



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

Seventy-fifth session
3- 28 August 2009

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

COLOMBIA

1. The Committee considered the tenth to the fourteenth periodic reports of Colombia (CERD/C/COL/14), submitted in one document, at its 1948th and 1949th meetings (CERD/C/SR.1948 and CERD/C/SR.1949), held on 12th and 13th of August 2009. At its 1968th meeting (CERD/C/SR.1968), held on 26th of August 2009, it adopted the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the submission of the tenth to the fourteenth periodic reports and the opportunity thus offered to resume the dialogue with the State party. It also expresses appreciation for the frank and sincere dialogue held with the delegation and the efforts made to provide responses to many questions raised in the list of issues and posed by Committee members during the dialogue.

3. Noting that the report was 8 years overdue, the Committee invites the State party to observe the deadlines set for the submission of its reports in the future.

B. POSITIVE ASPECTS

4. The Committee welcomes the State party's continued collaboration with the Office of the High Commissioner for Human Rights (OHCHR) since the establishment of a field office in the country in 1997.
5. The Committee notes as positive the engagement of the State party with Special Rapporteurs, Special Representatives and Working Groups of the Human Rights Council and the numerous visits by such human rights mechanisms.
6. The Committee notes the commitments pledged by the State party to promote equal rights of Afro-Colombians and indigenous peoples during the process of Universal Periodic Review of the Human Rights Council and encourages the State party to fulfil these commitments.
7. The Committee welcomes the human rights provisions in the Constitution which enshrine the principles of non-discrimination, recognise ethnic and cultural diversity and provide that the State should undertake measures in favour of discriminated or marginalised groups in order to achieve equality in practice. The Committee furthermore notes the extensive legal framework adopted to promote the rights of Afro-Colombians and indigenous peoples.
8. The Committee welcomes the jurisprudence of the Constitutional Court and its extensive references to international human rights standards.
9. The Committee notes the successive national development plans (*CONPES*) which contain provisions on differentiated measures in favour of disadvantaged ethnic groups and communities and recognition of their specific needs.
10. The Committee welcomes the policy of affirmative action in favour of ethnic groups reflected in the specific constituencies for their representation in the two chambers of parliament, as well as the election of members of these groups at the regional and local level.
11. The Committee notes with satisfaction the recognition of the Roma community and the commitment to protect their human rights.

C. FACTORS AND DIFFICULTIES IMPEDING THE IMPLEMENTATION OF THE CONVENTION

12. The Committee takes note of the armed conflict and situation of violence by armed groups, whose main victims are civilian populations, in particular Afro-Colombians and indigenous peoples.

D. CONCERNS AND RECOMMENDATIONS

13. While noting that the State party recognises the persistence of racial discrimination and its historical causes which has resulted in marginalisation, poverty and vulnerability of Afro-Colombians and indigenous peoples, the Committee is concerned that there is no general

provision forbidding discrimination on grounds of race. Furthermore, the Committee is concerned that legislation to incriminate acts of racial discrimination is not in full conformity with article 4 of the Convention, The Committee regrets to learn that draft anti-discrimination legislation has recently failed to gain the necessary political support in Congress.

The Committee recommends that the State party enact legislation in order to give full effect to the provisions in the Constitution on non- discrimination expressly forbidding discrimination on grounds of race and to ensure that effective remedies are available to enforce such legislation. Furthermore, the Committee reiterates its recommendation that State party should enact specific penal legislation in accordance with article 4 of the Convention.

14. The Committee is particularly concerned over the continuation of acts of serious violations of human rights against Afro-Colombians and indigenous peoples, including killings, extra-judicial executions, forced recruitment and enforced disappearances in the context of the armed conflict. The Committee notes that while illegal armed groups bear significant responsibility for violations, reports continue to indicate the direct involvement or collusion of State agents in such acts and that members of the armed forces have publicly stigmatised Afro-Colombian and indigenous communities.

The Committee urges the State party to intensify its efforts to protect Afro-Colombian and indigenous communities against serious human rights violations and take all possible measures to prevent such violations in the context of the armed conflict. The Committee recommends that the State party ensure that members of the armed forces comply with the Permanent Directive of the Armed Forces No. 800-07 of 2003, avoid stigmatisation of Afro-Colombian and indigenous communities, guarantee the effective and strict compliance with adopted policies and regulations and ensure that any acts of violations of human rights are promptly investigated and, when necessary, punished.

15. While the Committee is aware of efforts taken by the State party to prevent violations, such as the establishment of the Early Alert System (SAT) and the adoption of different protection programmes, the Committee remains concerned over threats against and killings of Afro-Colombian and indigenous leaders. The Committee is furthermore concerned over the absence of civilian authorities in order to protect and assist the local population in areas taken up by the military.

The Committee recommends that the State party strengthen the Early Alert System (SAT) by ensuring proper allocation of material, human and financial resources and implementing on a timely basis their alerts and ensure that civilian authorities, including at departmental and municipal level, are involved in the coordination of preventive measures. The Committee urges the State party to intensify measures to protect the security of Afro-Colombian and indigenous leaders and in this regard pay particular attention to the precautionary and provisional protection measures (*medidas cautelares y medidas provisionales*) ordered by the Inter-American Human Rights System. Given their valuable role in preventing violations, the Committee

recommends that the State party increase resource allocations for the community defenders of the Human Rights Ombudsman's Office (*defensores comunitarios de la Defensoría del Pueblo*) and expand the programme in order to cover the most vulnerable Afro-Colombian and indigenous communities.

16. The Committee is concerned over information provided by the State party indicating continued large numbers of massive and individual displacements and the disproportionately high and increasing numbers of Afro-Colombians and indigenous peoples among the displaced and over reports that assistance may be denied due to restrictive interpretations of the applicable standards. The Committee is especially concerned that humanitarian assistance and protection measures for the displaced remain inadequate and that compliance with the Constitutional Court decision T-025 of 2004 has been insufficient and unduly delayed. The Committee is concerned that women and children of Afro-Colombian and indigenous communities are particularly vulnerable among the displaced population and lack effective and differentiated assistance and protection.

The Committee recommends that the State party, as a matter of priority, allocate additional human and financial resources in order to comply with the Constitutional Court decision T-025 of 2004 and the follow-up orders (*Auto 092 of 2008, Autos 004 and 005 of 2009*). While recognising efforts by the State party, such as the adoption of a National Plan of Assistance for the Displaced (*Decreto 250 de 2005*) with differentiated assistance measures, the Committee recommends that the State party intensify these efforts to ensure the practical implementation of the Plan, and that it pay particular attention to the rights of Afro-Colombian and indigenous women and children. The Committee recommends that the State party focus on ensuring that national policies are sufficiently funded and carried out at departmental and municipal level and that safe return for the displaced to their original lands is facilitated.

17. The Committee notes that Law 975 of 2005 and Decree 1290 of 2008 provide for reparations for victims who have suffered violations by armed groups. While welcoming the State party's recognition of victims' right to reparations, the Committee regrets that insufficient information is available on how this right has been implemented in relation to Afro-Colombian and indigenous victims.

The Committee recommends that the State party ensure the effective implementation of reparations, including restitution of lands, in the framework of Law 975 of 2005 and Decree 1290 of 2008 with due regard to Afro-Colombian and indigenous victims and that special attention be paid to women and children. The Committee notes that, regardless of the perpetrator, reparations should be implemented without discrimination.

18. The Committee is concerned that, despite national policies on special measures, in practice Afro-Colombians and indigenous peoples continue to face serious challenges to the enjoyment of their rights and remain victims of *de facto* racial discrimination, marginalisation and continue to be particularly vulnerable to human rights violations. The Committee is

concerned over structural causes which perpetuate discrimination and exclusion from access to socio-economic rights and development, including in the areas of employment, housing and education. In particular, the Committee is concerned that policies on special measures are not accompanied by adequate resource allocations, including at the departmental and municipal level, and that their implementation is not effectively monitored.

The Committee recommends that the State party combat discrimination and effectively implement special measures in order to ensure that Afro-Colombians and indigenous peoples are guaranteed full and equal enjoyment of human rights. The Committee, while noting the existence of various national policies on special measures in a number of areas, is concerned that these policies give inadequate attention to the structural causes which have resulted in the exclusion from access to socio-economic rights and development. The Committee recommends that the State party increase to the extent possible resource allocations for policy implementation, including at the departmental and municipal level, and ensure that they are monitored in an effective and transparent manner. Furthermore, while noting efforts such as the creation of the *Comisión Intersectorial para el Avance de la Población Afrocolombiana, Palenquera y Raizal* in 2007, the Committee underlines the importance of consultation with relevant communities in the elaboration of relevant development plans and affirmative action policies.

19. While noting as positive that the State party recognises collective land ownership for Afro-Colombian and indigenous communities, the Committee is concerned over the significant obstacles they face in exercising their rights to land, including violence against their leaders and forced displacement. The Committee furthermore notes that the formal process for claiming collective land titles is unduly bureaucratic and that numerous cases are still pending a final decision. The Committee is concerned over reports indicating the fraudulent acquisition by other persons and the occupation of their territories by armed groups with lucrative interests to cultivate illicit crops and monocultures, in particular palm plantations, which damage the soil and threaten the food security of the affected communities. The Committee is concerned that the case of the Curvaradó and Jiguamiandó communities is paradigmatic in this regard and regrets that the State party has not complied with the related decisions of the Inter-American Court of Human Rights and the recommendations of the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation (CEACR).

The Committee recommends that the State party ensure that collective land ownership of Afro-Colombian communities and indigenous peoples is recognised, respected and can be exercised in practice by reducing bureaucratic claims procedures and by taking effective measures to protect communities from violation when attempting to exercise their rights. The State party is also recommended to pay particular attention to the restitution of land titles to displaced Afro-Colombian and indigenous communities and urged to comply with the decisions of the Inter-American Court of Human Rights and the recommendations of the CEACR of the ILO in relation to the communities of Curvaradó and Jiguamiandó and ensure non-repetition of similar cases.

20. The Committee, while noting efforts of the State party to conduct consultations with affected communities, is nevertheless concerned that the right to prior consultations and consent is frequently violated in conjunction with megaprojects relating to infrastructure and natural resource exploitation, such as mining, oil exploration or monocultivation.

The Committee recommends that the State party adopt and implement in a concerted manner legislation which regulates the rights to prior consultation in accordance with ILO Convention No. 169 and relevant recommendations of the CEACR of the ILO, in order to ensure that all prior consultations are undertaken in a manner which respects the free and informed consent of the affected communities. The Committee recommends that the State party seek technical advice from the OHCHR and the ILO for this purpose.

21. While noting as positive that the State party recognises the jurisdiction of indigenous justice systems, the Committee is concerned that the administration of criminal justice does not take adequate measures to protect the rights of Afro-Colombians and indigenous peoples and that perpetrators commonly enjoy impunity. The Committee is concerned that the Office of the Prosecutor General (*Fiscalía General de la Nación*) does not manage comprehensive data on the ethnicity of victims and the outcome of investigations of related cases. Furthermore, the Committee is concerned that legal advice is insufficient and not always provided in indigenous languages.

The Committee draws the States party's attention to its General Recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. In particular, the Committee recommends that the State party ensure that the Office of the Prosecutor General (*Fiscalía General de la Nación*) document and manage comprehensive data on the ethnicity of victims and perpetrators. The State party is encouraged to reinforce the provision of legal advice and ensure that adequate interpretation in court proceedings is provided in indigenous languages. The Committee recommends that the State party pay particular attention to the conditions of detention of Afro-Colombian and indigenous persons, who are in prison in large numbers. Furthermore, the Committee urges the State party to guarantee that remedies are effective, independent and impartial and that victims receive just and adequate reparation.

22. While recognising efforts by the State party to provide culturally sensitive health care coverage for indigenous peoples, the Committee is concerned that life expectancy and health indicators and are considerably lower for Afro-Colombians and indigenous peoples, while maternal and infant mortality as well as chronic malnutrition rates are significantly higher, compared to the mestizo population. The Committee is concerned over the lack of adequate and accessible health services among these communities and over insufficient data on health indicators and on related policy measures to improve them.

The Committee recommends that the State party, in close consultation with the affected communities, devise a comprehensive strategy to guarantee that Afro-

Colombians and indigenous peoples are provided with quality health care. The implementation of such a strategy should be ensured by adequate resource allocations, active participation of departmental and municipal authorities, collection of indicators and transparent progress monitoring. Particular attention should be paid to improving access to health care for Afro-Colombian women and children. The Committee underlines the importance that targeted measures to improve the standard of living, including improved access to clean water and sewage systems, be linked to health indicators.

23. The Committee, while noting efforts to provide a culturally sensitive education policy (*etnoeducación*) for Afro-Colombian and indigenous children, remains concerned that the State party does still not provide free primary education and that illiteracy rates remain significantly higher among Afro-Colombian and indigenous children.

The Committee reiterates the recommendations of the Committee on the Rights of the Child of 2006 (CRC/C/COL/CO/3, paras. 77 and 95) and recommends that the State party strengthen its education policy (*etnoeducación*) and guarantee both in law and practice that Afro-Colombian and indigenous children are provided with free primary education. Strategies should be devised in close consultation with the affected communities, receive adequate resource allocations and involve departmental and municipal authorities. Gender perspectives should be duly considered in such educational policies.

24. The Committee notes that the State party has increased efforts to compile relevant data on the situation of ethnic groups and indigenous peoples. The Committee however notes the considerable variance in the information available on the percentage of the population that identifies itself as Afro-Colombian and notes that the results from the census of 2005 differ from other population surveys.

The Committee recommends that the State further improve its compilation of information on the situation of ethnic groups in the economic, social and cultural fields. The Committee also recommends that the State party ensure that future census questions are formulated in a manner that permits and encourages self-identification of persons belonging to ethnic or indigenous groups. The State party is recommended to consult with relevant communities on measures to improve data collection and also during the elaboration and realisation of the next census.

25. The Committee is concerned over reports that certain indigenous peoples, especially in the Colombian Amazon, are on the brink of extinction as a result of the armed conflict and related consequences.

The Committee urges the State party to find political and legal solutions to protect the existence of these peoples and the exercise of their human rights.

26. The Committee is concerned about reports over cases of discrimination regarding access of members of ethnic groups to places open to the general public.

The Committee recommends that the State party adopt and enforce legislation to give full effect to article 5(f) of the Convention in the public as well as in the private sphere.

27. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified.
28. The Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.
29. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.
30. The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention.
31. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.
32. Noting that the State Party submitted its Core Document in 1997, the Committee encourages the State Party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4).
33. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 14, 17, 18 and 25 above.
34. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 15, 16 and 20 and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

35. The Committee recommends that the State party submit its 15th and 16th periodic reports in a single document, due on 2 October 2012, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.
