



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 seventeenth to nineteenth periodic reports of Colombia*

1. The Committee considered the combined seventeenth to nineteenth periodic reports of Colombia (CERD/C/COL/17-19), submitted in one document, at its 2778th and 2779th meetings (see CERD/C/SR.2778 and 2779), held on 27 and 28 November 2019. At its 2795th meeting, held on 10 December 2019, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the timely submission of the combined seventeenth to nineteenth periodic reports of the State party, submitted in one document (CERD/C/COL/17-19). The Committee expresses appreciation for the frank dialogue held with the State party's high-level delegation and the information provided in writing.

B. Positive aspects

3. The Committee welcomes the following legislative, institutional and policy measures taken by the State party:

(a) The National Development Plan 2018–2022, “Pact for Colombia, Pact for Equity” (Act No. 1955 of 2019);

(b) Act No. 1997 of 2019, on the amendment of legislation in order to provide for the granting of Colombian nationality to the children of Venezuelan migrants born in Colombia;

(c) Act No. 1833 of 2017, establishing the congressional legal commission for the protection of the rights of the black, or Afro-Colombian, communities;

(d) Decree No. 2124 of 2017, regulating the prevention and warning system for ensuring a rapid response to the presence, operations and/or activities of criminal organizations or criminal acts and conduct that jeopardize the rights of the population and the implementation of the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace;

(e) Decree No. 1953 of 2014, which entered into force in 2018, recognizing the first indigenous university in Colombia, the Autonomous Indigenous Intercultural University of Cauca;

(f) The National Strategy for Guaranteeing Human Rights 2014–2034.

* Adopted by the Committee at its 100th session (25 November–13 December 2019).



C. Concerns and recommendations

Demographic composition of the population

4. The Committee takes note of the carrying out of the 2018 national population and housing census and the participation of indigenous peoples, persons of African descent and the Roma population. However, it is concerned that the results of the census do not adequately represent the Afro-Colombian, black, Palenquera and Raizal population, since, according to the data obtained in the census, the number of persons belonging to these groups has declined by almost 31 per cent since the 2005 census. While acknowledging the State party's efforts to rectify the figures using an estimate based on data obtained in the 2018 quality of life survey, the Committee is of the view that the data concerning this segment of the population are not accurately reflected (art. 2).

5. **The Committee reiterates its recommendation to the State party and urges it to collect and provide to the Committee 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. In this regard, the Committee encourages the State party to continue its efforts to adopt, with the involvement of indigenous peoples, persons of African descent and the Roma population, an appropriate methodology for the next population and housing census to ensure the collection of accurate and reliable statistical data for these population groups, and in particular the Afro-Colombian, black, Palenquera and Raizal population. It further recommends that the State party provide adequate training to officials of the National Department of Statistics responsible for conducting the population and housing census to ensure that the criterion of self-identification is appropriately applied and taken into consideration. The Committee draws the State party's attention to its general recommendation No. 4 (1973) concerning reporting by States parties with regard to the demographic composition of the population.**

Definition of racial discrimination

6. The Committee is concerned that the definition of racial discrimination provided for in Act No. 1482 of 2011 is still not in line with article 1 (1) of the Convention. It is further concerned at the lack of effective implementation of the Act, as reflected in the low number of investigations and convictions in cases of racial discrimination (arts. 1, 2, 5 and 6).

7. **The Committee reiterates its previous recommendation (CERD/C/COL/CO/15-16, para. 10) and urges the State party to introduce a definition of racial discrimination in its legislation in accordance with article 1 of the Convention. The Committee urges the State party to take the necessary measures to ensure the effective implementation of Act No. 1482 and to carry out thorough investigations of cases of racial discrimination and adequately punish those responsible.**

Prohibition of direct and indirect discrimination

8. The Committee remains concerned about the lack of a general provision in administrative or civil legislation prohibiting direct and indirect racial discrimination in all fields of public life, including in relation to the rights contained in article 5 of the Convention (arts. 2 and 5).

9. **The Committee recommends that the State party introduce in its administrative and civil legislation the prohibition of direct and indirect discrimination in all fields of public life, including in relation to the rights contained in article 5 of the Convention.**

Racial hatred and incitement to racial discrimination

10. The Committee is concerned about the increase in discriminatory views, racial hatred and xenophobia in the State party, especially towards migrants, in particular migrants living with HIV and lesbian, gay, transgender, bisexual and intersex migrants. The Committee reiterates its previous concern that criminal legislation is still not fully in

conformity with article 4 of the Convention and that it still contains no reference to propaganda activities that promote and incite racial discrimination (arts. 4 and 6).

11. The Committee refers the State party to its general recommendations No. 15 (1993) on article 4 of the Convention and No. 35 (2013) on combating racist hate speech and recommends that the State party:

- (a) Take effective measures to prevent and combat hate speech, incitement to racial discrimination and expressions of racism;**
- (b) Ensure that all cases of xenophobia, hate speech, incitement to racial discrimination and racially motivated violence are investigated and that those responsible are prosecuted and adequately punished;**
- (c) Carry out public awareness-raising campaigns on respect for diversity and the elimination of racial discrimination;**
- (d) Criminalize the dissemination of ideas that justify or promote racial hatred and prohibit organizations that promote and incite racial discrimination, as previously recommended by the Committee.**

Impact of the armed conflict, the Peace Agreement, justice and reparation

12. The Committee is concerned about the violence that still persists following the signing of the Peace Agreement and that affects, and constitutes a serious threat to, indigenous peoples and communities of African descent. In particular, it is concerned about paramilitary incursions into territories inhabited by these population groups; the targeted killings of members of communities of African descent and indigenous peoples; the increase in massive forced internal displacement, and the lack of protection for these population groups; and the continuing recruitment of indigenous children and children of African descent by non-State armed groups. The Committee is also concerned about information to the effect that risk reports issued by early warning system of the Ombudsman's Office are not duly considered by the intersectoral commission for rapid response to early warnings and that the recommendations issued by the Ministry of the Interior concerning such reports are not properly implemented (arts. 2, 5 and 6).

13. The Committee reiterates its previous recommendation (CERD/C/COL/CO/15-16, para. 12) and urges the State party to:

- (a) Redouble its efforts to ensure protection for indigenous peoples and communities of African descent against the violence that still persists in the context of the armed conflict and that continues to have a disproportionate impact on these population groups, by ensuring full compliance with relevant Constitutional Court decisions;**
- (b) Ensure satisfactory protection from forced displacement, while respecting the rights, customs, traditions and culture of indigenous peoples, by ensuring full compliance with relevant Constitutional Court decisions and taking into account article 10 of the United Nations Declaration on the Rights of Indigenous Peoples and guaranteeing, where possible, the option of return;**
- (c) Intensify its efforts to prevent and eliminate the recruitment of indigenous children and children of African descent by non-State armed groups and ensure the effective implementation of the measures taken for their demobilization and reintegration;**
- (d) Ensure that the risk reports issued by the early warning system are duly taken into account by the relevant authorities, particularly the intersectoral commission for rapid response to early warnings, and that the recommendations issued by the Ministry of the Interior concerning such reports are properly implemented.**

14. The Committee takes note of the inclusion of a chapter on ethnic perspectives in the Peace Agreement. However, it is concerned about reports concerning the failure to implement the provisions of this chapter and the lack of guarantees for the effective participation of indigenous peoples and communities of African descent in the implementation of the Peace Agreement. It is further concerned about the lack of progress

in investigating, prosecuting and sanctioning those responsible and in providing reparations for human rights violations committed against members of indigenous peoples and communities of African descent in the context of the armed conflict, including collective reparations such as those for the Coordinating Office for Displaced Women of African Descent in Resistance (arts. 2, 5 and 6).

15. The Committee recommends that the State party:

(a) Ensure the implementation of the chapter on ethnic perspectives contained in the Peace Agreement, including by providing adequate funding, and guarantee the participation of members of indigenous peoples and communities of African descent, especially women, in the implementation of the Agreement, while respecting the traditional selection processes of indigenous peoples and communities of African descent;

(b) Carry out thorough and effective investigations with a view to prosecuting and punishing those responsible for human rights violations committed against members of indigenous peoples and communities of African descent affected by the armed conflict and take the necessary measures to ensure that victims receive full redress, by allocating the necessary resources.

Structural discrimination

16. The Committee is concerned about the persistent structural and historical discrimination faced by members of indigenous peoples and communities of African descent, as reflected in high levels of poverty and social exclusion, as compared with the rest of the population. It is also concerned about the impact that such discrimination has on the enjoyment of the rights set out in article 5 of the Convention, including the rights to work, health, education and political participation. In this regard, the Committee is concerned about: (a) obstacles to the labour inclusion of these population groups; (b) the lack of availability and accessibility of health services, especially in remote rural areas, where the majority of indigenous peoples and a considerable number of persons of African descent live; (c) cases of chronic malnutrition among indigenous children and deaths related to malnutrition, in particular among Wayúu, Amorúa and Sikuaní indigenous children; (d) the low levels of education of these population groups, as compared with the rest of the population; and (e) the continuing lack of adequate representation of the Afro-descendant and indigenous populations at all levels of public administration (arts. 1, 2, 5 and 7).

17. With reference to its general recommendations No. 23 (1997) on the rights of indigenous peoples, No. 32 (2009) on the meaning and scope of special measures in the Convention and No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends that the State party:

(a) Ensure that indigenous peoples and persons of African descent are protected against discrimination by State agencies and public officials, as well as by any other person, group or organization;

(b) Effectively promote social inclusion and reduce the high rates of poverty and inequality among indigenous peoples and persons of African descent, including through the adoption of special measures designed to eliminate structural discrimination against such groups;

(c) Eliminate all obstacles that impede the effective enjoyment by members of indigenous peoples and communities of African descent of their economic, social and cultural rights, especially in the areas of work, health and education;

(d) Take the necessary steps to reduce the rates of chronic malnutrition among indigenous children and to guarantee indigenous peoples' right to adequate food;

(e) Adopt, in consultation with, and with the involvement of, indigenous peoples and communities of African descent, effective measures, including legislation, to ensure their full participation in public affairs in both decision-making positions and representative institutions, and ensure equality of opportunity for participation

by indigenous peoples and communities of African descent at all levels of government service at both the local and national levels.

Right to prior consultation

18. The Committee is concerned that, although the right to prior consultation is formally recognized in Colombian law, legislative processes, in general, and, in particular, the granting of licences for investment, tourism, industrial fishing and mining projects, which are carried out in the territories of indigenous peoples and of communities of African descent, are reportedly conducted in the absence of prior, free and informed consultations in line with the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), and without the appropriate environmental precautions (arts. 2 and 5).

19. **Recalling its previous recommendation (CERD/C/COL/CO/15-16, para. 22) and its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee urges the State party to:**

(a) **Ensure the right of indigenous peoples and communities of African descent to be consulted on any project, activity, legislative or administrative measure likely to affect their rights, particularly their right to the land and natural resources that they own or have traditionally used, with a view to obtaining their free, prior and informed consent, in line with the United Nations Declaration on the Rights of Indigenous Peoples and other international standards;**

(b) **Make certain that, as an integral part of prior consultation processes, before permits are granted, and from the design of projects, works or other activities to their implementation, impartial independent bodies carry out assessments of the potential environmental and human rights impacts of economic and natural resource development projects in the territories of indigenous peoples and communities of African descent;**

(c) **Specify, in consultation with the indigenous peoples and communities of African descent whose territories and resources are affected, the mitigation measures to be put in place, the compensation for damages or losses suffered to be provided and the share in the benefits to be obtained from such activities.**

Land rights and land restitution

20. The Committee is concerned about the limited progress towards the implementation of legislation on the protection, restitution and titling of indigenous and Afrodescendent territories, including Act No. 1448 of 2011, on the restitution of land for victims of the armed conflict, Act No. 70 of 1993, which recognizes the right of collective ownership of Afro-Colombians over their territories, and Decrees No. 1953 of 2014 and No. 632 of 2018. In this regard, the Committee is concerned about reports that the Land Restitution Unit has rejected 64 per cent of land restitution applications, the long delays on the part of the National Land Agency in implementing decisions of the Court requiring the titling of collective territories, and the reduction in the budgets of both entities. The Committee is also concerned about the situation currently experienced by some indigenous peoples living in protected areas, including Tayrona National Park, who face restrictions on their right to dispose freely of their lands and natural resources (arts. 2 and 5).

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

(a) **Redouble its efforts to ensure, facilitate and expedite, without delay, the implementation of legislation, including Act No. 70 of 1993, Act No. 1448 of 2011 and Decrees Nos. 1953 of 2014 and 632 of 2018, intended to guarantee, preserve and restore the rights of the indigenous peoples and persons of African descent to own, use, develop and exercise full control over their lands, territories and resources and protect them from any illegal encroachment;**

(b) **Ensure that the Land Restitution Unit and the National Land Agency have sufficient human, material and financial resources to guarantee the implementation of legislative measures relating to the restitution of lands, ensuring the effective participation of indigenous peoples and communities of African descent;**

(c) **Guarantee the restitution of the lands to indigenous and Afrodescendent communities and ensure that land restitution applications are properly assessed on the basis of established legal criteria and that court decisions requiring the restitution of land are implemented without delay;**

(d) **Take the steps necessary to ensure that indigenous peoples living in protected areas, in particular Tayrona National Park, are able to dispose freely of their lands and natural resources and that they are consulted in all processes and decisions that affect them.**

Indigenous peoples facing extinction, living in isolation or at the initial-contact stage

22. The Committee regrets the lack of significant progress in applying Constitutional Court decisions and ethnic protection plans relating to indigenous peoples and persons of African descent that have been identified as being at risk of physical or cultural extinction or as extremely vulnerable, in particular the Awa and Uitoto people. The Committee is further concerned about the lack of effective measures for the protection of indigenous peoples in voluntary isolation or in an initial-contact situation, particularly the Nukak Makú people (arts. 2, 4, 5 and 6).

23. **The Committee reiterates its previous recommendation (CERD/C/COL/CO/15-16, para. 16) and urges the State party to give full effect to the decisions of the Constitutional Court, finalize the development of ethnic protection plans for peoples that have been identified as being at risk of physical or cultural extinction and ensure their effective implementation. The Committee recommends that the State party take the necessary urgent measures to ensure the physical and cultural survival of indigenous peoples who are living in voluntary isolation or in an initial-contact situation, particularly the Nukak Makú people.**

Situation of women of African descent and indigenous women

24. The Committee is concerned about the multiple forms of discrimination faced by indigenous women and women of African descent in comparison with women in the rest of the population, especially with regard to access to work, education and health services, including sexual and reproductive health services. The Committee is further concerned about the high rate of sexual violence, which disproportionately affects indigenous women and women of African descent, in particular violence in connection with the armed conflict, the lack of assistance, protection and justice for victims, and the prevalence of impunity for such crimes (arts. 2, 5 and 6).

25. **In the light of its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee urges the State party to:**

(a) **Step up its efforts, while giving due consideration to cultural and linguistic differences, to combat the multiple forms of discrimination faced by indigenous women and women of African descent to ensure that they have effective and adequate access to justice, work, education and health services, including reproductive health services;**

(b) **Take the necessary measures to prevent sexual violence against indigenous women and women of African descent and ensure that victims have access to appropriate assistance and effective and culturally appropriate protection mechanisms;**

(c) **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, and compliance with Constitutional Court decisions No. 92/08 and No. 9/15, thus guaranteeing that all cases of sexual violence are duly investigated, that the perpetrators are prosecuted and duly punished, and that victims receive comprehensive reparation.**

Venezuelan migrants

26. The Committee is concerned about the vulnerability of Venezuelan migrants in the State party and the discrimination encountered by them, in particular in terms of access to

health services and work, and the obstacles they face in gaining access to documentation (arts. 2 and 5).

27. The Committee recommends that the State party take the necessary measures to prevent discrimination against migrants, in particular in their access to health services and work, and to facilitate their access to documentation, promote their integration and ensure that victims of acts of discrimination have access to effective remedies.

Human rights defenders

28. The Committee is deeply concerned about the killings of, and the constant acts of violence, threats, intimidation and reprisals against, human rights defenders and leaders of indigenous peoples and communities of African descent, in particular in Cauca, including the recent killing of Cristina Bautista on 29 October. It is also concerned about the low number of investigations conducted, prosecutions brought and sanctions imposed in connection with such crimes. Furthermore, the Committee is concerned about reports concerning the lack of resources of the National Protection Unit and the ineffectiveness of the protection measures adopted by it, in particular in rural areas. The Committee is also concerned about acts of defamation against, and the criminalization of, human rights defenders, including those who are members of indigenous peoples and communities of African descent (arts. 4, 5 and 6).

29. The Committee recommends that the State party:

(a) **Take additional and effective measures to prevent acts of violence, threats, intimidation and reprisals against human rights defenders, in particular leaders of indigenous peoples and communities of African descent, and ensure that all allegations of such acts are investigated thoroughly, impartially and effectively, that those responsible, both the persons who carried out the acts and the instigators or ideologues, are prosecuted and duly punished, and that the victims or their families are provided with full reparation;**

(b) **Guarantee the effective protection of their lives and personal safety, by ensuring that protection measures are taken with the involvement of the individuals, peoples and communities concerned, taking into account their customs and culture, and that they are implemented effectively and reviewed regularly;**

(c) **Strengthen, through the allocation of adequate resources and the granting of express legal recognition, pre-existing collective protection mechanisms in the communities concerned, including the Indigenous Guard and the Cimarrona Guard;**

(d) **Ensure the effective functioning of the National Protection Unit by such means as the review and improvement of existing protection strategies, the adoption and effective implementation 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;**

(e) **Organize information and awareness-raising campaigns on the crucial work done by human rights defenders with a view to creating a climate of tolerance in which they can perform their work free from all forms of intimidation, threats and reprisals.**

Access to justice and indigenous jurisdiction

30. The Committee takes note of the National Justice Houses and Civic Harmony Programme and the local justice systems strategy intended to improve the functioning of the special indigenous courts and to increase access to justice for indigenous peoples and communities of African descent. However, it remains concerned that these are not sufficient to ensure access to justice for these population groups, as they are still not available in all their territories (art. 6).

31. The Committee recommends that the State party:

(a) Intensify its efforts to ensure access to justice for indigenous peoples and communities of African descent, by ensuring that they have access to justice throughout the territory in which they live;

(b) Continue making efforts to recognize, respect and strengthen the indigenous justice system, including harmonization, cooperation and coordination involving the authorities of the ordinary and indigenous systems of justice.

D. Other recommendations

32. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, including 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 Optional Protocol to the Convention on the Rights of the Child on a communications procedure. In addition, the Committee recommends that State party consider ratifying Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance.

Declaration under article 14 of the Convention

33. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

Follow-up to the Durban Declaration and Programme of Action

34. In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

35. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015–2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies, in collaboration with organizations of peoples of African descent. The Committee requests that the State party include in its next report precise information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Dissemination of information

36. The Committee recommends that the State party make its reports readily available and accessible to the public at the time of their submission and that it disseminate the present concluding observations in the official language and in other languages commonly used in the State party.

Consultations with civil society

37. The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

Follow-up to the present concluding observations

38. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 21 (a) (land rights and land restitution) and 23 (indigenous peoples facing extinction, living in isolation or at the initial-contact stage) above.

Paragraphs of particular importance

39. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 11 (hate speech), 17 (structural discrimination), 19 (right to prior consultation) and 29 (protection of human rights defenders and leaders of ethnic groups) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Preparation of the next periodic report

40. The Committee recommends that the State party submit its combined twentieth and twenty-first periodic reports, as a single document, by 2 October 2022, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.
