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the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-fifth session

SUMMARY RECORD OF THE 1948th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 12 August 2009, at 3 p.m.

Chairperson: Ms. DAH

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Tenth to fourteenth periodic reports of Colombia

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Tenth to fourteenth periodic reports of Colombia (CERD/C/COL/14; CERD/C/COL/Q/14; HRI/CORE/1/Add.56/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of Colombia took places at the Committee table.
2. Mr. GARZÓN (Colombia), drawing attention to the fact that Colombia's Ministry of Culture was headed by an Afro-descendant, said that the country had recently been visited by the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and that the Government had invited the Independent Expert on minority issues to visit Colombia in 2010.
3. Ms. GARCÍA (Colombia), outlining the multi-ethnic and multicultural make-up of her country, acknowledged that ethnic minority groups were in practice subjected to various forms of racial discrimination. Such discrimination was not, however, permitted by law or deliberately perpetrated by the State. On the contrary, the Government had taken measures to prevent discrimination and guarantee real equality, including through affirmative action. Indigenous peoples and communities enjoyed dedicated political representation, recognition of their community leaders, land rights, dialogue with the State, and prior consultation on issues that affected them directly, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination and the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169). In general terms, she outlined her country's commitment to defending human rights for all and ensuring equality. Civil society had contributed regularly to the Government's long-standing efforts to that end. The 1991 Constitution enshrined the principle of equality but also took account of diversity, providing for affirmative action to benefit the most vulnerable in society, including ethnic and cultural groups. She highlighted the articles of the Constitution that were most directly relevant to indigenous and ethnic groups, which were detailed in the periodic report, and outlined the institutional structure responsible for formulating and implementing policies to protect such groups and their rights.
4. In Colombia, a dedicated advocate for ethnic minorities operated under the People's Advocate, performing the role of independent monitor to fight discrimination, along with the prosecutor assigned to human rights and ethnic groups. The Constitutional Court had produced a large body of jurisprudence relating to the situation of ethnic groups and indigenous peoples, as detailed in the periodic report before the Committee (CERD/C/COL/14). Constitutional Court Decrees Nos. 004, 005 and 092 of 2009 had called upon the Government to improve the situation of the indigenous and Afro-Colombian populations and of women who were displaced or at risk of displacement, which the Government was doing.
5. She outlined the challenges presented to Colombia by violence committed by illegal armed groups, which had persisted for decades. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, following his visit in July 2009, had

noted with concern the activities and attitudes of such groups, who had complete disregard for human rights and international humanitarian law and were apparently responsible for most killings of and other crimes against indigenous persons. Since 2002, the Government had geared its policies towards protecting the rights and freedoms of its citizens in the face of that challenge and had made significant progress: murder rates had almost halved between 2002 and 2008, while the number of kidnappings had fallen from 2,882 to 437. Targeted measures had been taken to respond to the differentiated needs of indigenous and ethnic groups, with coordinated activities among various parts of the Administration and consultation with indigenous organizations. Several pieces of legislation had resulted; they included provisions to protect the human rights of indigenous people by ensuring appropriate action by law enforcement bodies. Significant efforts had been made to improve relations between those bodies and the communities they served, including Black and indigenous groups.

6. Attention had been devoted to helping those displaced by the country's ongoing violence. The Government had developed policies, plans and programmes and allocated significant financial resources to the problem - \$2.2 billion for 2007-2010. Account was being taken of the particular needs of displaced ethnic groups, in terms not only of humanitarian assistance but also land rights, and the Government was pursuing a policy of building consensus with ethnic groups affected by displacement or poverty in order to promote sustainable social, economic and cultural development and reduce inequality. Specific programmes had been established to help indigenous and ethnic groups overcome poverty and achieve the Millennium Development Goals, with progress already being made. The Government was also working to involve indigenous communities in alternative development processes while respecting their traditions, with a view to strengthening the effectiveness of its governance.

7. A range of affirmative actions had been taken to benefit ethnic groups in the area of statistical data collection, health care and education, including free medical treatment for indigenous communities, opportunities to use traditional medicine, monitoring of educational enrolment trends among ethnic and indigenous students, and teaching of minority languages and culture at all ages.

8. The State had consulted the relevant communities on intercultural and methodological aspects of educational projects. Provision had been made for inter-institutional coordination and continuous assessment of implementation. Support had been provided for 36 ethno-educational projects between 2003 and 2008, and a further 21 projects were to be supported in 2009 and 2010. The Ministry of National Education promoted consultation on and coordination of ethno-educational policy and produced guidelines aimed at strengthening bodies such as the departmental and municipal educational commissions for Black communities.

9. In 2005 a special competition had been held to select 6,000 Afro-Colombian ethno-educators. In addition, 5,000 Afro-Colombians and 2,985 indigenous students had benefited from scholarships, and a scholarship fund for postgraduate studies abroad had just been launched.

10. The Ministry of National Education, in consultation with the National Educational Commission for Black Communities, had published guidelines for the Chair of Afro-Colombian Studies in 2004 and a new edition in 2005. In 2007 it had supported research involving some 400 teachers on progress made in implementation of the guidelines. A new version reflecting the outcome of the research would be published shortly.

11. Emphasis was placed in curricula on the equality of men and women, and the unequal status of women in society was attributed to historical and cultural circumstances. A gender approach was being incorporated in the educational guidelines for cross-cutting educational programmes concerning sexuality and human rights with the assistance of the United Nations Population Fund.

12. The representation of ethnic groups in the National Council for Culture, the National Heritage Council and the National Arts Council was mandatory, and the Ministry of Culture supervised the programming of the Señal Colombia public television channel, whose broadcasts included specific cultural content for indigenous and Afro-Colombian groups.

13. A general framework for integrated protection of the rights of children and adolescents belonging to ethnic groups had been established. It recognized that the distinctive characteristics of each community must be preserved. A total of \$11 million had been invested between 2002 and 2009 in projects on behalf of the families of ethnic groups run by the Colombian Family Welfare Institute. In general, action to enhance the quality of life and well-being of ethnic groups was based on the aspirations of the indigenous peoples themselves. However, it was also recognized that no ethnic group was isolated but formed an integral part of an open national society, in which it had access to external resources without having to renounce its identity.

14. Respect for cultural diversity was also one of the principles underlying the affirmative policy for women aimed at building peace and development formulated by the Office of the Presidential Adviser on Equality for Women. The Government's policy on prevention, care and socio-economic stability for displaced persons also incorporated both a gender approach and an ethnic perspective, given the exacerbated impact on women of the violence generated by illegal armed groups. In response to Constitutional Court Judgement T-025, the Government had ordered the implementation of 13 programmes to meet the needs of displaced women, one of which involved a differentiated approach on behalf of displaced Afro-Colombian women.

15. Special electoral constituencies had been established for indigenous and Afro-Colombian communities to ensure their representation in the Congress of the Republic. As a result, the indigenous communities currently held two seats in the Senate and one in the House of Representatives and the Afro-Colombian communities held two seats in the House of Representatives. Of course, they could also obtain seats in the Congress through the ordinary constituencies. The current Minister of Culture, a General serving with the National Police Force and the Ambassador to South Africa were Afro-Colombians. Many governors, mayors, deputies and councillors were also of indigenous or Afro-Colombian origin.

16. A number of bodies had been created with a view to coordinating public policies. They included the National Land Commission, the Permanent Bureau for Coordination with Indigenous Peoples and Organizations, the Standing Commission on Human Rights for Indigenous Peoples and the Amazonian Bureau. The Ministry of the Interior and Justice had set up a group of more than 25 experts on prior consultation of ethnic groups. A bill regulating prior consultation as a basic right of ethnic groups was currently being drafted. It would identify and fill existing legal vacuums that hampered the consultation process.

17. Under Colombian law, where natural non-renewable resources were exploited inside an indigenous reserve or within 5 kilometres of a reserve, 5 per cent of the value of the fees payable

to the department and 20 per cent of those payable to the municipality were allocated to investment projects in the areas inhabited by the indigenous communities. Priority was given to building projects, maintenance and improvement of the tertiary road network, protection of the environment, health care, public education at all levels, electricity, drinking water, sewage and other basic services.

18. The 710 indigenous reserves covered an area of some 32 million hectares, or 29 per cent of the national territory, and enjoyed immunity from confiscation and transfer. The Afro-Colombian communities inhabited an area of some 5.3 million hectares throughout the national territory and enjoyed similar immunity.

19. With a view to reducing poverty and improving living conditions, a number of indigenous communities were covered by programmes run by the Presidential Social Action Agency, including: infrastructure development projects; food security; the Families in Action Programme involving support for child education and nutrition; the Forest Ranger Families Programme which offered social and technical support; economic incentives for alternative forms of production conducive to sustainable forest management; and integrated care for displaced persons.

20. In pursuance of its strategy to promote social equality and the advancement of ethnic groups, the Government had adopted a policy of affirmative action for the Black or Afro-Colombian population in 2004. In 2007, it had established the Intersectoral Commission for the Advancement of the Afro-Colombian, Palenquera and Raizal Population, headed by the Vice-President of the Republic. It was hoped that the process of policy coordination with the indigenous peoples, aimed at improving their living conditions, eliminating discrimination and marginalization and guaranteeing their survival and sociocultural diversity, would shortly be completed.

21. Despite its achievements in the fight against racial discrimination, Colombia was aware that the country had a long way to go before persistent economic and social disparities were eradicated.

22. Mr. MEDRANO (Colombia) introduced a PowerPoint presentation on the recommendations of the Intersectoral Commission for the Advancement of the Afro-Colombian, Palenquera and Raizal Population.

23. The Commission had been established to assess the living conditions of that population, in particular those of women and children. It was chaired by the Vice-President and its members included: the Minister of the Interior and Justice, the Minister for Foreign Affairs, the Minister of Trade, Industry and Tourism, the Minister of Social Welfare and the Minister of Culture and Education; representatives of the National Planning Department, the Civil Service Administration Department, the Social Action Agency, the International Cooperation Agency, the Afro-Colombian bench of the Congress of the Republic, the High-Level Advisory Commission of Black Communities and the Association of Afro-Colombian Municipalities, and the Legal Representative of the Community Councils.

24. Regional workshops in 18 towns had been attended by some 4,000 representatives of social, cultural and youth organizations, the education system and trade unions; officials and

elected representatives from municipal, departmental and national bodies; and representatives of the Afro-Colombian, Raizal and Palenquera communities and of religious denominations. The participants had agreed that the main difficulties facing the communities concerned included: lack of political and economic power; shortcomings in access to and quality of education; lack of awareness of Afro-Colombian culture and of appreciation of ethnic and cultural diversity in the country; racism and racial discrimination; unequal access to the labour market; and the precarious legal situation with respect to property rights to community land.

25. The Commission had made five recommendations. The first concerned the fight against racism and racial discrimination and the promotion of diversity. A bill on equality of opportunity had been agreed with the parliamentary representatives of the Afro-Colombian community and would shortly be submitted to the national Afro-Colombian advisory body. The second recommendation concerned the promotion of political participation and representation. It focused on the creation of special constituencies in areas where the Afro-Colombian, Palenquera and Raizal communities constituted a minority of the local population. The third recommendation concerned enhancement of the quality of and access to education on behalf of the Afro-Colombian, Palenquera and Raizal communities. The fourth recommendation concerned employment and income generation. It focused on amending tax legislation so that fiscal incentives were given to private companies to appoint members of the Afro-Colombian community to managerial posts and to invest in areas with a large Afro-Colombian, Palenquera and Raizal population. Another aim was to amend contractual legislation so that public contractors took into account the employment ratio of Afro-Colombian staff at all levels. Private national and multinational companies seeking State contracts would have to pursue diversity policies. The fifth and last recommendation concerned incorporation in information systems. The main proposal was to enact a law requiring ministries and national and regional entities to adjust their procedures, instruments and formats with a view to identifying and quantifying the beneficiary Afro-Colombian population, establishing targets and indicators and reporting the results in the Information and Management System for Governance (SIGOB).

26. Mr. DIACONU (Country Rapporteur) said that, apart from the State party's latest periodic report and its written replies (document without a symbol, Spanish only) to the list of issues (CERD/C/COL/Q/14), he had received a wealth of information from the Inter-American Commission on Human Rights, six United Nations thematic rapporteurs, other human rights treaty bodies and NGOs.

27. Colombia had been the scene of an internal armed conflict for more than 30 years, and the worst-affected geographical areas included those where the Afro-Colombian and indigenous peoples constituted a large percentage of the population. The conflict had led to the forced displacement of - depending on the source - an estimated 1 million to 3 million people. In spite of the demobilization agreements reached by the Government with paramilitary leaders in 2005, illegal armed groups continued to perpetrate acts of intimidation and violence against vulnerable populations, community leaders and human rights defenders.

28. The periodic report recognized that the Afro-Colombian and indigenous communities were still victims of racial discrimination. The problem had complex cultural roots in the history of Colombia and Latin America, which was replete with accounts of the marginalization and poverty of such communities and of their vulnerability to violence.

29. The Colombian Constitution enshrined the principle of equality and advocated affirmative action on behalf of groups that were discriminated against or marginalized. Many provisions dealt specifically with the rights of Afro-Colombians and indigenous peoples, who had been granted special electoral constituencies, indigenous jurisdiction and territorial autonomy. The Constitutional Court had also rendered important judgements in favour of their rights of collective ownership, political participation and prior consultation. He noted that, pursuant to article 93 of the Constitution, the Convention would prevail over any internal law that was incompatible with its provisions.

30. The National Development Plan, 2006-2010, contained general and specific strategies on behalf of the communities concerned. A comprehensive long-term plan for the Afro-Colombian, Palenquera and Raizal population was envisaged for the period 2006-2019. Special measures were also designed to cater for groups within the communities concerned, such as women and children. Housing subsidies were offered mainly in the Pacific area. Legal titles were attributed and water supply, road-building, port and airport projects were implemented in the areas inhabited by indigenous and Afro-Colombian communities. The Committee hoped to be kept informed of progress in implementing the recommendations of the Intersectoral Commission for the Advancement of the Afro-Colombian, Palenquera and Raizal Population referred to in the PowerPoint presentation.

31. He welcomed the affirmative action policy, which ensured that ethnic groups were represented in both houses of Congress and at the regional and local level. The fact that public-sector bodies were incorporating ethnic variables in their information system would be helpful for the formulation and implementation of policies and also for human rights monitoring bodies and NGOs.

32. Reports indicated that the policies designed to combat racial discrimination were not always implemented effectively. Sustained affirmative action policies were needed, including in areas that were not affected by the internal conflict. He requested statistics disaggregated by ethnicity on socio-economic indicators such as housing, social security and employment. The census planned for 2015 should be based on consultations with Afro-Colombian and indigenous populations and as much ethnic data as possible should be collected and used for the development of targeted policies.

33. The Committee noted the absence of specific legislation to prohibit and punish discrimination on grounds of race. The provisions of the Single Disciplinary Code mentioned in the report (para. 84) were inadequate, and no action had been taken on draft legislation submitted to the Senate in 2007. In that connection, he requested clarification of the term “discrimination for suspect or sensitive motives” mentioned in title VI of the draft Act. He reminded the delegation that the adoption of specific anti-discrimination legislation, supplemented by relevant criminal provisions, was a requirement under article 4 of the Convention.

34. Human rights violations continued to be committed in the areas affected by the conflict. Incidents reported to the Committee included the occupation by Colombian marines of 100 civilian homes in Mosquera, Nariño Department, causing the displacement of some 700 Afro-Colombians; indiscriminate machine-gun attacks from helicopters on Afro-Colombian homes in the López de Micay municipality; and threats to community leaders. He asked what had been done to address those situations.

35. He also wished to know what measures had been taken to speed up the implementation of Colombian Constitutional Court ruling T-025 of 2004 relating to the situation of displaced persons. By their very nature, protection measures were urgent, and a four-year delay in implementation was unacceptable.

36. In the light of persistent reports of extrajudicial executions, illegal and arbitrary detentions, enforced disappearances, and cruel, inhuman and degrading treatment attributed to members of the security forces, efforts must be stepped up to ensure the effective implementation of the Government's "zero tolerance" policy on human rights violations by security forces personnel.

37. Local authorities should be involved in the implementation of early-warning preventive measures in connection with anti-guerrilla military operations. The number of civilian authorities should be increased in areas of military operation in order to fill the potential protection gap.

38. Afro-Colombians and indigenous people, especially women, were affected disproportionately by the large-scale displacement caused by the internal conflict. Mass displacement continued to occur and effective action must be taken to meet the humanitarian needs of the displaced populations. Some reports suggested that the term "internally displaced person" was used only for persons displaced by violence carried out by illegal armed groups and that, consequently, persons displaced by operations of paramilitary groups or the security forces were not entitled to assistance. The delegation should comment on those allegations, as such practice would constitute a violation of the Guiding Principles on Internal Displacement. In its ruling T-025 of 2004, the Colombian Constitutional Court had identified as a key problem the lack of a specific approach to displaced population groups that would make it possible to identify and address their particular and pressing needs deriving from their specific situation within that of internal displacement. The Government should do its utmost to improve the situation of displaced persons and facilitate and promote their return to their places of origin.

39. He asked how many victims of human rights violations had benefited from reparations as stipulated by the Justice and Peace Act (No. 975 of 2005).

40. Indigenous peoples and Afro-Colombians had also been affected by large-scale development projects undertaken on their communal lands, and no appropriate consultation mechanisms appeared to be in place. Reports suggested that indigenous land rights were disregarded when it came to implementing development and mining projects, and that such projects were executed without prior consultation or consent of the communities affected. Only recently, the Colombian Government had reportedly granted a concession to the foreign mining company AngloGold Ashanti in the northern Cauca Department without prior consultation of the Afro-Colombian communities living in the area. Oil palm and sugar cane plantations also affected the traditional way of life and the environment of indigenous peoples. In addition, the Government had allegedly approved the use of genetically modified seeds, which might affect indigenous peoples' traditional farming practices by contaminating the native stock of seeds and could have adverse consequences for their health and environment. He invited the delegation to comment on those reports and urged the Government to establish a functioning consultation mechanism without further delay.

41. He enquired what was being done to ensure that the eradication of illegal crops by the Armed Forces, albeit necessary, did not deprive farmers of their means of subsistence and what measures were being taken to guarantee their safety.

42. He expressed concern over reports that 60 per cent of Afro-Colombians who had received property deeds had subsequently been displaced. The overly complex and drawn-out procedure for obtaining collective land title should be simplified, and the large number of institutions currently involved in the process should be replaced by a single body or a limited number of bodies. Measures should also be taken to combat the fraudulent acquisition of land and promote and protect the land rights of indigenous and Afro-Colombian communities.
43. Urgent action was required to protect indigenous populations in the Colombian Amazon region that were reportedly on the brink of extinction as a result of armed conflict, environmental destruction and large-scale development projects.
44. The Committee had been informed about targeted assassinations and violence committed against Afro-descendant leaders in connection with land claims. He asked whether the perpetrators of such acts were prosecuted and punished and whether the precautionary measures ordered by the Inter-American Court of Human Rights were being implemented.
45. Afro-Colombians were reportedly subject to persisting structural discrimination that translated into a lack of access to basic services such as health care, education, housing and clean water. He would welcome additional information on measures taken or planned to address the situation.
46. He requested clarification on the information about bilingual education given in the report and asked whether the Colombian education system provided for the education of vulnerable groups, including members of ethnic groups. The Committee would welcome relevant statistics.
47. Despite the collective demobilization process under way, illegal armed groups continued to exist and commit acts of violence, often with total impunity. The Justice and Peace Act apparently failed to take account of victims' right to truth, justice and reparation, and he asked what measures had been taken to end impunity, conduct criminal investigations and bring perpetrators to justice before ordinary courts, rather than military tribunals.
48. In its reply to question 5 of the list of issues, the State party had informed the Committee that free legal assistance was available through the Office of the Ombudsman. He asked whether such legal aid was provided to indigenous persons in their own language and encouraged the Government to finance the establishment of local ombudsman offices in indigenous and Afro-Colombian areas.
49. He requested updated information on the situation of community councils for the Black or Afro-Colombian population and the appointment of legal representatives.
50. While the activities and programmes implemented to strengthen the culture and identity of ethnic groups were commendable, discrimination against those groups was deeply entrenched in Colombian society and existing programmes were insufficient to change mentalities. Awareness campaigns must be directed at the wider public to promote diversity, mutual respect and the enjoyment of fundamental human rights by all Colombians.

51. Colombia had deemed it unnecessary to make a declaration under article 14 of the Convention, drawing attention to domestic remedies available to citizens. He pointed out that the article 14 procedure did not obviate, but rather complement, domestic remedies.

52. The State party's reply concerning the absence of legislation prohibiting discrimination in access to public places was unconvincing. Discrimination in access to restaurants, bars and discotheques reportedly existed, and the adoption of relevant legislation was required under the Convention.

53. The Committee would welcome additional information on the situation and participation of Roma people.

54. Mr. SICILIANOS commended the State party for its efforts to address the difficult situation caused by the internal conflict. However, the absence of specific anti-discrimination legislation was regrettable. The Colombian Constitutional Court had issued several rulings that were fully consistent with the spirit of the Convention. He would welcome additional information on measures taken to implement those decisions.

55. The delegation should provide additional information on the work of the Ethnic Minorities Division.

56. The report made repeated reference to consultation mechanisms which, according to the information provided, were in conformity with the guidelines set forth in ILO Convention No. 169. Conversely, NGO reports questioned the effectiveness of consultation processes, suggesting that, in practice, decisions were taken without prior consultation of the Afro-Colombian or indigenous communities affected. He invited the delegation to comment.

57. Given the difficult socio-economic situation of Afro-Colombians and indigenous peoples, especially with regard to health care, housing and education, the collection of disaggregated statistical data was crucial to the development of targeted policies to address the problem.

58. Mr. LINDGREN ALVES thanked the State party for its comprehensive report and written replies, which had obviously been prepared in close consultation with civil society organizations. Nevertheless, the volume of information provided seemed somewhat excessive in the light of the scope of the present dialogue.

59. Referring to paragraph 9 of the report, he enquired what criteria were used to establish whether a person was "of mixed race". He wished to know whether the percentage given for Afro-Colombians and native islanders (Raizales) included Afro-descendants living in cities and how many Colombians self-identified as "White".

60. With regard to Afro-West Indian persons mentioned in paragraph 10 of the report, he asked whether they lived in separate areas by choice or because they were not accepted elsewhere. Did they speak English by choice or because they had no access to Spanish language courses?

61. Referring to the statistics on acts of violence committed by the Revolutionary Armed Forces of Colombia - People's Army (FARC-EP) provided in paragraph 29 of the report, he enquired which persons or entities were responsible for the remaining crimes not attributed to that insurgent group.
62. He asked whether the numerous crimes committed against Afro-Colombians and indigenous peoples occurred in the context of the fight against the FARC-EP. Were those crimes investigated and the perpetrators brought to justice?
63. Mr. KEMAL commended the State party on its determined efforts to combat racial discrimination, aided by the constitutional recognition of the multi-ethnic population and the provision of seats for ethnic minorities in the Senate and the House of Representatives. He also welcomed the 1993 Act establishing collective titling of the traditional lands of the Black communities living in the Pacific Basin.
64. While many Colombians claimed that their country's diverse racial groups lived in harmony, observers had reported evidence of discrimination, particularly in places such as restaurants and nightclubs. It was therefore understandable that the affirmative action bill currently before the Senate enjoyed significant support. The Governmental committee on racial inequality had reported that Afro-Colombians continued to face structural discrimination, were disproportionately poor and had a mortality rate 50 per cent greater than that of the rest of the population, while their life expectancy was 12 years less than the national average. The committee had proposed quotas for Afro-Colombians in universities, government agencies and the armed forces, and incentives for companies to recruit them in middle management and for political parties to enlist Afro-Colombian candidates for local and national elections. The role of Afro-Colombians would also be given due recognition in the history of the State party. Some Afro-Colombians, however, feared that the introduction of such measures might provoke racial tensions and conflict, arguing that better education and social policies were needed to enable Afro-Colombians to compete with their counterparts on equal terms. The Committee supported affirmative action in general, and he believed that it would not prove incompatible with measures to improve education and social policies for that sector of the population. He requested updated information on the status of the affirmative action bill. It would be useful to learn when it was expected to be passed, whether there was indeed a risk of adverse reaction and what concerns had arisen in the Senate's debate.
65. Mr. CALI TZAY asked, with reference to the United Nations Declaration on the Rights of Indigenous Peoples, whether the terms "ethnic group", "ethnic population", "ethnic minority", "ethnic community", "ethnic people", "indigenous community", "indigenous population" and "indigenous people" had been used indiscriminately in the periodic report. He also requested clarification of the meaning of the term "resguardos". Given that only three ethnic groups were recognized in the report - indigenous peoples (3.3 per cent), Afro-Colombian communities and the native islanders (10.62 per cent) and the Roma or Gypsies (0.012 per cent), he would appreciate further information on the composition of the remaining 86.068 per cent of the population.
66. Welcoming the definition of the Roma or Gypsies as representing an age-old culture, he wished to know why the same had not been said of indigenous groups, which had been present on the American continent long before the Roma arrived there.

67. Act No. 60 of 1993 establishing the jurisdiction and the allocation of resources for indigenous resguardos had reportedly been repealed by Act No. 1152 of 2007. The Constitutional Court had apparently declared the latter unconstitutional on the grounds that insufficient consultations had taken place with the indigenous people involved. He would be interested to learn whether the 1993 Act was currently in force and what the reasons had been for its attempted repeal.

68. He commended the State party on the National Development Plan 1998-2002, which had stressed the need for a change in relations between the State, national society and indigenous peoples in the light of the constitutional changes of the previous decade. He asked why “sanitation” was required in the preparation of the resguardos and what criteria were being applied in the process of granting land to indigenous peoples. He also wished to know why there was a need to amend Decree No. 804 of 1995 on ethnic education and what changes the amendment would introduce. It would be useful to know up to what level of schooling bilingual and multicultural education was available. Given that the Plan included prior consultation as the instrument for reaching agreement, he drew the State party’s attention to paragraph 5 of the Committee’s general recommendation XXIII on indigenous peoples, which referred to the need for free and informed consent. He asked whether there was a requirement for indigenous peoples’ consent in the State party, or whether prior consultation was considered sufficient. In that connection, he enquired why indigenous peoples had not been consulted prior to the adoption of Act No. 1151 of 2007 approving the National Development Plan 2006-2010, which had also resulted in the repeal of that Act in 2008 by the Constitutional Court. The statement in the periodic report that none of the draft laws devised by the Government and presented in the Congress infringed the rights of the indigenous peoples was clearly contradicted by the repeal of the two Acts he had cited. He would welcome the comments of the delegation on that issue.

69. Mr. de GOUTTES said that, while the periodic report contained an almost overwhelming amount of information on the State party’s legislative framework, it did not go into sufficient detail about the practical application of those laws. The Committee focused on socio-economic indicators evidencing a pattern of serious racial discrimination, including rates of mortality, illiteracy, delinquency and imprisonments. Those indicators were clearly applicable to all the ethnic groups described in the periodic report. Together with the issue of the armed conflict in the State party, that phenomenon constituted the Committee’s greatest concern. Indeed, the prison population data provided in paragraphs 267-275 of the periodic report showed that more Afro-Colombians were in prison than any other group. He would welcome the delegation’s comments on that situation.

70. Turning to the legal framework, he noted that the State party recognized the fact that, despite the introduction of a new Penal Code in 2001, its criminalization of racism was still not in keeping with article 4 of the Convention. Furthermore, according to paragraph 264 of the report, only six complaints had been received for acts of racism, very few investigations had been opened, and no investigations had ended in a sentence. He requested an update on the progress of the draft law penalizing all forms of discrimination specifically covering the provisions of the Convention, which the People’s Advocate had proposed in 2003. He suggested that the People’s Advocate should attend future meetings with the Committee for the consideration of the State party’s reports, as had become the practice with other States parties.

71. He requested an explanation of the action of tutela mentioned in paragraph 40 of the periodic report. Paragraph 463 of the report appeared to indicate that the State party had decided not to make a declaration under article 14 of the Convention because it wished to promote recourse to domestic remedies. Recourse to domestic remedies was, however, not incompatible with the international procedure of individual communications under article 14 of the Convention. On the contrary, paragraph 2 of article 14 explicitly required that domestic remedies should be exhausted before there was recourse to the individual communication procedure.

72. He asked what measures had been implemented to take account of the traditions and customs of indigenous or ethnic minorities in the judicial system, in keeping with the Committee's general recommendations XXXI on the criminal justice system and XXIII on indigenous peoples.

73. Mr. PROSPER echoed colleagues' concerns about the lack of information in the periodic report on the implementation of the State party's comprehensive legal framework. He would be grateful for any statistics or details of successes and difficulties of the State party in seeking accountability for violence carried out against the Afro-Colombian and indigenous groups. He asked what measures the Government was taking to prevent that violence and protect the population. He would appreciate an explanation of the State party's position on its responsibility to protect those populations. He requested additional details of the State party's early-warning system for preventing violence, especially its effectiveness. He would welcome a frank assessment from the delegation of the challenges the State party faced in fulfilling its responsibility to protect.

74. It would be interesting to have additional details of the State party's efforts to prevent violence against women, in cooperation with the Gender Affairs Observatory. In particular, it would be useful to know whether improvements had been noted in the prevention of such violence and enforcement of the relevant laws.

75. Mr. THORNBERRY drew the State party's attention to the fact that, even in the field of State action, neutral or well-intentioned policies could have negative results. Discrimination in practice and indirect discrimination, as well as intentional discrimination, were primarily detected through statistics, which was why disaggregated data were so important. Self-identification was an important factor in data collection, and census questions should be designed accordingly.

76. He asked whether the State party made a distinction between temporary affirmative action programmes and the permanent rights of indigenous persons, Afro-Colombians and other groups.

77. He asked how consultations were held with respect for traditional governance structures, and whether local customs and traditions were taken as the starting point in relation to decision-making when designing models of consultation. Had any development projects been drawn up by indigenous peoples and, if so, had the Government facilitated their application?

78. He enquired whether the collective rights of indigenous people and Afro-Colombians were regarded as inherent rights, stemming from self-determination, or rights granted by the State. He

also wished to know whether the lack of legal security in recognition of lands and territories, to which the delegation had referred in its opening statement, was a legal matter or a matter deriving from the conflict.

79. He would appreciate further information on the national narrative outlined in school textbooks. It would be especially interesting to learn how groups such as indigenous peoples, Afro-Colombians, Mestizos and the Roma fitted in to that history, and what efforts were made to avoid perpetuating stereotypical portrayals of such groups.

The meeting rose at 6 p.m.