



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

### Concluding observations on the combined fifteenth and sixteenth periodic reports of Colombia\*

1. The Committee considered the combined fifteenth and sixteenth periodic reports of Colombia, submitted in a single document (CERD/C/COL/15-16), at its 2355th and 2356th meetings (CERD/C/SR.2355 and 2356), held on 4 and 5 August 2015. At its 2377th and 2379th meetings, held on 19 and 20 August 2015, it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the timely submission of the fifteenth and sixteenth periodic reports of the State party in a single document. The Committee welcomes the frank and constructive dialogue with the State party's high-level delegation and the additional information provided after the dialogue.

#### B. Positive aspects

3. The Committee welcomes the fact that the State party has developed an extensive legal and institutional framework for the protection of indigenous peoples, Afro-Colombians and Roma. The Committee welcomes in particular:

(a) The adoption of the Victims and Land Restitution Act No. 1448 of 2011 and Legislative Decrees No. 4633, 4634 and 4635 of 2011, which set out differentiated measures to provide support, assistance and comprehensive redress for indigenous peoples, Roma and Afro-Colombian communities that were victims of the armed conflict;

(b) The creation of the National Human Rights and International Humanitarian Law System in 2011;

(c) The establishment of the Observatory on Discrimination and Racism in 2012.

4. The Committee welcomes the important role that certain institutions of the State party have played in the protection and promotion of the rights of indigenous peoples, Afro-Colombians and Roma, such as the Constitutional Court, the Ombudsman's Office and the National Centre for Historical Memory.

\* Adopted by the Committee at its eighty-seventh session (3 to 28 August 2015).



5. The Committee also welcomes the close collaboration between the State party and the Office of the United Nations High Commissioner for Human Rights.

6. The Committee welcomes the anti-racism campaign “La hora contra el racismo” promoted by the State party in the framework of the International Decade for People of African Descent.

## **C. Concerns and recommendations**

### **Demographic composition of the population**

7. The Committee notes with concern the lack of information appropriately reflecting the demographic composition of the population of the State party, in particular socioeconomic indicators to assess progress towards the equal realization of the rights contained in the Convention. In addition, the Committee notes with concern the discrepancy between the official data of the State party and data provided by other sources on indigenous peoples and the Black, Palenquero and Raizal communities (Afro-Colombian peoples) (art. 2, para. 1).

8. **Recalling its general recommendation No. 4 (1973) concerning reporting by States parties on the demographic composition of the population, as well as its previous concluding observations, the Committee reiterates its recommendation and urges the State party to collect and provide the Committee with reliable, updated and comprehensive statistical data on the demographic composition of the population, together with socioeconomic indicators disaggregated by ethnicity, gender, age, region, and urban and rural areas, including the most remote areas. Bearing in mind that the next census is due to take place in 2016, the Committee urges the State party to facilitate active participation by indigenous peoples and the Afro-Colombian and Roma populations, through their representative institutions, in developing the methodology to be used and to ensure that such a methodology is based on the criterion of self-identification.**

### **Definition and offence of racial discrimination**

9. The Committee welcomes the adoption of Act No. 1482 of 2011 on the amendment of the Criminal Code to criminalize acts of racism and racial discrimination. Nevertheless, it remains concerned about the lack of a general provision in administrative or civil legislation prohibiting racial discrimination and the fact that the offence of racism or discrimination as provided for in the Act is not in line with the parameters defined in article 1 of the Convention. Similarly, it is concerned at the lack of effective implementation of the Act, as reflected by the limited information on the number of cases investigated and the results obtained. In addition, the Committee reiterates its concern that the State party’s criminal legislation is not fully in conformity with article 4 of the Convention (arts. 1 and 4).

10. **In the light of its previous recommendation (CERD/C/COL/CO/14, para. 13), the Committee urges the State party to introduce a definition of racial discrimination in its legislation in accordance with article 1, paragraph 1, of the Convention. To this end, it recommends that the prohibition of direct and indirect discrimination in all fields of public life, including discrimination relating to the rights contained in article 5 of the Convention, be introduced in the State party’s administrative and civil legislation. The Committee urges the State party to take the necessary measures to ensure the effective implementation of the Act by carrying out thorough investigations of cases of racial discrimination and adequately punishing those responsible. In the light of its general recommendations No. 15 (1993) on article 4 of the Convention and No. 35 (2013)**

**on combating hate speech, the Committee recommends that the State party ensure that its criminal legislation is fully in line with article 4 of the Convention.**

#### **Impact of the armed conflict and peace negotiations**

11. The Committee welcomes the information on progress in the peace negotiations taking place in Havana and the Early Warning System developed by the Ombudsman's Office to monitor and prevent human rights violations and breaches of international humanitarian law in the context of the internal armed conflict. However, the Committee is concerned that:

(a) The armed conflict continues to disproportionately affect indigenous and Afro-Colombian peoples, owing to such factors as the militarization of their territories, the high incidence of sexual violence against indigenous and Afro-Colombian women, the use of indigenous and Afro-Colombian children by non-State armed groups and extrajudicial executions, including the practice known as "false positives";

(b) The peace negotiations do not involve the effective participation of indigenous peoples and the Afro-Colombian population;

(c) Risk reports issued by the Early Warning System are not duly considered by the Inter-Agency Early Warning Committee (arts. 5 and 6).

#### **12. The Committee recommends that the State party:**

(a) **Redouble its efforts to ensure full respect for human rights and international humanitarian law in relation to the territories of indigenous peoples and the Afro-Colombian population, inter alia by ensuring that the risk reports issued by the Early Warning System are duly taken into account by the relevant authorities, particularly the Inter-Agency Early Warning Committee;**

(b) **Carry out thorough investigations into human rights violations against members of indigenous and Afro-Colombian peoples in the context of the armed conflict and take the necessary measures to ensure that victims receive full redress;**

(c) **Take the necessary measures to ensure the effective implementation of Act No. 1719 of 2014 on access to justice for victims of sexual violence, in particular that committed in connection with the armed conflict;**

(d) **Step up its efforts to prevent the recruitment of indigenous and Afro-Colombian children by non-State armed groups and ensure the effective implementation of the measures taken for their demobilization and reintegration;**

(e) **Allocate the necessary human, material and technical resources to the Attorney General's Office for the effective discharge of its duties; and**

(f) **Ensure that members of indigenous and Afro-Colombian peoples, including women, are properly consulted in peace negotiations so that the process of truth, justice and redress effectively takes into account their legitimate interests.**

#### **Structural discrimination against Afro-Colombians**

13. The Committee is concerned about the persistent structural discrimination and invisibility faced by Afro-Colombians, which is evident in the inequality gap in the exercise of economic, social and cultural rights between Afro-Colombians and the rest of the population. The Committee is concerned that the highest levels of poverty are

recorded in areas in which the majority of Afro-Colombians are concentrated (arts. 2 and 5).

**14. In the light of its general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends that the State party take the special measures necessary to put an end to the structural discrimination that affects Afro-Colombians, including action to:**

**(a) Improve the living conditions of Afro-Colombians by ensuring that they are protected against discrimination by public officials and State agencies, or by any individual, group or organization;**

**(b) Remove all obstacles that prevent the enjoyment of economic, social and cultural rights by Afro-Colombians, especially in the areas of education, employment and health;**

**(c) Combat the poverty, social exclusion and marginalization that disproportionately affect Afro-Colombians.**

**Indigenous peoples facing extinction and indigenous peoples living in isolation or at the initial-contact stage**

15. The Committee regrets that the State party has not effectively implemented the decisions of the Constitutional Court, which has ruled that some indigenous peoples are at risk of physical and cultural extinction. The Committee regrets that the State party has not yet finalized the design of ethnic protection plans for the benefit of the majority of these peoples and that the implementation of the plans that have already been designed is still at the initial stage. The Committee is also concerned about the absence of measures for the effective protection of indigenous peoples living in voluntary isolation or at the initial-contact stage (art. 2, para. 2).

**16. The Committee urges the State party to give full effect to the decisions of the Constitutional Court and to expedite the design and implementation of ethnic protection plans for peoples that have been identified by both the Constitutional Court and the National Indigenous Organization of Colombia as being at risk of physical or cultural extinction and to ensure the effective participation of affected indigenous peoples in the development and implementation of such plans. The Committee recommends that the State party take the necessary urgent measures to ensure the physical and cultural survival of the indigenous peoples who are in a situation of greater vulnerability, particularly the Awá, Hitnu and Wayúu peoples, and indigenous peoples living in voluntary isolation or in an initial-contact situation, particularly the Nukak Makú people of the Colombian Amazon region.**

**Forced displacement**

17. Despite the measures taken by the State party for the protection of the displaced population, the Committee reiterates its concern at the persistence of forced displacement, which continues to disproportionately affect indigenous peoples and Afro-Colombian communities (art. 5).

**18. The Committee urges the State party to take the necessary urgent steps to ensure the practical and effective implementation of the Programme to Guarantee the Rights of Indigenous Peoples Affected by Displacement, or at risk of displacement, and the Comprehensive Plan to prevent displacement and provide protection and care for the displaced Afro-Colombian population. The Committee recommends that the State party ensure the provision of the human**

**and material resources needed for their implementation and the mainstreaming of a differentiated approach into these measures and plans.**

#### **Land rights and land restitution**

19. Although the Committee notes with satisfaction the progress made by the State party in recognizing the rights that indigenous and Afro-Colombian peoples have over their territories, and the efforts made to return their lands following forced displacement, the Committee is concerned about:

(a) The constant threats and violence that prevent indigenous and Afro-Colombian peoples from effectively exercising their land rights;

(b) The failure to adopt the necessary regulations and the lack of effective implementation of Act No. 70 of 1993, which recognizes the right of collective ownership of Afro-Colombians over their territories;

(c) The obstacles to the effective implementation of Act No. 1448 of 2011, including a lack of human and material resources, a lack of coordination between the authorities responsible for its implementation and the fact that the right to restitution is restricted to victims displaced from their lands after 1991 (art. 5).

#### **20. The Committee recommends that the State party:**

(a) **Guarantee the right of indigenous and Afro-Colombian peoples to possess, use, develop and control their lands, territories and natural resources, freely and with full security, by such means as providing legal recognition and the necessary legal protection;**

(b) **Ensure the implementation of Act No. 70 of 1993 and the adoption of the corresponding regulations;**

(c) **Take the necessary steps to ensure that the agencies responsible for implementing Act No. 1448 of 2011 have adequate human and material resources and cooperate with each other effectively, thus ensuring the effective participation of indigenous and Afro-Colombian peoples.**

#### **Right to prior consultation**

21. Although the Committee notes that the State party has recognized the right to consultation as a fundamental right of both indigenous peoples and Afro-Colombians, it is concerned at information about the lack of effective implementation of this right, partly because consultation is carried out without proper information, sometimes hastily, or without due consideration for the concerns of these peoples. In addition, it is concerned that the bill under consideration to regulate the process of prior consultation is not fully in conformity with international standards. The Committee regrets that Afro-Colombian peoples were not consulted about the National Development Plan (2014-2018). Lastly, the Committee notes with concern reports of statements made by high-level government officials to the effect that the right to prior consultation is an obstacle to development and infrastructure projects (arts. 2 and 5).

#### **22. Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee calls upon the State party to:**

(a) **Fulfil its obligation to ensure consultation, with a view to obtaining the free, prior and informed consent of indigenous and Afro-Colombian peoples, as a means of effective participation in any activities relating to legislative or administrative provisions that could affect their rights, particularly their right to the land and natural resources that they own or have traditionally used;**

**(b) Adopt procedural protocols for carrying out prior consultation ensuring respect for the cultural characteristics, traditions and customs of each people;**

**(c) Avoid statements criticizing or stigmatizing the efforts of indigenous and Afro-Colombian peoples to exercise their fundamental right to free, prior and informed consent and their right to sustainable development.**

#### **Impact of projects involving natural resource exploitation**

23. The Committee notes with concern the reports regarding the negative impact of projects involving the exploitation of natural resources, including illegal mining, on the territories of indigenous and Afro-Colombian peoples, which cause irreparable damage to the environment and affect their traditional forms of subsistence and exploitation of land and resources, such as hunting, fishing, farming and traditional mining. The Committee is also concerned at the tensions between outsiders and the indigenous and Afro-Colombian peoples living in those territories. The Committee is particularly concerned at the situation faced by Afro-Colombian communities in northern Cauca, the Wayúu people in La Guajira and the indigenous peoples in Putumayo and Nariño.

24. **In view of the fact that the protection of human rights and the elimination of racial discrimination are essential for sustainable economic development, and recalling the role of both the public and the private sectors in this regard, the Committee urges the State party to:**

**(a) Guarantee the full and effective enjoyment by indigenous and Afro-Colombian peoples of their rights over the lands, territories and natural resources that they occupy or use, in the face of incursions by outsiders who exploit natural resources, both legally and illegally;**

**(b) Ensure the effective implementation of protection measures and safeguards against negative environmental impacts and in support of the traditional ways of life of indigenous and Afro-Colombian peoples;**

**(c) Guarantee that indigenous and Afro-Colombian peoples affected by natural resource activities in their territories receive compensation for damage or loss suffered and participate in the benefits arising out of such activities.**

#### **Political rights of Afro-Colombians**

25. The Committee notes with concern that, while legislative measures have been taken to promote the political participation of Afro-Colombians, they have not proved effective, given the continuing lack of adequate representation of Afro-Colombians at all levels of public administration that would facilitate the design and implementation of public policies to guarantee their rights (art. 5).

26. **The Committee recommends that the State party redouble its efforts to ensure the full participation of Afro-Colombians in decision-making bodies, particularly in representative institutions and public affairs, and take effective measures to ensure equal opportunities for participation by Afro-Colombians at every level of public administration, both national and local. The Committee also recommends that the State party raise awareness among Afro-Colombians about the importance of their active participation in public and political life.**

#### **Human rights defenders and leaders of indigenous and Afro-Colombian peoples**

27. While it takes note of the work done by the National Protection Unit, the Committee is concerned at the ineffectiveness of the protection measures adopted to

provide security and guarantee respect for the lives and personal safety of human rights defenders and leaders of indigenous and Afro-Colombian peoples. In particular, the Committee is deeply alarmed at the constant threats against and the murders of human rights defenders and leaders of indigenous and Afro-Colombian peoples, such as the murder of the Afro-Colombian leader Genaro García the day before the interactive dialogue with the State party (arts. 5 and 6).

**28. The Committee recommends that the State party:**

**(a) Adopt effective and timely measures to prevent acts of violence against human rights defenders, including leaders and defenders of the rights of indigenous and Afro-Colombian peoples, and to ensure the effective protection of their lives and personal safety;**

**(b) Ensure the effective functioning of the National Protection Unit as a special mechanism for the protection of human rights defenders by such means as the review and improvement of existing protection strategies, the adoption of collective protection measures, with differentiated measures for people living in rural areas and for women, and the allocation of sufficient human, financial and technical resources;**

**(c) Conduct thorough investigations and bring effective prosecutions of persons who threaten the lives and physical safety of human rights defenders, including leaders and defenders of the rights of indigenous and Afro-Colombian peoples.**

**Afro-Colombian population in Buenaventura**

29. The Committee notes with grave concern the critical situation of vulnerability facing the population of Buenaventura (Valle del Cauca), of whom approximately 90 per cent are Afro-Colombian, owing to such factors as the lack of consultation prior to the promotion of the port expansion project and the establishment of tourism projects that threaten the way of life and ancestral practices of the population. The Committee also notes with deep concern the levels of violence in the port of Buenaventura resulting from the presence of illegal armed groups. The Committee is particularly concerned about cases of enforced disappearance and the existence of so-called “*casas de pique*” (houses where illegal armed groups torture and kill their victims) (arts. 2, 5 and 6).

**30. The Committee recommends that the State party:**

**(a) Take effective measures to protect the lives and safety of the inhabitants of Buenaventura and conduct thorough investigations into human rights violations, ensuring that the perpetrators receive appropriate punishment;**

**(b) Adopt the necessary measures to ensure compliance with the right to prior consultation of Afro-Colombian communities that may be affected by economic development projects in Buenaventura;**

**(c) Organize round-table discussions between representatives of the Government, the private sector and members of the Afro-Colombian communities affected and ensure that they produce concrete, achievable and measurable agreements and that such agreements are effectively implemented.**

**Discrimination against indigenous and Afro-Colombian women**

31. The Committee is concerned about the multiple forms of discrimination faced by Afro-Colombian and indigenous women in the State party, particularly as regards their

inadequate access to education, employment, justice and health care, including sexual and reproductive health services (arts. 2 and 5).

**32. The Committee recommends that the State party take into account its general recommendation No. 25 (2000) on the gender-related dimensions of racial discrimination and include a gender perspective in all policies and strategies for combating racial discrimination in order to address the multiple forms of discrimination affecting indigenous and Afro-Colombian women. The Committee also urges the State party to take measures with an intercultural focus to improve access by women who are victims of discrimination and violence to education, employment, justice and health care, including sexual and reproductive health services.**

#### **Right to health**

33. The Committee remains concerned about the lack of availability, accessibility and acceptability of health services in regions inhabited mostly by indigenous and Afro-Colombian peoples, which is reflected, inter alia, in the high infant and maternal mortality rates compared with other regions of the State party (art. 5).

**34. The Committee recommends that the State party allocate adequate resources to the health sector and redouble its efforts to ensure accessibility, availability, affordability and quality of health care, paying particular attention to the needs of indigenous and Afro-Colombian peoples through such action as the development and implementation of intercultural health service plans that take account of the geographical characteristics of rural areas and provide for the active participation of indigenous and Afro-Colombian peoples.**

#### **Right to safe drinking water**

35. The Committee notes with concern the lack of access to safe drinking water and basic sanitation by indigenous and Afro-Colombian peoples living in rural and remote areas. It is also concerned about the impact of the disproportionate and uncontrolled use of water and pollution of rivers owing to the development of mining activities. The Committee notes with great concern the negative impact that the operations of the El Cercado dam and the El Cerrejón mine and the diversion of the Ranchería River have on access to water for the Wayúu people in La Guajira (art. 5).

**36. The Committee recommends that the State party guarantee access to safe drinking water and sanitation services for indigenous and Afro-Colombian peoples, particularly those living in rural and remote areas. The Committee also recommends that the State party take the steps necessary to ensure that water use by the mining industry does not negatively affect access to water by indigenous and Afro-Colombian peoples living in those territories, including the adoption of water processing and desalination standards. The Committee urges the State party to take urgent steps to ensure access to water by the Wayúu people.**

#### **Right to education**

37. The Committee welcomes the progress made by the State party to improve the right to education by indigenous and Afro-Colombian peoples. It is concerned, however, that there are still significant differences in access to education, primarily affecting indigenous and Afro-Colombian children living in rural and remote areas. It is also concerned that the current education policy fails to comply fully with the aim of preserving the right to cultural identity of indigenous and Afro-Colombian peoples (art. 5).



38. The Committee recommends that the State party redouble its efforts to ensure the availability, accessibility and quality of education for indigenous and Afro-Colombian children. The Committee also recommends that the State party should take the necessary steps to ensure that the policies of ethnic education and intercultural education fulfil the objective of promoting and preserving the cultural identity of indigenous and Afro-Colombian peoples.

#### **Access to justice**

39. The Committee is concerned that the mechanisms introduced by the State party to provide access to justice for indigenous, Afro-Colombian and Roma peoples, such as the National Houses of Justice Programme, are not sufficient to ensure timely access to justice, as they are not yet available in all the territories of indigenous and Afro-Colombian peoples. The Committee is also concerned at reports of alleged irregularities in legal proceedings involving indigenous persons (art. 6).

40. In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee calls on the State party to improve the functioning of the special indigenous courts. It also recommends that the necessary steps be taken to guarantee access to justice, including the establishment of houses of justice in those territories where they do not currently exist and to uphold respect for the fundamental right to due process, with guarantees, in cases involving members of indigenous, Afro-Colombian and Roma peoples.

### **D. Other recommendations**

#### **Ratification of other treaties**

41. The Committee encourages the State party to ratify the international treaties to which it is not yet a party, in particular the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance.

#### **Declaration under article 14 of the Convention**

42. The Committee urges the State party to make the optional declaration provided for in article 14 of the Convention.

#### **Durban Declaration and Programme of Action**

43. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination into its national legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests the State party to include in its next periodic report detailed information on the action plans and other measures taken to implement the Durban Declaration and Programme of Action in the country.

**International Decade for People of African Descent**

44. Pursuant to General Assembly resolution 68/237 on the proclamation of the International Decade for People of African Descent (2015-2024) and General Assembly resolution 69/16 on the Decade's programme of activities, the Committee recommends that the State party prepare and implement an appropriate programme of measures and policies. The Committee also requests the State party to include in its next report detailed information on the specific measures taken in this regard, bearing in mind its general recommendation No. 34 (2011).

**Dissemination of reports and concluding observations**

45. The Committee recommends that the State party make its reports available to the public as soon as they are submitted and that it disseminate the Committee's concluding observations in the official language and, where appropriate, other languages commonly used in the State party.

**Consultation with civil society organizations**

46. The Committee recommends that the State party continue to hold consultations and broaden its dialogue with civil society organizations working to protect human rights, particularly in the area of racial discrimination, in the course of preparations for the next periodic report and the follow-up to the present concluding observations.

**Follow-up to concluding observations**

47. 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 on its follow-up to the recommendations contained in paragraphs 12, 16, 30 and 36 within one year of the adoption of these concluding observations.

**Paragraphs of particular importance**

48. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 20, 22, 24 and 28 and requests the State party to include in its next periodic report detailed information on specific measures taken to implement them.

**Preparation of the next report**

49. The Committee recommends that the State party submit its seventeenth to nineteenth periodic reports, combined into a single document, by 2 October 2018, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. In the light of General Assembly resolution 68/268 of 9 April 2014, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.

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