Amortization	1,159	17.4	4.3
<i>Wages (excl. MEP and PJ)</i>	585	8.8	2.2
Other expenditure (1)	344	5.2	1.3

Note: Includes expenditure on goods and services, capital expenditure, transfers to deconcentrated agencies and public enterprises. Source: Ministry of Finance (2013), "Marco fiscal presupuestario de mediano plazo, 2013-2018" ("Medium-term fiscal framework, 2013-2018"), Dirección General de Presupuesto, San José, [http://www.hacienda.go.cr/docs/52224ab8cd313\\_MARCO%20PRESUPUESTARIO%20MEDIANO%20PLAZO%202013\\_2018.pdf](http://www.hacienda.go.cr/docs/52224ab8cd313_MARCO%20PRESUPUESTARIO%20MEDIANO%20PLAZO%202013_2018.pdf).

### Tax revenue to GDP ratio

Tax revenues to GDP are low in Costa Rica compared to OECD members, but also relatively low compared to other LAC countries. According to OECD Revenue Statistics, tax revenues represent only 21% of GDP in Costa Rica, while the LAC average is 27.9% and the OECD average 41.9% (Figure 31). However, given the high level of revenue earmarks, increasing tax pressure alone would not provide a proportional additional fiscal space for financing government priorities. If budget earmarks are not reformed, increasing tax revenues to GDP would automatically increase the budget allocations which are tied to these, in a way that may not reflect government priorities (unless these spending floors are not binding, with actual spending above the minimum required floor). For example, 6% of revenues must be allocated to the judiciary power. If the ratio of tax revenues to GDP increased, this would increase the share of spending in judiciary power to GDP. As other budget items such as education are earmarked to the GDP, with no relation to revenues, increasing tax pressure would increase the relative share of spending in the judiciary compared to education.

**Figure 31. Total tax revenue as % of GDP, 2014**



Source: Source: OECD (2016), Revenue Statistics 2016, OECD Publishing, Paris. DOI: [http://dx.doi.org/10.1787/rev\\_stats-2016-en-fr](http://dx.doi.org/10.1787/rev_stats-2016-en-fr).

## **Aligning public expenditure with the medium-term strategic priorities of government**

As a contract of trust between citizens and the state, it is expected that the budget document should account comprehensively and correctly of all expenditures and revenues of the national government. To promote alignment with the multi-year planning, prioritisation and goal setting functions of government, the budget process should organise and structure public expenditure (both central government and institutionally decentralised sector) in a way that corresponds readily with national objectives.

### *Encompassing the whole of public sector in national development plans, and linking these to annual budgets*

According to Principle number 2 of the Recommendation of the Council on Budgetary Governance, budgets should be closely aligned with the medium-term strategic priorities of government. It is therefore advisable to develop a strong medium-term dimension in the budgeting process, beyond the traditional annual budget cycle. Likewise, principle number 8 of the Recommendation of the Council on Budgetary Governance recommends having regular processes for reviewing existing expenditure policies in a manner that helps budgetary expectations to be set in line with government-wide developments. Governments should take stock, periodically, of overall expenditure and reassess its alignment with fiscal objectives and national priorities, taking account of the results of evaluations.

Costa Rica has a long tradition of preparing national development plans. However, links between the national development plans and the annual budget have traditionally been weak, as the links between the objectives of the different institutions and the national targets. For example, in the previous national development plan (2011-2014), about three quarters of the institutional objectives were met, but only about one quarter of the national objectives.

The Ministry of Finance is currently working towards implementing programme and performance budgeting, in order to better articulate the multi-year plans and the annual budgets. To this end, it has designed guidelines which are applicable to the whole of public sector (including the institutionally decentralised sector). On the planning side, efforts were made in the 2015-2018 National Development Plan to establish results-based targets, tied to a specific indicator to measure achievements. In addition, Costa Rica is moving from sectoral and institutional plans to a unified instrument for the whole of the public sector (including the institutionally decentralised sector): a matrix linking the plan and the budget (*Matriz de Articulación plan-presupuesto*, MAPP).

Initiatives to use programme and performance budgeting to better articulate the annual budgets and the medium-term strategic objectives are common best practices implemented in OECD countries (Box 12). In general terms, Costa Rican programme and performance budgeting initiative seems to be aligned with good practice in OECD countries.

### Box 12. French programme budgeting system

In 2001, France enacted a new organic budget law including a well-defined programme structure, shifting budget classification from nature of expenses to public policy objectives. According to this new approach, the budget must be divided into missions, programmes and actions:

- A **mission** covers a series of programmes designed to contribute to a specific public policy. A mission can involve a single ministry or several ministries. The Parliament cannot change or adjust the Missions. It has to accept the budget allocations proposed by the executive government and has power only to vary the allocation between programmes.
- A **programme** covers a coherent set of activities of a single ministry targeted to a specific public policy objective. If more than one ministry participates in a large public policy, each of them should have a separate Programme, covering its own responsibility in that matter, and ensuring coordination. Thus a programme corresponds to a centre of responsibility. Accordingly, for every programme, a programme director is appointed. All the resources from the State Budget should be allocated and spent within a Programme. In a similar way, resources allocated by the Parliament to a particular programme cannot be spent by the ministers for another programme.
- An **action** covers a set of operational means to implement the programme. The budget breaks down resources allocated to the actions of each programme; however, this break down is indicative and not committing. There is indeed a high degree of freedom for expenditure choices for ministers, in order to allow the Programme to reach its forecasted performance. However, there is one exception to this increased freedom: appropriations for personnel are not indicative but binding, in an asymmetrical way: personnel appropriations can be used for other purposes, but appropriations for other purposes cannot be used for personnel costs.

The Organic Budget Law prescribes an extensive performance reporting process to integrate performance information in the budget system through the following two types of mandatory budget documents: annual performance plans (*projets annuels de performances, PAP*) and annual performance reports (*rapports annuels de performances, RAP*). For a given mission, the PAP provides a detailed description of its purpose, goals, policy targets and performance indicators. As part of the annual budget act, the PAP documents are forward looking and are meant to contribute to the public debate about the costs and benefits of public policy. The RAPs are published in the first quarter along with the budget review act; they focus on performance achievements and provide detailed information on programme implementation and results. The RAPs are thus backward looking and tend to contribute to the public debate on the administration's performance.

Source : Loi Organique Relative aux Lois de Finances, 2001

### *The challenge of the institutionally decentralised sector*

As the funding schemes of the institutionally decentralised sector are rigid, the government cannot reallocate funds from one spending area to another according to its priorities and sector needs. In addition, the institutionally decentralised sector's budgets and accounts are approved by the CGR General, which by its nature adopts a formal/legalistic approach. The CGR does not carry out monitoring or evaluation of these institutions' spending and results, to ensure that the money is spent efficiently on relevant programmes and achieves the declared objectives.

### *Co-ordination mechanisms*

Co-ordination mechanisms to ensure that the institutionally decentralised sector's objectives are in line with the government's objectives are still weak. Formally, the CGR supervises the execution of the institutionally decentralised sector's budgets, and measures results in terms of outcome; and both MIDEPLAN and the CGR elaborate semi-annual and annual reports regarding compliance and progress of budget execution and performance. However, most of the institutionally decentralised sector's resources

come from funding schemes which are largely independent from the national budget process, and as these institutions are autonomous, they do not discuss their objectives or performance with the government nor the CGR. Therefore, the government lacks effective instruments and mechanisms to ensure that the objectives of the institutionally decentralised sector are in line with the National Development Plan.

### **Designing capital budgeting to meet national development needs**

According to the Recommendation of the Council on Budgetary Governance (Principle 3), the capital budgeting framework should be designed to meet national development needs in a cost-effective and coherent manner. This framework should apply to all government capital spending.

Costa Rica has a well-developed National System of Public Investment (*Sistema Nacional de Inversión Pública*, SNIP) to ensure that central government capital expenditure is aligned with the National Development Plan. However, public investment by the institutionally decentralised institutions are only included in the SNIP for information purposes and on voluntary basis. According to estimations, less than 50% of capital expenditure is reported in the SNIP.

The Planning Ministry (MIDEPLAN) is responsible for ensuring that public investments programs as defined in the National Public Investment Plan (*Plan Nacional de Inversión Pública*, PNIP) are compatible with the objectives and priorities defined in the National Development Plan. In particular, MIDEPLAN coordinates the SNIP, which aims to ensure the maximum economic, social and environmental impact, implementing an integrated public investment analysis, monitoring and evaluation system. In principle, capital expenditure from institutionally decentralised institutions must be aligned with the National Development Plan, but in practice there is no enforcement mechanism, and no instrument to control whether this is indeed the case. Total public investment is therefore difficult to evaluate.

### ***Institutional framework for Public Private Partnerships***

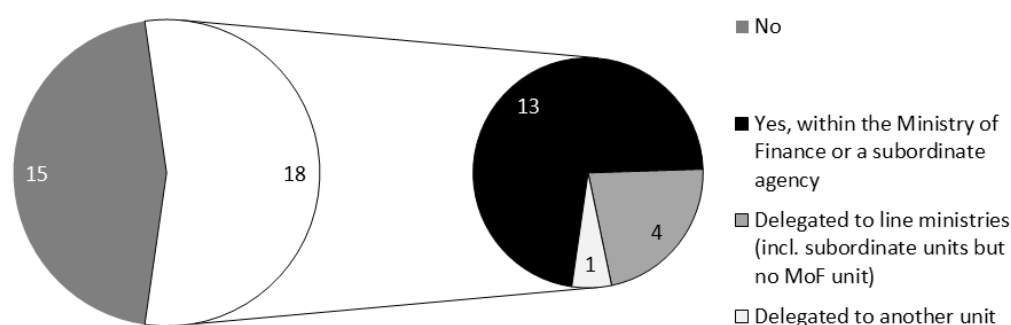
According to the OECD Principles for Public Governance of Public-Private Partnerships, governments should establish a clear, predictable and legitimate institutional framework supported by competent and well-resourced authorities, the selection of Public-Private Partnerships should be grounded in value for money analysis and, the budgetary process should be sued transparently to minimise fiscal risks and ensure the integrity of the procurement process.

Costa Rica has relatively little experience with PPPs compared with most OECD countries. The first public private initiatives were carried out after the Law 7762 on Concession was enacted in 1998 (*Ley General de Concesión de Obras Públicas con Servicios Públicos*). To date, only four concession projects have been carried out. Most of these contracts had long delays during the procurement process and the initial execution phase, due to delays in the expropriation process, weak risks allocation, lack of trust from the financial sector, and insufficient technical capacities. As a consequence, renegotiations were needed to maintain the economic equilibrium of the contracts.

Costa Rica is in the process of developing a new framework for public private initiatives. In 2016, the government formulated a public policy for PPPs. In December 2016, the Government also issued an executive decree to regulate public private collaboration initiatives. The decree includes norms and procedures to implement PPP Projects, including financing, economic compensations, rituality of goods and services, minimum content of PPP agreements, risk allocation and contract duration. This new regulation is in principal aligned with OECD recommendations. However, there is still no clear vision of how this new framework will be articulated with the current institutional and legal design.

Since 1998, concession projects are managed by the National Concessions Council (*Consejo Nacional de Concesiones*, CNC), a subsidiary body of the Ministry of Public Works which operates in an autonomous way, independently of MIDEPLAN and the Ministry of Finance. The CNC is responsible for managing the National Concessions Fund (*Fondo Nacional de Concesiones*), carrying out the procurement process, signing the concession agreement and if needed continuing with the contract during the execution phase. More recently in April 2014, a PPP Unit was created in the Directorate of Public Credit (*Dirección General de Crédito Público*) of the Ministry of Finance to coordinate with other offices and propose technical criteria and methodological guidelines to analyse possible investment projects under the public-private partnership figure, and control the contingent liabilities they generate. The role of this unit is not yet clearly defined, and there seems to be overlaps in the functions and responsibilities assigned between the PPP unit and the CNC. There are not yet mechanisms in place to align and coordinate the work of these two entities. As a consequence, current institutional arrangements are not yet fully aligned with good practice in OECD countries (Figure 32).

**Figure 32. OECD countries with PPP specialist units in central government**



Note: Data from Latvia is not available. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.

Source: OECD (2014) Survey of Budgeting Practices & Procedures in OECD Countries

### ***Consultation and engagement with stakeholders on PPP projects***

According to the OECD Principles for Public Governance of Public-Private Partnerships, popular understanding of Public-Private Partnerships requires active consultation and engagement with stakeholders as well as involving end-users in defining the project and subsequently in monitoring service quality. There is still strong social resistance to public private initiatives in Costa Rica. In 2013, the government had to terminate the road concession project between San José and San Ramón due to strong resistance from civil society, which perceived PPP projects as too expensive, time consuming and subject to corruption threats. The Costa Rican Government is aware of the need to do more awareness rising related to PPP projects in Costa Rica. With support from the OECD, Costa Rica is currently undertaking capacity building workshops on public-private cooperation, value for money, and preparation, presentation and execution of projects. In addition, in the context of the new public poly, there have been regular seminars and conferences involving the main stakeholders in the private and public sector.

### **Ensuring that budget documents and data are open, transparent and accessible**

Budget transparency is a key element underpinning the overall agenda of transparency, accountability, and trust in government. According to Principle 4 of Budgetary Governance, this requires availability of clear, factual budget reports informing the key stages of policy formulation, as well as implementation and review. Budgetary information should be presented in a comparable format before the budget is adopted

(e.g. a draft budget), during the implementation phase (e.g. a mid-year report), and after the end of the year (e.g. an end-year report). It should encompass the whole of the public sector.

The Budget Directorate prepares a mid-year budget execution report, and an end-of-year report, presenting the physical results of the programmes executed during the year. The latter must be given to the CGR before 1 March of the year following the end of the budget exercise. The macroeconomic estimations provided by the Central Bank are also publicly available. The Ministry of Finance prepares a Medium-Term Fiscal Framework that is available to the public. The Ministry also prepares annually a citizens' budget, to facilitate the understanding of the main phases of the budgetary cycle, the main sources of revenues, and the main expenditure. However, this document does not include revenues and expenditures from the institutionally decentralised sector, and therefore, it does not give a complete picture of public expenditure in Costa Rica.

In addition to the fact that some budget documents only refer to the central government expenditure, financial information is provided under different consolidation methods. Information is consolidated for the whole of public sector or only for general government, and within the consolidation for the whole of public sector, there are three different classifications: by function, by institution or by sector. Each of these data sets provides different values for important aggregates, such as central government expenditure or total public expenditure (and differences are sometimes very significant). While these different methodologies can be explained and the differences between the values understood, it is difficult for the user to know what information is available, and which one to use.

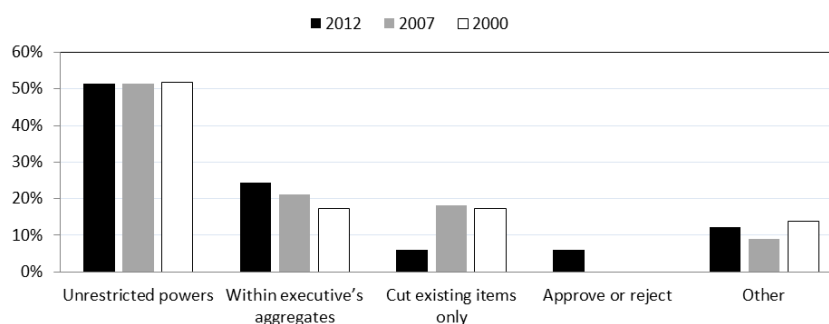
### **Providing for an inclusive, participative and realistic debate on budgetary choices**

The National Parliament has a fundamental role in authorising budget decisions and in holding government to account. According to Principle 5 of Budgetary Governance, Parliament and citizens should be able to engage with and influence the discussion about budgetary policy options, according to their democratic mandate, competencies and perspectives. Relative costs and benefits of the wide range of public expenditure programmes and tax expenditures should be provided, and all major decisions in these areas should be handled within the context of the budget process.

The Legislative Assembly of Costa Rica receives the draft budget law on 1 September, and has until the 29 November to discuss and approve the budget law. This gives three months for discussions, which is in line with OECD best practices. The budget is analysed by the Budget Committee (*Comisión de Asuntos Hacendarios*) of the Legislative Assembly, before being discussed in plenary session. The Legislative Assembly also has a budget analysis bureau (*Oficina de Análisis Presupuestario*) to provide technical support to the Budget Committee. Six people work in the budget analysis bureau. They provide analytical work for a range of actors, including the Treasury, the Special Permanent Commission for the Control of Public Expenditure and Income, and the Legislative Assembly; they advise and train deputies and their officials; provide budgetary information, advise on budgetary matters and coordinate with the Ministry of Finance the operation and implementation of the Automated System of the National Budget.

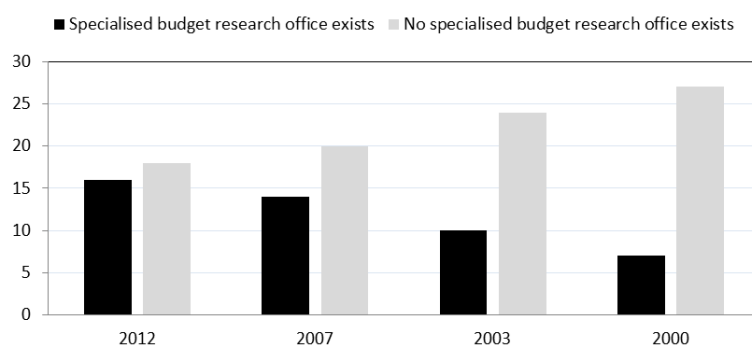
The Parliament can reallocate expenditure across spending areas, but it cannot increase total expenditure, unless it creates new revenue sources to cover these, which need to be certified by the CGR.

These practices and institutional arrangements are fully aligned with practice among OECD countries (Figures 33 and 34).

**Figure 33. Power of the legislature to amend the budget in OECD countries**

Note: Data from Latvia is not available. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.

Source: OECD (2014) Survey of Budgeting Practices & Procedures in OECD Countries

**Figure 34. Existence of a specialised budget research office attached to the legislature in OECD countries**

Note: Data from Latvia is not available. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.

Source: OECD (2014) Survey of Budgeting Practices & Procedures in OECD Countries

Despite these good practices, Costa Rica does not have formal mechanisms for engaging the views of citizens and civil society (such as pre-budget parliamentary hearings, civic forum, structured dialogue, etc.) in the budget approval phase. Civil society is informed about the budget proposal once it is submitted to the Legislative Assembly. There is no systematic analysis of the impact of the budget on different social groups (by gender, age or regional location), but some efforts are taking place to include information about regional impact of public spending (in particular in the 75 priority districts).

The institutionally decentralised public sector and deconcentrated agencies represent about 50% of consolidated general government expenditure. However, their budget is not submitted, nor discussed, in the Legislative Assembly, and there is no alternative mechanism to ensure that their budgets and priorities are aligned with citizens' needs. As mentioned above, the revenues and expenditures of the decentralised public institutions are not included in the citizen's budget either. This means that 50% of total public expenditure in Costa Rica is not included in the political debate and possible citizen participation.



The institutionally decentralised public sector is part of the public sector, and is financed by citizens through taxes, fees, social contributions, etc. Their revenues and expenditures should therefore be included in public debates and citizens budgets, in order to allow taking informed decisions on spending priorities.

### **Present a comprehensive, accurate and reliable account of the public finances**

According to Principle 7 of Budgetary Governance, budgets and accounts should present a full national overview of the public finances – encompassing central and sub-central levels of government, and a perspective on the whole public sector (i.e. including the institutionally decentralised public sector and deconcentrated institutions) – as an essential context for a debate on budgetary choices (OECD Principle No. 6). The central government budget of Costa Rica is on a modified cash basis. Costa Rica is in the process of implementing the International Public Sector Accounting Standards (*Normas Internacionales de Contabilidad del Sector Público*) and the International Financial Reporting Standards (*Normas Internacionales de Información Financiera*, NIIF). The aim is to have accrual accounting for the central government, and a single chart of accounts and homogeneous accounting practices for the whole public sector. As for most OECD countries, this process is very slow, and it takes several years, once the legislations are voted, for the new accounting standards to be fully implemented.

### **Actively plan, manage and monitor the execution of the budget, financial management**

Funds of all public revenues and expenditure should be kept in a single, centrally-controlled treasury fund, with the use of special-purpose funds, and ear-marking of revenues for particular purposes, kept to a minimum. Ministries and agencies should have a limited flexibility to reallocate funds through the year, within the scope of parliamentary authorisations and consistent with the broad purpose of the allocation. More significant reallocations, e.g. involving large sums or new purposes should require new parliamentary authorisation.

#### *Carryovers and deficits*

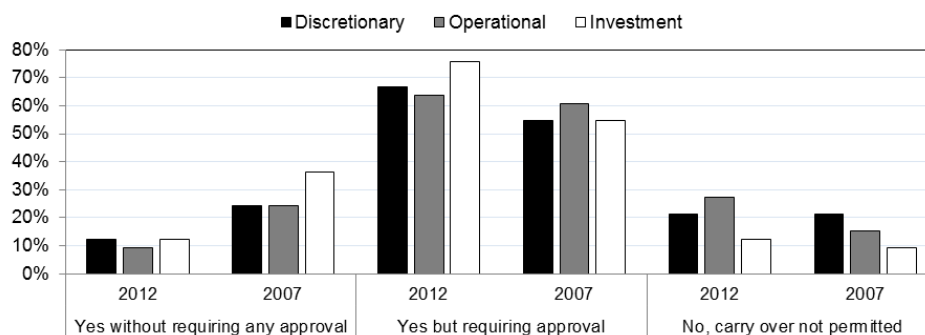
Costa Rica has a Single Treasury Account (*Caja Única del Estado*), where all the revenues collected by the state are kept, and which is managed by the Treasury. However in practice, resources in this Single Treasury Account are transferred to the sub-accounts of each of the spending bodies according to the financial programming carried out by the Ministry of Finance. Even though they are transferred to sub-accounts within the Single Treasury Account, when these resources are transferred, they are considered as expenditure, and therefore they increase the fiscal deficit. However, it is frequent that the recipients of these funds do not spend them immediately, and reserves accumulate year after year, which undermines the efficiency of the public sector, and artificially increases the deficit. In 2014, the surpluses accumulated in the Single Treasury Account represented 2.5% of GDP (that same year, the financial deficit was 5.7% of GDP).

The National Treasury is aware of this situation, and since 2014, it has started to revise the balances of the sub-accounts before authorising new transfers. In 2016, the Legislative Assembly passed Law 9371 on the Efficient Management of Public Resources (*Eficiencia en la Administración de los Recursos Públicos*), which gives entities up to two years to use their balances before returning unused funds to the Treasury. Likewise, the Treasury has improved its cash management practices; aligning transfer of funds during the budget year with actual committed expenditures.

In many OECD countries, such carryover of funds is only allowed with approval from the Central Budget Authority (Figure 35). Good OECD practice consists on capping the authorised carryover to a specific share of the budget allocation (for example, no more than 15% of the allocation can be carried forward),

or limiting carryovers in time (for example, funds of year  $t$  can be spent until March of year  $t+1$ ). Costa Rica's recent reforms therefore strengthen the alignment with OECD best practices.

**Figure 35. OECD Carry-over regimes in 2012 and 2007**



Note: Data from Latvia is not available. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.

Source: OECD (2014) Survey of Budgeting Practices & Procedures in OECD Countries

### *Reallocation of spending*

Given the important rigidities in the budget allocation (earmarked revenues, spending floors), it would be important to have some flexibility in the execution of the budget. Internal reallocations within a Ministry occur frequently, under the initiative of the Budget Directorate. Reallocation is made through executive decrees, and it can only be done within a same programme. Reallocations require Legislative Assembly approval for: i) reallocations that affect total expenditure; ii) reallocations from capital to current expenditure; iii) reallocations from non-personnel to personnel services. Reallocations between Ministries and programmes also require the Legislative Assembly's approval.

In the case of the institutionally decentralised sector, institutions can present extraordinary budgets, or request for budget modifications during the course of the year. These requests are examined and must be approved by the CGR.

### **Ensure that performance, evaluation and value for money are integral to the budget process**

Performance budgeting allows countries to systematically incorporate performance data into the budget process. According to Principle 8 of Budgetary Governance, the implementation of performance budgeting requires adopting financial management information systems that facilitate the collection of performance data, adjusting the budget process to incorporate the information into budget allocations, establishing appropriate incentives at the management level and developing institutional capacity to carry out the process. Such performance-informed budgeting can also be complemented with periodical evaluations. The main advantage of evaluations over performance indicators is that evaluations can lead to some clearer judgements on the justification, effectiveness and impact of government programmes.

Costa Rica has a well-developed legal framework to support planning, evaluation, monitoring of programs and performance management. However, until now, these different instruments have been used in a legalistic, process-oriented manner, rather than as a tool for taking informed decisions and prioritizing spending. In addition, about 60% of the ministries do not have a strategic plan, which weakens the possibility of measuring performance, and the institutionally decentralised sector (i.e. 50% of public

expenditure) is not integrated in this framework. Finally, given the strong budget rigidities described above, the share of expenditure which could be allocated based on results is very limited.

Results-based management has traditionally been a shared responsibility between the Ministry of Finance and MIDEPLAN. Since 2015, a new model was introduced, which aims to ensure that performance is taken into account at all stages of budgeting: planning, linking plan and budgets, financial management, program and investment project management and monitoring and evaluation. MIDEPLAN is responsible for implementing evaluations and monitoring results. The government has designed a methodological document, a calendar of implementation and a presidential guideline to adopt results based management in the entire public sector. However, there are concerns about the implementation of this new approach in the institutionally decentralised sector. A pilot of this new approach will be carried out in 2017.

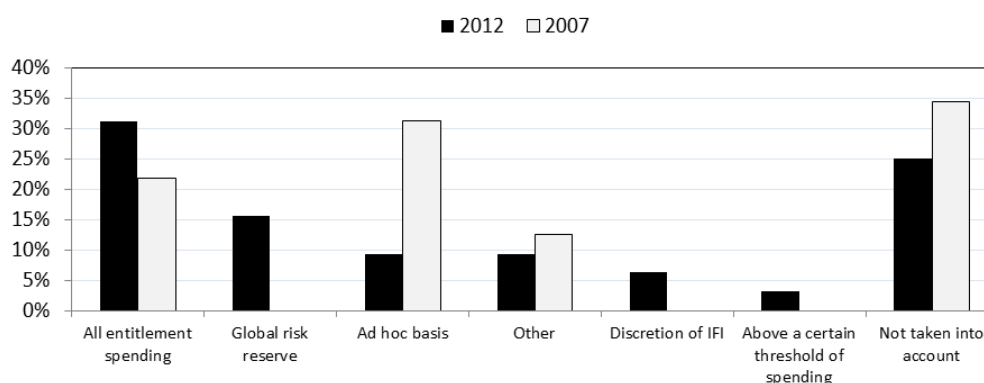
The 2015-2018 National Development Plan introduces results-based management and seems to follow all the best practices. It starts with a diagnosis of the current situation of the country, presents a vision for 2018, identifies the ten priority sectors to achieve this, describes the strategic proposals of each sector, looks at infrastructure investment, regional dimension and provides an agenda and criteria for monitoring and evaluation. Each programme or project is described, and is attached to a specific objective. A table then shows the indicator to be used, the baseline, the objectives for the 2015-18 period (on an annual basis), the estimated budget needed and source of funds, the budget programme it corresponds, the risk factor, and the names of the people responsible for this objective. It is still too early to evaluate how this plan is implemented in practice and to what extent it influences budget decisions. In addition, while in theory the institutionally decentralised sector must be aligned with the National Development Plan, in practice, there are no instruments to revise their plans, their objectives or monitor their actions.

### **Assessing fiscal risks: off-budget funds and public guarantees**

Fiscal risks are the possible deviations of fiscal outcomes from what was expected at the time of the budget or other forecast. These may be due to unexpected changes in macroeconomic variables (such as exchange rates), the calling of contingent liabilities (e.g. guarantees, in particular to the banking sector), and interactions with the private agents (e.g. through public private partnerships)<sup>292</sup>. Fiscal risks can threaten the sustainability of public finances, and should therefore be clearly identified, classified by type and as far as possible quantified (Principle 9 of Budgetary Governance). Mechanisms to manage these risks should be discussed and established. Many OECD countries publish regularly reports on long-term sustainability of their public finances, where they discuss and quantify fiscal risks (Figure 36).

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<sup>292</sup> <https://www.imf.org/external/np/pp/eng/2008/052108.pdf>.

**Figure 36. Risk taken into account for entitlement spending in OECD countries**

Note: Data from Latvia is not available. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.

Source: OECD (2014) Survey of Budgeting Practices & Procedures in OECD Countries

Costa Rica does not carry out fiscal risk or long-term risk analysis in its budget process, and does not have a fund for contingencies (natural disasters, others). Each institution is responsible for evaluating the demographic risks affecting its activities and taking necessary corrective measures. For example, the Costa Rican Department of Social Security evaluates impact of ageing on its health expenditures.

The public enterprise sector is particularly important in the country, since it includes sectors such as electricity, telecommunications and fuel. 23.8% of the budget corresponds to non-financial public enterprises and 15.7% to financial public enterprises<sup>293</sup>. These activities are not subsidised by the government, and there is not an active privatisation policy currently in place.

The government issues guarantees, which are not processed by the Legislative Assembly. The Office of the Comptroller General indicates that expenditure due to guarantees has been minimal and that they are rarely used. Some public institutions are entitled to borrow up to a certain amount and do not require a state guarantee, but most public institutions require a state guarantee for major foreign credits, which must be approved by the Legislative Assembly.

### **Promoting the integrity and quality of budgetary forecasts and independent fiscal institution**

Macroeconomic estimates used in the budget play an essential role for ensuring fiscal sustainability, a credible medium term fiscal framework, or compliance with fiscal rules (Principle 10 of Budgetary Governance). This is why many OECD countries are establishing independent fiscal institutions, which carry out economic and fiscal projections (with a short- to medium-term horizon, or long-term scenarios); baseline projections (assuming unchanged policies); analysis of the executive's budget proposals; monitoring compliance with fiscal rules or official targets; costing of major legislative proposals; and analytical studies on selected issues. These independent projections are either used by the executive for designing its budget, or act as benchmarks on which to compare the government's projections. Independent fiscal institutions can also be responsible for the evaluation of the long-term expenditure impact of proposed legislations.

<sup>293</sup> Data provided by the Ministry of Finance.

In Costa Rica, projections are currently provided by the Central Bank, which carries out a macroeconomic programme every year. This programme is revised twice a year. The Central Bank is an independent institution and its projections are seen as highly professional and independent. However, there is no institution responsible for implementing independent economic analysis, assessing the medium-term fiscal sustainability of public finances, evaluating the long-term expenditure impact of new legislations, or carrying out independent evaluations of public spending. Costa Rica does not count with a strong network of independent, academic, professional think-tanks which currently carry out this role either.

### **Budgeting for the subnational governments**

All the principles of Budgetary Governance analysed above are fully applicable to subnational government budgeting procedures. In particular, subnational governments should manage budgets within clear, credible and predictable limits for fiscal policy; a capital budgeting framework should be designed in order to meet subnational development needs in a cost-effective and coherent manner; documents and data should be open, transparent and accessible; there should be inclusive, participative and realistic debate on budgetary choices; and subnational governments should actively plan, manage and monitor budget execution and ensure that performance, evaluation and value for money are integral to the budget process.

Only 3.8% of public expenditure is carried out by subnational governments in Costa Rica. Local governments have full autonomy to define their budget. According to article 68 of the Municipal Code (*Código Municipal*), local governments are responsible for presenting the budget, submitting tax proposals to the Legislative Assembly, and deciding municipal service fees and rates. Article 74 of that same Code gives municipalities the capacity to charge service fees and rates considering their cost plus a 10% profit. These services include public lighting, public road cleaning, waste collection, transportation, appraisal, treatment and adequate disposal of ordinary residues, park and green area maintenance, municipal police service, and other municipal services. Other sources of municipal revenue are trading licence taxes, construction permits, and retail liquor licences or permits. Municipal stamps must be paid for transactions such as local property transfers, creation of corporations, mortgages and covered bonds.

Municipalities also receive direct transfers from the central government, such as those received in accordance with the Simplification and Tax Efficiency Law 8114 (*Ley de Simplificación y Eficiencia Tributarias*) to finance the country road network. According to article 170 of the Constitution (reformed in 2001), municipalities should receive at least 10% of central government's budget. Given the tight financial situation at the central level and the limited capacities and functions assigned to the municipal level, implementation of this article has been very difficult. After more than 15 years, there has only been one measure to start implementing this requirement. Since 2016, transfers for the Country Road Network (*Red de Caminos Vecinales*) were increased from 7.5% to 22.5% of the national road fund (which represents only 1.5% of central government's budget).

The municipal budget is approved at two levels. At the political level, the budget must be approved by the Municipal Council. At the administrative level, it should be approved by the Office of the Comptroller General. The municipal budget process is however not subject to the Financial Administration of the Republic and Public Budgets Law and they are not under the scope of the Budget Authority. Municipalities must use the accounting and budgeting technique determined by Office of the Comptroller General. Budgets must consider all revenues and expenditures and a balanced budget rule must be applied.

Most municipalities have well developed strategic plans produced in consultation with the civil society and linked with the budget process through the annual operative plan (*plan operative annual*, POA). The formulation process is governed by the Municipal Finance Unit and the budget document must comply with guidelines prescribed by the Office of the Comptroller General. Municipalities have some flexibility

during the budget execution phase to adjust the budget document. Likewise, carry overs are allowed under particular circumstances and up to six months after the budget year.

Nevertheless, other budget practices remain rather limited at the municipal level. Examples include reporting mechanisms, which could be enhanced to ensure resources are appropriately monitored and reported, the practical application of the existing budget balance rule and overall budgetary coordination mechanisms. In fact, formalisation of budget coordination channels and fiscal management at different government levels has been identified as a major challenge for Costa Rica. Finally, the development of evaluation systems that go beyond formal compliance and would inform the budget process in a more effective way remains limited.

### **Preliminary assessment and recommendations**

Costa Rica has developed interesting instruments for ensuring alignment of annual budgets and capital expenditure with the National Development Plan, to improve transparency of budgetary data, or moving towards performance oriented budget decisions. However, these only apply to the expenditure controlled by the central government, i.e. to about fifty percent of total public expenditure.

Costa Rica faces three main challenges in terms of budgeting: 1) Lack of effective fiscal constraints, as well as a mechanism for facilitating and enforcing medium-term fiscal discipline in the central government budget; 2) Fragmentation of public administration which reduces government's ability to reallocate funds to priority areas and ensure accountability towards central government institutions and citizens; and 3) High revenue earmarks and budget rigidities, which further hinders government's capacity to reorient resources to the priority sectors, reduces the role of the budget as an instrument to support government policy, and threaten fiscal sustainability in the long term.

Since the last assessment carried out in 2014, Costa Rica has made modest improvements in these three areas. In 2016, the Legislative Assembly passed a body of laws with a positive fiscal impact (e.g. Legislative Decree for the Efficient Management of Public Resources [*Decreto Legislativo 9371 Eficiencia en la Administración de los Recursos Públicos*], pension reform, and targeted tax reforms aiming to reduce tax exonerations). Likewise, the Treasury has improved its cash management practices, aligning transfer of funds during the budget year with actual committed expenditures. On 13 January 2017 the government presented a bill to the Legislative Assembly to include the deconcentrated agencies in the national central budget. But this only represents 6% of non-consolidated public expenditure. In spite of these improvements, the reforms are modest compared with the challenges and the opportunities for improvement. Despite having full support from the IDB, the World Bank and the OECD in having a more robust and enforceable fiscal rule, the government has not yet been able to pass the bill. Sound macro-economic management, including responsible fiscal policies, is still a major challenge in the country.

The following initiatives would substantially strengthen Costa Rica's budgetary practices:

- Costa Rica would greatly benefit from having a well-designed fiscal framework using fiscal rules and targets that are suitable to country-specific macroeconomic circumstances. The Fiscal Responsibility Bill presented in 2016 is a good initiative towards this objective. However, major efforts are needed to ensure that the political willingness to improve public finances is actually reflected in a clear, sound and sustainable fiscal policy.
- While it would be politically very difficult to implement, a general revision of the mandate, financing schemes and institutional framework of institutionally decentralised sector's agencies

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should be carried out, to evaluate whether their mandate still fits government priorities, and whether their funding is in line with their needs.

- The efforts for linking planning and budgeting go in the right direction and should be continued, and it would be important to make sure that this reform is actually implemented, with the institutionally decentralised sector really accepting to discuss their institutional plans with the central government (MIDEPLAN), and align them with the National Development Plan.
- Given the complexity of PPPs and their somewhat infrequent use, it is convenient to concentrate critical skills in one PPP unit to ensure value for money. This PPP Unit can fill gaps in terms of specific skills, lack of coordination or high transaction costs. However, it is essential that this unit has a clear mandate and that it is well articulated with the current institutional framework.
- Costa Rica could envisage creating an independent fiscal institution or assigning that role to an already existing independent institution. An effective, medium-term fiscal framework must not only rely on credible, independent macroeconomic estimations, but has to be complemented by an important role in monitoring the compliance and implementation of fiscal rules. If Costa Rica was to establish fiscal rules or reinforce its medium term fiscal framework, an independent fiscal institution could play this role. Such an independent fiscal institution could also be responsible for the evaluation of the long-term expenditure impact of proposed legislations.

## SECTION 5: PUBLIC EMPLOYMENT AND HUMAN RESOURCE MANAGEMENT IN THE PUBLIC SECTOR

This section addresses PGC Core Principle 5: “Strategic human resources management in the public sector as a whole-of-government strategic enabler for better policy-making and public-service delivery, including core values, strategic workforce planning and management, diversity, and mechanisms to ensure staff performance and capacity”.

### Introduction

This section presents an overview of the strategic human resource management (HRM) practices in Costa Rica at the central level of government. It makes reference to key aspects of HRM such as employment frameworks, data-informed HRM, workforce planning, recruitment and civil service career, pay determination, performance management, training and development, the management of senior managers, industrial relations and HRM at subnational level.

### Composition, Structure and Legal Context

Costa Rica has a relatively small public sector workforce. Employment in the public sector accounted for approximately 15% of the total employment in 2014, a smaller share than the OECD average of 21%, but slightly above the Latin American average of 12%<sup>294</sup>. Like in more than half OECD countries, Costa Rican public employees work 40 hours per week. They are entitled to 15 to 25 days of vacation per year, depending on seniority<sup>295</sup>. The distribution of the public sector workforce by gender is balanced at around 48%, which is lower than the OECD average (58%), as illustrated by Figure 37.

**Figure 37. Share of public sector employment filled by women, 2009 and 2015 (in %) in selected OECD countries**



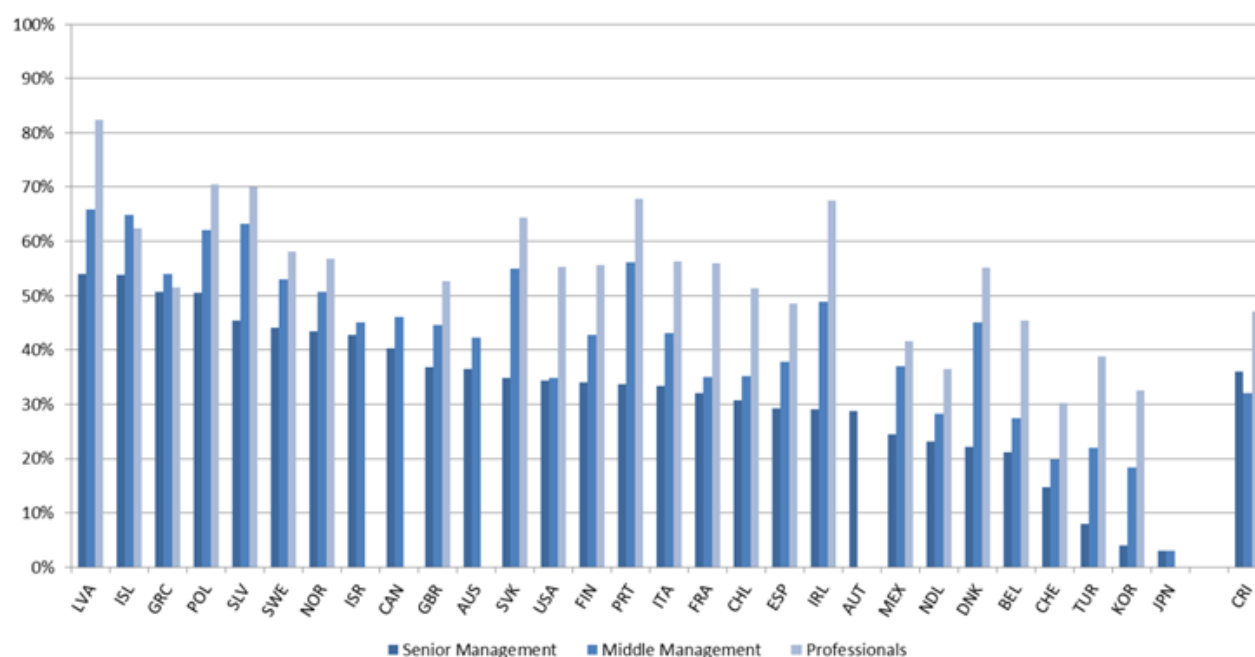
Source: International Labour Organization (ILO) ILOSTAT (database), Employment by institutional sector.

The number of women in senior positions in Costa Rica’s central government is 36%, which is higher than the OECD average of 32% (see Figure 38 below).

294 International Labour Organization (ILO) ILOSTAT (database) (<http://dx.doi.org/10.1787/888933431105>)

295 OECD 2016 Strategic Human Resources Management survey



**Figure 38. Share of women in selected central government positions, 2015**

1. Information on data for Israel: <http://dx.doi.org/10.1787/888932315602>.

2. Disaggregated data not available for Estonia, Germany nor Hungary

Source: OECD (2016) Survey on the Composition of the workforce in Central/federal Governments

According to the Ministry for National Planning and Economic Policy (*Ministerio de Planificación Nacional y Política Económica*, MIDEPLAN), in 2014 -2015 approximately 298.800<sup>296</sup> people work in public administration and about 48% (144.900) are civil servants under the civil service regime. The remaining public employees are employed under indeterminate duration contracts with the exception of the advisors of the Ministers who have fixed term contracts (10 individuals per Ministry).

The functions of civil servants are described in Classification Manuals that are designed and/or approved by the General Directorate for Civil Service (*Dirección General de Servicio Civil*, DGSC). In comparison with other public employees, civil servants usually have more job security, they are on different pay scales, their recruitment process is more vigorous and they have a specific performance management system.

### **Institutional foundations of HRM in Costa Rica's Central Public Administration**

The Constitution of 1949<sup>297</sup> and the subsequent Law 1558 of the Civil Service Statute (*Estatuto de Servicio Civil*) of 1953 established the Civil Service Regime (*Régimen del Servicio Civil*, CSR) to regulate public employment in the national executive branch, which includes Ministries and their subsidiary bodies. While Article 191 of the Constitution states that a single status should regulate the relation between the state and

<sup>296</sup> Responses of Costa Rica to the OECD 2016 Strategic Human Resources Management survey.

<sup>297</sup> Sistema Costarricense de Información Jurídica (1949), Constitución Política de la República de Costa Rica,

[http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?param1=NRTC&nValor1=1&nValor2=871&nValor3=101782&param2=1&strTipM=TC&IResultado=1&strSim=simp](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=871&nValor3=101782&param2=1&strTipM=TC&IResultado=1&strSim=simp) (accessed 23 January 2017).

civil servants, in practice the CSR only applies to a minority of institutions: from the 330 public institutions registered in MIDEPLAN, only 47 are within the CSR. Some Ministries have more than one public employment regime. For example the Ministry of Public Security (*Ministerio de Seguridad Pública*) has civil servants under the CSR and other employees under the Police Statute (*Estatuto Policial*).

The other public employment frameworks, regulated in most cases by the Labour Code (*Código Laboral*) and collective agreements can be very different from the CSR and from each other. They cover for example the legislative and judicial branches, the Supreme Court of Elections (*Tribunal Supremo de Elecciones*), the municipal level, and the institutionally decentralised sector which includes institutions open to competition such as Costa Rican Electricity Institute (*Instituto Costarricense de Electricidad*, ICE). The differences between the employment frameworks in Costa Rica's public sector have resulted in significant disparity in the treatment of employees across institutions.

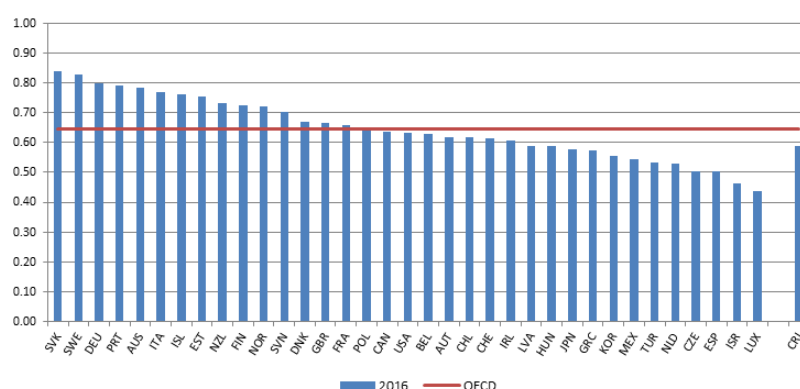
The institutions in charge of HR in the 47 entities of the CSR form the Human Resources Management System (*Sistema de Gestión de Recursos Humanos*, SIGEREH), was established in the Regulation of the Status of the Civil Service, Executive Decree (*Reglamento del Estatuto del Servicio Civil, Decreto Ejecutivo n.º 21 de 14 de septiembre de 1954*)<sup>298</sup>. The SIGEREH is coordinated by the Civil Service General Directorate (*Dirección General de Servicio Civil*, DGSC) an independent institution located in the Presidency. The DGSC's main responsibilities<sup>299</sup> include:

- Draft and recommend legislation regarding salaries (in coordination with the Budgetary Authority);
- Analyse, classify and appraise positions within the CSR, and assign them to the corresponding payment category according to the Public Administration Salaries Act (*Ley de Salarios de la Administración Pública*, Ley nº2166);
- Select eligible candidates for the executive branch;
- Formulate procedures and technical instruments to enhance efficiency, such as periodical performance reviews;
- Encourage training within the executive branch, enhancing administrative capacity for supervisors, managers and directors.

Costa Rica delegates slightly less responsibilities to ministries than the average OECD country (see Figure 39). In the CSR, issues like performance related pay, codes of conduct or recruitment of casual staff are usually delegated to the HR Departments within the CSR institutions (*Oficinas de Gestión Institucional de Recursos Humanos*, OGEREH). The OGEREH share some common responsibilities, and depending on the size and available funding in their ministry some may have additional roles (e.g. organising specific entrance examinations).

<sup>298</sup> Tribunal Supremo de Elecciones (1954), Reglamento del estatuto del servicio civil, Decreto Ejecutivo n.º 21 de 14 de septiembre de 1954, <http://www.tse.go.cr/pdf/normativa/reglamentoestatoserviciocivil.pdf> (accessed 6 February 2017)

<sup>299</sup> Article 13, Civil Service Statute and its regulations. Decree 1581 f 2008. [http://www.dgsc.go.cr/dgsc/archivos\\_normativa/Estatuto\\_Servicio\\_Civil-Reglamento-Actualizado-28-08-2008.pdf](http://www.dgsc.go.cr/dgsc/archivos_normativa/Estatuto_Servicio_Civil-Reglamento-Actualizado-28-08-2008.pdf)

**Figure 39. Extent of delegation of HRM practices to line ministries in central government**

Notes: Information on data for Israel: <http://dx.doi.org/10.1787/888932315602>, the index is composed of the following variables: the existence of a central HRM body; and the role of line ministries in determining: the number and types of posts within organisations; the allocation of the budget envelope between payroll and other expenses; staff compensation levels; position classification, recruitment and dismissals; and conditions of employment. The index ranges from 0 (no delegation) to 1 (high level of delegation). Missing data for countries were estimated by mean replacement. In Costa Rica, the delegation indicator only applies to the 47 entities of the CSR which accounts for about 14% of the public sector workforce.

Source: OECD (2016) Strategic Human Resources Management Survey (SHRM)

The DGSC evaluates and audits the OGEREH. For example it validates internal competitions or ensures compliance with compensation regulations. The DGSC is currently working with the Chilean Agency for International Cooperation and the Chilean General Directorate for Civil Service to improve HRM tools and policies by measuring the results of the management systems in place in the OGEREH. This work is integrated in SIGEREH's strategic plan 2017/2021.

The heads of OGEREH are all members of the Human Resources Chief Management Assembly (*Asamblea de Jefes de Recursos Humanos*) which meets periodically. This assembly elects a group of 6 representatives to act as a Technical Advisory Council (*Consejo Consultivo de Recursos Humanos*). This smaller unit studies and makes observations and recommendations to significant policy changes proposed by the DGSC.

In 2015, the DGSC developed a comprehensive model for Public Employment (*Modelo de Empleo Público Integrado en el Estado Costarricense*) to be implemented by 2018. In 2016, this model was integrated into a proposal for a draft Presidential Decree "On the Effectiveness, Efficiency and Transparency in the Human Resources Management in the Public Administration" (*Directriz dirigida al sector público "Sobre la Eficiencia, Eficacia y Transparencia en la Gestión Recursos Humanos de la Administración Pública"*). The idea of a decree was finally substituted by a draft law on public employment (Please see section below on salary determination).

## Data-informed HRM

Data on the civil service workforce can help to provide insights on the composition of the workforce, and on the civil service's ability to recruit, retain and manage the performance of civil servants. It is a fundamental input into effective strategic HR planning and management, and, when collected and held centrally, can be a power tool for benchmarking organisations and informing reform.

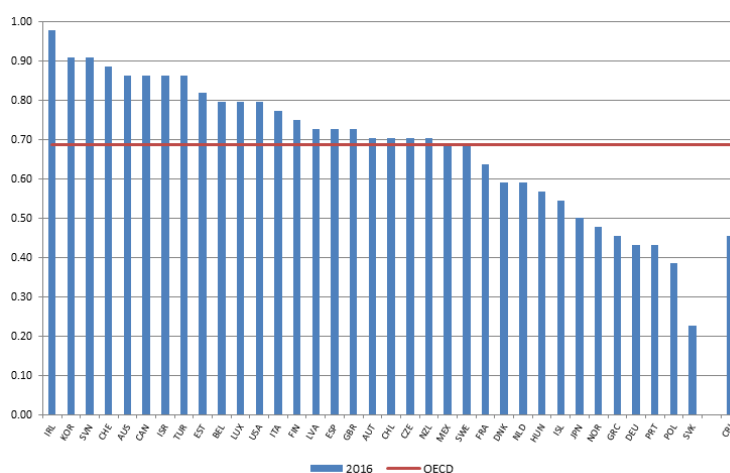
Currently, Costa Rica seems unable to provide reliable, systematised data about the total number of employees and their salaries in central public administration. Costa Rica collects administrative data to a lesser extent than the average OECD country (see Figure 40). The lack of standardised administrative data

records for salaries or for categories such as function, age, level of education, or gender also affects the capacity of Costa Rica to design targeted policies.

Employee data in Costa Rica is collected by different institutions with different purposes and using different models. For example, the Ministry of Finance manages a payroll database (system INTEGRA). The data from the system INTEGRA were used by Costa Rica to answer the OECD survey on the composition of the workforce in Central/Federal Government (launched in September 2016 and completed by 31 OECD countries, Colombia and Lithuania).

Another important database (SICCNET) is managed by the Technical Secretariat of the Budgetary Authority, STAP (*Secretaria Técnica de la Autoridad Presupuestaria*). Since 2016, all institutions under the Budgetary Authority (which includes about half CSR institutions) have the obligation to provide data about the status of positions (filled/ vacant), by category (Decree 38916-H, article 3)<sup>300</sup>. The STAP, who has been collecting data on the number of filled vacancies since 1994<sup>301</sup>, also has the authority to request information to other institutions in the public sector, such as the legislative and judiciary, decentralized administrations or municipalities (Law 8131, art.57, *Ley de la Administración Financiera de la República y Presupuestos Públicos*)<sup>302</sup>.

**Figure 40. Collection of administrative data in central government**



Note: Information on data for Israel: <http://dx.doi.org/10.1787/888932315602>. The index measures the existence of the following administrative data records at the Central/federal level: number of employees; level; function; age; gender; disabilities; other minority status; level of education; length of service; languages spoken; type of contract; union membership; part time; other flexible working arrangements; total sick days used; training days used; special leave used; mobility within the civil service; turnover data; retirements; resignations; dismissals. Responses to individual variables consider the following options: 1 (Yes, standardized data records are available and are centralised for the whole or most of the national/federal civil service); 0.5 (Yes, however standardized data records only exist at line ministry level, ie not aggregated centrally) and 0 (No, currently no standardized administrative data record exists).

<sup>300</sup> Ministerio de Hacienda de Costa Rica (n.d.), 2015 N° 38916-H, El presidente de la república y el ministro de hacienda, procedimientos de las directrices generales de política presupuestaria, salarial, empleo, inversión y endeudamiento para entidades públicas, ministerios y órganos desconcentrados, según corresponda, cubiertos por el ámbito de la autoridad presupuestaria, [http://www.hacienda.go.cr/docs/552e8aa271885\\_DE%2038916-H%20procedimientos%20para%20directrices%20presupuestarias,%20salariales,%20empleo.docx](http://www.hacienda.go.cr/docs/552e8aa271885_DE%2038916-H%20procedimientos%20para%20directrices%20presupuestarias,%20salariales,%20empleo.docx). (accessed 6 February 2017).

<sup>301</sup> <http://www.hacienda.go.cr/contenido/47-cifras-de-empleo-publico>.

<sup>302</sup> Ministerio de Hacienda de Costa Rica (n.d.), Ley de la Administración Financiera de la República y Presupuestos Públicos, 2001 Ley N° 8131, Asamblea Legislativa de la República de Costa Rica.

Source: OECD (2016) Strategic Human Resources Management Survey

Until now, the STAP has requested aggregated data about the number of people working in each category, but currently the STAP, MIDEPLAN and the Ministry of Presidency are developing a template (Excel) to request more fine-grained data on HR. This template aims to be compatible with OECD's data collection requests.

This initiative seems to be a simple and effective first step towards better data collection (it could be implemented with a decree). Effective implementation will involve a great amount of preliminary work, namely to harmonise professional categories across all institutions. Careful planning is necessary to make sure that the project will succeed. Costa Rica is preparing an Open Data Decree to request data from public institutions according to STAP's template.

In parallel, the DGSC manages HR processes for CSR institutions with the support of the IT platform SAGETH, an Automated System to Manage Employment and Human Talent (*Sistema Automatizado para la Gestión del Empleo y Talento Humano*). The DGSC has recently developed a theoretical model that would cover the whole public sector and allow improving HR procedures and the collection of statistical information on public employment (SAGETH 2). This model was presented to the Legislative Assembly and to the Government in January 2017 and the DGSC prepared a draft law the Creation of a National Public Employment System (*Creación del Sistema Nacional de Empleo Público*), currently under consultation within the public administration. While the elaboration of the model seems to be an important step towards better and systematic collection of employment statistics, the implementation of the system may be affected by lack of funding according to the DGSC.

## Workforce planning

Workforce planning is a key feature of strategic human resources management. It encourages governments to think strategically about the right mix of people and skills that will be needed to increase efficiency, responsiveness and quality in service delivery. Unlike most (26) OECD countries, Costa Rica does not articulate a government-wide civil service strategic vision with a long term view, and only some public institutions have an ad hoc workforce planning system in place.

Workforce planning was one of the main priorities to strengthen Costa Rican public institutions in the National Development Plan 2015-18. In 2015 the National Commission on Public Employment, NCPE (*Comisión Nacional de Empleo Público*)<sup>303</sup> produced a report about public employment and salaries<sup>304</sup> which recognized the large disparities in work conditions, in efficiency, effectiveness and remuneration across institutions. These issues were included in several draft laws and discussed in the Legislative Assembly, such as:

- Ceilings to the remuneration in civil service (Draft Laws 19.156, 19.883 and 19.506);

<sup>303</sup> Successor to the Sectoral Council on Public Employment (*Consejo Sectorial de Empleo Público*) under the previous Government.

<sup>304</sup> Government of Costa Rica, Mideplan, Ministry of Finance and Ministry of Labor and Social Security (2015), *Gestión del empleo y remuneraciones en el Sector Público: datos relevantes, Insumos de trabajo para discusión*.

- Reform of the pensions' system (Draft Law 19.922)<sup>305</sup>;
- Reform of the performance evaluation system (Draft Law 19.787)<sup>306</sup>.

Up to now none of these draft laws has reached consensus in the Legislative Assembly (please see sections below on salary determination and performance).

### The Civil service career

Like in 20 OECD countries, recruitment into the civil service in Costa Rica is done through a competitive examination that provides for entry into a specific group of the public service. The DGSC runs the recruitment process for the CSR: it announces competitions online for all positions, sets the criteria for eligibility according to the conditions and requirements of the Civil Service Job Description, determines which tests will be used and assigns applicants a percentage value with respect to the overall score of 100%. Applicants who achieve a minimum score of 70% are considered eligible to apply to civil servants positions and are included in a database from which eligible candidates' profiles can be retrieved. From this pool, the DGSC submits the three highest scoring candidates to the Minister or Authorized Chief, supported by the HR Department of the particular institution seeking to fill the vacancy, who will conduct an interview. The rules apply equally to all applicants and all results are published.

On average, the recruitment process between job posting and the job offer lasts over a year. Only two OECD countries experience such long delays, and only when recruiting Senior Managers; often recruitment procedures for senior managers, middle managers and professionals takes up to 6 months (31, 29 and 30 OECD countries respectively). New openings need to be requested to the Budgetary Authority and approved by the Legislative Assembly. A hiring freeze was introduced in the Costa Rican public sector in 2014<sup>307</sup>.

Recruitment in Costa Rica is not related to strategic human resource planning (unlike in 26 OECD countries), and it does not have a common skills inventory/competency framework to classify skills and competencies. Most OECD countries (23) have a common framework for Senior Managers, and about half (17) have a common framework for all civil servants. Usually individual institutions also develop their own Manual of positions (Manual de Puestos), which is reviewed and approved by the Budgetary Authority. The DGSC is developing a project to strengthen the competencies of senior managers which is expected to involve the development of a competency framework (*Manual de Clasificación Especial*) for this category of civil servants.

The DGSC has no aggregated data on mobility of civil servants, but the number of people who move is expected to be very low. Mobility is possible under certain conditions (e.g. exchange of positions with agreement from the hierarchy), but there are no specific programmes to encourage it. While only 11 OECD countries have mobility programmes, these may be an important tool to bring in specific short-term

<sup>305</sup> Consejo Nacional de Rectores (n.d.), Draft Law 19.922, Ley de reforma integral a los diversos regímenes de pensiones y normativa conexas, <http://proyectos.conare.ac.cr/asamblea/19922.htm> (accessed 20 February 2017).

<sup>306</sup> Asamblea Legislativa de la República (n.d.), Draft law 19.787 on the Promotion of Good Performance by Public Servants for Public Quality Management (*Proyecto de Ley sobre la Promoción del Buen Desempeño de los Servidores Públicos para una Gestión Pública de Calidad*), [http://www.asamblea.go.cr/Centro\\_de\\_Informacion/Consultas\\_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero\\_Proyecto=19787](http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero_Proyecto=19787) (accessed 6 February 2017).

<sup>307</sup> Directriz N° 009-H, available at [http://www.imprentanacional.go.cr/pub/2014/07/17/COMP\\_17\\_07\\_2014.html](http://www.imprentanacional.go.cr/pub/2014/07/17/COMP_17_07_2014.html). (accessed 6 February 2017)

expertise in short supply in the civil service. They may also have a positive impact on employee development and public sector innovation.

Promotions to a higher position in the CSR are mainly done by internal reassignment (direct promotion) or internal competition. Ministries only open a vacant position for external competition<sup>308</sup> when there are no suitable internal candidates. This practice is rare in OECD countries, where most (27) have transparent government-wide listing of openings (or accessible to all government employees). Fourteen OECD countries also make a systematic use of panels for promotions.

Like in about half of the OECD countries, if a ministry or agency wants to restructure or decrease the number of employees, it has to first propose employee reallocation possibilities; in case the employee is dismissed s/he gets an allowance. Out of the 27 OECD countries that have data about this type of dismissals, 7 report- like in Costa Rica - that in practice such dismissals happen very rarely. The remaining 20 OECD countries use this type of dismissals either regularly (7 countries) or occasionally (13 countries).

### Salary determination

The Budgetary Authority determines payment policies according to guidelines issued by the Presidency (*Ministerio de la Presidencia*) and the Ministry of Finance (*Ministerio de Hacienda*). Wages are adjusted to inflation twice per year by the Public Sector Wage Bargaining Commission (*Comisión Negociadora de Salarios del Sector Público*). This Commission is composed of the Vice Minister of Finance, the Vice Minister of Labour and Social Security, the Vice Minister of the Presidency and the Civil Service Deputy Director General<sup>309</sup>, as well as representatives from public sector unions and labour organisations. According to the Law on salaries, increases are considered an acquired right and it is therefore not possible to lower them.

Salaries are composed by a base salary complemented by different benefits. They are determined by the Law on Salaries<sup>310</sup> (*Ley n°2166, Ley de Salarios de la Administración pública*) and the pay scales include 73 categories, which one with a different number of levels. For each level there is a corresponding base salary and fixed amount for annual increase. The annual increase is subject to having good results in the annual performance evaluation only for the central government.

Salaries in the CSR are financed by the national budget, while other employment systems like municipalities or public companies<sup>311</sup> have their own resources and different schemes to determine base pay, benefits and performance-related pay.

In the CSR the base salary can be complemented by over 20 different types of incentives<sup>312</sup>, including seniority pay (*anualidades*) and other different bonuses (*pluses salariales*). In most cases these incentives

<sup>308</sup> Law 5181 Civil Service Status (chapters IV, V, VI); and Regulation of the Civil Service Status (chapters III, IV, V, VI).

<sup>309</sup> *Vice-Ministro/a de Hacienda, Vice-Ministro/a de Trabajo, Empleo y Seguridad Social, Vice-Ministro/a de la Presidencia y el/la Subdirector/a General del Servicio Civil*

<sup>310</sup> Law 2166, « Ley de Salarios de la administración pública »

<sup>311</sup> Draft Law 19.787 on the Promotion of Good Performance by Public Servants for Public Quality Management (*Proyecto de Ley sobre la Promoción del Buen Desempeño de los Servidores Públicos para una Gestión Pública de Calidad*), available in [http://www.asamblea.go.cr/Centro\\_de\\_Informacion/Consultas\\_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero\\_Proyecto=19787](http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero_Proyecto=19787) (accessed 6 February 2016).

<sup>312</sup> Government of Costa Rica, Mideplan, Ministry of Finance and Ministry of Labour and Social Security (2015), *Gestión del empleo y remuneraciones en el Sector Público: datos relevantes, Insumos de trabajo para discusión*, available in

are generalised, irreversible and automatic, and therefore cannot be controlled by the authorities. With the draft laws 19.156 and 19.883 (please see below) the administration would be able to control some of the bonuses. Other incentives can be negotiated separately in the framework of collective bargaining agreements. These regulate significantly the salaries and additional pay of many public employees, including under the CSR. In 2016 the government has started renegotiating agreements upon their expiration in order to eliminate abusive benefits. All agreements negotiated so far have reduced the costs of benefits.

The complex system of bonuses leads to big differences in salaries between people with similar responsibilities, across ministries and between the CSR and the institutionally decentralised institutions, including those that follow the CSR's job classification and base salary standards. Hence, it is easy to maintain disequilibrium through the use of such tools while still maintaining compliance with the overall framework.

In 2016, the Legislative Assembly discussed Draft Law 19.506 (*Proyecto de Ley para el Ordenamiento de la Retribuciones Adicionales al Salario Base del Sector Público*)<sup>313</sup> which aimed at regulating bonuses to the base salary across most public sector institutions, contributing to a more equitable and transparent system that included ceilings in some bonuses. The initial draft law went through some modifications and eventually included elements from draft Law 19.787314 on the Promotion of Good Performance by Public Servants for Public Quality Management (*Proyecto de Ley sobre la Promoción del Buen Desempeño de los Servidores Públicos para una Gestión Pública de Calidad*) (see section below on performance management).

The discussion of Draft Law 19.506 was particularly sensitive and illustrates some of the difficulties in reaching political compromise. In 18 January 2017, the Legislative Assembly's Permanent Commission on Social Affairs (*Comisión Permanente de Asuntos Sociales*) requested the Ministry of the Presidency (*Ministerio de la Presidencia*) and the General Comptroller (*Contraloría General de la República*), to analyse the potential impact of draft law 19.506 on public expenditure. Both documents, published in January 2017, considered that the law would have a low positive impact on public expenditure; the Ministry of the Presidency also highlighted a possible risk of expenditure increase. At the same time, trade unions threatened with a general strike for February 2017. In such unfavourable context, the Government abandoned the project in the last week of January.

In addition to the Draft Law 19.506, the Permanent Commission of Juridical Affairs (*Comisión Permanente de Asuntos Jurídicos*) of the Legislative Assembly has also discussed in the recent past:

- A draft law to impose ceilings to the remuneration of Senior Civil Servants in the public administration (Exp. N°19.156). The law anticipates that those salaries cannot be higher than 18 monthly minimum wages of the least paid category of workers in the private sector. Salaries

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<https://documentos.mideplan.go.cr/alfresco/d/d/workspace/SpacesStore/5fb082d5-29f8-432a-8b72-f3c508cc8b46/INFORME%20SOBRE%20EL%20EMPLEO%20PUBLICO.pdf?guest=true> (accessed 6 February 2017)

<sup>313</sup> Ministerio de Presidencia (2017), *Ley para el Ordenamiento de las Retribuciones Adicionales al Salario Base del Sector Público - Consideraciones jurídicas y políticas, y Valoración del impacto fiscal del Proyecto*, <http://presidencia.go.cr/wp-content/uploads/2017/01/Empleo-Pu%CC%81blico-SAS-FINAL.pdf> (accessed 6 February 2017)



higher than this amount once the law is approved can be kept but wouldn't have additional increases.

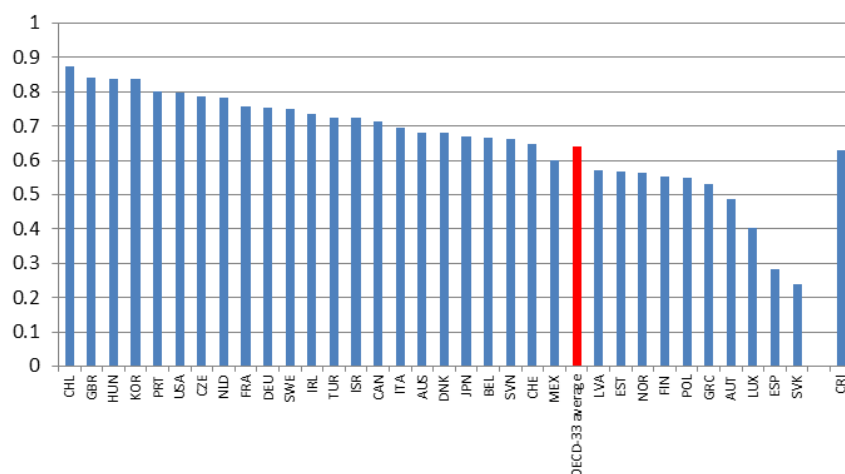
- A draft law to impose limits on the total remuneration of civil servants (including the highest levels) (Exp. 19.883<sup>315</sup>)

The government is currently preparing a draft law to create a National System to manage the Civil Service in Costa Rica (*Sistema Nacional de Gestión del Servicio Público Costarricense*). Whereas initially planned to be discussed in an open forum involving the executive and the legislative at the end of March 2017, this has now been postponed.

## Performance management

Costa Rica uses performance assessments in HR decisions to a similar extent as the OECD average country.

**Figure 41. Extent of the use of performance assessments in HR decisions in central government, 2016**



Notes: Information on data for Israel: <http://dx.doi.org/10.1787/888932315602>. For further country-specific information as well as details on the methodology and factors used in constructing the index see Annex E (available at: [www.oecd.org/gov/indicators/govata glance](http://www.oecd.org/gov/indicators/govata glance)). Data for New Zealand not included in the OECD average. Iceland does not have formalized performance assessment mandatory for government employees. The index on performance assessment is composed of the following variables: existence of a formalised performance assessment; use of performance assessment tools (meetings with supervisors, frequency of meetings, written feedback, etc.); performance assessment criteria used; and the importance of good performance assessments for career advancement, remuneration, contract renewal on the same job/ remaining in the same job and employment contract renewal in the public service.

Source: OECD (2016) Strategic Human Resources Management Survey

Public sector institutions develop their own performance assessment models<sup>316</sup> based on guidelines prepared by the DGSC. The DGSC can support HR Departments in ministries (OGEREH) to implement them.

<sup>315</sup> Ley de Eficiencia Salarial En Las Remuneraciones Totales De Los Funcionarios Públicos Y De Los Jerarcas De La Función Pública

<sup>316</sup> Articles 41-44, Regulations of the Civil Service Statute, Executive Decree No. 21 of 14 December, 1954; Resolution DG-304-2009.

Individual performance assessment is conducted once a year, based on work objectives established at the beginning of each period. Employees are assessed for five “generic performance components” which are the commitment to improving the user’s experience, capability of meeting the strategic goals of the institution, competencies, flexibility and merit. Employees are given a quantitative score on a 100-point scale which is then converted into a 5-step qualitative scale: excellent, very good, good, regular and poor.

The lack of clarity of the performance system was highlighted in a government report in 2015<sup>317</sup>. The National Development Plan 2015-2018 also highlighted the need to link the institutional and individual objectives in the performance evaluations.

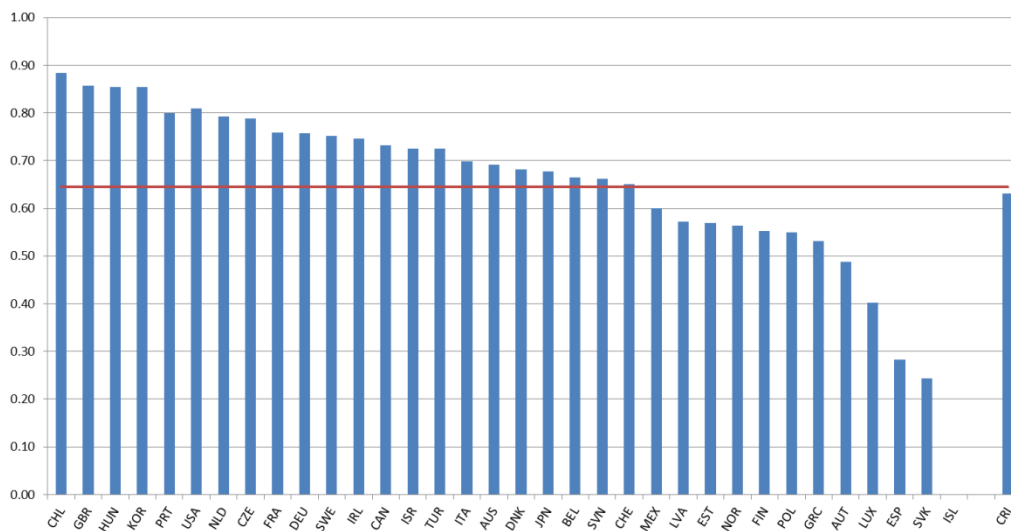
The improvement of the performance management system was included in the draft law 19.787; in 2016 some elements of this draft law were integrated in the Draft Law 19.506. Consequently, the rejection of draft Law 19.506 led to a rejection of the provisions related to the performance system. The draft law 19.787 was resubmitted to the Legislative Assembly in February 2017 and should be discussed by the Permanent Ordinary Commission for Juridical Matters (*Comisión Permanente Ordinaria de Asuntos Jurídicos*). This commission is also expected to discuss draft laws related to salary ceilings (draft laws 19.156 y 19.883). In parallel, the government has included a chapter on performance management in its integrated proposal in the creation of the National Public Employment System.

Currently, all public employees that have received ratings of at least "good" in the previous year are entitled to different bonuses (see above the section on salary determination), and bonuses continue to grow every year as long as public employees are rated “good”. In OECD countries, performance related pay is more often (20 countries) less than 40% of the base salary. 7 OECD countries do not use performance related pay.

The composite indicator on the extent of the use of performance related pay in central government shows that Costa Rica makes greater use of performance related pay than the average OECD country, with 0.87 and 0.64 respectively.

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<sup>317</sup> Government of Costa Rica, Mideplan, Ministry of Finance and Ministry of Labor and Social Security (2015), *Gestión del empleo y remuneraciones en el Sector Público: datos relevantes, Insumos de trabajo para discusión*, available at <https://documentos.mideplan.go.cr/alfresco/d/d/workspace/SpacesStore/5fb082d5-29f8-432a-8b72-f3c508cc8b46/INFORME%20SOBRE%20EL%20EMPLEO%20PUBLICO.pdf?guest=true> (accessed 6 February 2017).

**Figure 42. Extent of the use of performance related pay in central government, 2016**

Notes: Performance related pay is not in used in Belgium (federal government), Greece, Iceland, Luxembourg, Mexico, The Netherlands and Turkey. The index on PRP is composed of the following variables: the use of a PRP mechanism and for which staff categories; the use of one-off bonuses and/or merit increments; and the maximum proportion of basic salary that PRP represents.  
 Source: OECD (2016) Strategic Human Resources Management Survey

## Training and Development

Training is a core HR function to develop the competencies of civil servants. Many OECD countries have reduced the amount of training available and associated funding as a result of the 2008 economic crisis.

The DGSC in Costa Rica has a Centre for Training and Development (*Centro de Capacitación y Desarrollo*, CECADES) responsible for co-ordinating, promoting and administering training for civil servants from the CSR. CECADES also coordinates the training units of the CSR institutions and is responsible for training the Heads of these units (*Encargados de Capacitación*). These heads of units form the Subsystem of Training and Development of the Civil Service Regime (*Subsistema de Capacitación y Desarrollo del Régimen de Servicio Civil*, SUCADES). The training units need to comply with instructions from CECADES.

Currently, all civil servants under the CSR receive a 3-hour induction training when they enter the civil service. This training is organised individually by each institution but CECADES intends to standardize the content of the training in the near future.

In addition, institutions in SUCADES develop annual training plans for continuous training, but usually less than 1% of the institution's budget is used on training. For example in 2017 the budget for training in the Ministry of Housing (*Ministerio de Vivienda y Asentamientos Humanos*) was 0.03% of the institutional budget.

Training plans take into account training needs identified during performance assessments or through questionnaires to the hierarchy like in the Ministry of Housing. All the trainings have to be approved by CECADES.

MIDEPLAN and the DGSC have developed a National Plan for Capacity Building of the Civil Service (*Plan Nacional de Formación Profesional y de Capacitación de Personal de la Administración Pública*),

with technical assistance from the Latin American Centre for Public Administration and Development (*Centro Latinoamericano de Administración para el Desarrollo*, CLAD) is giving technical assistance to Costa Rica; MIDEPLAN is currently waiting for comments from the CLAD. This plan should provide a framework for the elaboration and implementation of future annual training plans. However, there hasn't been any agreement on the final plan and as such there are no plans for its implementation.

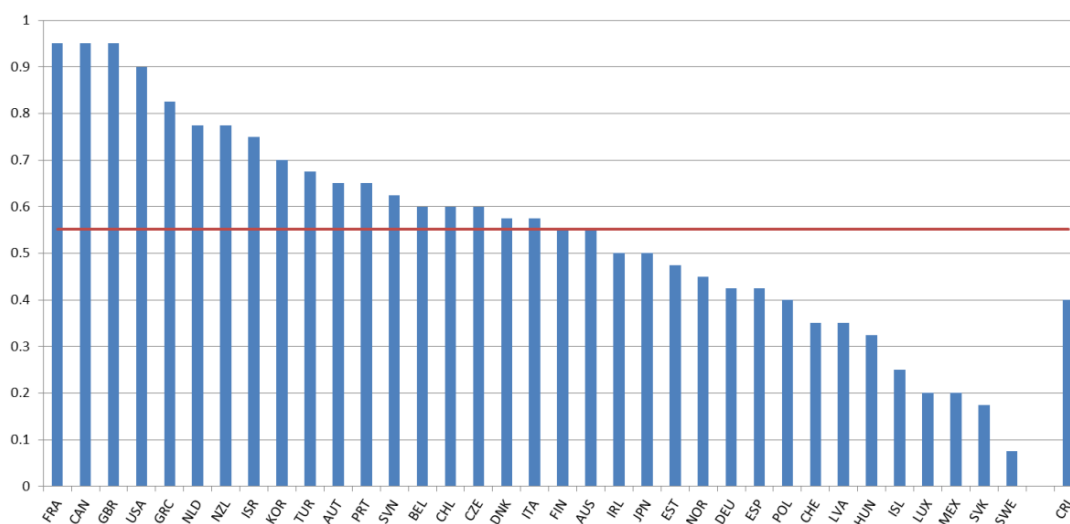
## Senior Civil Service

Costa Rica's Senior Civil Service (SCS) includes the highest managerial level of the civil service (National Directors and Civil Service Managers (Gerentes de Servicio Civil) and Heads of Service (Jefes del Servicio) who are responsible for the planning, organisation, coordination and supervision of administrative and technical work. In most cases, National Directors are politically appointed<sup>318</sup> in the ministries and their affiliated offices. People in political trust positions must comply with aptitude requirements for an adequate technical performance (Article 4 g. of the Civil Service Statute- Law 1581 modified by Law 7767).

The remaining categories of senior managers are civil servants who progressed in their careers in the public service. This group of career civil servants are managed in the same way as other civil servants, the only difference being that they are required to have more than 5 years of experience in the public sector. This explains why unlike 22 OECD countries Costa Rica does not have a specific selection process for senior managers. Costa Rica's SCS are also subject to the same performance management regime as civil servants at lower levels of the hierarchy, and all public employees are subject to the same accountability framework.

For these reasons, in comparison with the average OECD country Costa Rica makes less use of separate HRM practices for senior civil servants in central government.

**Figure 43. Use of separate HRM practices for senior civil servants (SCS) in central government, 2016**



Notes: Information on data for Israel: <http://dx.doi.org/10.1787/888932315602>.

Source: OECD (2016) Strategic Human Resources Management Survey

A centrally defined skills profile for senior managers exists in 22 OECD countries. In Costa Rica, the DGSC developed in 2015 a model to strengthen senior civil servants in the Civil Service Regime (*Proyecto*

<sup>318</sup> Mideplan does not have data on the exact numbers of politically appointed National Directors

*Implementación de un modelo de fortalecimiento del personal directivo del RSC*). This model included competency profiles, career management, performance and development and would benefit about 2700 current and future SCS.

As part of this model, the DGSC approved in 2016 a Policy to strengthen the Professional Management functions in the CSR (*Política Orientada al Fortalecimiento de la Función Directiva Profesional en el Régimen, de Servicio Civil*). The policy is aligned with OECD's 2015 Public Governance Review's (PGR) recommendations to improve leadership capacity, but its implementation could be hampered due to lack of funding.

For the time being, Costa Rican SCS can occasionally attend training delivered by CLAD, by the Latin American and Caribbean Institute for Economic and Social Planning (*Instituto Latinoamericano de Planificación Económica y Social*, ILPES) and by the Economic Commission for Latin America and the Caribbean (*Comisión Económica para América Latina y el Caribe*, CEPAL).

## **Industrial relations**

Industrial relations refer to the relationship between unions and employers, and have the goal of including employee representatives in the decision making process on workforce policies.

Unionisation in Costa Rica is voluntary and except for providers of essential services, all civil servants have the right to strike. According to data from the Ministry of Labour and Social Security (*Ministerio de Trabajo y Seguridad Social*, MTSS), in 2015 the unionisation rate in the public sector was 86.9%, while it was only 3.3% in the private sector. The high level of the unionisation rate in the public sector can be partly explained by a change in status of the National Association of Educators (*Asociación Nacional de Educadores*, ANDE), which became a trade union in 2014 and led to an increase in the unionisation rate by over 30 percentage points.

The availability of data about the unionisation rate in the public sector varies greatly across OECD countries, and for the countries that have data, the rate can vary between 5 and 95%.

In Costa Rica there is a great variety of trade unions, which is also a consequence of the institutional fragmentation. Unions have to be consulted in discussions about the base salary, social benefits, right to strike and minimum service. In addition, unions can be consulted on a voluntary basis for issues relating to additional remuneration and performance pay, codes of conduct, introduction of new management tools and government restructuring. For example, unions were involved in the approval of the Labour Procedure Code (*Código Procesal Laboral*) early 2016 that aims at simplifying working trials (*juicio laboral*).

Unions do not receive public funds directly but union leaders have special permissions to work on union activities and in some cases there is some form of administrative support (eg. office space).

## **HRM at subnational levels**

Costa Rica's Political Constitution determines that municipalities are autonomous (Article 170). As such, the processes and practices presented above do not apply to municipalities, whose HRM policies are regulated by the Municipal Code (Law 7794 of 30 April 1998, *Código Municipal*)<sup>319</sup>.

<sup>319</sup> Código Municipal, Ley No. 7794 de 30 de abril de 1998, published in La Gaceta No. 94 on 18 May 1998, <http://www.tse.go.cr/pdf/normativa/codigomunicipal.pdf> (accessed 23 January 2017).

The Administrative Municipal Career (*Carrera Administrativa Municipal*, CAM) regulates issues like recruitment and selection, performance evaluation, rights and duties of civil servants or training. Civil servants positions are organised into 5 groups (*Operativo, Administrativo, Técnico, Profesional* and *Ejecutivo*) and the municipality decides on the number of people in each one.

Positions are described in class manuals (*Manual de Clases*<sup>320</sup>) and used in job announcements. For example the *Manual de Clases* of the municipality of San Carlos (which employs 270 civil servants) describes the activities, minimum requisites, knowledge and competencies for each type of position. These descriptions are used in job announcements. Given their autonomy, municipalities were not affected by the hiring freeze of 2014 (*Directriz* N° 009-H), but new positions need to be approved by the General Comptroller.

Like in the CSR, external competitions to recruit municipal civil servants are only open when a vacancy cannot be fulfilled by a direct appointment by a qualified civil servant (Article 128 CAM) or by an internal competition. The selection procedures may vary from one municipality to the other but the final decision is taken by the mayor.

Remuneration for municipal civil servants is paid from the municipal budget; for example in the Municipality of Curridabat remuneration corresponds to around 35% of the municipal budget. Like in the Civil Service Regime, base salary is complemented by seniority pay (*anualidades*) and other bonuses, sometimes regulated by collective bargaining agreements. In the municipalities visited seniority pay is automatic and the amount has no ceiling; pay increases are negotiated every 6 months.

Performance evaluation looks at general issues like loyalty, use of resources, discipline or punctuality; the achievement of specific objectives is not measured.

The DGSC, the Institute for Promotion and Municipal Support, (*Instituto de Fomento y Asesoría Municipal*, IFAM), and the National Union of Local Governments (*Unión Nacional de Gobiernos Locales*) may provide occasional support to municipalities in activities such as the organisation of selection processes or the organisation of training. Municipalities can also contract support from other institutions.

Lack of administrative data is also a reality at municipal level. The municipalities visited during the fact finding mission<sup>321</sup> usually have a data base with basic information about salaries and paper files about employees. Municipalities receive ad-hoc requests to provide information from several institutions such as the Ministry of Finance, the Union for Local Governments, General Comptroller or DGSC.

## Preliminary assessment and recommendations

Some of Costa Rica's core Human Resource Management (HRM) practices tend to align with those of OECD countries. Costa Rica uses performance assessments in HR decisions in central government to a similar extent of the OECD average country. The delegation of human resources functions to ministries is also relatively close to the OECD average. Nevertheless, Costa Rica still faces challenges in important areas like data collection, wage imbalances and capacity at senior levels.

<sup>320</sup> Municipalidad de San Carlos (2012), Recursos Humanos: Manual de Clases, Comité de Mejoramiento Continuo,

<http://www.munisc.go.cr/Documentos/NuestraMunicipalidad/Manual%20de%20Clases%20de%20Puestos.pdf> (accessed 23 January 2017)

<sup>321</sup> Curridabat, Orotina and San Carlos.

Costa Rican authorities have been taking steps to address these weaknesses. The draft law 19.506 (*Ley para el Ordenamiento de las Retribuciones Adicionales al Salario Base del Sector Público*) on additional pay and performance was prepared and discussed in the Legislative Assembly; the Technical Secretariat of the Budgetary Authority (*Secretaría Técnica de la Autoridad Presupuestaria*, STAP) and MIDEPLAN are developing a template to collect administrative data in a standardised way; the General Directorate of Civil Service (*Dirección General de Servicio Civil*, DGSC) is moving forward with a plan to improve the software used for HRM; Costa Rican authorities are collaborating with the Latin American Centre for Public Administration and Development (*Centro Latinoamericano de Administración para el Desarrollo*, CLAD) to develop a National Plan for Capacity Building for civil servants; and the policy to strengthen the Senior Civil Service started to be implemented.

However, these efforts have not yet materialised in tangible results. The law 19.506 was under discussion for a long period and finally rejected by the Legislative Assembly and the unions, and abandoned by the government. The initiatives to improve data collection are very recent, under development, and dispersed across different institutions. The capacity building initiatives, in particular the full implementation of the policy to strengthen the Senior Civil Service, will depend on availability of funding.

Taking into account the current situation, Costa Rica is recommended to address the following issues:

- Better coordinate the ongoing efforts to improve the collection of administrative data. Consistency between the initiatives of the DGSC on the one side, and MIDEPLAN, STAP and Ministry of the Presidency on the other side, is necessary to avoid duplication of efforts, reduce costs and increase chances of success. Consultation with other public sector institutions should be considered in order to make sure that the database will be relevant to institutions and to get their buy-in.
- Wage distortions in the public sector remain a broadly recognised challenge. The lack of progress to date in all draft laws that addressed this topic suggest that future reforms require early and genuine consultation and co-operation with all relevant stakeholders including unions, to ensure buy-in and long-term commitment.
- Seniority pay and bonuses depend on an inefficient performance system. Individual performance criteria are very broad and are not related to institutional objectives; in practice bonuses are awarded to all civil servants and do not act as a reward for performance. Costa Rica should consider establishing new conditions for performance-related pay and creating space to align individual performance with organisational objectives, programmes and goals.



## SECTION 6: DIGITAL GOVERNMENT

This section addresses PGC Core Principle 6: “*The use of ICTs and electronic access to government, including the vision for digital government as a strategic enabler of public-sector performance and responsiveness to the needs of civil society, and the framework conditions for implementing digital government*”.

### Introduction

This section provides an overview of the current state of digital government in Costa Rica and its impact on improved citizens’ participation in policy making, service delivery and well-being. It provides the general context for the use of digital technologies to ensure improved access to public services, assesses the framework conditions for digital government, and discusses government capabilities to implement digital government policies. This section particularly focuses on assessing the degree of alignment with OECD best policies practices, and it benchmarks Costa Rica against the “OECD Recommendation of the Council on Digital Government Strategies” [OECD/LEGAL/0406].<sup>322</sup>

The OECD Recommendation of the Council on Digital Government Strategies includes 12 Principles structured around three pillars: (i) openness and engagement in government processes and operations; (ii) joined-up approaches to digital government strategies; and (iii) capabilities to ensure effective implementation and return on investments. This framework builds on more than a decade of OECD analytical work and country reviews.<sup>323</sup> In 2014, Costa Rica adhered to the Recommendation on Digital Government Strategies and has expressed its full commitment and willingness to comply with its Principles.

### Strategic framework for digital government

Costa Rica recognised the use of ICTs as a critical element of public sector reform in the 2000s. In 2006, Costa Rica created the Technical Secretariat of Digital Government (*Secretaría Técnica de Gobierno Digital*) to foster the use of digital technologies in support of the modernisation of the public sector<sup>324</sup>. The country has progressively advanced its ICT agenda aimed at establishing the necessary building blocks for digital government to enhance public sector performance, improve access to public services and foster citizen’s participation in decision-making. More specifically, changes to the legal and regulatory framework have been introduced to foster an enabling environment for ICT services, reduce administrative burdens, enable digital transactions and improve public service delivery.<sup>325</sup> In addition to the executive body for digital government (the Technical Secretariat mentioned above), units and bodies for high level strategic deliberation and public policy development were also created.<sup>326</sup>

Since 2006, Costa Rica’s strategic use of digital technologies in the public sector has grown in maturity and sophistication. The Master Plan of Digital Government 2011-2014 (*Plan Maestro de Gobierno Digital*

<sup>322</sup> See OECD (2015) Roadmap for the Accession of Costa Rica to the OECD Convention, [[C\(2015\)93/FINAL](#)].

<sup>323</sup> See OECD (2003), *The E-Government Imperative*; OECD (2005), *E-Government for Better Government*; OECD (2009), *Rethinking E-Government Services*; OECD (2011), *M-Government*; OECD (2013), *Open Government Data*.

<sup>324</sup> See Decree 33147-MP from 2006.

<sup>325</sup> See Law 8220 from 2002, Law 8660 from 2008, Decree 35776 -PLAN-G-J from 2010, Directive N° 067-MICITT-H-MEIC from 2014.

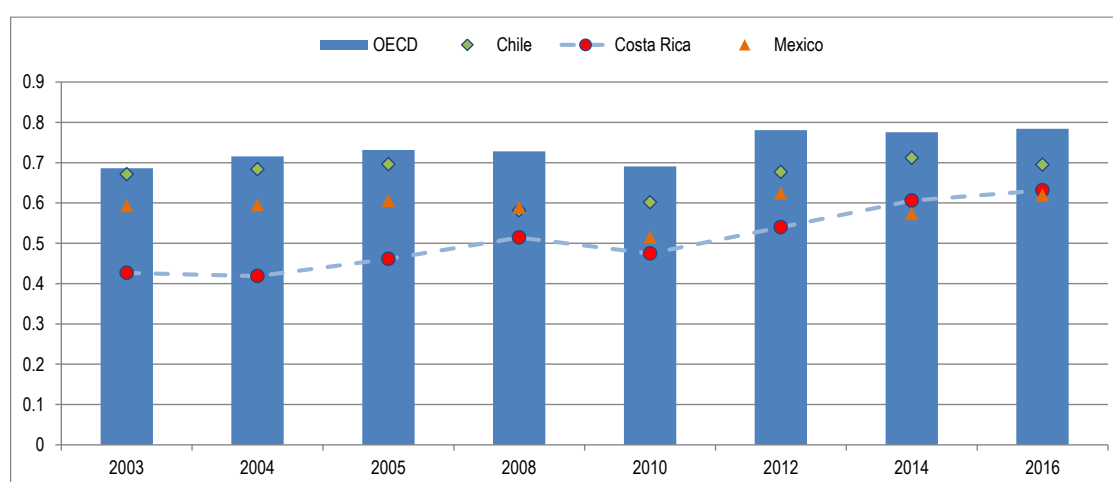
<sup>326</sup> See Decree 33147-MP from 2006, Decree 35139-MP-MIDEPLAN from 2009.



de Costa Rica 2011-2014), developed with the technical support of the Government of Korea, identified a set of crucial projects and actions to facilitate the modernisation of the public sector through the use of digital technologies. The new National Plan for the Development of Telecommunications 2015-2021 (*Plan Nacional de Desarrollo de las Telecomunicaciones 2015-2021*) covers digital government and is in strong alignment with the National Development Plan<sup>327</sup>. The plan uses the *OECD Recommendation of the Council on Digital Government Strategies* as reference to develop its strategic approach, outlining the vision and path for developing the building blocks for the digital transformation of government.<sup>328</sup>

Efforts made by Costa Rica over the last decade have helped the country consolidate its position as a regional leader in the area of digital government, steadily moving towards convergence with OECD countries as measured by international benchmarks (see Figure 44). This steady progress has allowed Costa Rica to reach comparable levels of digital maturity as OECD countries in the LAC region, with an overall score similar to Mexico.

**Figure 44. UN e-Government Index**



Source: United Nations (2016) UN e-Government Survey, New York, United Nations. <https://publicadministration.un.org/egovkb/en-us/Data-Center> (Consulted on September 6, 2016)

The National Plan for the Development of Telecommunications (*Plan Nacional de Desarrollo de las Telecomunicaciones 2015-2021*) stresses the role of digital technologies in fostering transparency and accountability in government activities. In line with the OECD Recommendation on Digital Government Strategies (hereinafter the OECD Recommendation), Costa Rica's strategic documents for digital government set the objective of leveraging technologies to bring the government closer to citizens and

<sup>327</sup> The National Development Plan for 2015-18 was driven by three main guidelines: 1) strategic orientation, with strong focus on performance management, including the national, sectorial and regional dimensions; 2) public consultation and active participation of the various actors responsible for the implementation of the plan, to ensure its compliance; 3) assure that the monitoring and evaluation provides information not only on the achieved goals but also on the products, effects and impacts achieved in social welfare. The elaboration of the NDP is characterised by a prospective vision, a mid- and long-term approach, in order to develop the country and eradicate poverty, with increased equality and environmental sustainability.

<sup>328</sup> See *Plan Nacional de Desarrollo de las Telecomunicaciones 2015-2021. Costa Rica: Una Sociedad Conectada*, available at [https://sutel.go.cr/sites/default/files/normativas/pndt\\_2015-2021.pdf](https://sutel.go.cr/sites/default/files/normativas/pndt_2015-2021.pdf).

businesses through more convenient and accessible services, greater transparency and more open and inclusive operations and decision-making processes.

### **Digitally-enabled openness in policy-making and service delivery**

This subsection assesses the use of digital technologies to foster openness, engagement and inclusiveness in public sector operations as a means to secure public trust, and it benchmarks Costa Rica's digital government practices against the principles grouped under the first pillar of the OECD Recommendation.

#### ***Ensure greater transparency, openness and inclusiveness of government processes and operations***

Principle 1 of the OECD Recommendation refers to the use of digital technologies to support greater transparency, openness and inclusiveness of government operations. Costa Rica has a robust democratic tradition and the principle of transparency and the right to access public information have constitutional basis.<sup>329</sup> A new legal and regulatory framework for freedom of information is being developed, and a draft decree on transparency and access to public information is currently available for public consultation.<sup>330</sup>

Costa Rica has also put in place an institutional framework for open government led by the National Commission for Open Government (*Comisión Nacional de Gobierno Abierto*), presided by the Ministry of the Presidency (*Ministerio de la Presidencia*). The National Commission is composed of five sub-commissions: Support Systems (*Sub-comisión de Sistemas de soporte*), Participation, Training (*Formación*), Transparency and Territorial Collaboration.

The Sub-commission of Support Systems assesses government use of online platforms, and carries out surveys to understand users' perception of the accessibility and usability of public information and online services. Its ultimate goal is to make recommendations to enhance the use of digital technologies to support open government. This is critical to facilitate access to services given the fragmentation of digital service delivery. As in most OECD countries, public institutions have progressively digitalised their services and made public information available through their own portals. OECD countries have also opted for the development of central open government data portals that facilitate access to government data for data consumers. They also increasingly engage with the whole open data ecosystem, including data producers and consumers, to better understand their needs and improve the data value chain and foster data-driven innovation.

Experience in OECD countries shows that siloed approaches make it hard for citizens to find and access public services and data and for governments to respond to citizens' needs in a holistic and integrated way. To help overcome this challenge, OECD governments have moved to the establishment of a government services one-stop shop and they offer services based on life events, rather than government structure<sup>331</sup>. These efforts are still at an early stage in Costa Rica. Barely 5% of public services are currently available through platforms and only 50% of those are able to deliver fully transactional online services through the use of digital signature<sup>332</sup>.

<sup>329</sup> See articles 11, 27, 30 and 46 of the Constitution of Costa Rica. Republic of Costa Rica (2003), Constitución Política de la República de Costa Rica, [www.constitution.org/cons/costaric.htm](http://www.constitution.org/cons/costaric.htm).

<sup>330</sup> See draft decree: <http://consulta.gobiernoabierto.go.cr/consultadaip/>

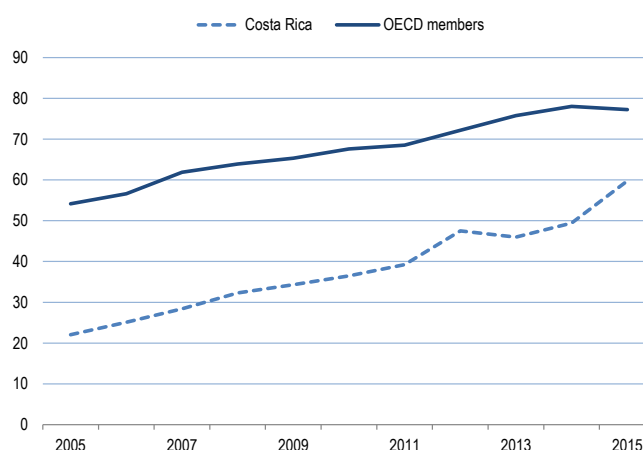
<sup>331</sup> OECD (2009), *Rethinking e-Government Services: User-Centred Approaches*, OECD Publishing, Paris.

DOI: <http://dx.doi.org/10.1787/9789264059412-en>

<sup>332</sup> OECD Accession Questionnaire.

Digital divides hinder the governments' ability to use digital technologies to promote inclusiveness of government activities. According to World Bank data, the use of critical technologies, such as the internet, remains low in Costa Rica compared to OECD standards but has experienced steady progress (see Figure 45). In 2015, 59.76% of the Costa Rican population were internet users, compared to a 77.24% average for OECD countries. In terms of mobile penetration, however, Costa Rica stands significantly above LAC or OECD countries, with 150.7 subscriptions per 100 people, compared to 110.4 average for the LAC region and 116 for OECD countries in 2015, highlighting great opportunities in terms of mobile government services<sup>333</sup>.

**Figure 45. Internet users per 100 people**



Source: World Bank (2016) World Development Indicators

Means for digital identification and authentication are considered to be key enablers for digital government, as they allow service providers to determine the identity of the service user and determine his or her entitlements and enable the user to provide legally recognised consent through digital means. To ensure an inclusive development of digital government uptake of these mechanisms among the Costa Rican society, the adoption of the digital identification should be broad. Costa Rica benefits since 2005 of a legal framework for digital signatures.<sup>334</sup> The Vice-Ministry for Telecommunications is the governing body, but the certifying entity providing access to the solution is the Central Bank of Costa Rica. Nevertheless, while a solution is available, its uptake among citizens and SMEs is low, mainly due to associated costs. As of 28 February 2017, only 198,289 digital signature certificates for individuals had been emitted by the Central Bank.<sup>335</sup> As a consequence, citizens and SMEs experience limited ability to provide online legal consent and exercise rights through digital channels, or access fully transactional digital services.

Since 2012, Costa Rica has an open government data portal<sup>336</sup> that facilitates access to a wide variety of government datasets. However, open government data still lacks the necessary directives and policy framework to support its effective implementation. In particular, a more robust policy framework and greater awareness within the public sector are needed to help drive data availability, as organisations often

<sup>333</sup> World Bank (2016) World Development Indicators (database), <http://data.worldbank.org/data-catalog/world-development-indicators>.

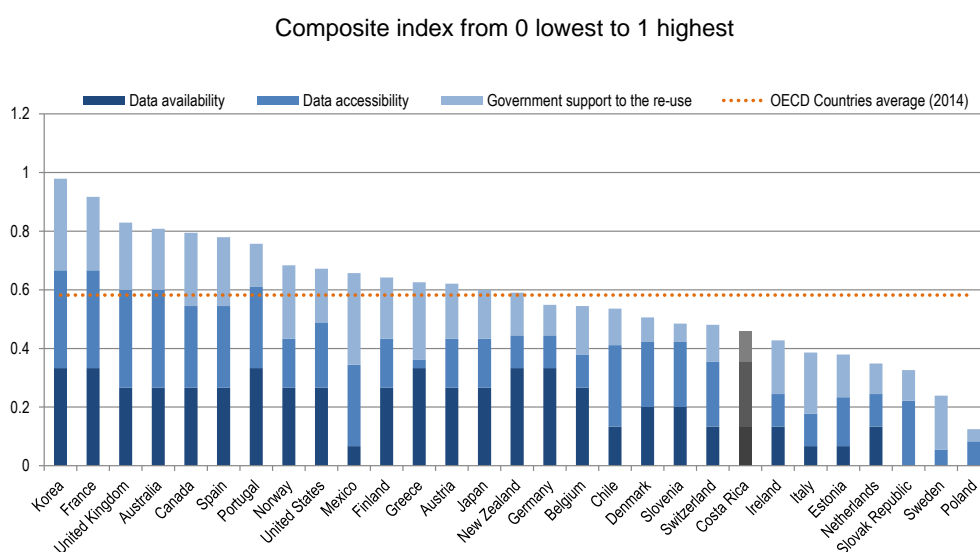
<sup>334</sup> See Law 8454 from 2005 on Certificates, Digital Signatures and Electronic Documents (*Ley de Certificados, Firmas Digitales y Documentos Electrónicos*) and Executive Decree. 33018-MICIT concerning the same law.

<sup>335</sup> Source: Payment Systems Division, Central Bank of Costa Rica.

<sup>336</sup> See <http://datosabiertos.presidencia.go.cr/home>.

do not see the value of opening up their data. Indeed, as it can be observed in the open government data portal, the number of datasets available remains relatively low<sup>337</sup> as compared to OECD countries<sup>338</sup> and the number of institutions opening up their datasets are also limited. As a result, open government data performance in the country is relatively low. This is consistent with the results of the OECD OURdata Index, which assesses the governments' efforts to increase availability, accessibility and re-use of open government data in OECD and partner countries (see Figure 46). While Costa Rica experiences levels of accessibility slightly above OECD average (0.22 compared to 0.19 for the OECD average in that sub-indicator), it is currently underperforming in terms of availability and efforts to foster re-use.

**Figure 46. OECD Open, Useful and Re-Usable Data (OURdata) Index**



Notes: OECD Countries: a) Data for Australia, Austria, Belgium, Canada, Chile, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom and the United States are for 2014; b) Data for the Czech Republic, Hungary, Iceland, Israel, Latvia and Luxembourg are not available; c) Turkey did not have a one-stop-hop open data portal at the time of the data collection in 2014. Data for Costa Rica are for 2016.

Source: OECD Open Government Data Survey 2014

Steps are being taken to address this situation. A new open government data policy is currently available for public consultation. The current draft decree, applicable to the central government alone, advances a definition of open government data, establishes the governance arrangements of the national open government data policy, establishes a prioritisation mechanisms for publishing datasets, provides guidelines on data release and determines consultation mechanisms to engage the community of data consumers, ensuring their effective participation in the implementation of the open data policy.<sup>339</sup>

<sup>337</sup> Below 150 datasets as of October 7 and a link to the Open Data Portal of the Municipality of Palmares.

<sup>338</sup> As of March 2017, Austria has 2,270 datasets; Finland: 1,618; Netherlands: 10,022; Belgium: 5,300; Switzerland: 2,177; Norway: 809; Sweden: 416; USA: 192,322.

<sup>339</sup> See draft available for consultation: <http://consulta.gobiernoabierto.go.cr/wp-content/uploads/2017/02/Borrador-Decreto-Datos-Abiertos.pdf>

### Box 13. Min Pension: Enhancing Transparency in Social Benefits through Digital Technologies in Sweden

Min Pension is a current service which on a daily basis helps the Swedish people to get an overall picture of their earned pension rights, pension tracking system, and the possibility to make a projection of the old age pension, retirement planner. The website can be accessed through single sign on login from external internet sites; the Swedish Pensions Agency, several banks, pension companies. A user can access the site with just one click.

Before the implementation of Min Pension, pension information was provided from a product point of view and presented partially with different assumptions by different stakeholders. Therefore it wasn't possible to get an overall view.

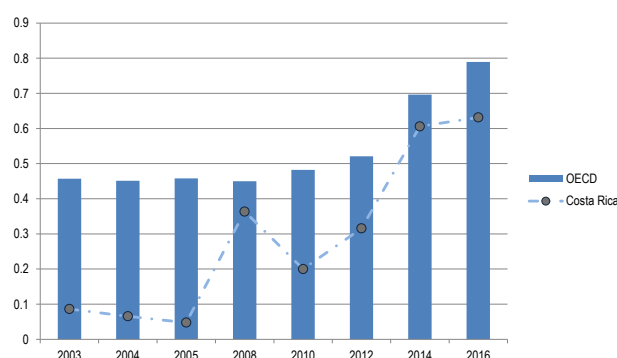
Source : OECD (2016), Digital Government Strategies for Transforming Public Services in the Welfare Areas, <http://www.oecd.org/gov/digital-government/Digital-Government-Strategies-Welfare-Service.pdf>

### *Encourage engagement and public participation of public, private and civil society stakeholders in policy making and public service design and delivery*

Principle 2 of the OECD Recommendation highlights the relevance of leveraging digital technologies to support public participation and engagement in policy making and service design and delivery. Costa Rica's democratic institutions provide a robust legal framework supporting public participation, including basic principles laid out by the Constitution. These principles are further detailed by a legal framework concerning citizen participation in the policy cycle (see the "Transparency and Accountability" Section of this Accession Assessment Report).

Costa Rica has made steady progress in digitally-enabled participation in policy making and service design and delivery (see Figure 47). At the national level important initiatives exist. The National Commission for Open Government is using its online platform to enable public consultations on relevant national policies, such as the aforementioned decrees on freedom of information and open government data or a new regulation on urban renewal.

Figure 47. UN E-Participation Index



Source: United Nations (2016) UN e-Government Survey, New York, United Nations. <https://publicadministration.un.org/egovkb/en-us/Data-Center> (Consulted on September 6, 2016)

The most relevant nation-wide efforts to bring users voice into service design and delivery are currently being carried out by the Ministry of Economy, Industry and Trade (*Ministerio de Economía, Industria y Comercio*, MEIC), as part of its administrative simplification efforts. These efforts aim at simplifying the most impactful administrative procedures, engaging with service users and all relevant stakeholders,

representing an important initiative to push for more user-centred and user-driven services. Additionally, some initiatives (such as hackathons and engagement with the data user community) are helping certain public institutions and authorities to promote the re-use of data in order to rethink public services. Finally, at the local level, some municipalities have rolled out participation platforms to enable participatory budgeting or online consultation on municipal projects<sup>340</sup> and are releasing data on public services to support the emergence of innovative public services.

#### **Box 14. Denmark: Digital Services and Co-production for Better Welfare Services**

Remote ulcer treatment in Denmark, as elsewhere, was relatively inconvenient. Municipal nurses cared for the ulcers in the home of the patient. When in doubt or if the ulcer was deteriorating, she sent the patient to the hospital to get assessed.

Nowadays municipal nurses still care for ulcers in the home of the patient, but now they communicate directly with the hospital through a web journal from their cell phones or tablets. Nurses upload photos of the ulcers to the web journal, which enables hospital experts to assess the ulcer without seeing the patient in most cases.

This new arrangements allows for financial benefits in both regions and municipalities, which finance the care. This digital innovation in service delivery also entails convenience benefits for the patients, who no longer need to travel to the hospital as often.

Source : <http://www.oecd.org/gov/digital-government/Digital-Government-Strategies-Welfare-Service.pdf>

However, as is the case for OECD members, Costa Rica still struggles in achieving a cultural shift towards a user-driven approach in digital service design and delivery, and in achieving a critical mass of digital participation in public decision-making. An important factor for this is the absence of a government-wide policy for public service digitalisation providing guidelines for service design that ensures adequate piloting and testing with the participation of service users, or describing delivery alternatives that help public institutions consider co-delivery and co-production of services. This vision is at the core of the digital transformation of the public sector as described in the OECD Recommendation. This vision acknowledges the power of technology to enable new dynamics between governments, citizens and businesses in which governments act not only as providers, but also as a platform of convener allowing the best fit solution for users' needs to be provided by the best equipped stakeholder.

Digital service delivery is particularly challenging at the sub-national level of government, where resources and digital skills are often scarcer. In some cases, this means the complete absence of digital services other than solutions made available by national entities, for instance, digital construction permit enabled by a solution developed by the Association of Architects (*Colegio de Arquitectos*). In other cases, procedures and services are only partially digital (e.g. front office), but the back office procedures are still paper-based and have not substantially changed (e.g. Orotina). The most resourceful municipalities, such as Palmares, have gone their way in the development, use and re-use of open sources solutions to overcome the context of scarcity of resources.

In addition, as shown in Figure 46 above, the results of the OURdata Index suggest that the Government of Costa Rica can improve in terms of its efforts to open data re-use.

<sup>340</sup>See the Participation Portal of the Municipality of Palmares: <http://planificacionpalmares.jimdo.com/ventanilla-de-participaci%C3%B3n-ciudadana/>.

### **Box 15. Digital Service Standard in the United Kingdom**

The United Kingdom's Government Digital Service, unit responsible for digital government in Cabinet Office, developed the Digital Service Standard that all public facing transactional services in government must meet. It is composed of 18 criteria that ensure the progressive development of user-driven services:

1. Understand user needs
2. Do ongoing user research
3. Have a multidisciplinary team that can design, build and operate the service
4. Use agile, iterative and user-centred methods
5. Iterate and improve frequently
6. Evaluate tools and systems used to build, host, operate and measure the service
7. Understand security and privacy issues
8. Make all new source code open and publish it under appropriate licenses
9. Use open standards and common government platforms where available
10. Test the end-to-end service
11. Make a plan for the event of the digital service being taken temporarily offline
12. Make sure the service is simple and intuitive enough users succeed the first time
13. Make sure user experience is consistent with GOV.UK (government platform)
14. Encourage everyone to use digital service alongside an appropriate plan to phase out non-digital channels
15. Collect performance data
16. Identify performance indicators, including 4 mandatory KPIs defined in the manual. Perform a benchmark and plan to enable improvements
17. Report performance data in the performance platform
18. Test the service from beginning to end with the responsible minister

Source : <https://www.gov.uk/service-manual/service-standard>

### ***Create a data-driven culture in the public sector***

As governments around the world see the rise of the wealth of data thanks to new data producing and processing technologies (e.g. Internet of Things, big data analytics, machine learning algorithms, artificial intelligence), they are trying to leverage these opportunities to improve policy making processes and service delivery. Principle 3 of the OECD Recommendation focuses on the need to create a data-driven culture in the public sector that would enable governments to make the most of the data they own, produce



and connect to increase their performance. A data-driven culture in the public sector is concerned with the public sector systems and capabilities needed to optimise the management of the data value chain to deliver better societal results based on better decisions all across society and within the public sector in particular.

Costa Rica's current strategic efforts, as well as the legal and regulatory framework in place around data management, focus on fostering open government data, protecting data privacy and security, and red-tape reduction.<sup>341</sup> Despite these efforts, and as in most OECD countries, initiatives to develop a strategic management of data as to enhance its impact on evidence-based decision-making and public value creation are still at a very early stage of development. Important enablers for the development of a data-driven public sector have nevertheless been identified as areas of opportunity. In particular, the need to strengthen interoperability of government information systems and data is acknowledged to be a crucial strategic objective.<sup>342</sup> The lack of a satisfactory digital identification system for digital public services may be an obstacle to the emergence of a data-driven administration in the years to come, preventing the public sector to better understand, tailor digital interactions between users and the public administration or effectively implement the once only principle.

In addition, data assets in the public sector have not yet been mapped and there is an absence of a government-wide data policy. Paired with the lack of structured approaches to the development of data skills and capabilities in the public sector, these elements should raise concerns about the ability of Costa Rica to use data as a strategic asset in a data-rich world.

***Reflect a risk management approach to address digital security and privacy issues, and include the adoption of effective and appropriate security measures***

Recognising that digital technologies imply risks in terms of data security and privacy, Principle 4 of the OECD Recommendation suggests that countries should take a risk management approach to data and information management.

Personal data protection is of pivotal importance to secure citizens' trust. The right to privacy is constitutionally protected and a comprehensive legal and institutional framework exists around personal data protection.<sup>343</sup> Yet, in Costa Rica its effective implementation in the digitalisation of public services and government processes has not yet been detailed in a policy instrument that ensures the effectiveness of the implementation of data protection in the digital world.

While Costa Rica lacks a risk management strategy for cybersecurity, it has been working on the development of a National Cybersecurity Strategy in close collaboration with a range of public and private institutions. Coherent with OECD best practices, a national Computer Security Incident Response Team (*Centro de Respuesta de Incidentes de Seguridad Informática*, CSIRT-CR) was created by executive decree. Yet, the CSIRT has still scarce capabilities in terms of financial, technical and human resources. As of march 2017, the CSIRT consisted of only one staff, limiting its ability to respond to the demands and needs of Costa Rica in terms of information and data security within and outside of the public sector.

<sup>341</sup> See Decreto 38994-MP-PLAN-MICITT, Fomento del Gobierno abierto en la Administración pública y creación de la Comisión Nacional por un Gobierno Abierto; Estrategia de Gobierno Abierto; Law 8968 from 2011 to protect the individuals against the inappropriate processing of their personal data; Law 8220 from 2002 on Citizen Protection against Excessive Requirements and Excessive Administrative Procedures (*Ley de Protección al Ciudadano del Exceso de Requisitos y Trámites Administrativos*) and Law 8454 from 2006 on Certificates, Digital Signatures and Electronic Documents.

<sup>342</sup> See Plan Nacional de Desarrollo de las Telecomunicaciones 2015-2021. Costa Rica: Una Sociedad Conectada available at <http://www.micitt.go.cr/images/Telecomunicaciones/pndt/PNDT-2015-2021.pdf>

<sup>343</sup> See Law 8968 from 2011 and Decree 37554-JP from 2012.



## Establishing sound governance and co-ordination frameworks

OECD principles for Digital Government Strategies highlight the importance of establishing effective governance and institutional frameworks to co-ordinate the implementation of digital government strategies, policies, programmes and initiatives. This sub-section briefly assesses Costa Rica based on this second set of principles.

### *Secure leadership and political support*

Principle 5 of the OECD Recommendation stresses the relevance of securing leadership and political support to ensure co-ordination and collaboration across government agencies. Insufficient political support and available financial resources remain considerable challenges to achieve expected outcomes from digital government initiatives.<sup>344</sup>

In addition, the mandate and capabilities of the unit called to play the role of the co-ordinating body for digital government, the Vice-Ministry for Telecommunications, are relatively weak. Decree 35139-MP-MIDEPLAN from 2009 which established the Inter-sectorial Commission for Digital Government (*Comisión Intersectorial de Gobierno Abierto*) as the governing body for digital government policies, is still in place despite the fact that the Commission is not operational in terms of policy making or high level co-ordination.

The Ministry of Science, Technology and Telecommunications (*Ministerio de Ciencia, Tecnología y Telecomunicaciones*, MICITT), as co-ordinating body for the implementation, currently faces significant staff and financial constraints to effectively play its role.<sup>345</sup> The multiplicity of actors playing a role in this policy area and the financial constraints of the MICITT have prevented the emergence of clear and strong leadership in the area of digital government, limiting the government's ability to co-ordinate actions and strategic decisions and to help build consensus and ownership within the political system and the public administration to achieve policy objectives. The absence of a sufficiently strong governing body for digital government makes it harder raise awareness about issues, develop and implement coherent digital government strategies.

### *Ensure coherent use of digital technologies across policy areas and levels of government*

Principle 6 of the OECD Recommendation refers to the coherent use of digital technologies across policy areas and levels of government. According to the recommendation this can be achieved by four means: i) engaging relevant stakeholders; ii) integrating digital government into broader public sector reforms; iii) ensuring alignment with broader strategies; iv) providing the co-ordinating unit with the mechanisms needed to align overall strategic investment choices.

While the current digital government strategy is in alignment with the broader national development strategies, important weaknesses in the digital government co-ordination system are noticed. As advanced in the assessment of the previous principle of the Recommendation, the co-ordinating body for digital government is understaffed and relatively weak. The lack of effective co-ordination mechanisms and political support, coupled with the jurisdictional complexities of the Costa Rican administrative system has resulted in digital silos.

<sup>344</sup> According to responses to the OECD Accession Questionnaire.

<sup>345</sup> The Digital Government Department is currently staffed of 4 people.

In addition, the Technical Secretariat of Digital Government, initially conceived as the executive arm of digital government policies attached to the Presidency, was moved in 2009 to RACSA (*Radiográfica Costarricense, S.A.*), a public enterprise part of the group of the Costa Rican Electricity Institute (*Instituto Costarricense de Electricidad*), a state-owned enterprise operating in a recently liberalised market. This leaves the government without an executive unit or body that could develop shared tools, resources and services to public agencies that can foster coherence. Instead, the Technical Secretariat, with its expertise, technical capabilities and historical ties to the public sector, raises concern among competing firms.<sup>346</sup> This is also relevant for municipalities, which often rely on shared solutions made available by the central government to modernise their service delivery or internal organisational management.

Fortunately, Costa Rica has recognised the need to set up a more robust institutional framework as a strategic objective for the country.<sup>347</sup> This is seen as a necessary step to overcome the digital fragmentation of the public sector, foster government interoperability, avoid duplication of efforts, inefficient spending and the uneven digital development of the public sector. Nevertheless, the decentralisation of public expenditure and the jurisdictional limits of the central government, in principle ensuring coherence in the use of technology across the public sector, will remain challenging unless the scope and buy-in of digital government policies is large enough.

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<sup>346</sup> Interviews with the private sector and MICITT, accession mission June 2016; videoconference March 2017.

<sup>347</sup> See Plan Nacional de Desarrollo de las Telecomunicaciones 2015-2021. Costa Rica: Una Sociedad Conectada, available at <http://www.micitt.go.cr/images/Telecomunicaciones/pndt/PNDT-2015-2021.pdf>.

### Box 16. Co-ordination mechanisms in selected countries

#### Portugal

The Agency for Administrative Modernisation (AMA) is responsible for the approval of ICT projects over EUR 10 000 in observance of the norms and guidelines defined by the e-Government Network. The e-Government Network is chaired by the AMA and gathers other relevant stakeholders, such as the ICT Shared Service Centre, and meets at both the high political level to determine strategic orientation and at the operational level.

Moreover, the AMA follows a Programme Management Officer (PMO) structure led by the Director of e-Government. This team is in continuous contact with focal points at institutions relevant for the implementation of digital government projects to monitor project roll out. The e-Government Network organises meetings and specific workshops to discuss trending topics or issues in the area of e-government.

#### Spain

The ICT Strategy Commission (CETIC), an inter-ministerial body at the highest political level comprising senior officials from all ministries, defines the strategy that once approved goes to the Council of Ministries. The CETIC also defines the services to be shared, and determines the priorities for the investments, reports on draft laws, regulations and other general standards with the purpose to regulate ICT matters for the general state administration. Furthermore, the CETIC promotes collaboration with the autonomous regions and local authorities for the implementation of integrated inter-administrative services.

The Committee of the Directorate for Information Technologies and Communication includes 25 chief information officers (CIOs) of the different ministries (13) and agencies (12), and the deputy directors for ICTs of all ministries and units. This committee leads the co-ordination of the implementation of ICT projects.

#### Uruguay

The Honorary Directive Board is a distinctive governance board in the regularity of its meetings (once a week), in its decision-making powers and the composition of its board. The Honorary Directive Board takes virtually all high-level decisions of the Agency for Electronic Government and Knowledge and Information Society (AGESIC). It is composed of five members, including the delegate of the President (formally the Pro-Secretary of the Presidency – in practice it is often the Director-General of the Presidency by delegation) – the CEO of the agency and three representatives appointed by the presidency. At the moment these include one representative from the private sector, one from academia and one from the technical community. A complementary advisory board includes the CIOs of the different public institutions.

The AGESIC has an area dedicated to bodies and processes (“*organismos y procesos*”) which is in charge of managing relationships with other public institutions and seeks to monitor and support the implementation of digital government policies, co-ordinate cross-cutting projects and perform change management. The AGESIC also has a strong PMO structure, providing a centralised follow-up and support mechanism for digital government project implementation.

Source: OECD (2016), Digital Government in Chile: Strengthening the Institutional and Governance Framework, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264258013-en>

### ***Establish effective organisational and governance frameworks to co-ordinate the implementation of the digital strategy within and across levels of government***

The OECD Recommendation advances in its Principle 7 that digital government strategies should be supported by effective organisational and governance frameworks to co-ordinate the implementation of the digital government strategy.

The governance model of digital government in Costa Rica has undergone several changes over the last decade. After the creation of the Technical Secretariat of Digital Government in 2006<sup>348</sup> as an executive body for the implementation of digital government, the Government established the Inter-sectorial Commission for Digital Government in 2009<sup>349</sup> with the mandate of setting the policy framework in this area. As previously mentioned, the 2009 Decree also moved the Technical Secretariat to the Costa Rican Institute of Electricity, placing the executive arm of the digital government policy within an operator working in a liberalised market.

Report N° DFOE-IFR-IF-5-2012 of the General Comptroller of the Republic (*Contraloría General de la República*) states that “its role has focused on the approval of projects proposed by the General Secretariat of Digital Government; instead of setting directives and policies for the development and implementation of digital government, one of the components of the Information and Knowledge Society, a situation which is in contradiction with its regulatory framework”<sup>350</sup>. As aforementioned, with the current institutional and governance arrangements, and the budgetary constraints of relevant authorities, Costa Rica currently lacks the ability to effectively steer and co-ordinate the implementation of digital government policies. As such, current efforts for digitisation are very much decided at the organisational level, thus preventing the emergence of a real whole-of-government approach that embeds technology into broader public sector reform agendas, which represents the core of the shift from e-government to digital government, and that fosters strategic ICT investments in line with the government priorities.

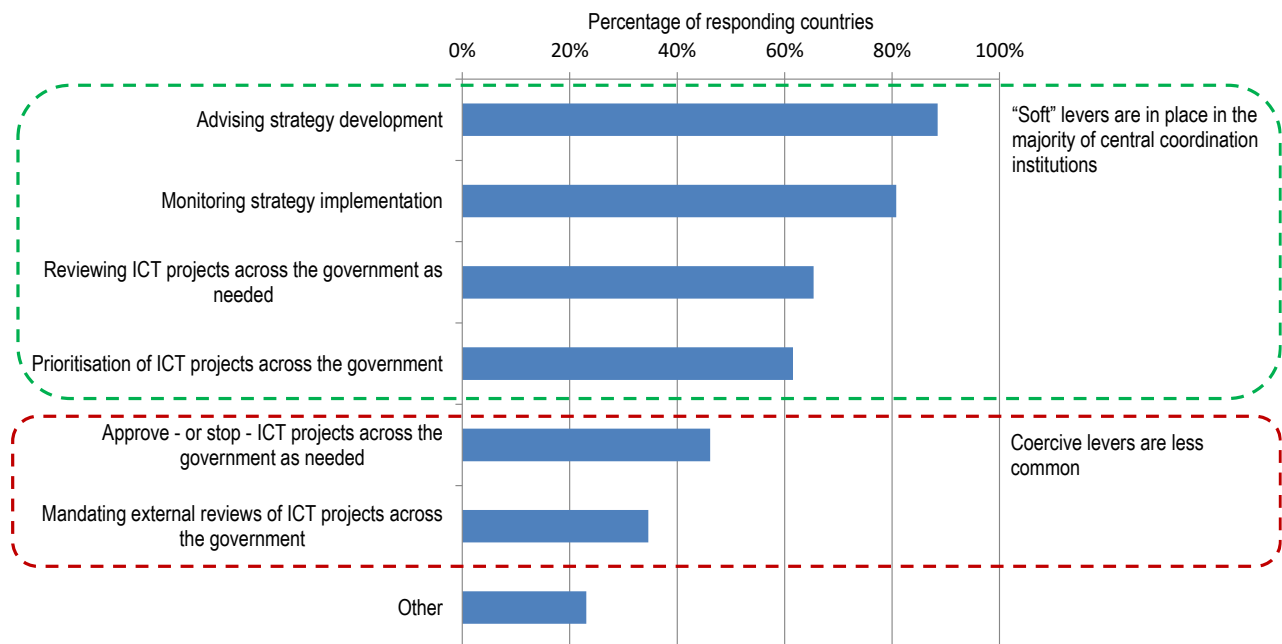
Ensuring such level of coherence implies the existence of organisations with clear mandates and the mix of policy levers that fits the administrative context. While the MICITT is able to advise strategy development and monitoring, in the absence of an executive unit or body, the MICITT is currently unable to perform or ensure other common functions of digital government co-ordination, such as the review of ICT projects or project prioritisation (see Figure 48 for context in OECD countries).

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<sup>348</sup> See Decree . 33147-MP from 2006.

<sup>349</sup> See Decree 35139-MP-MIDEPLAN from 2009.

<sup>350</sup> See Contraloría General de la República (2012) Report N° DFOE-IFR-IF-5-2012.

**Figure 48. Policy levers of central co-ordinating units for digital government**

Source: OECD Survey on Digital Government Performance 2014

The Commission for Telecommunications and E-Government, part of the Presidential Council on Innovation and Human Talent (*Consejo Presidencial de Innovación y Talento Humano*), is working on a draft decree that may strengthen the role of the Vice-Ministry of Telecommunications as the governing body of digital government and create an executive unit to help build common infrastructure and capable of reviewing and assessing large ICT project, helping improve project governance

Monitoring and evaluation systems for digital government policies, programmes and projects are at an early stage of development. The current survey-based methodology does not ensure timely and consistent follow up of ICT projects in the public sector. It does not enable Costa Rica to assess digital government activities and policies at the micro, meso and macro level, or ensure that all relevant stakeholders have timely and accurate data to assess performance and inform decisions.

The satisfactory institutionalisation of digital government in the country remains a challenge, without adequate steering and co-ordination capacity. The current context of national planning and the co-ordination frameworks are unable to secure the alignment of the ICT investments and efforts made by local and national decentralised sectors with broader national objectives. The Government of Costa Rica is aware of this reality and is currently working on updating its legal and regulatory framework to strengthen the role of the Ministry of Science, Technology and Telecommunications as the governing body for digital government in the country. This provides an opportunity to establish joined-up approaches and stronger co-ordination mechanisms under the stewardship of the MICITT.

### ***Strengthen international co-operation with other governments***

Principle 8 of the OECD Recommendation underlines the important of strengthening international co-operation to serve citizens and businesses across boarder, promote peer-learning and the international co-ordination of digital government strategies when fitting.

Costa Rica has a tradition of openness to the world, with strong commercial ties to regional and OECD countries, as well as history of international trade and co-operation with other countries on issues of mutual interest<sup>351</sup>. It frequently holds regional conferences and participates of the Latin American & Caribbean Network of Electronic Government (*Red de Gobierno Electrónico de América Latina y el Caribe*, RedGEALC), making it an active actor of peer learning exercises.

However, the participation of Costa Rica in regional networks of digital government has been historically driven by the Technical Secretariat of Digital Government and now located at RACSA, a public enterprise part of the group of the ICE, operating as a business unit. The fact that the secretariat is representing the Costa Rican government at international for a, instead of the governing body for digital government policies or even an executive agency of the Costa Rican Government, hampers appropriate institutional representation.

### **Capabilities and effective implementation**

The OECD Recommendation of the Council includes a third and final pillar or set of principles linked to the institutional capacities to support the implementation of digital government strategies. This sub-section will assess Costa Rica based on these principles upheld by the Council of the OECD.

#### ***Develop clear business cases to sustain the funding and focused implementation of digital technologies projects***

The OECD Recommendation suggests in its Principle 9 that governments develop business cases to ensure sustainable funding and focused investments. Business cases help public institutions build a robust case for ICT investments, considering alternative solutions, helping make a decision based on the net value of the proposal. In case of large ICT projects, the business case methodology also allows public authorities to follow up on the benefits realisation. Capturing data on ICT project implementation also allows public institutions to learn about the drivers of their failure and success.

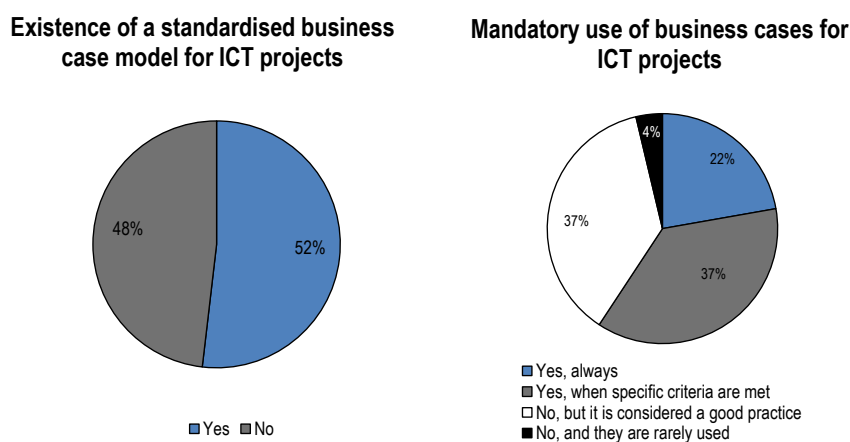
As of March 2017, Costa Rica has yet to develop a policy framework covering the development and implementation of ICT projects. Costa Rica lacks standardised or mandatory use of business cases to justify ICT investments in the public sector regardless of the complexity, budget size or risk of the project. While ICT project monitoring is recommended, it is not mandatory for public institutions. Moreover, the absence of business cases and *ex-ante* ICT project review mechanisms deprive the Costa Rican public sector of a tool for better targeting and structuring ICT investments.

As business cases to monitor the effective benefit realisation of these projects are lacking, there are no data produced which would provide significant insights in terms of ICT project management. The latter would allow for progressive strengthening of the public sector's capacity to use and manage ICTs.

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<sup>351</sup>See Costa Rica's participation in DR-CAFTA, a free trade agreement, with the United States and Central American peers. <https://ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta> and its membership in the Central American Integration System, <http://www.sica.int/>

Figure 49. Use of ICT business cases in OECD countries



Note: Data not available for Latvia. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.

Source: OECD Digital Government Performance Survey 2014

### *Reinforce institutional capacities to manage and monitor projects' implementation*

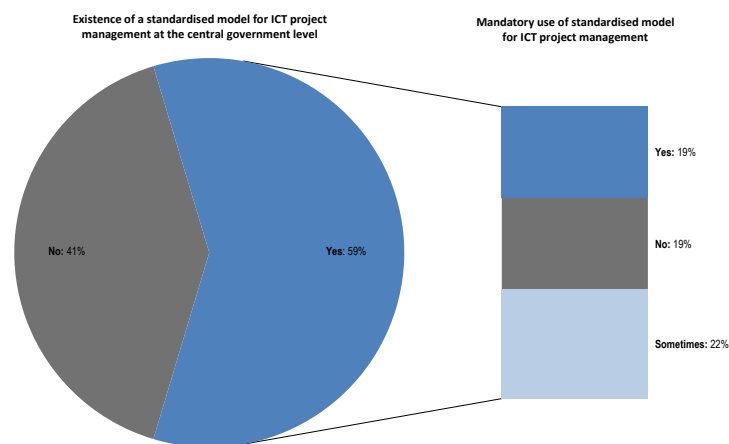
As ICT projects become more complex, the OECD Recommendation calls for governments to reinforce institutional capacities to manage and monitor projects' implementation (Principle 10). They should do so by managing risks and increasing their data collection of ongoing projects to enable adjustments in the course of the implementation and determining performance indicators for the public sector. It also expects government to achieve greater institutional capacities by developing the ability to have a comprehensive picture of ongoing digital initiatives, ICT management skills and relying more on prototyping and testing.

Digital government in Costa Rica is fostered by a steadily growing economy and a vibrant ICT sector. These elements have facilitated the emergence of a more inclusive society and a population that is more tech-savvy relative to most neighbouring countries<sup>352</sup>. However, as the government matures in its use of ICTs, it should be increasingly able to co-ordinate projects, strategically prioritise investments and consolidate its capabilities to implement ICT projects, as well as its monitoring and follow-up systems to ensure return on investments.

OECD countries use budget thresholds to structure ICT project governance and standardised ICT project management methodologies to create sound investment frameworks (see Figure 50). Such tools are not used or in place in Costa Rica, partly due to the absence of an adequately resourced governing body and effective co-ordination mechanisms for digital government policies for the central government and decentralised and autonomous agencies. In addition, institutional fragmentation limits the central government's ability to set the necessary conditions to drive change, co-ordinate actions and set budgetary controls.

<sup>352</sup>The International Telecommunication Union (ITU) ICT Skills Index (2015) for Costa Rica is 6.2, above the average for the LAC region (4.73), but below the OECD average (7.7). ITU (2015) ICT Development Index 2015, Geneva, ITU. <http://www.itu.int/net4/ITU-D/idi/2015/>

**Figure 50. Use of standardised ICT project management models in OECD countries**

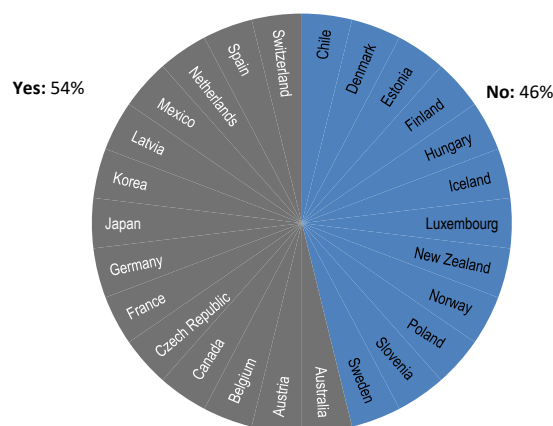


*Note: Data not available for Latvia. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.*

*Source: OECD Digital Government Performance Survey 2014*

As in many OECD countries, budgetary constraints and the relative scarcity of ICT professionals make effective implementation of complex ICT projects extremely challenging<sup>353</sup>. This suggests the need for a strategy to attract, develop and retain ICT-skilled professionals in the public sector as other OECD countries are approaching this challenge (see Figure 51). Similarly, local governments face growing pressure to modernise service delivery in a context of limited resources. The challenge of building and maintaining adequate capabilities within and across government levels and sectors also remains a serious challenge.

**Figure 51. Governments with a strategy to attract, develop and retain ICT-skilled professionals**



*Note: Data not available for Latvia. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.*

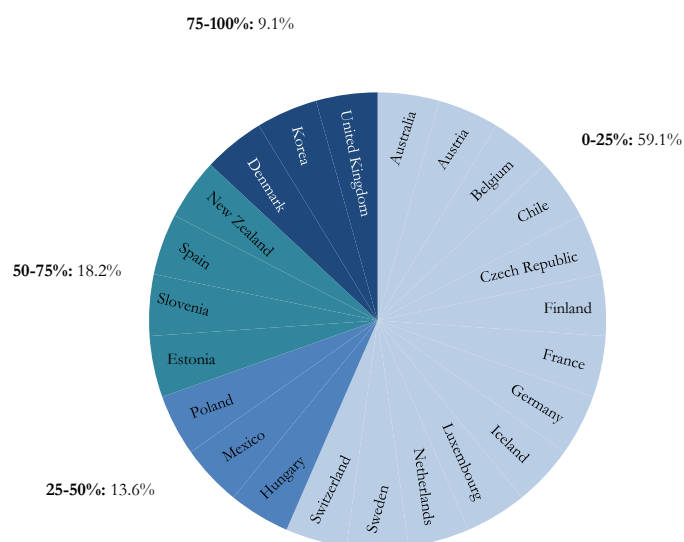
*Source: OECD Digital Government Performance Survey 2014*

<sup>353</sup> The scarcity of ICT professionals and the limited financial resources has been consistently raised as one of the main challenges to reinforce institutional capacities both during the accession mission of June 2016 and responses to the OECD Accession Questionnaire.



Finally, Costa Rica lacks a thorough monitoring of government ICT projects allowing for a close follow up of the realisation of expected benefits that would support a greater understanding of the ICT project performance in the Costa Rican public sector. This is also true for many OECD countries (see Figure 52).

**Figure 52. Share of Full Potential Financial Benefits of ICT Projects Governments can Account for**



*Note: Data not available for Latvia. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.*

*Source: OECD Digital Government Performance Survey 2014*

### Box 17. Managing large ICT projects in the Danish Government

#### Standardised ICT Project management models: The Danish ICT Project Model

The Danish ICT Project Model provides a standardised way of managing ICT projects across the government administration. With clear reference to the UK ICT project model Prince2, it provides guidelines for how to organise and manage ICT projects and delivers concrete templates for all generic products in the process. The overall phases covering all projects are illustrated below:



The Ministry of Finance has created a unit establishing good practices on digital government projects, including both mandatory and recommended elements. The model has enabled establishment of a specific governance structure, for example requiring approvals of well-developed business cases, as well as ongoing approvals – so called “stop-go” decisions - each time project pass from one phase to the next.

#### Denmark: Managing large ICT Project risks

In 2010, the Danish government recognised that many government IT projects suffered from structural difficulties and established the need for more professional central review mechanisms. The Council for IT Projects was established in 2011. It reviews any IT project with a budget of more than DKK 10 million (around EUR 2 million) and any government IT programme with a budget of more than DKK 60 million. The council evaluates whether the project or programme has high risks. If it does, a binding and very close monitoring of the project becomes mandatory, including reporting every six months and the option of conducting an external review.

The council can also recommend that projects that are already underway be subject to a review if they are delayed, become more costly than planned or face substantial challenges to the realisation of expected benefits. The Danish Council for IT Projects is composed of nine senior managers, primarily from the private sector, but also from semi-public and public IT-intensive organisations. Its members have experience with large-scale IT projects or projects for change and can contribute solid and competent guidance to governmental IT projects. So far the council has carried out around 50 risk assessments for government IT projects, out of which nine were found to be of high risk.

Source: The Danish Digitisation Agency; and <http://www.digst.dk/Styring/Projektmodel> (accessed January 29, 2016); Danish Council for IT Projects (n.d.), [www.digst.dk/ServiceMenu/English/Policy-andStrategy/Interministerial-Project-Office/The-Danish-Council-for-IT-Projects](http://www.digst.dk/ServiceMenu/English/Policy-andStrategy/Interministerial-Project-Office/The-Danish-Council-for-IT-Projects).

### *Procure digital technologies based on assessment of existing assets*

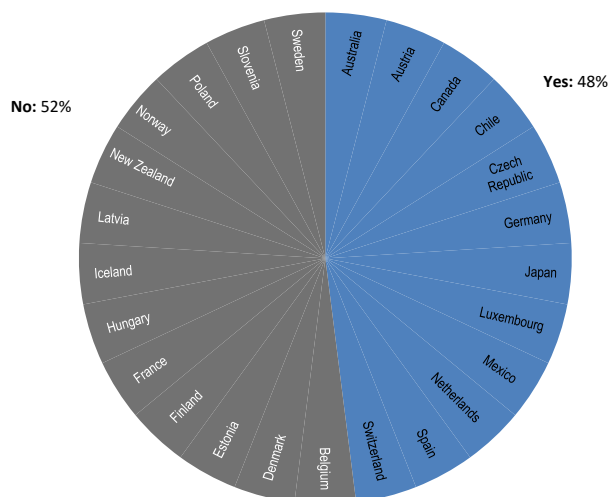
Principle 11 of the OECD Recommendation stipulates that governments should procure digital technologies based on existing assets. To do this, governments should have a comprehensive visibility of existing projects, contracts, service level agreements, assets, including data and skills.

Budgetary constraints in Costa Rica create incentives for developing procurement approaches more efficiently and finding better ways of investing in digital technologies and public sector modernisation projects. To achieve this, Costa Rica has put emphasis on the development of an integrated platform for public procurement.

Notwithstanding these efforts to make procurement more efficient, Costa Rica lacks an ICT procurement strategy or an institution responsible for the provision of ICT shared services. It also lacks essential tools for the strategic procurement of ICTs, such as a repository for all ICT contracts and service level

agreements (see Figure 53), a comprehensive and detailed database of ICT assets of the central government or a database for previous ICT provider performance (see Figure 54). It is important to note that these tools are still being developed in a majority of OECD countries.

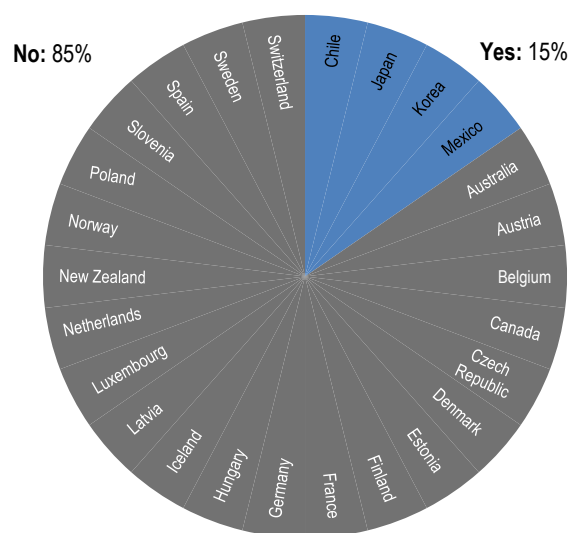
**Figure 53. Existence of a central, searchable repository for ICT contracts in government**



*Note: Data not available for Latvia. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.*

Source: OECD Digital Government Performance Survey 2014

**Figure 54. Existing Database on Previous ICT Supplier Performance**



*Note: Data not available for Latvia. Latvia was not an OECD Member at the time of preparation of this survey. Accordingly, Latvia was not included in the survey.*

Source: OECD Digital Government Performance Survey 2014

### ***Ensure that general and sector-specific legal and regulatory frameworks allow digital opportunities to be seized***

The 12<sup>th</sup> and final principle of the OECD Recommendation invites governments to ensure that general and sector-specific legal and regulatory frameworks allow stakeholders to seize the opportunities offered by digital technologies. It suggests that this be done by: i) reviewing these as appropriate and; ii) including the assessment of implications on governments' digital needs in regulatory impact assessments.

While a comprehensive review of the legislation and regulations has not been performed, the legal framework for digital government in Costa Rica is at level with OECD countries with regards to digital signature, digital privacy and security, interoperability and digital citizens' rights (e.g. once only principle).

Similar to other OECD countries, new regulations or legislations are not systematically assessed in terms of the impact they may have on the government's digital needs. However, all legal and regulatory initiatives put forward by the MICITT are assessed in this regard. Digital government development plans and strategies are ambitious and in line with the OECD Recommendation for this policy area.

#### **Box 18. Netherlands – Citizens' rights to data**

A landmark decision from the Netherlands In April 2009 the Judicial Division of the Dutch Council of State (Raad van State), the highest Administrative Court in the Netherlands, placed limits on the possibility for public bodies to charge for access to databases they have created when it ruled that a public authority could not assert database rights over, nor charge for, data collected with public funds as part of its regular activities.

The case was taken to the Court by Landmark Nederland, a large supplier of land and property search information, which in 2006 brought together a national dataset of environmental risks such as contaminated land from a range of sources including Dutch council records. These reports were part of a portfolio of products to be sold to home buyers via estate agency brokers. The City of Amsterdam sought compensation for supplying the data and also wanted to limit its re-use, arguing a substantial investment had been made in compiling the original dataset. The Court rejected the appeal lodged by the City of Amsterdam for compensation costs for supplying information that would be sold for profit. The Court ruled that, while the data could be considered to form a database because there had been a substantial investment in its collection, the City of Amsterdam had not borne the risk of this substantial investment, and was therefore not a producer of the database for the purposes of asserting database rights. Consequently the City was not entitled to attach financial conditions or other limitations on the use of this data by Landmark Nederland.

### **Preliminary assessment and recommendations**

Generally speaking, Costa Rica presents a healthy dynamic in the area of digital government and is experiencing a steady trend towards convergence with OECD standards. Costa Rica's are both broadly in line with the OECD Recommendation on Digital Government Strategies [[C\(2014\)88](#)]. Costa Rica has shown growing maturity in its use of digital technologies to support broader public sector modernisation efforts and help government come closer to citizens and businesses.

At this stage, Costa Rica is looking at how to achieve greater coherence and digital integration in its deployments of ICTs across the public sector. Going forward, Costa Rica could benefit from greater political support and a revision of the institutional architecture of digital government enabling the country to drive change and implement a better governance of strategic ICT projects in the public administration. Decisive efforts should be made to reduce and eliminate digital divides and stronger efforts should focus on fostering the digitalisation of public services from end-to-end and driving uptake of digital service delivery to drive down the costs per transaction.

Costa Rica could benefit from:

- A better resourced governing body for this policy area with a stronger leadership and co-ordination role based broad political support, in particular from the centre of government.
- The development of an executive body responsible for the implementation of digital government, able to develop shared infrastructure and services as well as provide technical assistance as required.
- The establishment of an open government data policy that ensures the framework conditions for the development of a dynamic open government data ecosystem.
- Ensuring access to digital identification and authentication mechanisms for all citizens and businesses.
- The development of digital government management tools and capacities to support the implementation of the digital government strategy. These include a more systematic use of business case and a more robust ICT project governance to avoid duplication of efforts and ensure benefits.

## SECTION 7: MULTI-LEVEL GOVERNANCE

This section addresses PGC Core Principle 7: “Multi-level governance, including the ability of central and sub-national administrations to implement together these good-government practices and design and deliver services efficiently and effectively, and equitably across regions”. It presents the multi-level governance arrangements of Costa Rica and compares them with practices in OECD countries. It describes the relationship between the various levels of government in Costa Rica. It examines the institutional framework for multi-level governance and local democracy; the sub-national competencies and fiscal framework; regional equity; sub-national human resource performance and capacity strengthening; as well as multi-level co-ordination.

### Institutional framework

Costa Rica is a small country with an area of 51,100 km<sup>2</sup> and a population of around 4.9 million. 76.8% of the total population lives in urban areas and nearly a quarter of Costa Rica’s total population lives in the San José Metropolitan Area<sup>354</sup>. The country is a unitary state and its governance system is largely focused on the central level, with a particularly strong institutionally decentralised sector, while sub-national authorities only have marginal impact.

The country is divided into 7 provinces, 81 cantons and 473 districts (Art. 168 of the Constitution). There are also 8 district municipal councils which are composed of those districts that are far away from the centre of the municipality and are headed by an *Intendente* that has the same roles and responsibilities than the mayor<sup>355</sup>. Only the central government and municipalities (or *cantones*) have administrative decision-making powers. The municipal government (*municipalidad*) is composed of a municipal council and a mayor. Municipal council members and the mayor are elected for a renewable term of four years. The creation of new cantons must be approved by the Legislative Assembly, by a vote of no less than two-thirds of its members.

Municipalities show large differences across a range of features. For instance, San Carlos, with an area of 3347.98 km<sup>2</sup> and composed of 11 districts, is the largest municipality, whereas Flores, with 6.96 km<sup>2</sup>, is the smallest one. Population density also varies significantly: the centre, close to San José (Valle Central), has municipalities with more than a thousand inhabitants per square kilometre, whereas the population density of some rural and a border municipality barely exceeds 10 inhabitants per square kilometre. Box 19 provides a comparative perspective of the structure of sub-national governments in OECD countries and in Costa Rica. It shows that Costa Rica’s sub-national features are similar to small OECD countries such as Denmark, Finland, Ireland Estonia or Slovenia both in terms of population and number of municipalities.

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<sup>354</sup> CIA Factbook (n.d.), Costa Rica, <https://www.cia.gov/library/publications/the-world-factbook/geos/cs.html> (accessed 28 March 2017).

<sup>355</sup> Ley General de Concejos Municipales de Distrito. Law 8173 of 2001.

### Box 19. Sub-national government structure in the OECD countries

The multi-level governance structure of countries varies considerably in the OECD, with 9 federal states and 25 unitary states. Among OECD countries, only eight have three sub-national government tiers: the regional/federated level, the intermediary level and the municipal level. 18 countries have two sub-national tiers (regions and municipalities) and eight countries have only one sub-national tier.

#### Number of sub-national governments\* in the OECD in 2015 with figures on Costa Rica

2014-15	Municipal level	Intermediary level	Regional or state level	Total number of sub-national governments	Population (in thousand)
<b>Federations and quasi-federations</b>					
Australia	565		8	573	23,781.17
Austria	2 102		9	2 111	8,611.09
Belgium	589	10	6	605	11,285.72
Canada	4 014		13	4 027	35,851.77
Germany	11 116	402	16	11 534	81,413.15
Mexico	2 445		32	2 477	127,017.22
Spain	8 117	50	17	8 184	46,418.27
Switzerland	2 324		26	2 350	8,286.98
United States	35 879	3 031	50	38 960	321,418.82
<b>Unitary countries</b>					
Chile	345		15	360	17,948.14
Czech Republic	6 253		14	6 267	10,551.22
Denmark	98		5	103	5,676.00
Estonia	213			213	1,312.00
Finland	317		1	318	5,482.01
France	36 681	101	27	36 809	66,808.38
Greece	325		13	338	10,823.73
Hungary	3 177		19	3 196	9,844.69
Iceland	74			74	330.82
Ireland	31			31	4,640.70
Israel	252			252	8,380.40

Italy	8 047	110	20	8 177	60,802.08
Japan	1 718		47	1 765	126,958.47
Korea	227		17	244	50,617.04
Latvia	119				19.995.
Luxembourg	105			105	569.68
Netherlands	393		12	405	16,936.52
New Zealand	67		11	78	4,595.70
Norway	428		18	446	5,195.92
Poland	2 478	380	16	2 874	37,999.49
Portugal***	308		2	310	10,348.65
Slovak Republic	2 927		8	2 935	5,424.05
Slovenia	212			212	2,063.77
Sweden	290		21	311	9,798.87
Turkey	1 394		81	1 475	78,665.83
United Kingdom	389	27	3	419	65,138.23
<b>OECD35</b>	<b>134 019</b>	<b>4 111</b>	<b>527</b>	<b>138 538</b>	
<b>Costa Rica</b>	<b>89****</b>			<b>89</b>	<b>4,807.85</b>

Notes: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law. \* Includes only sub-national government with general competencies. \*\*Netherlands: 403 municipalities as of 1 January 2014. \*\*\* The regional level in Portugal includes only two overseas regions: Madeira and Azores.\*\*\*\* In Costa Rica there are 81 cantons and 8 district municipal councils.

Source: OECD (2015), *Sub-national governments in OECD countries: Key data* (brochure), OECD, Paris, [www.oecd.org/regional/regional-policy](http://www.oecd.org/regional/regional-policy) and World Bank <http://data.worldbank.org/indicator/SP.POP.TOTL>

Table 17 provides an overview of the organisation of sub-national governments across OECD countries. Costa Rica belongs to the category of unitary countries, with only one sub-national government level - like many small OECD countries.

**Table 17. Organisation of sub-national governments (SNG) in the OECD**

	<b>Countries with only one SNG level (Municipalities)</b>	<b>Countries with two SNG levels <i>Municipalities + regions</i></b>	<b>Countries with three SNG levels Municipalities + intermediary entities + regions</b>



9 federations		Australia Austria Canada Mexico Switzerland	Germany Belgium Spain United States
26 unitary countries	Estonia Finland Ireland Island Israel Luxembourg Portugal Slovenia Latvia	Chile Korea Denmark Greece Hungary Japan Norway New-Zealand Netherlands Czech Republic Slovak Republic Sweden Turkey	France Italy Poland United Kingdom

Note: Spain is a quasi-federal country. Finland and Portugal have part of autonomous regions in part of the country. There is an intermediate level in United Kingdom

Source: OECD Regional statistics (2016). 10.1787/region-data-en.

Despite the apparent simplicity of the territorial organisation, Costa Rica has a complex and fragmented institutional architecture. Next to the division between central government and municipalities, the country has different divisions of the territory for different purposes, primarily oriented towards policy co-ordination efforts:

- Division for electoral purposes. This division corresponds to the 7 provinces set in the Constitution. The Supreme Electoral Tribunal (*tribunal supremo de elecciones*) allocates to the provinces a number of Representatives in proportion to their population to reach a total of 57 representatives for the Legislative Assembly. The provincial division established in 1902, and enshrined in 1949 Constitution, appears to be outdated to Costa Rica's current reality. As it will be shown later in this section, Costa Rican government has created new divisions for strategic, regional development and sectoral purposes that do not fit the current provincial arrangements. In fact, nowadays provinces seem only to be used for electoral purposes. This adds complexity and creates duplicities in the current institutional and territorial divisions.
- Division for rural development. Law 9036 on the Transformation of the Agrarian Development Institute (*Instituto de Desarrollo Agrario*, IDA) into the Rural Development Institute (*Instituto de Desarrollo Rural*, INDER) prioritised the attention of territories to implement rural development support mechanisms and divided the country into 28 territories. This division is done following cultural, geographical and socio-economic indices. A territory can be composed of 1 to 3 cantons.
- Division for service delivery. Different institutions of the institutionally decentralised sector (i.e. responsible for service delivery in different areas) use different geographical demarcations. For instance, according to the Decree 35513 of 2009 that establishes the administrative organisation of the Regional Education Directorates (*Direcciones Regionales de Educación*, DRE) of the Ministry of Public Education (*Ministerio de Educación Pública*, MEP), the 7 provinces are divided into 28 regional directorates (the latter differ geographically from the ones used for rural development). The regional directorates for education are distributed as follows: San José (7 regional directorates), Alajuela (4 regional directorates), Cartago (2 regional directorates), Heredia (2 regional directorates), Guanacaste (4 regional directorates), Puntarenas (5 regional directorates)

and Limón (3 regional directorates). As another example, in the health sector, there are 7 medical regional directorates and 5 financial regional directorates.<sup>356</sup>

- Division for planning purposes. Executive Decree 16068 of 1985 and its Amendments (Decrees 18423 of 1986, and 17299 of 1988) establish 6 regions: *Central, Brunca, Chorotega, Huetar Caribe, Huetar Norte* and *Pacífico Central*. These six planning regions implement territory-specific components of the national development strategy set at the central level. Planning regions host regional development councils, the Regional Development Councils (*Consejos Regionales de Desarrollo*, COREDES) formed by representatives of the central government and of the municipal level, as well as key stakeholders such as community and private sector, environmental organisations, academics, indigenous and afro-descendants communities, which approve, execute and monitor regional development plans. The Ministry of National Planning and Economic Policy (*Ministerio de Planificación Nacional y Política Económica*, MIDEPLAN) provides the technical secretariat for these regional development councils. The size and (economic) importance of the regions are uneven. For example, the central region comprises 41 (out of 81) cantons - representing about 65% of the population - and it is the country's centre for economic development.

The co-existence of several co-ordinating structures at sub-national level, depending on different ministries, may generate fragmentation, gaps and work in silos<sup>357</sup>. The planning and preparation of meetings with key stakeholders on the ground by sectoral ministries have been the focus of sustained efforts, but there is a lack of inter-sectorial co-ordination. In this sense, as it will be further developed in the multi-level governance section, MIDEPLAN's current efforts to restructure and co-ordinate regional planning through the COREDES are an important step towards a clearer and simplified organisational structure of the State and a draft law 19959 on Regional Development of Costa Rica (*Desarrollo Regional de Costa Rica*) seeks to unify the regional distribution as discussed below in the subsection on institutional arrangements for multi-level co-ordination.

## Local Democracy

Since 1998, i.e. after the change of the municipal code, mayors have been elected directly by citizens. Before, citizens only elected the members of the municipal council which then elected the mayor. For the 2016 local elections, Costa Ricans had to elect 6.069 representatives, including mayors, municipal and district councilors, the heads of the 8 district municipal councils, i.e. the *intendentes*, and the presidents of the district councils within the municipalities, called *síndicos*<sup>358</sup>. These numbers reflect the institutional fragmentation of the administrative and political territorial division for such a small country. The low turnout for the most recent municipal elections in February 2016 (40.8%) remains a challenge, although the situation substantially improved from the 2010 elections where only 28.5 of the electorate voted<sup>359</sup>. The Electoral Code (*Código Electoral*) law 8765, allows municipal authorities to run for immediate re-election, unlike national authorities that must have at least an interim period before being able to run for re-election.

<sup>356</sup> Centro de Desarrollo Estratégico e Información en Salud y Seguridad Social (n.d.), El Sistema Nacional en Costa Rica: Generalidades, <http://www.cendeiss.sa.cr/cursos/sistemanacsaludgeneral.pdf>.

<sup>357</sup> Information provided during the Accession mission.

<sup>358</sup> Tribunal Supremo de Elecciones (n.d.), Procesos Electorales: Elecciones Nacionales y Municipalidades, [http://www.tse.go.cr/pdf/ifed/procesos\\_electorales.pdf](http://www.tse.go.cr/pdf/ifed/procesos_electorales.pdf).

<sup>359</sup> Tribunal Supremo de Elecciones (2016), Elecciones Municipales 2016, <http://www.tse.go.cr/resultados2016.htm>.

Article 2 of the 2009 electoral code introduced gender quotas at the local level, stating that 50% of all candidates on a party list must be female and also introduced the alternation mechanism, that is, two people of the same sex may not be listed subsequently. Electoral authorities can reject lists that do not comply.

### Sub-national competencies and fiscal framework

The constitution allocates a large, yet undefined, power to municipalities. Their action is mostly framed and organised by the central government and national regulation. The general principles of territorial decentralisation are set forth in the Constitution. Since 1949, several reforms have intended to strengthen the sub-national level. Article 4 of Law 7794 on the Municipal Code (*Código Municipal*) confirms the political, administrative and financial autonomy of the municipalities.

The Municipal Code also defines the attributions of the municipalities and their council (Article 4 and 13). Municipalities have own, shared and transferable competencies. Their own competencies include managing and providing some municipal public services; setting and collecting municipal fees and taxes; convening citizens to popular consultations; promoting participatory and inclusive local development; and advancing local public policies in favour of gender equality. Some municipal governments are responsible for administrating a large territory, which encompasses a large number of districts. By agreement with other municipalities, or with the appropriate government agency or body, the municipality may carry out, jointly or individually, services or works in the canton or region. Finally, according to Law 4240 on Urban Planning (*Planificación Urbana*), the municipality has the authority to dictate the urban regulatory plan and all guidelines pertaining to spatial planning.

The allocation of responsibilities to Costa Rican municipalities is described in the General Law 9329 on the Transfer of Competence and Resources adopted in 2010 (*Ley General de Transferencia de Competencias y Recursos a los Municipios*), aiming to reactivate decentralisation in accordance with art 170 of 2001 Constitution. The law also stipulates that any function not explicitly granted to central authorities can be transferred to municipalities (with the exception of education and healthcare where municipalities can only support the Executive while developing those competencies<sup>360</sup>). However, generally, municipalities limit their activities to their own competencies due to the lack of sufficient resources.

Sub-national governments currently represent 4.1% of general government expenditure, 1.2% of general government capital, 4.5% of general government revenues and 0.5% of general government debt, as shown in Table 2. Budgets of municipalities are approved (compliance check) by the Comptroller General (*Contraloría General de la República, CGR*) (Article 184. §2 of the Constitution).

**Table 18. Sub-national government finance in Costa Rica**

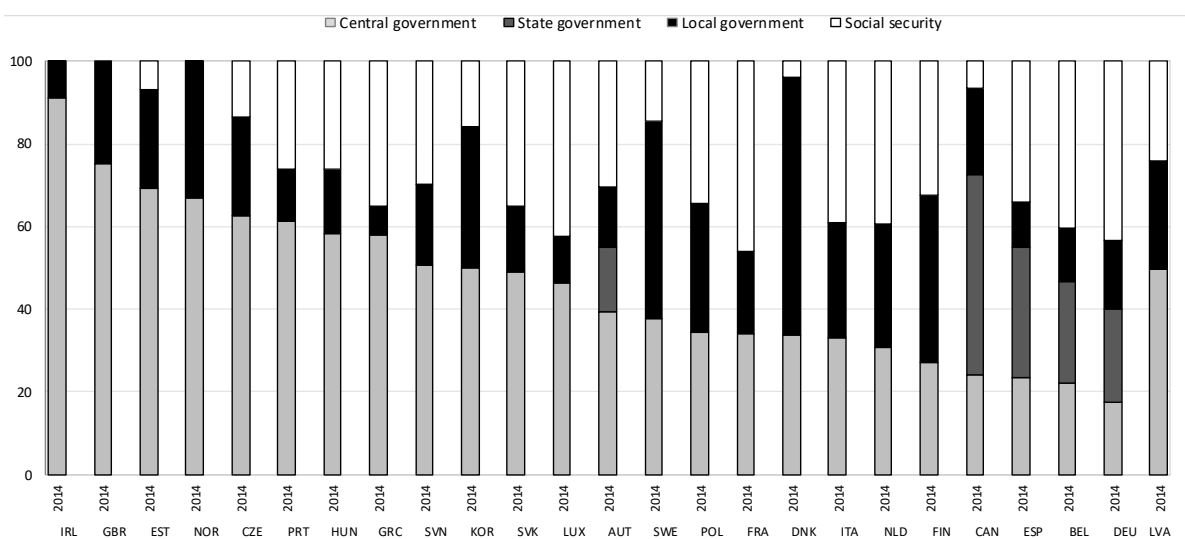
Expenditure	% GDP	% General Government (same expenditure category)	% Sub-national Government
Total expenditure (2013)	1.2%	4.1%	100%
Current expenditure	1.0%	-	8.5%
Staff expenditure	0.5%	4.1%	41.8%
Investment	0.2%	11.6%	15.9%

<sup>360</sup> See Article 3, 2010 Executive Decree – Bylaw to the General Law on Transfer of Competencies from the Executive Power to Municipalities N° 36004-PLAN (*Reglamento a la Ley General de Transferencia de Competencias del Poder Ejecutivo a las Municipalidades*).

Source: OECD/ UCLG(2016), Sub-national Governments around the world: Structure and finance. Costa Rica Country Profile

Compared with the OECD average, Costa Rica's public expenditure is low<sup>361</sup>. The institutionally decentralised sector accounts for a large share of it (around 41%), while the territorially decentralised sector only accounts for a minor share (less than 4%). Sub-national expenditure is low in all domains, meaning that Costa Rica's sub-national governments play a marginal role in delivering services to their communities, including direct investment or public procurement. As compared to OECD practices, Costa Rica's sub-national represents a fraction of the average contribution of sub-national authorities in OECD Members. As shown in Figure 55, only Greece, with 6.7%, and Ireland, with 8.8%, have a similar, low expenditure level at the local level.

**Figure 55. Distribution of general government expenditures across levels of government, 2014**



Note: In 2014, data for the OECD non-European countries (apart from Canada and Korea) and for Iceland, Turkey and Switzerland are not available. Data for Turkey are not included in the OECD average due to missing time-series. Transfers between levels of government are excluded (apart from Australia, Korea, Japan and Turkey). Local government is included in state government for Australia and the United States. Australia does not operate government social insurance schemes. Social security funds are included in central government in Ireland, New Zealand, Norway, the United Kingdom and the United States.

Source: OECD National Accounts Statistics (database) from Government at a Glance 2015.

Law 8131 on Financial Administration of the Republic and Public Budgets from 2001 (*Ley de Administración Financiera de la República y Presupuestos Públicos*) sets the rules to limit the expenses or deficits; however, they do not apply to local governments' economic and financial regimen. In addition, the Executive Branch may not intervene in, or limit budget execution by, local governments, as it would be contrary to the municipal autonomy enshrined in Article 170 of the Constitution.

Local governments can raise their own taxes, after authorisation by the Legislative Assembly (Art. 121 of the Constitution). Municipalities are entitled to collect municipal taxes such as property tax (real estate), register (patents) and services provided to citizens (waste collection, for instance). For most municipalities, local taxes represent the greatest source of revenues. Two draft law initiatives (n° 19329 and 19121) seek

<sup>361</sup> OECD (2015), *Costa Rica: Good Governance, from Process to Results*, OECD Public Governance Reviews, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264246997-en>

to strengthen the mandate of the municipalities to approve new taxes, and hence, to strengthen their financial autonomy.

### *Transfer of Competencies*

In order to strengthen the decentralisation process, Article 170 of the Constitution was revised in 2001, stipulating that the Ordinary Budget of the Republic will allocate no less than ten percent (10%) of the ordinary revenues to the municipal level. Only in 2010, Law 8801, the General Law on the Transfer of Competencies from the Executive Branch to the Municipalities (*Ley General de Transferencia de Competencias del Poder Ejecutivo a las Municipalidades*) established the mechanism to implement the gradual increase of the budget allocated to the municipal level, at a rate of one point five percent (1.5%) per year, until completing the total ten percent (10%). Fifteen years after the constitutional amendment and five years after approval of Law 8801, the first special law for the transfer to municipalities of the first 1.5 percent of the ordinary budget of the Republic was published on 17 November 2015. This law, the First Special Competencies Transfer Law: Full and Exclusive Responsibility of the Cantonal Road Network (*Primera Ley Especial para la Transferencia de Competencias: Atención Plena y Exclusiva de la Red Vial Cantonal*), targeted the transfer of competencies related to the full and exclusive attention of the country's road network.

The country's central planning body, MIDEPLAN, is the ministry in charge of organising the transfer of competencies. For that purpose, a Consultative Council was created and is headed by MIDEPLAN. In addition to the Minister of Planning, the Consultative Council is composed of the Minister of Finance (*Ministerio de Hacienda*), representatives of the Municipal Institute for Promotion and Advisory Services (*Instituto de Fomento y Asesoría Municipal*, IFAM), the Local Governments National Union (*Unión Nacional de Gobiernos Locales*, UNGL), the National Association of Mayors and Governors (*Asociación Nacional de Alcaldías e Intendentes* - ANAI), the Network of Municipal Women (*Asociación de Mujeres Municipalistas*), and the National Confederation of Development Associations (*Confederación Nacional de Asociaciones de Desarrollo* – Conadeco), as well as - on an ad hoc basis - a representative of the ministry that will transfer competencies. In the case of the transfer of the competency for cantonal roads, the Ministry of Public Works and Transportation (*Ministerio de Obras Públicas y Transportes*) participated in this Consultative Council<sup>362</sup>. An evaluation with national and subnational governmental entities is being carried out by the Technical Secretariat for the Transfer of Competencies in order to assess the transfer process of the cantonal road network.

MIDEPLAN faces multiple challenges in order to identify transferable budgetary resources and competencies. Since the Constitution only states a transfer ceiling and does not specify the topics, nor the priority criteria for allocation of competencies, the process has suffered from important delays in drafting and submitting a proposal to the Legislative Assembly. There is no evidence of a consultation process with municipalities prior deciding the competencies to be transferred. In some OECD countries that went through similar reform processes, consultative bodies were established to foster strategic decision-making. In Estonia, for instance, a cooperative body was formed with representatives from the corresponding central-government ministries and from the national-level municipal associations to discuss the topics and

<sup>362</sup> Mideplan (n.d.), MIDEPLAN convoca Consejo Consultivo para la revisión de reglamentos a la Ley 9329 que transfiere a las municipalidades la atención plena y exclusiva de la red vial cantonal, <https://www.mideplan.go.cr/prensa/118-noticias-comunicados/1621-mideplan-convoca-consejo-consultivo-para-la-revision-de-reglamentos-a-la-ley-9329-que-transfiere-a-las-municipalidades-la-atencion-plena-y-exclusiva-de-la-red-vial-cantonal>.

competencies to be transferred, as well as the main budget issues and the financial obligations associated with any proposed change in tasks<sup>363</sup>.

While it is too early to make an assessment on the impact of the first transfer of competencies, local public officials and elected representatives from municipalities interviewed during the fact-finding mission stressed some difficulties in the execution of works of cantonal roads. For instance, the budget transfer in different instalments during the year is delaying many of the cantonal road works and sometimes hampers the proper execution of the annual budget of the municipalities.

### Inter-regional equity

Costa Rica's Gini coefficient of 0.487 is very near the average of LAC region (0.490)<sup>364</sup>. But inequality is relatively high compared to OECD standards and is rising since the mid-1990s. It is currently at its maximum historical value, despite an improvement in overall macroeconomic performance<sup>365</sup>.

Inter-regional differences do exist, for instance in the area of educational services (schools and high schools) and health (e.g. hospitals). The Central region has, overall, more and better quality goods and services. In addition, specific challenges to foster economic growth and well-being exist for those geographical areas which primarily consist of ecologically protected land, as opposed to economically exploitable territory (e.g. Dota canton which consists for 80% of protected area).

The Human Development Index also benchmarks the 81 cantons of the country. The difference between the most advanced Santa Ana, 0.944, and Los Chiles, 0.617, is substantial<sup>366</sup>, reflecting the gap between urban and rural areas and the existence of significant disparities. Yet, overall, the situation has improved over the last years. According to the Map of the Cantonal Human Development Index, in 2014 66.7% of the population was part of the "high" and "very high" category, while the figure only reached 50% in 2010. However, 37% of the cantons have weakened their human development index as compared to 2010 and in 13% of the municipalities the situation did not improve for the same period<sup>367</sup>.

Currently, Costa Rica does not have a national fiscal equalisation system<sup>368</sup> to alleviate regional differences. Furthermore, the country does not have formal redress mechanisms in service delivery for citizens and businesses, nor special court procedures to redress citizens or a business when they face a level of service that is lower to that of other regions or to the national inter-regional average. The country's Service Control Offices (*Contralorías de Servicios*) primarily operate in the Central region. Nevertheless,

<sup>363</sup> OECD (2011), *Estonia: Towards a Single Government Approach*, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264104860-en>.

<sup>364</sup> OECD (2016), *OECD Economic Surveys: Costa Rica 2016: Economic Assessment*, OECD Publishing, Paris. [http://dx.doi.org/10.1787/eco\\_surveys-cri-2016-en](http://dx.doi.org/10.1787/eco_surveys-cri-2016-en).

<sup>365</sup> Ibid.

<sup>366</sup> Atlas de Desarrollo Humano Cantonal de Costa Rica (2016), Ranking según IDH 2014, <http://desarrollohumano.or.cr/mapa-cantonal/index.php/ranking-idh#ranking-por-idh>.

<sup>367</sup> Atlas de Desarrollo Humano Cantonal de Costa Rica (2016), Atlas Cantonal, <http://desarrollohumano.or.cr/mapa-cantonal/index.php/mapa-cantonal>

<sup>368</sup> Fiscal equalisation is a transfer of fiscal resources across jurisdictions with the aim of offsetting differences in revenue raising capacity or public service cost. Its principal objective is to allow sub-central governments to provide their citizens with similar sets of public services at a similar tax burden even if incomes differ across areas. Fiscal equalisation can be seen as the natural companion to fiscal decentralisation as it aims at correcting potential imbalances resulting from sub-central autonomy. (Blöchliger, H. and Charbit, C., *Fiscal Equalisation*, OECD Economic Studies No. 44, 2008/1).

under the *amparo* principle, every Costa Rican citizen has the right to maintain or restore the enjoyment of his or her rights established in the Constitution.

The only mechanism to monitor sub-national public administration performance is the Office of Comptroller General through an Integrated Municipal Information System (*Sistema Integrado de Información Municipal* - SIIM). The SIIM, in 2015, had a 61-indicator Municipal Management Index (*Índice de Gestión Municipal*, IGM) to measure local government performance in the following thematic areas: institutional management and development; planning, citizen participation and accountability; environmental development management; economic services management; and social services management. The index has become a reference tool among Costa Rican municipalities. It is generally highly considered by elected and public officials as a useful tool to improve performance of the municipality and overall service delivery, but territorial differences - particularly between urban and rural and remote areas - are not explicitly reflected in the index.

### **Human resources performance and capacity strengthening**

Similarly to many OECD countries, Costa Rican municipalities individually regulate, via internal regulations for services and group agreements, all dispositions related to employee-employer relations with their public servants. This includes selecting and recruiting municipal staff.

Two institutions at national level provide training to the municipalities in order to strengthen local administrations:

- The Municipal Institute for Promotion and Advisory Services (*Instituto de Fomento y Asesoría Municipal*, IFAM)<sup>369</sup> aims to strengthen the municipalities through technical assistance and funding to improve municipal public services and the municipal public administration. Its activities cover diverse areas of the municipal tasks, from political management and administrative-financial matters (preparing resource and human management tools, job position manuals, salary scales, recruiting, training, promotions, etc.) to projects related to the infrastructure and equipment (civil work, machinery and equipment, etc.).
- The National Union of Local Governments<sup>370</sup> and municipalities work together to strengthen municipal management, with technical support and assistance. The UNGL has developed the Human Resource Management instrument for the Municipal Administrative Career (General Manual on Job Classifications, Manual on Recruitment, Selection and Orientation, Manual on Performance Assessment, Regulations of the Municipal Administrative Career, and the National Salary Scale).

In addition, other initiatives are taken by national institutions to foster capacity and initiatives in specific areas. These include for instance:

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<sup>369</sup> Created in 1971 by Law 4716 Law on the Organization and Operation of the Municipal Institute for Promotion and Advisory Services, *Ley de Organización y Funcionamiento del Instituto de Fomento y Asesoría Municipal*. More information: [www.ifam.go.cr/index.php/sobre-ifam/informacion-general/](http://www.ifam.go.cr/index.php/sobre-ifam/informacion-general/).

<sup>370</sup> More information: <http://ungl.or.cr/>

- The National Directorate of Community Development (*Dirección Nacional de Desarrollo de la Comunidad*, DINADECO)<sup>371</sup> supporting the creation of associations with legal personality and legal frameworks to foster citizen participation at the local level;
- the National Women Institute (*Instituto Nacional de las Mujeres*, INAMU) providing advice to local entities, including municipalities, advice and technical support to implement joint projects that contribute to the advancement of women and the construction of solidary, equitable, integrated and participatory local development that can guarantee gender equality and equity.

## Multi-level co-ordination

### *Institutional arrangements for multi-level co-ordination*

The main mechanisms used to coordinate development between the national and sub-national levels are the National Development Plan (*Plan Nacional de Desarrollo*, PND), the National Public Investment Plan (*Plan Nacional de Inversión Pública*, PNIP) and the Regional Development Plans (*Planes Regionales de Desarrollo*, PDR).

At sub-national level, MIDEPLAN's Executive Decree 39453 of 14 October, 2015 created the Regional Development Councils, COREDES, as a new body in each of the 6 regions. These councils aim to coordinate and articulate policies, plans, programs as well as institutional and inter-institutional projects, through the participation of the different stakeholders involved in the strategic development process.

The COREDES operate according to the regionalisation map established in Decree 16068 of February 15, 1985, which divides the country into six regions for planning, administration and development. For the time being, the COREDES of the following regions: Brunca, Chorotega, Huetar Caribe, Huetar Norte and Pacifico Central have been created. Only the one from the Central Region has still to be established, which faces specific challenges because of the complexity of the region, i.e. the number of actors to be involved etc.

A draft law 19959 on regional development prepared by MIDEPLAN is currently under discussion at the Legislative Assembly and aims to enshrine the COREDES as a key hub at regional level gathering all key stakeholders from the sub-national level, the line ministries and the institutionally decentralised sector working at the local level. The draft law also aims to consolidate MIDEPLAN's regions as the common framework at sub-national level for Ministries and decentralised institutions. It also intends to create a new fund for regional development (*Fondo Nacional para el Desarrollo Regional*) that would contribute to implement national development policies and reduce regional disparities.

Furthermore, the Organic Regulation of the Executive Branch (*Reglamento Orgánico del Poder Ejecutivo*) No. 38536 (2014) introduces the Regional Inter-Sectorial Committees. Each region has Regional Inter-Sectorial Committees, composed of the highest institutional representatives of key lines Ministries: Social Affairs; Employment and Economic Growth; Environment; Infrastructure; and Identity, Culture and Sports. Ministers must ensure that any institution under their purview that is not present in the region is duly represented in the Regional Inter-Sectorial Committees to articulate development programmes, projects and activities. As shown in Figure 56 underneath, COREDES are the most strategic and broad

<sup>371</sup> Created in 1967 by Law 3859 on Community Development (*Ley sobre Desarrollo de la Comunidad*).  
More information: <http://www.dinadeco.go.cr/>



platform, whereas the Regional Inter-Sectorial Committees aim at coordinating line Ministries on the ground.

At municipal level, the Cantonal Inter-institutional Co-ordination Councils (*Consejos Cantonales de Coordinación Interinstitucional*, CCCI) are the formal co-ordination mechanism between the central and local level of government. They were established by Article 18 of the General Law 8801 of 2010 on Transfer of Competences from the Executive Branch to the Municipalities (*Ley General de Transferencia de Competencias del Poder Ejecutivo a las Municipalidades*), which states that “*Inter-institutional canton coordination councils are hereby created as a political coordination office between the diverse public entities that represent the cantons. The purpose is to coordinate the design, execution and oversight for any public policy with a local effect. The councils will be presided over by the Mayor's Office of each municipality.*” The CCCI are currently used as a key co-ordination mechanism to facilitate co-ordination and integration of work done by different stakeholders at the municipal level. Sixty out of 81 municipalities currently have their CCCI in place.

CCCI have the potential to become, together with COREDES at regional level, key hubs within the national governance system. CCCIs are the product of a bottom-up process, steered by local mayors. Also, they respond to a key need of Costa Rica’s governance, i.e. to improve the co-ordination amongst autonomous agencies, and between them and local government. Finally, CCCIs contribute to knowledge pooling – which means that all stakeholders accept to put together information leading policy making. However, challenges remain, as indicated during the fact-finding mission. First, municipalities may lack capacities and funds to create CCCIs and guarantee their functioning (an office, some basic human resources, etc.). Second, representatives from public companies and autonomous agencies do not always recognize the technical leadership of local mayors and the CCCI secretariat, which negatively affects the capacity of councils to co-ordinate policies. Third, citizens have limited possibilities to participate in the councils. The possibility to involve local stakeholders, including private businesses, has initially been ignored by the legislator, who considered the presence of the mayor as sufficient to represent all the instances of local constituencies in a given CCCI. Only recently the law has been amended to give citizens the possibility to play a more active role in these local instances.

Further in support of local development, the current government launched *Tejiendo Desarrollo* (“weaving development”) as a policy framework supporting community-led development processes. The objectives of the network are the following: to promote the participation of civil society in development processes, to articulate the sectoral organisation of the government and to design policies that respond to the priorities of local actors. The National Development Plan describes the network and its two key components: to promote development processes in specific territories (10 territories which comprise 34 cantons) and to develop a National Policy on Regional and Territorial Development with civil society participation.

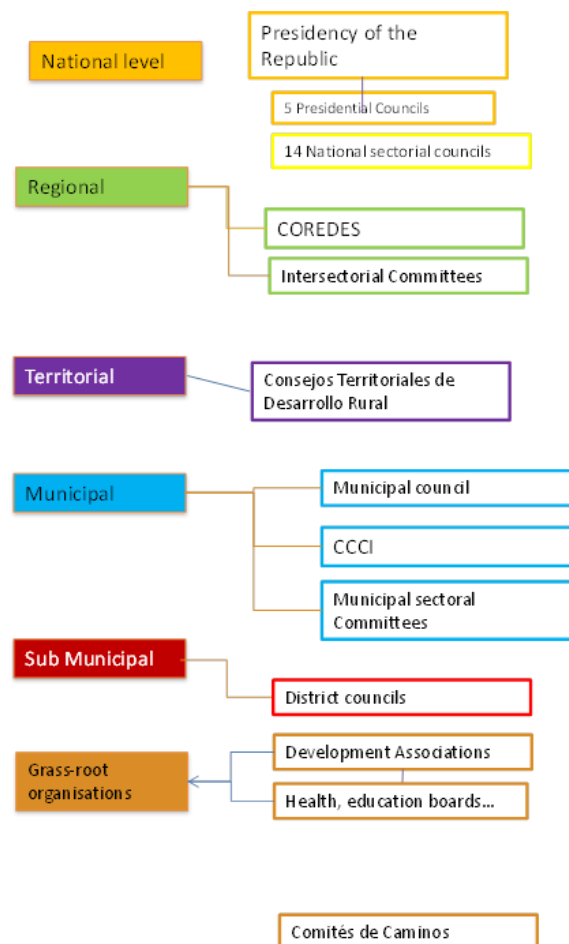
The Institute for Rural Development (INDER) is in charge of the territorial development policy and MIDEPLAN is in charge of the regional development component. The following institutions are part of the core group of this network: Office of the First Lady, MIDEPLAN, the Institute of Municipal Development and Assistance (*Instituto de Fomento y Asesoría Municipal*, IFAM), INDER and DINADECO. The extended network counts the participation of the Ministry of Agriculture and Livestock (*Ministerio de Agricultura y Ganadería*, MAG), Ministry of Public Works and Transportation, the Joint Social Welfare Institute (*Instituto Mixto de Ayuda Social*, IMAS), the Ministry of labour and social Security (Ministerio de Trabajo y Seguridad Social, MTSS), the Ministry of Housing and Urban Development (*El Ministerio de Vivienda y Asentamientos Humanos*), the Ministry of Culture, the Vice-Ministry of Youth (*Ministerio de Cultura y Juventud*, MCJ), the National Institute for Women, the National Commission for Emergencies (*Comisión Nacional de Emergencias*), National Institute of Rural and Urban Housing (*Instituto Nacional de Vivienda y Urbanismo*), National Institute for Vocational Training

(*Instituto Nacional de Aprendizaje*, INA), Costa Rican Tourism Board (*Instituto Costarricense de Turismo*), Vice-Ministry of Telecommunications (*Vice-Ministerio de Telecomunicaciones*), Ministry of Environment and Energy (*Ministerio de Ambiente y Energía*), Costa Rican Institute for Water Supply and Sewerage (*Instituto Costarricense de Acueductos y Alcantarillados*), National System of Conservation Areas (*Sistema Nacional de Áreas de Conservación*), Ministry of Economy, Industry and Trade (*Ministerio de Economía, Industria y Comercio*), Ministry of Sports (*Ministerio del Deporte*).

In addition to the multi-level coordination efforts cited above, further coordination efforts include the federations of municipalities and the Territorial Councils for Rural development (*Consejos Territoriales de Desarrollo Rural*, CTDR) under the 8 regions set up by INDER to contribute to territorial development. This territorial co-ordinating body is created and co-ordinated by INDER in order to promote joint territorial and rural development plans, in close consultation with key stakeholders on the ground, especially coming from local communities and private sector (farmers, minorities, among others).

Figure 56 shows the current institutional arrangements for strategic planning co-ordination and illustrates the complexity of the multi-level set up in Costa Rica. The different territorial divisions and the overlap of co-ordination mechanisms raise questions not only about the real need for so many co-ordinating bodies in a small country, but also about its effectiveness (i.e. duplication of participation in multiple co-ordination structures by stakeholders at the local level).

**Figure 56. Institutional arrangements for strategic planning co-ordination in Costa Rica**



Source: internal figure provided by Mideplan for the Programa Tejiendo Desarrollo

### *Associations of municipalities*

In parallel to the previously described co-ordinating planning structures, Costa Rica has a multiplicity of actors that give support to municipalities. The Federations or *mancomunidades* are inter-municipal associations that mainly provide technical support for operational public services to its members. Eleven federations currently intervene at the sub-national level in Costa Rica and 3 national associations of municipalities<sup>372</sup> play a prominent role in the relationship between the central and the local level.

The Local Governments National Union (UNGL) gathers a vast majority of the municipalities of the country and aims to represent the political and institutional interests of municipalities vis-à-vis central government. In addition to the traditional competencies referring the defence of the political interests of municipalities, the municipal code states that UNGL has also the responsibility of co-ordinating the National Council for Capacity-Building (*Consejo Nacional de Capacitación Municipal*, CONACAM) and overseeing the implementation of the Descriptive guide for general positions, wages and salaries (*Manual Descriptivo Integral de Puestos y la Escala de Salarios Única para el Régimen Municipal*)<sup>373</sup>, on which the municipal administrative career is based. For that purpose, the UNGL is member of different commissions and boards created by the central government and aimed at co-ordinating with key stakeholders on specific topics. More specifically, the UNGL acts on behalf of its municipalities members in the following bodies:

- Public Transports Council (*Consejo de Transporte Público -CTP*);
- Road Administration National Council (*Consejo Nacional de Vialidad -CONAVI*);
- Road safety Council (*Consejo de Seguridad Vial -COSEVI*);
- Comprehensive Agricultural Programme (*Programa Integral del Mercado Agropecuario -PIMA CENADA*);
- National Directorate of Community Development (*Dirección Nacional de Desarrollo de la Comunidad -DINADECO*);
- Joint Commission for Specific Expenditures (*Comisión Mixta Partidas Específicas*);
- Municipal Development Fund (*Fondo Desarrollo Municipal*);
- National Council for Municipal Capacity Building (*Consejo Nacional de Capacitación -CONACAM*);
- Health Promotion Commission (*Comisión para la Promoción de la Salud*);
- Consultative Platform on Solid Waste (*Plataforma Consultiva de Residuos Sólidos*);

<sup>372</sup> Local Governments National Union (UNGL), The National Association of Mayors and Intendentes (*Asociación Nacional de Alcaldías e Intendentes - ANAI*) and The Metropolitan Federation of Municipalities of San José (*Federación Metropolitana de Municipalidades de San José – FEMETROM*)

<sup>373</sup> Vlex (n.d.), Manual descriptivo de Puestos Integral para el Régimen Municipal, de 28 de Octubre de 2010, <https://vlex.co.cr/vid/manual-puestos-integral-gimen-municipal-484887502>.

- Consultative Council on the Process of transfer of competencies.

The National Association of Mayors and *Intendentes* (*Asociación Nacional de Alcaldías e Intendentes* - ANAI) is an organisation created to promote, defend and strengthen mayors and *intendentes* - heads of the 8 district municipal councils- as key stakeholders in promoting local governments' development.

The Metropolitan Federation of Municipalities of San José (*Federación Metropolitana de Municipalidades de San José* – FEMETROM) is the association created in 2004 under article 10 of the Municipal Code that promotes inter-municipal cooperation and is composed of 10 municipalities of the metropolitan area including its capital San José (Alajuelita, Aserrí, Curridabat, Escazú, Goicoechea, Mora, Moravia, San José, Santa Ana and Tibás). Its aims are limited to spatial planning and land-use management<sup>374</sup>.

The UNGL is the only association that is currently officially included in the major consultative bodies created at the central level, but contrary to many OECD countries such as Spain, Sweden and Switzerland, Costa Rica has no institutionalised mechanisms and procedures to integrate local government associations in a concerted and formal dialogue (Box 20). Rather, consultation in Costa Rica is decided on a case by case basis.

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<sup>374</sup> Rosales, M. and S.V. Carmona (2006), Latin America, [http://www.cities-localgovernments.org/gold/Upload/gold\\_report/06\\_latinamerica\\_en.pdf](http://www.cities-localgovernments.org/gold/Upload/gold_report/06_latinamerica_en.pdf).

### Box 20. Integrating lower levels of government in consultation procedures: The cases of Spain, Sweden and Switzerland

In **Spain**, the National Commission for Local Administrations (CNAL) is the standing body for collaboration between central and local governments. It is composed of an equal number of representatives of central and local governments and chaired by the Ministry of Finances and Public Administration. Local government representatives are designated by the National Association of Local Governments. The CNAL issues a report on state draft laws and regulations regarding local government and its administration. The other body of co-operation between central, regional and local governments is the Sectoral Conference for Local Affairs.

In **Sweden**, the process that precedes the development and passage of a new law includes setting-up committees of inquiry. The terms of reference of such committees are stipulated by the government and its members, who include special advisers and experts appointed by the lead minister concerned. Experts are often recruited from local and regional authorities and from the Swedish Association of Local Authorities and Regions (SALAR). Committees normally hold public meetings, and their results are extensively circulated for comments. Even if there are only limited formal consultation mechanisms, groups and citizens present their views through the normal work of local municipal councils and committees in the course of their normal public business. Informal consultation mechanisms also involve contacts with local enterprises and business organisations, municipalities, SALAR or other state agencies.

In **Switzerland**, extensive consultation procedures are used at cantonal level, and to integrate cantonal views at the federal level following Article 45 of the federal Constitution. Since cantons are in charge of the implementation of federal laws, the Confederation informs them in advance and in detail about future projects, and is obliged to involve them in the consultation procedure. The participation of the Association of Cantons in the consultation is important, but not the only way of participating. Cantons can also raise their voice through representatives in mixed working groups or institutionalised meetings. The commissions of the Council of States consult with cantons on the applicability of laws.

Source: CNAL. Ministry of Finance and Public Administration. Government of Spain, OECD (2007b), *Multi-level Regulatory Capacity in Sweden*, OECD Publishing, Paris, [www.oecd.org/gov/regulatory-policy/38287547.pdf](http://www.oecd.org/gov/regulatory-policy/38287547.pdf).  
 OECD (2007c), *Government Capacity to Assure High Quality Regulation in Switzerland*, OECD Publishing, Paris, [www.oecd.org/regreform/regulatory-policy/38286959.pdf](http://www.oecd.org/regreform/regulatory-policy/38286959.pdf).  
 OECD (2016), *OECD Public Governance Reviews: Peru: Integrated Governance for Inclusive Growth*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264265172-en>

The Big Metropolitan Area (*Gran Área Metropolitana* - GAM) of San José is a geographical area composed of 31 municipalities and the capital San José. It is primarily used for spatial planning purposes and GAM represents almost 65% of the population of the country (2.6 million). Like other OECD metropolitan areas such as Barcelona or Vancouver, GAM has a strategic planning policy (GAM Plan 2013-2030), but it lacks a specific metropolitan structure to foster co-ordination in the delivery and management of key public urban services (i.e. public transport, waste and solid management). OECD countries have different experiences regarding metropolitan governance, which can vary from structures with technical management members and dedicated exclusively to specific topics like transport or economic development (e.g. Metropolitan Region of Rotterdam-The Hague), to cases where an assembly of elected members can decide on a wide ride of topics (e.g. London) (see Table 19).

Table 19. Overview of selected metropolitan governance models in OECD countries

Examples	Metropolitan governance structure	Coverage of metropolitan governance structure	Competencies
Non-elected inter-municipal authorities			
Metropolitan Region of Rotterdam-The Hague (MRDH)	- General management of 27 members - Executive Board of 5 members	2.2 million people across 23 municipalities	- Transport - Economic development

Barcelona ( <i>Àrea Metropolitana de Barcelona, AMB</i> )	<ul style="list-style-type: none"> <li>- Metropolitan Council composed of 90 members (the mayors from all 36 municipalities and city councillors appointed by their municipalities)</li> <li>- President of AMB (mayor of Barcelona)</li> <li>- 485 staff (as of 2014)</li> </ul>	3.2 million people across 36 municipalities	<ul style="list-style-type: none"> <li>- Strategic planning</li> <li>- Spatial planning</li> <li>- Transport and mobility</li> <li>- Water</li> <li>- Waste treatment</li> <li>- Social cohesion</li> <li>- Economic development</li> </ul>
Montreal (Montreal Metropolitan Community, MMC / Communauté métropolitaine de Montréal, CMM)	<ul style="list-style-type: none"> <li>- Community Council composed of 28 members (mayors and city councillors)</li> <li>- President (mayor of Montreal)</li> </ul>	4 million people across 82 municipalities	<ul style="list-style-type: none"> <li>- Spatial planning</li> <li>- Transport</li> <li>- Economic development</li> <li>- Social housing</li> <li>- Metropolitan infrastructure and services</li> <li>- Waste management planning</li> <li>- Wastewater sanitation</li> </ul>
Vancouver (Metro Vancouver)	<ul style="list-style-type: none"> <li>- Board composed of 38 members representing the 23 local authorities</li> <li>- 1500 staff</li> </ul>	2.5 million people across 23 local authorities (21 municipalities, one Electoral Area, one treaty First Nation)	<ul style="list-style-type: none"> <li>- Regional services, including three core utilities (water, liquid waste, solid waste)</li> <li>- Regional planning (Regional Growth Strategy, RGS)</li> </ul>
<b>Elected metropolitan governments</b>			
Portland (Portland Metro)	<ul style="list-style-type: none"> <li>- Metropolitan Council composed of six members (one in each district), directly elected every four years</li> <li>- President of the Council, directly elected region-wide every four years</li> </ul>	1.5 million people across 25 municipalities	<ul style="list-style-type: none"> <li>- Land-use planning (e.g. urban growth boundary)</li> <li>- Transport planning (as an MPO)</li> <li>- Managing several park facilities</li> <li>- Handling waste disposal</li> <li>- Maintains landfills and recycling transfer stations</li> <li>- Owning and operating some major facilities (e.g. zoo, convention centre, exposition centre)</li> </ul>
Stuttgart (Verband Region Stuttgart, VRS)	<ul style="list-style-type: none"> <li>- Regional assembly of 93 members directly elected every 5 years by proportional vote</li> <li>- President of the regional assembly and regional director, both elected by the members of the regional assembly</li> </ul>	1.96 million encompassing the city of Stuttgart and 5 surrounding districts (total of 179 cities and municipalities)	<ul style="list-style-type: none"> <li>- Regional spatial planning</li> <li>- Transport infrastructure and operation (including suburban rail S-Bahn)</li> <li>- Regional economic and touristic development</li> </ul>
London (Greater London Authority, GLA)	<ul style="list-style-type: none"> <li>- London Assembly of 25 members directly elected by proportional representation</li> <li>- Mayor of London directly elected every four years</li> </ul>	8.2 million across the city of London and 32 boroughs	<ul style="list-style-type: none"> <li>- Land use (London Plan)</li> <li>- Transport (Transport for London)</li> <li>- Policing (Mayor's Office for Policing and Crime)</li> <li>- Fire and rescue (London Fire and Emergency Planning Authority)</li> <li>- Development (GLA Land and Property)</li> </ul>

Source: OECD (2016), OECD Territorial Reviews: The Metropolitan Region of Rotterdam-The Hague, Netherlands, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264249387-en>.

As illustrated in this section, non-institutionalised system of communication and co-operation between the central and the local level happens either through the planning consultation processes (e.g. COREDES and

others), or through the association of municipalities (mainly UNGL). Each of them are independently connected to the central level, but there is no real interaction amongst them, which may duplicate communication and co-ordination.

### **Preliminary assessment and recommendations**

The constitutional reform of 2001 has formally allocated more power and budget to sub-national levels of government, the latter currently only representing about 4% of total general government consolidated expenditure. The government elected in 2014 has put decentralisation - and hence, multi-level governance in a broader sense - as a priority on its reform agenda, including the implementation of the 2001 constitutional reform, which has been pending for more than a decade. In addition, it has launched a number of initiatives to facilitate multi-level coordination, and policy development and implementation.

However, the delay in implementing the 2001 constitutional reform implies that subnational authorities have still limited budget, implementation capacity and impact on service delivery. As for many OECD member countries, Costa Rican local governments face an administrative capacity challenge which can hinder the provision of quality public services at the local level. In addition, it has been observed that access to basic services has territorial features, which could be better addressed by more sophisticated multi-level governance. In order to promote inclusive growth and the reduction of regional disparities, sub-national authorities need to be supported by a sound multi-level governance framework.

Costa Rica's multi-level governance arrangements are particularly complex and risk to provoke overlaps, dysfunctions and duplications. Several co-ordination mechanisms co-exist at sub-national level and there is a lack of impact assessment regarding the efficiency of those co-ordination mechanisms. Efforts made by MIDEPLAN to restructure and co-ordinate regional planning through the Regional Development Councils, COREDES, show willingness to improve the situation. In the medium term, Costa Rica should envisage to simplify and streamline the central government's presence at regional and local level.

Costa Rica needs to define an effective decentralisation model adapted to its territorial and administrative reality. To this end, Costa Rica may consider the following actions:

- Draw up a diagnosis of current needs and potential competencies to be transferred to municipalities. This analysis could be conducted through an open and interactive dialogue between central government and municipalities.
- In order to speed up and implement in an efficient and effective manner the transfer of competencies, a specific body at the highest level (preferably within the CoG) could be created to coordinate future transfers, establish a clear road map, and supervise and monitor the implementation.
- In parallel to the transfer of the 10% of public revenues to municipalities, Costa Rica could also consider on a medium-term basis the creation of a redistributive programme that could contribute to reducing regional disparities across the country.
- Costa Rica could develop a more comprehensive approach to the current multi-governance arrangements in particular by reinforcing the mandate of COREDES as a single regional body to gather all stakeholders including line ministries, decentralised institutions and local key stakeholders.

**PART II - 2019 PROGRESS REPORT ON IDENTIFIED PUBLIC  
GOVERNANCE PRIORITY AREAS**



## INTRODUCTION

In-depth examinations of several aspects of Costa Rica's public governance system were presented to the Public Governance Committee (PGC) in November 2016 and in April 2017.

These assessments observed that Costa Rica's highly fragmented public administration impacts steering and co-ordination in all policy areas, especially budgetary governance and human resources. Therefore, the areas of co-ordination, budgetary governance and human resources management were identified as priority areas by the PGC. These areas relate to three Core Principles set out in the Appendix to the Accession Roadmap of Costa Rica [[C\(2015\)93/FINAL](#)]:

- Principle 1: Sound structure of government, [...] co-ordination, leadership and foresight capacity within the centre of government that ensures a whole of government approach to decision-making and effective interface between the political and administrative levels [...];
- Principle 4: Budget performance, including aggregate fiscal discipline, the effective allocation and reallocation of public resources, the promotion of the efficient delivery of public services, and budget transparency and accountability;
- Principle 5: Strategic human resources management in the public sector as a whole-of-government strategic enabler for better policy-making and public-service delivery, including core values, strategic workforce planning and management, diversity, and mechanisms to ensure staff performance and capacity;

Further to the accession discussion that took place at the PGC meeting in November 2017, in February 2018 the PGC noted that it “looks forward to the implementation of Costa Rica's public governance reform agenda and would particularly welcome both administrative and legal measures which would further reinforce (a) human resources management (e.g. sustainability and transparency of the public wage bill and the public employment database); (b) budgetary governance (e.g. fiscal sustainability; budgetary transparency; strengthening of the role of the Ministry of Finance vis-à-vis deconcentrated and decentralised agencies) and (c) the overall steering and co-ordination capacity of the centre of government.”

The Secretariat conducted fact-finding missions to Costa Rica in August 2018 and February 2019 to take stock of, and discuss, the implementation of Costa Rica's public governance reform agenda. The progress report at hand provides an assessment on progress made regarding the priority reform areas. It reflects the situation as at mid-March 2019.

## CO-ORDINATION

### Preliminary Assessment and Recommendations (AAR)

The Government of Costa Rica faces substantial challenges related to its fragmented public sector. The AAR concluded that the country's Centre of Government (CoG) - composed of the Presidency, MIDEPLAN and the Ministry of Finance - needs to further develop its strategic role vis-à-vis other public institutions, in general, and the institutionally decentralised sector, in particular.

Institutionally decentralised public entities and subsidiary bodies of central government ministries are one of the key features of the country's governance system. Most entities of the institutionally decentralised sector, initially created in the 1940s, were autonomous institutions with a mandate of policy-making, as well as service delivery. However, a more recent wave of newly created public institutions primarily consists of subsidiary bodies, which mainly represent policy implementation shortcuts to attain greater administrative and budgetary flexibility. Whereas this creates flexibility, it negatively impacts the CoG's co-ordination capacity.

In this context, the AAR recommended to develop a strategy to rationalise the institutionally decentralised sector gradually. The AAR moreover recommended establishing guidelines regarding the creation of agencies, complemented with a clear definition of agency performance and the development of a policy regarding the use of performance targets.

In order to strengthen the co-ordination, leadership and foresight capacity within the CoG, it was recommended to enhance the strategic role of the Ministry of the Presidency, supporting the quality of the decision-making process of the Council of Ministers. In addition, Costa Rica was encouraged to undertake structural investment in CoG capacity building. This could be done through technical training and the development of soft skills, with the Ministry of the Presidency and MIDEPLAN as primary beneficiaries. Eventually, the development of a clear policy and a set of instruments to ensure the CoG's steering capacity of the institutionally decentralised sector was recommended.

### Planned reforms announced by Costa Rica to the PGC

Acknowledging the importance of improving co-ordination, leadership and foresight capacity within the Centre of Government, Costa Rica announced reforms related to (1) the elimination of non-functional institutions; (2) the implementation of a body for the co-ordination of decentralised institutions and the establishment of a clear legal framework for the creation of new subsidiary bodies and autonomous agencies; (3) the enhancement of evaluation mechanisms for autonomous institutions; and (4) the re-organisation of the Ministry of the Presidency.

### Progress to date

The government has implemented several initiatives to strengthen the CoG's steering and co-ordination capacity and mechanisms. These include reports to identify non-functional institutions and possibly abolish them through decree or law, mechanisms to improve coordination and steering of the institutionally decentralised sector, and a strategic approach to the evaluation of autonomous institutions.

Between September 2017 and April 2018, the Ministry of Planning and Economic Policy (*Ministerio de Planificación Nacional y Política Económica - MIDEPLAN*) delivered three reports identifying non-functional institutions with the intention to progressively abolish them as part of a strategy to

gradually rationalise the institutionally decentralised sector and move towards a sound structure of government. As a direct consequence of these reports, the Decree 40951-MP-MIDEPLAN of 2018 to close 18 non-functional commissions was adopted on 12 February 2018 and on 14 February 2019 the Legislative Assembly passed Law 9668 to abolish seven inactive institutions. The Decree 40951-MP-Mideplan only applies to commissions established under MIDEPLAN that were not currently active and those that were chaired by the Minister, Vice-minister and/or representative of MIDEPLAN from other Ministries.

Building on Law 9524 on Strengthening the budgetary control of deconcentrated agencies (subsidiary bodies of the ministries)<sup>375</sup>, MIDEPLAN and the Ministry of Finance (MoF) are working together to reassess the degrees of financial and budget autonomy of these agencies. This is an attempt to rationalise the public administration by merging or abolishing institutions or creating shared services. Addressing the fragmentation of the public administration is one of the priorities of the current government since the approval of Law 9635 on Strengthening Public Finance- please see below for more information, which includes provisions on public employment, public sector fragmentation, social dialogue, economic recovery and education. The Ministry of Culture will be used as a pilot, following its request to the MoF and MIDEPLAN to help it restructure this sector.

To foster the co-ordination and steering of autonomous institutions, Costa Rica integrated the development of the National Development Plan (NDP) and the National Investment Plan (NIP). This allowed establishing a coherent and whole-of-government policy, contributing to better strategic planning, the rational use of resources and better implementation of the NDP, as most of its policies are operationalised by NIP investments (the latter being carried out by autonomous institutions for the majority of investment projects, i.e. 62%). This new approach has enabled a direct dialogue with the autonomous institutions and has allowed the CoG to enhance its steering and co-ordination capacity. In addition, the autonomous institutions are now included in the monitoring and evaluation process of the NDPIP, the National Evaluation Agenda (*Agenda Nacional de Evaluación*).

For the preparation of the NDPIP, the Inter-institutional Co-ordination Council (*Consejo de Coordinación Interinstitucional*) was re-established as a mechanism for the Executive and the autonomous institutions to discuss and set the priorities of the NDPIP. The Council will also be used to define the NDPIP Action Plan and monitor its implementation. It will meet every six months to discuss the progress made, identify potential bottlenecks and discuss how to solve them. This experience has been well received by all institutions and the Council is currently used to discuss areas going beyond the NDPIP, such as the public employment reform or the implementation of the Law 9635.

Decree 41187-MP-MIDEPLAN created special mechanisms to better steer, articulate and monitor public policies in seven thematic areas<sup>376</sup>. These mechanisms will include all public entities (including autonomous institutions) of the different thematic areas. The main goal is to ensure compliance with the priorities established by presidential mandate. The seven areas are innovation and competitiveness; infrastructure, mobility and territorial planning; human security; health and social protection; education for sustainable development and coexistence; economic stability and inclusive growth; and territorial development.

<sup>375</sup> See more detail on this law under the budgetary governance part.

<sup>376</sup> Strategic Articulation Mechanisms (*Áreas estratégicas de Articulación Presidencial*).

A new unit was created within the Ministry of the Presidency to manage SOEs and autonomous institutions<sup>377</sup>. Due to capacity constraints, the unit will initially focus on state-owned enterprises and will progressively include autonomous institutions.

Furthermore, the government has significantly improved its monitoring and evaluation (M&E) efforts, especially of the autonomous institutions. M&E activities are driven by two key documents:

- The National Evaluation Agenda: monitors and evaluates the NDPIP. MIDEPLAN is in charge of carrying out this agenda and it will make publicly available the level of compliance of each institution (including autonomous institutions) *vis-à-vis* the goals set in the NDPIP. All sectors and 16 policy interventions of the Plan will be included.
- The National Evaluation Policy 2018-2030 was launched in November 2018 and will use the evaluation of public interventions as a tool to make decisions, learn, and make rational use of public resources as well as to increase accountability. It has four axes:
  1. Evaluation as part of the policy cycle;
  2. Institutionalisation of evaluation;
  3. Capacity for evaluation;
  4. Participation of stakeholders in evaluation.

The government has created several guidelines on a range of topics such as basic evaluation concepts, the use of evaluation and the creation of indicators. MIDEPLAN has been disseminating these tools across the public sector and has provided tailored training. In 2018, 155 public servants from a wide range of public institutions, including autonomous institutions, were trained on these different topics.

After further analysis, it was decided not to proceed with the development of a legal framework for the creation of new subsidiary bodies and autonomous agencies. As an alternative measure to constrain the creation of new institutions, the government supported an initiative to reform the bylaws (internal regulations) of the Legislative Assembly, aiming to ensure that any draft law that does not have an associated source of funding cannot be presented to the Legislative Assembly. The bill was however archived. Currently, there is another project to reform the bylaws of the Legislative Assembly, promoted by the Ministry of the Presidency. But to date, it does not include a specific reference on how to control the creation of autonomous institutions.

Finally, a draft decree to re-structure the Ministry of the Presidency was prepared in consultation with other CoG actors with the objective to improve and strengthen strategic decision-making. However, the decree was not approved and MIDEPLAN has taken a leading role as the key CoG actor.

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<sup>377</sup> Assessment Unit for the Direction and Co-ordination of State Owned Enterprises and for the Management of Autonomous Institutions (*Unidad Asesora para la Dirección y Coordinación de la Propiedad Accionaria del Estado y la gestión de las Instituciones Autónomas*).

## BUDGETARY GOVERNANCE

### Preliminary Assessment and Recommendations (AAR)

As highlighted in the AAR presented in April 2017, Costa Rica faces three main challenges in terms of budgeting:

- Lack of effective fiscal constraints, including a mechanism for facilitating and enforcing medium-term fiscal discipline in the central government budget (budget principle number 1 of the Recommendation of the Council on Budgetary Governance);
- Fragmentation of the public administration which reduces the government's ability to reallocate funds to priority areas and ensure accountability towards central government institutions and citizens; and
- High revenue earmarks and budget rigidities, which further hinder the government's capacity to reorient resources to priority sectors, reduce the role of the budget as an instrument to support government policy, and undermine fiscal sustainability in the long term.

The following are some of the main recommendations in the AAR:

- Costa Rica would greatly benefit from having a well-designed fiscal framework using fiscal rules and targets that are suitable to country-specific macroeconomic circumstances.
- A general revision of the mandate, financing schemes and institutional framework of agencies in the institutionally decentralised sector would be beneficial, to evaluate whether their mandate still fits government priorities, and whether funding is in line with their needs.
- The efforts for linking planning and budgeting go in the right direction and should be continued; it would be important to make sure that this reform is actually implemented, with the institutionally decentralised sector accepting the value of discussing institutional plans with the central government (MIDEPLAN), and aligning with the objectives of the NDP.

### Planned reforms announced by Costa Rica to the PGC

The Costa Rican government recognised the need to improve their budgetary practices and address the issues highlighted in the AAR. In particular, it proposed to implement a set of legal reforms and pilot programmes in order to start addressing the three challenges previously mentioned:

- Legal reforms:
  - Bill to incorporate deconcentrated entities' budget into the National Budget;
  - Bill to eliminate certain earmarked government expenditures that have created budget rigidities, and replace them with new assignment criteria based on government-wide priorities;
  - Bill to improve fiscal responsibility through the introduction of a clear and verifiable expenditure rule.
- Pilot programmes:
  - Integration of the two existing budget databases;
  - Results-based budgeting pilot programme (e.g. the budget is assigned based on institutional performance and creation of public value).

## Progress to date

In 2018, Costa Rica made concrete progress on the core issues that were highlighted in the AAR. Recent legal and administrative reforms are well aligned with the Recommendation of the Council on Budgetary Governance [OECD/LEGAL/0410]. In late May 2018, shortly after the new government took office, Costa Rica announced a package of measures involving both executive and legislative action. The principal legislative measure of this package, the Law to Strengthen Public Finance (*Ley de Fortalecimiento de las Finanzas Públicas*), Law 9635, was adopted on 3 December 2018. As for the executive (administrative) measures, the government implemented important administrative measures to contain expenditures in 2018. Except for the debt service, pensions, and capital expenditure, the government had a budget for 2019 with the same nominal values as in 2018. The MoF estimated savings with an impact of 0.14% of GDP for 2018. However, the fiscal situation is still precarious<sup>378</sup> and the MoF estimates that the fiscal reform will result in only a small improvement in the public debt-to-GDP ratio (around 62% in 2022<sup>379</sup>).

Passing Law 9635 was an important step towards improving fiscal sustainability, as it has tools and measures to improve budgetary governance. In particular, the law includes a new fiscal rule, linking the growth of current spending to the growth of nominal GDP, with the allowed spending growth depending on the central government's debt-to-GDP ratio. There are two escape clauses for national emergencies and recessions. The law also has monitoring and reporting tools to ensure compliance.

Law 9635 also includes tools to increase flexibility, allowing the MoF to allocate resources beyond legal earmarking constraints when central government public debt is more than 50% of GDP. The Law includes a broader definition of the expenditures that can be included under the education constitutional earmark of 8% of GDP, giving the MoF more room for manoeuvre during the budget allocation process.

Successful implementation of the reform is indispensable to bring public finances back to a sustainable path. The government is preparing seven related regulatory decrees. In the particular case of the fiscal rule, there are yet no clear guidelines on the way the rule is going to be implemented in the decentralised sector. The Technical Secretariat of the Budgetary Authority has started to work on the topic and a first draft of the guidelines is expected shortly.

Regarding fragmentation, the Legislative Assembly passed a bill to include the deconcentrated agencies in the national central budget (Law 9524 on Strengthening budgetary control of deconcentrated agencies). The MoF is working in close collaboration with the Office of the Comptroller General (CGR) to have an integrated budget by 2020. Despite being a noteworthy initiative, it is important to highlight that the budget of all deconcentrated agencies is less than 6% of the non-consolidated total government expenditure. To build on the considerable progress made, further efforts are needed to ensure that administrative fragmentation does not hamper alignment among government policies, coordination among public institutions, and effective monitoring and evaluation tools.

There has also been modest progress in aligning the budget with government priorities and performance budgeting. As noted above, the NDP and the NIP were developed simultaneously and as one for the first time, and with greater involvement of the autonomous institutions. MIDEPLAN has refined the results-based budgeting framework and the general guidelines for implementation.

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<sup>379</sup> Information provided by the Ministry of Finance Costa Rica, last update March 2019.

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The pilot approach has gained momentum and will be implemented for the first time in five public agencies in the 2020 budget.

Other reforms, such as the initiative to include a principle of fiscal discipline in the Constitution and reforms to reduce fragmentation in the public sector are part of the current political debate.

## HUMAN RESOURCES MANAGEMENT

### Preliminary Assessment and Recommendations (AAR)

The AAR recommended to address concerns in three areas:

- Improve the availability of workforce data: Costa Rica’s strategic workforce planning capacity is affected by its inability to provide reliable data about the size and shape of the public workforce, including demographic data and salaries in central public administration.
- Address wage distortions and pay system complexity in the public sector: Costa Rica’s complex system of bonuses undermines the principle of equal pay for equal work. In the hundreds of different bonuses, annuities, and allowances (known locally as “pluses”) result in a pay system where the base salary amounts to as little as 20% of an employee’s salary. These “pluses” limit the fairness and strategic management of the pay system because they are generally not transparent, are irreversible and in most cases increase automatically as an annuity or percentage of base pay. Thus, each year the overall compensation costs rise, based not on a targeted government strategy, but rather on managerial decisions made much earlier with limited transparency.
- Pay raises and bonuses depend on an inefficient performance system: The lack of clarity of the performance system was highlighted in a 2015<sup>380</sup> government report. The need to link institutional and individual objectives in performance evaluations was further recognised in the National Development Plan 2015-2018. To align individual performance with organisational objectives, programmes and goals, the AAR recommended that Costa Rica consider establishing new conditions for performance-related pay.

### Planned reforms announced by Costa Rica to the PGC

Costa Rican representatives recognised the need to address the three OECD recommendations on public employment and HR through: (1) an open and centralised employment database of the entire public sector; (2) the link of individual performance evaluation to the institutional objectives; and (3) a comprehensive approach to the public employment bill of law, based on dialogue amongst stakeholders.

### Progress to date

The passing of Law 9635 included a number of important provisions that address some of the concerns highlighted in the AAR. This includes steps that begin addressing fragmentation of the public employment system in three important ways:

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<sup>380</sup> Government of Costa Rica, Mideplan, Ministry of Finance and Ministry of Labour and Social Security (2015), *Gestión del empleo y remuneraciones en el Sector Público: datos relevantes, Insumos de trabajo para discusión*, available at <https://documentos.mideplan.go.cr/alfresco/d/d/workspace/SpacesStore/5fb082d5-29f8-432a-8b72-f3c508cc8b46/INFORME%20SOBRE%20EL%20EMPLEO%20PUBLICO.pdf?guest=true> (accessed 6 February 2017).



- First, the law establishes a broad scope for the application of its public employment-related measures to include the entire public sector, including deconcentrated and autonomous institutions, state-owned enterprises, and local government.
- Second, the law gives MIDEPLAN legal authority to establish, direct and coordinate public employment policy across the public sector, including an explicit mandate to develop regulations and guidelines to unify, simplify and render public employment more coherent.
- Third, the law establishes maximum pay levels for senior level public servants, which is the first attempt to bring coherence across the pay systems.

Law 9635 also takes some steps to begin addressing the complexity and subsequent distortions of the wage system. It freezes the elements of variable pay and fixes them as nominal amounts going forward, rather than as a percentages of base pay. The law also stops the creation of any new components of variable unless created through an act of law passed in the Legislative Assembly. Together, these measures are expected to reduce the relative proportion and cost of the variable pay over time.

Law 9635 also establishes a mandatory performance management system for all public employees. The Law dictates that annuities will only be rewarded in case of high performance, shifting them from seniority pay to performance-related pay. The majority of the performance score will be based on achievement of objectives, while 20% of the score is reserved based on a competency model, which will also be developed. The design of the new system is being undertaken by the Directorate General for the Civil Service and will be applied to the whole public sector.

The Costa Rican Government recognizes that the employment measures passed in Law 9635 are a first step. The Government has expressed ongoing commitment to a more comprehensive public sector reform, which would include a ‘single salary’ system, where base salary accounts for 70-80%. Consultations with unions have already begun and the Government expects to bring a draft bill to the assembly for debate in the second quarter of this year.

Significant progress has also been made with creating a comprehensive database of public employees. Once implemented, this stands to greatly improve the public employment policy making capacity of the government, allowing them to better predict the impact of salary adjustments, conduct succession planning for retirement, and ensure longer-term sustainability. The database has been designed in collaboration between the General Directorate of Civil Service (DGSC) and the Budget Authority, and will be housed and maintained by the ICT department in the MoF. A Presidential Decree (Decree 40736-MP-H-MIDEPLAN) requires public institutions to provide data.

Data is being populated in five phases. Phase 1 is the largest, including data from 30 main entities in the central government, which account for approx. 45% of all public employees. Data from this phase has been provided and is being verified and cleaned. Phases 2 and 3 have also begun – which include the population of data from the judicial branch, and various deconcentrated entities. Phases 4 and 5 are expected to begin in the second quarter of 2019.

The Government also renegotiated five collective agreements in 2018, adding to the four completed the previous year. For the first time in over 25 years, social partners have agreed to reduce and streamline bonuses among other adjustments, which will reduce growth to employment costs to government. For example, the renegotiation of the collective agreement of the Port Administration of Puerto Limón (*Junta de Administración Portuaria y de Desarrollo Económico de la Vertiente Atlántica*, JAPDEVA) reduced the amount of working incentives (*bonos laborales*) by calculating

them against the base salary instead of total salary. In the Bank of Costa Rica, renegotiations led to the creation of a voluntary single salary system.”

## UPDATES ON COSTA RICA'S POSITION VIS-À-VIS OECD LEGAL INSTRUMENTS WITHIN THE COMPETENCE OF THE PGC

On 16 February 2016, the Government of Costa Rica formally submitted its Initial Memorandum. For the Recommendation of the Council on Public Procurement [OECD/LEGAL/0411] Costa Rica requested a timeframe for implementation until end of 2017 and for the Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships [OECD/LEGAL/0392] Costa Rica requested a timeframe for implementation until the end of 2018.

After the submission of its Initial Memorandum, the Council adopted four new Recommendations in the area of public governance. Costa Rica set out its position on the Recommendation of the Council on Gender Equality in Public Life [OECD/LEGAL/0418] on 31 March 2017, and on the Recommendation of the Council on Public Integrity [OECD/LEGAL/0435] on 21 July 2017. In addition, the Council adopted the Recommendation of the Council on Open Government [OECD/LEGAL/0438] and the Recommendation of the Council on Public Service Leadership and Capability [OECD/LEGAL/0445].

This part presents a summary of the country's position vis-à-vis the two most recent legal instruments, and an update on the two instruments that had a timeframe for implementation when formally submitted its Initial Memorandum.

### **Recommendation of the Council on Public Service Leadership and Capability [OECD/LEGAL/0445]**

**Position:** Acceptance with a timeframe for implementation until the end of 2022.<sup>381</sup>

The Costa Rican Government recognises the importance of the principles contained in the Recommendation, which are generally consistent with the current guidelines and reform directions proposed and promoted by Costa Rica in the administration of its civil service and broader public sector. The AAR in the area of public employment and strategic human resources management highlighted a number of issues which it recommended Costa Rica to address, in order to establish the necessary foundations for effective people management and civil service reform. These were improving the availability of workforce data, addressing wage distortions and pay system complexity in the public sector; and enhancing the performance management system.

Costa Rica recognises these challenges and has taken important steps to address them. This includes the development of a new public employment database, and legal measures passed by Law 9635 that limit the further development of pay complexities and establish a new performance management system. However, Costa Rica also recognises that room for improvement remains. The same law now gives authority for public employment policy to MIDEPLAN. The Ministry is currently leading further reforms to consolidate this new role and to put forward these principles for the whole public administration, which will require time for their institutionalisation. Hence, Costa Rica requests a period for implementation until the end of 2022.

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<sup>381</sup> Position submitted to the Secretariat on 16 February 2019.

## Recommendation of the Council on Open Government [OECD/LEGAL/0438]

**Position:** Acceptance.<sup>382</sup>

The government of Costa Rica demonstrates strong, high-level commitment to open government. Costa Rica's membership in the OECD Experts Group on Open Government, as well as its co-chairmanship of the OECD Network on Open and Innovative Government in Latin America and the Caribbean until 2018 are testimony to this commitment.

Together with other Latin American countries, Costa Rica is pioneering the move from an open government to an open state. On 25 November 2015, the then president of the Republic of Costa Rica and the presidents of the other two branches of government of the Republic of Costa Rica (Legislative Assembly and Supreme Court), together with the Supreme Electoral Tribunal, signed a joint declaration committing the country to move towards an open state by "promoting a policy of openness, transparency, accountability, participation and innovation in favour of citizens".

Costa Rica's constitution refers to open government principles, such as Article 9 (amended by Law 8364 from 2003) and Articles 25; 26; 29. Another example is Article 11, which was amended by Law 8003 in 2000 and prescribes administrative transparency and accountability and the liability of former public officials. Moreover, Costa Rica established access to information as a fundamental right in its constitution. Article 30 states "free access to administrative departments is guaranteed for the purpose of obtaining information on matters of public interest". Nevertheless, to date, Costa Rica does not have a dedicated law on access to information. Other legislation relevant to open government includes the Law against corruption and illicit enrichment (No. 8422), Law No. 8491 Popular Initiative Law and Law No. 8220 on protecting the citizen from excessive requirements and administrative procedures.

Following the change in government in 2018, the institutional responsibility for open government changed from the Vice-Ministry of the Presidency for Political Affairs and Citizen Dialogue to the Ministry of Communication. Maintaining the momentum created through the afore-mentioned reforms is important and will require continued commitment and implementation support from the centre of government. Another key actor is the National Open Government Commission (CNGA), which was created in 2015 through Executive Decree No. 38994-MP-PLAN-MICITT. It is responsible for promoting policies, guidelines, strategies and evaluation methodology in the area of open government. In line with OECD good practices, the CNGA is composed of a range of stakeholders, including representatives from the ministries of Communication; Finance; Planning; Justice and Peace; Science, Technology and Telecommunications; one representative from the private sector, two representatives from civil society, and one from academia.

## Recommendation of the Council on Public Procurement [OECD/LEGAL/0411]

Costa Rica agrees with the general principles of the Recommendation of the Council on Public Procurement. However, the country requested a timeframe for implementation until end of 2017 as some aspects needed legal reform such as significantly reducing the currently required *ex ante* control for contracts, defining a procurement authority and moving towards a single e-procurement platform.

Costa Rica has made important progress in aligning its regulations and practices with OECD standards. First, through R-DC-114-2016, the Office of the Comptroller General (*Contraloría General de la República*, CGR) changed its regulation, thereby reducing significantly the currently

<sup>382</sup> Position submitted to the Secretariat on 20 February 2018.

required *ex ante* control for contracts above given thresholds. Costa Rica has moved forward with the implementation of the single e-procurement platform, SICOP, and by 2021, the government expects that all public institutions use it. To date, 78.4% of public institutions are using SICOP.

Other important steps such as creating a procurement authority are under way. The Secretariat considers that the coordination between the CGR and the MoF in this area should continue to be improved, including in the preparation of the legal framework for this authority. Currently, three different bills are being prepared to tackle this issue: one by the Ministry of Finance, one by the CGR and one by a Legislator (*Diputado*).

### **Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships [OECD/LEGAL/0392]**

Costa Rica agrees with the general principles of the Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships (PPP). However, the country requested a timeframe for implementation until the end of 2018. The AAR recommended that additional efforts were needed to improve the PPP framework by aligning and coordinating the work of the PPP unit in the Directorate of Public Credit (*Dirección General de Crédito Público*) of the MoF and the National Concessions Council (*Consejo Nacional de Concesiones*, CNC), a subsidiary body of the Ministry of Public Works and Transport (*Ministerio de Obras Públicas y Transportes*).

In December 2016, the Government issued an Executive Decree to regulate public private collaboration initiatives. There seems to be increasing coordination between the MoF's PPP Unit and the National Concessions Fund (*Fondo Nacional de Concesiones*). Moreover, regular seminars and conferences have been held, involving the main stakeholders in the private and public sector. In addition, the Ministry of Finance has approved new procedures to define and register contingent liabilities from PPP projects (Decree No. 41042 Procedure for the determination of fiscal risks and of fiscal contingencies in PPPs).

There are currently no new concessions or PPP projects. In case Costa Rica launches new PPPs, the country will comply with this Recommendation and further develop its capacity.

### **Conclusion**

The present report provides an assessment of reform progress related to the priority areas identified by the PGC delegates in 2016 and 2017: co-ordination, budgetary governance and human resources management. As such, it addresses elements related to the Recommendation of the Council on Budgetary Governance [OECD/LEGAL/0410]; the Recommendation of the Council on Public Service Leadership and Capability [OECD/LEGAL/0445]; and Core Principles 1, 4 and 5 outlined in the Appendix to the Accession Roadmap of Costa Rica [[C\(2015\)93/FINAL](#)]. The report highlights that Costa Rica has made substantial progress on the three priority areas.