

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

75<sup>TH</sup> SESSION

COLOMBIA, 10 TO 14<sup>TH</sup> REPORT

12 AND 13 AUGUST 2009

Key facts .....	1
Opening remarks by the delegation .....	1
Overview of key issues .....	2
Other issues .....	6
Conclusions and next steps .....	6

### Key facts<sup>1</sup>

Ratification	Reservations	Party to Optional Protocols	Other core treaties ratified	Date of previous examination, submission of present report
1981	None	N/A	ICCPR, ICESCR, CAT, CRC, CEDAW, CMW, CRPD	20 August 1999 5 May 2008

### Opening remarks by the delegation

The delegation of Colombia was led by Mr Angelino Garzon, Ambassador and Permanent Representative to the United Nations in Geneva. He was supported by a high-level delegation, consisting of representatives of the Ministry of Interior and Justice, Ministry of Foreign Affairs, Ministry of Culture, Ministry of Education, Ministry of Defence, and the Permanent Mission in Geneva.<sup>2</sup>

The one hour long and quite detailed opening statement by the delegation was divided into two parts. In the first part Ms Rosa Garcia of the Ministry of Interior and Justice described all steps the Government has taken in recent years to combat racial discrimination. She outlined the current legislative and institutional

<sup>1</sup> The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at [www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx](http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx).

<sup>2</sup> Angela Margarita Rey, Human Rights Director, Ministry of Foreign Affairs; Rosa Garcia, Director Community of people from African descent, Ministry of Interior and Justice; Moises Medrano, Director populations, Ministry of Culture; Ingrid Rusinque, Sub-director direct interventions, ICBF; Maria Clara Ortiz, Sub-director, Ministry of Education; Eduth Claudia Hernandez, Ministry of Defence; Alvaro Enrique Ayala Melendez, Permanent Mission to the UN; Monica Fonseca, State Chancellery; Beatriz Mejia, Ethnic Affairs Advisor; and Juanita Garcia, Permanent Mission to the UN.

framework for the protection of human rights and highlighted efforts in the area of education, health, political participation of indigenous and Afro-Colombian communities, and affirmative action for vulnerable groups such as indigenous, displaced people and women. Ms Garcia admitted that indigenous people, Afro-Colombians, and the Roma are victims of different kinds of racial discrimination in Colombia but that this is the result of the colonial period. She underscored that the State intends to establish a legislative and institutional framework to prevent discrimination and guarantee equality.

In the second part of the opening remarks Mr Moises Medrano of the Ministry of Culture reported on the findings and recommendations of a commission that examined the situation of the Afro-Colombian communities. He outlined that the Afro-Colombians have limited access to education, employment, participation public institutions, subsidies, information, and safe land.

Overall, the delegation showed openness to dialogue with the Committee. The Ambassador also informed the Committee that the country has extended an invitation for the Special Rapporteur on minorities to visit at the beginning of 2010.

### Overview of key issues

The following overview addresses seven of the Committee's concluding observations following the examination on the basis of those themes that the Committee requested follow-up on implementation within one year<sup>3</sup> or to include detailed information on concrete measures taken in the State's next periodic report.<sup>4</sup> Each issue is assessed according to how it was addressed in the examination, including the initial views of the State, questions and comments by the Committee, and responses provided.

The Colombian delegation provided detailed responses to most of the questions raised in the list of issues and posed by Committee members during the dialogue. In cases, where no reply could be given, the delegation pledged that information would be provided in writing later. The Ambassador stated that the questions are not regarded as criticism and that the Committee's recommendations assist the Government to move forward in the protection of human rights. He underscored that the Government is committed to guarantee protection from racial discrimination and to erase inequalities. The Committee welcomed the Government's recognition of the existence of racial discrimination and its engagement with the international community and civil society. It took note of difficulties related to the armed conflict. Several Committee members stated that the main challenge for Colombia in combating racial discrimination is not the lack of legislation, but the actual implementation of existing laws.<sup>5</sup> Overall, the Committee welcomed the report as a good and detailed. Some experts however criticised the length of the report and the lack of information on implementation as well as the delay in its submission.<sup>6</sup>

### **Protection of Afro-Colombians and indigenous communities against serious human rights violations**

'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

<sup>3</sup> CERD /C/COL/CO/14 , para 33, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>4</sup> CERD /C/COL/CO/14 , para 34, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>5</sup> Mr Regis de Gouttes, Mr Mr Pierre-Richard Prosper, Mr Ion Diaconu.

<sup>6</sup> Mr Chris Peter, Mr de Gouttes, Mr Jose Lindgren Alves.

with adopted policies and regulations and ensure that any acts of violations of human rights are promptly investigated and, when necessary, punished.<sup>7</sup>

The Country Rapporteur, Mr Ion Diaconu, underscored that the civil population, in particular indigenous people and Afro-Colombians are the main victims of the armed conflict and the violence by armed groups as they often live in the conflict areas. These groups not only face a high rate of poverty, higher mortality, a lack of housing and high illiteracy rates, but also serious human rights violations. He expressed in particular concern at the high number of complaints regarding enforced disappearances, displacements, forced recruitment, and extra-judicial killings. Committee members Mr Jose Lindgren Alves and Mr Regis de Gouttes, while acknowledging that illegal armed groups bear significant responsibility for violations, inquired about reports of the direct involvement of State agents and members of the armed forces in such acts. The Ambassador responded that the violence did not start with the current Government, but has persisted for more than 40 years. Guerrillas, drug traffickers, para-military groups, and also public servants have been involved in serious human rights violations. The Government is determined to ensure that civil servants respect human rights, international law and the constitution. Ms Claudia Hernandez of the Ministry of Defence explained that the main perpetrators are the FARC (*Fuerzas Armadas Revolucionarias de Colombia*) and other armed groups that are financed through drug trafficking. Ms Angela Margarita Rey of the Ministry of Foreign Affairs emphasised that international aid is needed to combat drug trafficking as its revenues are used to finance the armed conflict. In response to the Committee's concerns about extrajudicial killings by armed forces, Ms Hernandez stated that administrative measures have been taken and involved military personnel has been withdrawn from active duty. Moreover a committee has been formed to lead investigations, which resulted in a drastic reduction of complaints in the last year. Mr de Gouttes questioned whether the armed forces are given specific instructions when entering sacred sites and spiritual places of indigenous groups. Ms Garcia responded that there are guidelines for the armed forces according to which they have to contact, when entering indigenous territories, community leaders to identify customs, traditions and sacred places to ensure respect for these sites.

### Early warning to prevent serious violations

'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.'<sup>8</sup>

Committee member, Mr Pierre-Richard Prosper, was interested in early warning measures and their effectiveness for the prevention of violence. Mr Diaconu expressed concern at the threats and killings of Afro-Colombian and indigenous leaders and asked about the measures the Government is taking to protect and prevent violations against minority group leaders. He added that the absence of civilian authorities to protect and assist local populations in areas taken up by the military is worrying. In response Ms Hernandez pointed to the early warning mechanism that was set up by the Ombudsman's Office to prevent forced displacements and to protect communities. The Ombudsman's Office develops risk reports, which are analysed by a Government committee. In the case of imminent risk early warnings are issued and sent to local authorities, which take relevant action. She added that there is also an oversight office, which has three main

<sup>7</sup> CERD/C/COL/CO/14, para 14 available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>8</sup> CERD/C/COL/CO/14, para 15 available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

roles: a preventive role by monitoring public officials; a punitive role when violations have been committed by officials; and lastly an intervention role in the judicial procedure to ensure due process and safeguard fundamental rights. Ms Hernandez also referred to the constitution, which contains a wide range of rights and allows any person to call for immediate protection if constitutional rights have been violated.

### **Displacements**

‘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.’<sup>9</sup>

Mr Diaconu underscored the high number of two million displaced people in the last 10 years. He also expressed concern that, despite far reaching legislation, forced displacements still occur. He underscored that as Afro-Colombians, indigenous people and women are the most affected they deserve special protection. Additionally, he claimed that the procedures to claim territorial rights for groups are lengthy and complicated and wondered whether the procedure could be simplified by reducing the number of procedural steps or involved institutions. Mr Dilip Lahari pointed to the fact that displacement is compounded by the land grab of agro-businesses. Ms Beatriz Mejia responded to the concerns regarding the high number of displaced people that the Government has increased its investment in the registration of displaced people by 700 percent compared to the previous four years. She acknowledged, however, that challenges remain particularly in the provision of housing and land for the displaced.

### **Reparations for victims of discrimination**

‘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.’<sup>10</sup>

The Committee noted that the Government passed several laws in the recent years, which provide for reparations for victims, who have suffered violations by armed groups. While the Committee welcomed this move it criticised that insufficient information was provided to the Committee on how this right has been implemented in relation to Afro-Colombian and indigenous people. Ms Garcia stated that land tenure studies are carried out to define if new or restructured territory can be collectively granted to indigenous people. She added that five million hectares of land have been handed over to displaced people and communities.

### **Prior consultation with indigenous people**

‘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

<sup>9</sup> CERD/C/COL/CO/14, para 16 available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>10</sup> CERD/C/COL/CO/14, para 17 available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

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.’<sup>11</sup>

Several Committee members criticised that the right to prior consultation and consent has been frequently violated in conjunction with mega projects relating to infrastructure and natural resource exploitation, such as mining, oil exploitation or mono-cultivation.<sup>12</sup> Mr Diaconu expressed disappointment with the written replies of the Government to the Committee’s question on this issue and pointed to a case where a concession was granted to a foreign mining company without consulting the affected community. Committee member Mr Patrick Thornberry was interested in whether consent is required under Colombian law after the consultations or if it is sufficient to carry out consultations. He was also interested in how the consultations are conducted. He pointed to the importance of local customs and traditions and stated that they should be the starting point for the consultation process. Ms Garcia replied that the Government recognised the importance of prior consultation. She explained that the Ministry of Interior has a coordinating and safeguarding role in the consultation process and that the courts have found that consultations should in principle always proceed to an agreement between indigenous people and the Government. However the court decisions leave the possibility for the State to take decisions, which mitigate or restore the circumstances in a particular case. The Ministry set up a working group, comprising 25 experts, that exclusively works on this issue. Moreover, a draft law to regulate the process of consultation and to fill existing legal gaps is currently being developed.

### **Affirmative action**

‘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.’<sup>13</sup>

Several Committee members welcomed that the State implements national policies on special measures for vulnerable groups in many areas such as development, education, health, and violence. However, they also expressed concern that in practice Afro-Colombians and indigenous people continue to face serious challenges to the enjoyment of their rights.<sup>14</sup> Mr Patrick Thornberry stated that the Committee looks beyond State action to the social roots of discrimination. He added that structural causes perpetuate discrimination and exclusion from access to socio-economic rights and development and well-intended programmes may have negative effects if these causes are not taken into account. He underlined the importance of consultation with relevant communities for the effectiveness of programmes. Mr Lahiri argued that disaggregated data on the impact of affirmative measures is necessary to ensure that the State targets its resources and actions appropriately. Mr Garcia from the Ministry of Interior outlined several programmes of affirmative action such as in the area of health, education, housing, culture, as well as special programmes for women, Afro-Colombians, and displaced people and other vulnerable groups. She argued that much progress has been achieved, but the Government is aware that many challenges remain.

<sup>11</sup> CERD/C/COL/CO/14, para 20, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>12</sup> Mr Diaconu, Mr Jose Calitzay, Mr Thornberry, and Mr de Gouttes.

<sup>13</sup> CERD/C/COL/CO/14, para 18, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>14</sup> Mr Diaconu, Mr Kemal, Mr Thornberry, Mr Lahiri.

## Protection of indigenous peoples facing extinction

‘The Committee urges the State party to find political and legal solutions to protect the existence of certain indigenous peoples, in particular the Colombian Amazon, which are on the brink of extinction as a result of armed conflict and the exercise of their human rights.’<sup>15</sup>

The Country Rapporteur Mr Diaconu underscored the effects agro-businesses, mining projects in the Amazon, and genetically modified seeds have on the indigenous people. He criticised that mining is taking place without prior consent of the affected people. Moreover, he claimed that plantations are leading to changes in the way of life of indigenous people and affect the environment so that their existence is at risk. Mr Diaconu stated that genetically modified seeds, which are introduced without prior consultation, may not only affect native farming but also the health and life of indigenous people. Mr Mosies Medrano of the Ministry of Culture admitted that indigenous people face risks from big agricultural projects. He explained that measures are taken to protect the indigenous people in the Amazon. He emphasised that there is a programme plan that covers 13 areas of action such as food security, education, health, improving habitat, environmental control, infrastructure, traditional lands, protecting family structures, control of diseases, training and capacity building. Mr Medrano stated that 3.5 million dollars have been invested so far for the protection of indigenous people in the Amazon. The Ambassador added that traditional agriculture is respected in Colombia.

### Other issues

In addition to the above mentioned recommendations the Committee highlighted the following issues: lack of a general provision forbidding discrimination on the grounds of race,<sup>16</sup> delays in the enactment of crucial anti-discrimination laws such as the Bill on Equality, lack of appropriate institutions such as a National Human Rights Institution to ensure the protection of human rights, lack of recognition of collective land titles for African-Colombians and indigenous communities,<sup>17</sup> high number of Afro-Colombians and indigenous people in prisons and their lack of access to legal advice,<sup>18</sup> inadequate health care for Afro-Colombians and indigenous people,<sup>19</sup> lack of free education and high illiteracy rates among Afro-Colombian and indigenous children,<sup>20</sup> lack of bilingual education, and lack of and the variation in reliable data such as the percentage of the population that identify as Afro-Colombian.<sup>21</sup>

### Conclusions and next steps

The Country Rapporteur Mr Diaconu stated that the dialogue had been exemplary and that Colombia showed its full commitment to its international obligations. Mr Diaconu also commended the engagement of civil society. However, he argued that many problems still remain due to the consequences of conflict such as violence, IDPs, reparations, return of IDPS, measures to eliminate economic and social aspects of discrimination, intercultural education, and bilingual teaching. He also pointed to pending anti-discrimination legislation and underscored that the authorities need to focus on the implementation of the legal framework and existing programmes. The chairperson recommended to the State party to observe the deadlines for the submission of the report in the future. The next periodic report is due on 2 October 2012.<sup>22</sup>

*Last revised and updated: 12 January 2010.*

<sup>15</sup> CERD/C/COL/CO/14, para 25, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>16</sup> CERD/C/COL/CO/14, para 13 available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>17</sup> CERD/C/COL/CO/14, para 19 available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>18</sup> CERD/C/COL/CO/14, para 21 available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>19</sup> CERD/C/COL/CO/14, para 22 available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>20</sup> CERD/C/COL/CO/14, para 23 available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>21</sup> CERD/C/COL/CO/14, para 24 available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

<sup>22</sup> CERD/C/COL/CO/14, para 35, available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

## **TREATY BODY MONITOR STAFF**

**Eléonore Dziurzynski**, Communications Officer, Geneva

**Gareth Sweeney**, Deputy Manager, Geneva

**Katrine Thomassen**, Manager International Programme, Geneva

**Michael Ineichen**, Human Rights Officer, Geneva

**Michelle Evans**, Representative to the UN, New York

**Vanessa Jackson**, Human Rights Officer, New York

## **AUTHOR OF THE COLOMBIA REPORT**

**Isabella Ries**, Intern

## **ABOUT THE PUBLICATION**

The *Treaty Body Monitor* forms part of the Human Rights Monitor Series produced by ISHR. It reports on each country reviewed by the six treaty bodies (all but the Committee on the Rights of the Child) and provides an overview of every treaty body session. It is currently an online publication that can be found at [www.ishr.ch](http://www.ishr.ch).

## **COMMENTS AND FURTHER INFORMATION**

We would welcome your feedback on this publication so please send any comments and suggestions to [information@ishr.ch](mailto:information@ishr.ch). You can check the latest Treaty Body Monitor reports published on [www.ishr.ch](http://www.ishr.ch).

## **COPYRIGHT, DISTRIBUTION AND USE**

Copyright © 2009 International Service for Human Rights

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

ISHR accepts no responsibility for any inaccuracies arising from or connected to unapproved or unofficial translations of its publications or parts thereof.

## **DISCLAIMER**

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on, or any use of this publication. We are however happy to correct any errors you may come across so please notify [information@ishr.ch](mailto:information@ishr.ch).