



**Alternate Report to the Fourteenth Report
presented by the Colombian State to the
Committee for the Elimination of all Forms of
Racial Discrimination**

EXECUTIVE SUMMARY

Observatorio de Discriminación Racial

Composed by the Program on Global Justice and Human Rights of the Universidad de Los Andes, the Proceso de Comunidades Negras (PCN) and the Centre for the Study of Law, Justice and Society (Dejusticia).

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General Presentation

1. 102 indigenous peoples live in Colombia, accounting for 3.3% of the country's population. At the same time, 10.6% of the population considers itself Afro-descendent¹. Both ethnic groups are the main victims of racial discrimination and racism in Colombia. The indigenous peoples and Afro-descendent population represent Colombian ethnic and cultural diversity. Nevertheless, constant violations of their rights threaten them with extinction (in the case of various indigenous peoples) and deepen the cycle of marginalization, poverty and invisibility in which they find themselves. In addition, both groups have been particularly affected by the armed conflict, violence and forced displacement. The precarious situation in terms of guaranteeing the rights of these ethnic groups shows the existence and persistence of structural racism in Colombia. They both share many factors of exclusion and marginality; other forms of violations occur in more specific ways for each of these population groups.
2. This report shows the effects of the Colombian State's inaction regarding the situation of constant discrimination to which the Afro-Colombian population and indigenous peoples of Colombia are subjected. Despite certain advances in this field, current circumstances show that there continues to be a lack of public policy measures and affirmative action to enable these ethnic groups to overcome their marginality and to eradicate the racial discrimination of which they are victims.
3. This executive summary includes key information related to the state of fulfillment of the Colombian State's commitments related to each article of the International Convention for the Elimination of all Forms of Racial Discrimination (ICERD).

Article 2

A. Legislation on Racial Discrimination

4. The Colombian constitutional framework addresses the formal and material dimension of equality along with the development of the cultural diversity of the ethnic groups. The political charter also includes various specific mentions of the rights of indigenous peoples: it promotes participation by members of the indigenous peoples in the Senate and the House of Representatives (article 286); establishes that the indigenous peoples' territories are considered territorial entities with administrative and budgetary autonomy (article 246); creates special jurisdictions that authorize the indigenous peoples to apply justice within their own territory pursuant to their regulations and procedures, as long as they are not contrary to the Constitution and the law, and contains a special recognition of the indigenous peoples' forms of government (article 330).
5. The Afro-descendent population enjoys fewer specific rights recognized by the Constitution. The charter mentions this ethnic group only in transitory article 55, which requested the Colombian Congress to enact legislation on their rights. The Congress promulgated Law 70 of 1993, which enshrines the right of collective property on behalf of black communities as well as protection for

¹ There is an academic and social debate over the term that should be used to refer to the black, Afro-descendent or Afro-Colombian population. And there are terms used to refer to people who come from prominent demographic and cultural centers: *palenqueros* (from Palenque in the department of Bolívar) and *raizales* (from the archipelago of San Andrés and Providencia). Because this report does not aim to take a stand in these discussions, but rather to limit itself to human rights violations, it does not take sides in favor of any of these denominations. For practical reasons, we use the most inclusive terminology adopted by the 2005 census in response to pressure from the Afro-Colombian movement: black, Afro-descendent, *palenquera* and *raizal* population. Also for practical reasons and for the sake of brevity, throughout the report we use summarized forms such as 'Afro-descendent population', 'Afro-Colombian population' or 'black population'. In doing so, we always use the most extensive and inclusive expression.

their cultural practices and traditional uses of natural resources while guaranteeing the economic and social development of their communities. However, the rights of the Afro-descendants continue to have less legal recognition than the rights of other ethnic groups, particularly those involving the government and jurisdiction over their collective territories (which currently do not enjoy the autonomy bestowed on the indigenous reservations) and recognition of the same cultural rights that the indigenous peoples have (such as the enactment of legislation on participation in the system of social security in healthcare²).

6. Colombia has enacted other laws and decrees that recognize the rights of ethnic groups; however, the current problem in Colombia involves not only the enactment of legislation but rather the actual enforcement/application² of existing legislation in order to make the rights of the black communities a reality. In addition, the legislative framework is not yet meeting the needs of both groups. The Colombian Congress has not promulgated specific legislation to protect people from discriminatory actions or to guarantee the right to equality of traditionally marginalized and discriminated groups such as the indigenous peoples and the Afro-Colombian population. Two draft bills were presented in 2007 to create an Antidiscrimination Statute. They were then combined into one single draft bill that until now has not gone through the necessary process of multiple debates in order to become law. As of this moment, debate on this measure has not been scheduled, which means that, due to regulations on legislative procedures, the draft legislation will once again be shelved³.
7. On the other hand, Colombian laws and regulations include decree 1320 of July 15, 1998, which has limited the application of prior consultation in a way that is incompatible with ILO Convention 169, as the Constitutional Court has stated on a number of occasions⁴ along with a number of ILO bodies⁵. We must also point out the enactment of laws such as the Rural Development Statute (Law 1152 of 2007), the General Forestry Law (Law 1021 of 2006), the National Development Plan (Law 1151 of 2007) and the Free Trade Agreement with the United States (Law 1143 of 2007). The first three laws have been declared unconstitutional in part or as a whole by the Constitutional Court because they ignore the fundamental right of these groups to prior consultation⁶.

B. Public Policies to Eliminate Racial Discrimination

8. In Colombia there are no independent national institutions that specialize in the promotion and protection of human rights and the struggle against racism and racial discrimination, nor has a national action plan against racism and discrimination been formulated that would establish coordination mechanisms among the entities involved. There is also no effective public policy that would guarantee respect for the right to equality and prohibit racial discrimination.
9. Even though public policy measures have been adopted aimed at protecting diverse rights of the indigenous peoples, including political participation, healthcare and education, some of them have not been applied, or have been applied in a deficient manner. Proof of that is the failure of the “Permanent Roundtable on Agreement” created in 1996 in response to firm demands by the indigenous peoples. This forum aims to reach agreements between the indigenous peoples and the

² Law 691 of 2001.

³ House of Representatives, legislative agenda. Information available at www.camara.gov.co consulted on May 2, 2009.

⁴ Constitutional Court Ruling T-652 of 1998, Speaker Magistrate: Carlos Gaviria Díaz. See also Constitutional Court Ruling T-737 of 2005, Speaker Magistrate: Álvaro Tafur Galvis.

⁵ Report by the ILO Committee of Experts on the Application of Conventions and Recommendations, published on March 6, 2009. Regarding the application of Convention 169, the Committee issued a statement on the Embera indigenous people that lives in the Pescadito and Chidima reserves, which belong to the Association of Kuna, Embera and Katío Councils (Asociación de Cabildos Kunas Emberas y Katíos – ACIKEK).

⁶ Constitutional Court Rulings C-175 of 2009, C-030 of 2008 and C-461 of 2008, respectively.

State on all administrative and legislative decisions that could affect them, evaluate implementation of State indigenous policy and follow up on fulfillment of all agreements reached through this mechanism. On November 2, 2006, the indigenous peoples decided to withdraw from it, citing lack of fulfillment of the agreements reached. Their final decision to withdraw stemmed from the position of the Colombian State to not recognize all of the rights contained in the United Nations Declaration on the Rights of Indigenous Peoples⁷.

10. The United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people witnessed during his mission to Colombia in 2004 that “the precarious human rights situation of Colombia’s indigenous peoples reflects the gap between progressive domestic legislation and the ineffectiveness of the institutions responsible for protecting these peoples, against a background of internal armed conflict involving numerous warring parties whose actions directly affect indigenous communities’ chances of survival”⁸
11. Policies aimed at the Afro-Colombian population are characterized by their institutional dispersion, given that they are formulated by diverse entities at the national, departmental and municipal levels, with a lack of organisms for coordination among them. In 1998, the Government for the first time recognized that indigenous and Afro-Colombian populations were the victims of systematic racial discrimination and that this gave rise to marginalization, poverty and vulnerability to violence. Since then, the Government began to issue various public policy documents aimed at the Afro-Colombian population⁹. However, their implementation is very deficient.
12. We must point to the creation, in 2007, of an Inter-sectorial Commission for the Advance of the Afro-Colombian, Palenquera and Raizal populations¹⁰ as a development in affirmative-action policy. The creation of this Commission was not consulted with the Afro-Colombian communities and organizations, which is why they have affirmed that they are not properly represented and do not recognize it. Additionally, the Commission has not yet published any of its results¹¹. In August of 2007, the National Planning Department presented the Long-term Comprehensive Plan for the Afro-Colombian, Palenquera and Raizal population, developed with full participation by the Afro-descendent organizations and communities. However, two years after its presentation, none of the recommendations formulated by the group of Afro-Colombian experts has been fulfilled by the national Government¹².

⁷ Colombia was one of the 11 states that abstained from voting on the Declaration at the United Nations General Assembly on September 13, 2007.

⁸ United Nations Commission on Human Rights, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mission to Colombia, E/CN.4/2005/88/Add.2, November 10, 2004, para.81.

⁹ In 1997 Conpes Document 2909 was drafted, which defined the program to support the development and ethnic recognition of the black communities. In 1998, the National Development Plan presented by the Government specifically included the Afro-Colombian component. A National Development Plan for the Afro-Colombian Population, entitled ‘Hacia una Nación Pluriétnica y Multicultural’ (Towards a Multiethnic and Multicultural Nation), which reported on the backward social and economic situation of the black population in Colombia. During the period between 1998 and 2002, documents were formulated for the development of regions with majority Afro-descendent populations, such as the archipelago of San Andrés and Providencia, the Antioquian Urabá and Chocó region and the lower and middle Atrato. A policy for the Afro-Colombian population was also established through Conpes 3169 document of 2002, which defined the government policy to generate greater social equality on behalf of the Afro-Colombian population of the Pacific region in particular and to help strengthen their ethnic identity, organizational processes and participation in policy formulation and in development plans that affect them. In 2004, Colombia for the first time formulated an affirmative action policy for the Afro-Colombian population and starting in 2006 has issued four public policy documents for the development of zones in which there are majority black population settlements: Buenaventura (Conpes 3410 of 2006), Cauca (Conpes 3461 of 2007), Quibdó (Conpes 3470 of 2007) and a State policy for the Colombian Pacific region (Conpes 3491 of 2007).

¹⁰ Decree 4181 of 2007.

¹¹ Rodríguez Garavito César, Alfonso Sierra Tatiana y Cavalier Adarve Isabel, 2009. *Raza y derechos humanos en Colombia*, Bogotá: Ediciones Uniandes, chapter 8 on legislation.

¹² Ibidem.

13. While during this period the visibility of the Afro-Colombian population as an ethnic group increased, this did not guarantee effectiveness of the enshrined rights and of the actions designed for that purpose, especially given the absence of measures for effective implementation of the policies and of follow-up mechanisms to facilitate evaluating their effects. The commitments acquired in public policy documents remain unfulfilled, particularly those referring to the creation and development of a differential approach for the Afro-Colombian population in health and education, diagnoses of the black communities' needs for land and the formulation and execution of sustainable productive development strategies for them.
14. Proof of that is that the Colombian State has established only four affirmative actions on behalf of the Afro-Colombian population. The first of these establishes greater opportunities for access to higher education for the members of black communities and creates a special scholarship fund for black students of scarce means who show outstanding academic performance¹³. However, the figures show that the percentage of Afro-Colombians who gain access to higher education is 6 percentage points below that of the mestizo population¹⁴. The second measure assigns two seats in the House of Representatives to Afro-Colombians¹⁵. The third includes recognition of the precarious situation of the Afro-Colombian population and acknowledges a commitment to implement a program that would involve such basic aspects as health, education, housing and public services, job creation and income generation for them¹⁶. In the development of this measure, the Inter-sectorial Commission for the Advance of the Afro-Colombian, Palenquera and Raizal Populations was created with the aim of evaluating the life conditions of the Afro-descendants, and to make recommendations in order to overcome the difficulties that prevent the progress of this population. However, the Commission has been questioned for the omission in the fulfillment of the right to prior consultation and hasn't presented any results yet. The fourth measure consists of preferential treatment regarding access to urban housing subsidies¹⁷; however, its implementation has been extremely limited.

Article 3

C. Persistence of *de facto* Segregation

15. In 1999, the Committee on the Elimination of Racial Discrimination (CERD) recommended that the Colombian State should adopt measures to “address *de facto* racial segregation in urban centres” and requested the State to include additional information in its next report on “housing patterns in urban areas and on legislation that may address discrimination in the housing sector”¹⁸. Despite this recommendation, the report of the Colombian State does not include either of those aspects and in practice no measures exist aimed at resolving the problem¹⁹. In its report, the State mentions that “the Ministry of the Environment, Housing and Territorial Development, as well as the local governments in the large cities, have carried out large-scale studies with an emphasis on the ethnic variable in the field of housing” (Part 3, paragraph 185). Later on it speaks of “the consolidation of a practice of studies carried out by the Ministry of the Environment, Housing and Territorial Development with an ethnic variable in the housing sector” (Part 8A3, paragraph 423). After making

¹³ Regulation of article 40 of Law 70 of 1993.

¹⁴ Rodríguez, Alfonso y Cavalier. 2009. *op. cit.*, chapter 7 on access to justice.

¹⁵ Law 649 of 2000.

¹⁶ Documento Conpes 3310 of 2004.

¹⁷ Decree 4466 of 2007.

¹⁸ Concluding Observations of the Committee on the Elimination of Discrimination, Colombia, CERD/C/304/Add.76, 12 April 2001, para. 21.

¹⁹ Rodríguez, Alfonso y Cavalier *op. cit.*, chapter 5 on housing.

inquiries with the relevant state institutions, the Observatory on Racial Discrimination (ODR) was able to establish that the large-scale studies that had been cited did not actually exist²⁰.

16. The lack of information that would include the ethno-racial variable regarding housing is clear and the episode of the nonexistent studies cited in the report presented by the Colombian State to the CERD is an example of that. In Colombia there is total ignorance of the population's current housing situation, with the result that the formulation of public policies aimed at improving the situation becomes a utopian task.

Article 4

D.1 Criminal Legislation on Discrimination

17. In Colombia there is no specific legislation to prosecute and punish racial discrimination. Colombian legislation includes just four norms that prohibit discrimination: 1) article 58 of the Criminal Code established it as an aggravating factor in punishing crimes if they are inspired by the victim's intolerance and discrimination referring to race, ethnic group, ideology, religion or beliefs, gender or sexual orientation, or an illness or disability; 2) article 48 of the Sole Disciplinary Code establishes an aggravating factor in punishing government employees who act based on hatred or intolerance of an ethnic, racial, religious, political or social group; 3) article 147 of the Criminal Code prohibits acts of racial discrimination in the context of the armed conflict; 4) article 33 of Law 70 of 1993 prohibits acts of intimidation, segregation, discrimination or racism against the Afro-Colombian population. These norms are not in accordance with the criteria established in the ICERD because they do not contemplate concrete judicial actions to prosecute, punish and prevent racial discrimination. Legislative initiatives to promulgate a law that would make discriminatory acts punishable have failed in the Colombian Congress because neither the Congress nor the Government has shown sufficient political will to enact them into law.

D.2 Stigmatization of Ethnic Groups by Government Authorities

18. Colombian governmental authorities fail to fulfill the obligation established in literal c of article 4 of the ICERD regarding their duty not to promote racial discrimination and fail to fulfill their duty to punish actors who incite racist actions.
19. The indigenous organizations and peoples are frequently accused by high government officials of being "guerrilla collaborators". The guerrilla groups, for their part, accuse the indigenous communities of complicity and collaboration with the opposing armed group or with the State security forces. For example, General Orlando Páez, the director of citizen security of the National Police, stated that the FARC guerrilla group had infiltrated the *Minga Indígena* (indigenous assembly) held in October of 2008²¹. According to police director general Óscar Naranjo, "the sixth front of the Revolutionary Armed Forces of Colombia (FARC) is inviting, setting up and promoting violent

²⁰ The entities referred the questions posed by the ODR to each other, until they affirmed that these studies had been carried out by another entity, the National Planning Department, whose public policy documents do not include any specifically dedicated to the right to adequate housing. In this regard, see: Response of July 28, 2008 by the Ministry of the Environment, Housing and Territorial Development to the request for information submitted by the ODR, and the Response of August 11, 2008 by the Ministry of Foreign Relations to the request for information submitted by the Ministry of the Environment, Housing and Territorial Development, which had been formulated in the first place by the ODR.

²¹ "General Orlando Páez, director de Seguridad Ciudadana de la Policía", *Semana* magazine, consulted on the web page: <http://www.semana.com/multimedia-nacion/general-orlando-paez-director-seguridad-ciudadana-policia/1115.aspx>.

acts by the indigenous people”²². The Senior Counselor of the Regional Indigenous Committee of Cauca (Comité Regional Indígena del Cauca), Aida Quilcué, has also been accused of being a member of the guerrillas²³. This comes on top of ridicule aimed at territorial claims. In October of 2008, President Uribe declared that “this country has 115 million hectares. The indigenous communities of Colombia represent 2.2% of the population. One million indigenous people have 27% of the national territory”²⁴. These declarations increase the exclusion and ostracism of these peoples, place them at risk and thereby intensify discrimination.

20. Members of the security forces, particularly in zones of armed conflict, also disseminate messages that stigmatize the black communities. Such is the case of the Afro-Colombian communities of the rural jurisdiction of Yurumanguí in the municipality of Buenaventura²⁵. The inhabitants of Yurumanguí tell how agents of the Marine brigade headquartered in Buenaventura have stigmatized the black population of their community, Juntas del Río Yurumanguí. One of the phrases repeated by the security forces using megaphones is: “Black people of Yurumanguí, demobilize”²⁶. These situations clearly show the use of “selective racial profiles” by members of the military forces who stigmatize the Afro-Colombian population and expose it as a military target of the guerrilla or paramilitary groups.

Article 5

E. Equality in Access to Justice

21. In Colombia there is no production of broken-down information on equality of treatment by the justice administration given to members of the indigenous peoples and the Afro-Colombian population. The Prosecutor General's Office has an information system that records variables for gender, age, quality of the person taking part and trial actions. However, “it does not contemplate the descriptive characteristics of racial condition”²⁷.
22. The Superior Council of the Judiciary, institution in charge of administering the judiciary and exercising disciplinary functions, does not have data on members of indigenous peoples and Afro-descendants who have been judged by the judicial branch, nor does it have data on those who have been sentenced²⁸.

²² “Indígenas seguirán protesta, Uribe dice que los apoyan las FARC”, consulted on the web page: <http://www.radiolaprimerisima.com/noticias/alba/39787>.

²³ “Escondida, temerosa por su vida y con protección de la Guardia Indígena permanece Aída Quilcué”, El Tiempo.com, January 5, 2009, consulted on the web page: http://www.eltiempo.com/colombia/politica/escondida-temerosa-por-su-vida-y-con-proteccion-de-la-guardia-indigena-permanece-aida-quilcue_4742574-1.

²⁴ “Comunidades indígenas son dueñas del 27% del territorio nacional”. Presidencia de la República. Consulted on the web page: <http://web.presidencia.gov.co/sp/2008/octubre/16/08162008.html>.

²⁵ This jurisdiction has been particularly affected by the conflict. In 2001, the communities of the rivers Yurumanguí, Naya, Mayorquín, Anchicayá, Calima, Cajambre and Dagua began to denounce the presence, threats and harassment by paramilitary groups in their territories. Despite constant denunciations by non-governmental organizations and black communities of threats against their lives, on April 10 and 11 of 2001, a group of paramilitaries entered one of the communities of the Naya River – which borders on the north with Yurumanguí – and murdered 32 peasants, Afro-Colombians and indigenous persons with chainsaws. Denunciation formulated by the Proceso de Comunidades Negras, consulted in May of 2008, www.renacientes.org.

²⁶ ODR, focus group held in Buenaventura (Valle del Cauca) in May of 2007. Testimony by a young person from the Juntas del Río Yurumanguí community. The witness's name has been omitted for security reasons.

²⁷ Response of December 17, 2007 by the Prosecutor General's Office (Fiscalía General de la Nación) to the request of information submitted by the ODR.

²⁸ Response of December 10, 2007 by the Statistical Development and Analysis Unit of the Administrative Chamber of the Superior Council of the Judiciary (Consejo Superior de la Judicatura, Sala Administrativa) to the request of information submitted by the ODR.

23. The National Penitentiary and Prisons Institute (Inpec) reports that 3.15% of the prison population is Afro-descendent and 1.01% indigenous²⁹. Unfortunately, the data provided by the Inpec are insufficient to analyze the situation of Afro-Colombians and members of indigenous peoples in the justice system and regarding equal application of the law, because they are not built on mutually exclusive categories³⁰. Additionally, in these data it is not clear how the population is registered and identified, and it is therefore impossible to know if they identify themselves as members of these ethnic groups or are registered as such based on the criteria of an outside observer.
24. It is therefore impossible to build indicators on how the judicial system is applied to the ethnic groups. This situation contributes to the perpetuation of racial discrimination, and until relevant information is produced, it will be impossible to design effective programs for the prevention and eradication of discriminatory acts in the justice system.

F. Civil Rights to Life, Integrity, Security and Liberty

25. The rights of the members of the ethnic groups to life, integrity, safety and liberty have been gravely affected within the framework of sociopolitical violence, particularly due to the internal armed conflict. In its most recent report to the CERD, the Colombian State does not mention specific measures aimed at guaranteeing and protecting these rights, nor measures aimed at protecting the entire indigenous and Afro-Colombian population that is at grave risk and vulnerability in the areas in which the armed conflict has its worst consequences.
26. In 2004, the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and intolerance³¹, and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people³², drew attention to the ethnic and racial dimensions of the armed conflict in Colombia that are reflected in the homicides and forced displacements of Afro-Colombians and indigenous persons.
27. Similarly, in 2005³³ and 2006³⁴, the Office of the High Commissioner for Human Rights (OHCHR) drew attention to the notable increase in threats and homicides against indigenous leaders and regarding the situation of vulnerability of “the indigenous persons and Afro-Colombians, [who] have suffered extrajudicial executions, arbitrary detentions and acts of sexual violence, which have been attributed to illegal armed groups and occasionally to members of the security forces”³⁵.

²⁹ Response of September 8, 2008 by the National Penitentiary and Prison Institute (Instituto Nacional Penitenciario y Carcelario - Inpec) to the request of information submitted by the ODR.

³⁰ For records on Afro-descendent and indigenous persons, the Inpec uses an instrument that identifies groups with exceptional conditions. These groups are: indigenous persons, Afro-Colombians, older adults, foreigners, pregnant mothers, nursing mothers and the disabled. This record and classification system does not adequately consider the intersection of special conditions, meaning that it does not appropriately record Afro-Colombians or indigenous persons who are disabled, or Afro-Colombians and indigenous persons who are older adults, or Afro-Colombian or indigenous women who are pregnant or are nursing mothers. The Inpec clarifies that out of a total of 2,178 Afro-Colombian prisoners, 74 belong to a minority but does not specify which one. In this regard, see: Response of September 8, 2008 by the National Penitentiary and Prison Institute (Inpec) to the request of information submitted by the ODR.

³¹ United Nations, Commission on Human Rights, 60th session, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mission to Colombia*, E/CN.4/2004/18/Add.3, para. 47.

³² United Nations, Commission on Human Rights, 61st session, *Informe del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los pueblos indígenas, Sr. Rodolfo Stavenhagen, Adición Misión a Colombia*, E/CN.4/2005/88/Add.2, November 10, 2004.

³³ United Nations, Commission on Human Rights, 61st session, *Report of the High Commissioner for Human Rights on the situation of human rights in Colombia*, E/CN.4/2005/10, February 28, 2005, para. 37.

³⁴ United Nations, Commission on Human Rights, 62nd session, *Informe de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos sobre la situación de los derechos humanos en Colombia*, E/CN.4/2006/9, January 20, 2006, para. 84.

³⁵ United Nations, Commission on Human Rights, 62nd session, *Report of the High Commissioner for Human Rights on the situation of human rights in Colombia*, E/CN.4/2006/9, para. 84.

28. Violations of these rights have been one of the main factors that have given rise to forced displacement of indigenous persons and Afro-descendants. According to UNHCR, “The dispute over territorial control in the region has seriously impacted the indigenous and Afro-Colombian communities. There have been combats both within and on the borders of indigenous reservations and collective territories belonging to black communities. At the same time, their level of vulnerability has increased due to continuous food shortages generated by restrictions established on the movement of people and foodstuffs in the region, a situation in which responsibility on the part of the security forces has also been identified³⁶ .
29. Between June 2004 and June 2008, the Colombian Commission of Jurists (CCJ) has recorded a total of 333 homicides and 170 forced disappearances among the indigenous peoples and Afro-descendent population; 30 of the forced disappearances resulted in homicides. During that same period, 277 cases of arbitrary detentions and 72 cases of kidnappings or hostage taking committed against indigenous persons or Afro-descendants were also recorded³⁷ .
30. One emblematic case of violation of the right to life of indigenous leaders is the December 2008 murder of Edwin Legarda, a member of the Coconuco indigenous people, by the Colombian Army³⁸ . Mr. Legarda, the husband of Aida Quilcué, Senior Counselor of the Regional Indigenous Council of Cauca (CRIC), was killed while traveling in the department of Cauca in a truck recognized as belonging to the CRIC. According to the Colombian Government, which has acknowledged the Army's responsibility in the matter, the group of peasant soldiers attached to the José Hilario López Battalion in Popayán mistakenly shot at the vehicle in which Edwin Legarda was traveling because it supposedly failed to stop at a military roadblock. However, after the attack, the body of Edwin Legarda was found to have been hit by three bullets and the CRIC vehicle by 17, two in the front and 15 on the sides, which, in the words of a recent report by the Ombudsman's Office “contradicts the initial version according to which the troops fired in response to the truck's failure to stop”³⁹ . His death occurred when he was on his way to pick up his companion and drive her to the Togoima reservation in Tierradentro, where they were to discuss the holding of the *Minga Indígena* and she was to present a report on her participation in the Universal Periodic Review held by the United Nations Human Rights Council on December 10, 2008 in Geneva on the human rights situation in Colombia⁴⁰ .
31. Another example of the constant violations suffered by the indigenous peoples is that of the Kankuamo people, who, since 2004 and in the wake of a series of accusations and declarations by informants and demobilized persons, have been the victims of arbitrary detentions. Around 50 Kankuamo men and women have been detained, most of whom were subsequently freed due to lack of proof to incriminate them⁴¹ .

³⁶ United Nations High Commissioner for Refugees (UNHCR). Evaluation of public policy for attention to forced displacement in Colombia, August 2004 to April 2007, Bogotá D.C., 2007, page 288.

³⁷ Database of the Colombian Commission of Jurists.

³⁸ Consulted at the newspaper El Tiempo.com May 1, 2009, available at <http://www.eltiempo.com/colombia/justicia/capturan-a-siete-militares-por-asesinato-del-esposo-de-la-lider-indigena-aida-quilcue> 5108247-1.

³⁹ Consulted at the newspaper El Tiempo.com May 1, 2009, available at <http://www.eltiempo.com/colombia/justicia/capturan-a-siete-militares-por-asesinato-del-esposo-de-la-lider-indigena-aida-quilcue> 5108247-1.

⁴⁰ Consulted at the newspaper El Tiempo.com December 16, 2008 and April 30, 2007 and the Comunicado a la Opinión Pública – CINEP, available at:

http://www.cinep.org.co/sites/cinep.cinep.org.co/files/cinep_comunicado5.pdf.

⁴¹ Fundación Hemera. Tensa calma en la Sierra: El caso del Pueblo Kankuamo. Report on the human rights situation of the Kankuamo indigenous people of the Sierra Nevada de Santa Marta drafted by the Fundación Hemera for the period from 2003 to 2006. Bogotá, September 2006.

32. The Afro-descendent population also suffers grave violations of their rights. An example of this is the city of Buenaventura (department of Valle del Cauca), where the violence has affected both rural and urban zones⁴². With the arrival of the paramilitaries in 2000, the conflict intensified. Between 2000 and 2001, 46 massacres were reported⁴³. During that same period, in Jurisdiction No. 8 and along the Cabal Pombo road, 4 massacres were reported, 34 inhabitants of the zone were murdered and 3,207 people were displaced. In 2001, in the Yurumanguí River basin, combats between the FARC and paramilitaries led to 5,300 people being displaced, 4 being killed and a settlement (El Fuerte) being burned⁴⁴. At El Fuerte 8 people were killed that year by the paramilitaries, a number of women were raped and the entire population was threatened⁴⁵. Around September of 2003, an additional 3000 people were displaced towards the river mouths out of fear of moving too far away from their lands⁴⁶. “The situation until April of 2005 continued to markedly deteriorate: there were 268 homicides in 2003, 300 in 2004 and in [2005 they reached] 120”⁴⁷. In 2006 and 2007 the crisis intensified even more. Displacement recorded between 2006 and 2007 was 13 times greater than in 2004, and has particularly affected the urban area⁴⁸.
33. The Constitutional Court has also stressed the situation in Buenaventura⁴⁹: “[n]ow, in that city, there is no one who does not know a victim of the war. In two years, 797 people have been murdered, the same number of victims that would occur if four fully-occupied Boeing airliners were to crash... Now, if you walk around Buenaventura, the signs of war are everywhere. Everyone knows a victim, someone who was wounded, a widow, an orphan, a policeman who has suffered an amputation, a shutdown business, an unfinished suffering”⁵⁰.
34. These violations affect particularly women victims of the armed conflict. According to data from a survey by the First National Encounter of Afro-Colombian Women in a Situation of Displacement⁵¹, 31% of the women reported having suffered physical aggressions during displacement. More than half of the women surveyed (58.62%) said that they knew of cases of aggressions against other displaced Afro-descendent women. Only 30% of the victims denounced those events, the rest saying that they had refrained from doing so out of fear, lack of guarantees or ignorance of the necessary institutional channels⁵². Many of the displaced women also reported having been the victims of aggressions motivated by their skin color (63.79%) and physical build (24.13%). They affirmed having been the targets of race-related insults, the most common being “chocorrano” (chocolate

⁴² Office for Peace and Coexistence Initiatives of the Governor of Valle del Cauca, as part of an agreement with the International Organization for Migrations (IOM). 2004. *Diagnóstico de la población en situación de desplazamiento -PSD- asentada en el municipio de Buenaventura*. February 2004.

⁴³ National Planning Department (Departamento Nacional de Planeación - DNP), *Documento CONPES 3410 de 2006 “Política de Estado para Mejorar las Condiciones de Vida de la Población de Buenaventura”*, Bogotá, February 2006.

⁴⁴ Office of the Governor of Valle del Cauca, 2004. *op. cit.*

⁴⁵ Afrodes y Global Rights, 2007. *Asociación de afrocolombianos desplazados (Afrodes) y Global Rights (2007). Luces y contraluces sobre la exclusión*. Bogotá: Afrodes y Global Rights.

⁴⁶ Office of the Governor of Valle del Cauca, 2004. *op. cit.*

⁴⁷ DNP, 2006. *op. cit.*

⁴⁸ Colombian Commission of Jurists, *Informe de seguimiento a la aplicación en Colombia de las recomendaciones del Representante Especial del Secretario General de las Naciones Unidas sobre los Derechos Humanos de las personas internamente desplazadas*, July 2006 to December 2007.

⁴⁹ Constitutional Court Order 005 of 2009, Protection of the fundamental rights of the Afro-descendent population victims of forced displacement within the framework of the unconstitutional state of affairs declared in ruling T-025 of 2004, Speaker Magistrate: Manuel José Cepeda.

⁵⁰ *Ibidem*.

⁵¹ During the encounter, 150 displaced Afro-Colombian women were surveyed. The survey consisted of 70 open questions divided into four categories: general information, ethnic identity, condition of the situation of displacement, effects of the violence on participation by women and their organizations. The survey was carried out simultaneously with the events held on November 4-11 2006 in the cities of Cartagena, Cali, Quibdó, Tumaco and Bogotá. AFRODES, UNHCR AND UNIFEM. 2007. *Primer Encuentro Nacional De Mujeres Afrocolombianas en situación de Desplazamiento*.

⁵² *Ibidem*.

cake), “*negra hijueputa*” (black daughter of a whore) and “here we do not accept black women”⁵³. More than 20% of the women reported having been the victims of sexual violence or sexual blackmail.

35. These situations are conclusive proof of the violations against the rights to life and physical integrity to which the Afro and indigenous groups are subjected, as well as of the lack of guarantees in the protection of these rights. According to the Colombian Commission of Jurists, “the death threats, confrontations, deaths of family members, pressure to collaborate with diverse parties to the conflict and restrictions on basic goods” occur widely throughout different places in the country, such as Antioquia, Cauca, Chocó and Nariño⁵⁴.

G. Political Rights

36. Even though the Colombian Constitution protects the right of indigenous peoples to set up organisms for popular elections⁵⁵, the implementation of constitutional norms has limited this guarantee. In practice, candidates from non-indigenous political parties or movements have been allowed to register and take part in the special elections that have been established on behalf of the indigenous peoples, thus restricting their possibilities for gaining access to electoral offices that theoretically have been reserved for them.
37. On the other hand, the Constitution guarantees ethnic and cultural diversity in Colombia (Article 7), which implies guaranteeing access by ethnic minorities to public office under conditions of equality and identifying those factors that impede equal access and a fair presence of Afro-descendants and indigenous peoples at all levels of the public sector, particularly in the justice administration. It also implies adopting appropriate measures to eliminate the identified obstacles while promoting equal access and a fair presence by indigenous and Afro-descendants in public administration⁵⁶.
38. Unfortunately, most governmental entities in Colombia lack differentiated information that would include the ethnic variable and make it possible to determine the level of participation by ethnic groups among their personnel⁵⁷. The ODR focused its investigation on entities involved in the administration of justice in Colombia, which also do not produce this information in a systematic form. For example, the military forces do not know how many Afro-Colombians, black people, *palenqueras* and *raizales* are in their ranks because “there is no such breakdown included in the database based on race”⁵⁸. Neither does the National Police have consolidated information at the national level on how many Afro-Colombians, black people, *palenqueras* and *raizales* serve in that institution⁵⁹. The Prosecutor General's Office stated that it does not gather information on the ethnic

⁵³ Ibidem.

⁵⁴ Colombian Commission of Jurists, *Informe de seguimiento a la aplicación en Colombia de las recomendaciones del Representante Especial del Secretario General de las Naciones Unidas sobre los Derechos Humanos de las personas internamente desplazadas*, July 2006 to December 2007.

⁵⁵ Articles 171 and 176.

⁵⁶ Durban Action Program, paragraphs 11 and 74.

⁵⁷ In this regard see section I. 1 of the Alternative Report to the 14th Report presented by the Colombian State to the Committee for the Elimination of all forms of Racial Discrimination (complete version).

⁵⁸ Response of April 9, 2008 by the Colombian National Army to the request of information submitted by the ODR.

⁵⁹ Of the information requested by the ODR from the departmental and municipal offices, just three of them –Nariño, Valle and Cali – provided complete information on the number of Afro-descendant persons that they employed out of their total personnel. The other offices either failed to give information or provided incomplete information. The ODR requested information from the National Police Headquarters and the Police Departments in the departments of Antioquia, Valle, Cauca, Nariño, Chocó, Bolívar, Atlántico and San Andrés; it also requested information from the Metropolitan Police of Bogotá, Cali and Medellín. There was no response from the National Police Headquarters, the Metropolitan Police of Bogotá or the police departments of Atlántico or Chocó. In this regard, see the responses of February 26, 2008 by the Police Department of Valle, of November 27, 2007 and February 20 2008 by the Police Department of Santiago de Cali, of February 25, 2008 by the Police Department of Nariño, of November 29, 2007 and February 22, 2008 by the Police Department of Antioquia, of December 13, 2007 by the Metropolitan Police of the Valle de Aburrá, of February

and/or racial identities of its employees⁶⁰. The Inpec also does not record this information about its personnel⁶¹.

39. The Superior Council of the Judiciary, which coordinates the information system of the judicial branch (Law 270 of 1996), reports a total of 659 Afro-descendent, Afro-Colombian, black, *palenquero* or *raizal*⁶² public servants in that branch. Despite the lack of information on the total number of employees of the judicial branch to facilitate determining levels of participation by the Afro population, it is possible to analyze the range of the levels of the Afro-descendents: of the total of 659 Afro employees, 10.4% (69 people) are mixed or municipal judges; 6.8% (45 people) are circuit and specialized circuit judges; and 2.8% (19 people) are magistrates. Finally, on the high courts (Supreme Court of Justice, Constitutional Court, Council of State and Superior Council of the Judiciary) there are no Afro-descendent magistrates.
40. In the absence of reliable information on participation by ethnic groups in governmental posts, particularly in the justice administration, it is impossible for the state to comply with its obligation to establish policies to guarantee participation by the ethnic groups in its entities.
41. In addition to participation in governmental posts, the rights of the ethnic groups include the right to be governed by their own authorities. This is an important guarantee aimed at conserving their ethnic identities while allowing them to govern themselves in accordance with their customs and traditions. In Colombia, the indigenous peoples enjoy constitutional recognition of the autonomy of their traditional authorities. The traditional authorities of the black communities, however, do not have legal recognition of their right to self-government. This situation directly affects the Afro-descendent population's right to self-determination and their right to cultural diversity.
42. These rights are also affected by repeated violations of the ethnic groups' right to prior consultation. Currently in Colombia, the ethnic groups do not have a procedure that respects their right to cultural integrity or that has been adequately consulted with them⁶³. The ethnic groups' right to prior consultation has constantly been violated by the State by means of legislative⁶⁴ and administrative⁶⁵ measures, as shown in the section on article 2.

23, 2008 by the Police Department of San Andrés and Providencia and of December 21, 2007 and March 28, 2008 by the Police Department of Cauca to the request of information submitted by the ODR.

⁶⁰ Response of January 31, 2008 by the Prosecutor General's Office to the request of information submitted by the ODR.

⁶¹ Response of September 8, 2008 by the National Penitentiary and Prison Institute (Inpec) to the request of information submitted by the ODR.

⁶² Response of March 7, 2008 by the Statistical Analysis and Development Unit of the Administrative Chamber of the Superior Council of the Judiciary to the request of information submitted by the ODR.

⁶³ Decree 1320 of 1998, which establishes the procedure for prior consultation, only does so for projects that require an environmental license. All interventions that do not have this environmental requirement are consulted using a procedure unilaterally established by the entity responsible for it –the Ministry of the Interior and Justice–, based on recommendations by the OAS-Harvard commission for prior consultation practices. This situation means that prior consultation practices vary according to the type of project.

⁶⁴ This is the case with the Forestry Law, which was declared unconstitutional by the Constitutional Court in Ruling C-030 of 2008, for being in violation of the right to prior consultation. The same happened with the Rural Development Statute (Ruling C-175 of 2009).

⁶⁵ One example of this is the creation of the Intersectorial Commission for the Advance of the Afro-Colombian, Palenquera and Raizal Population (Comisión Intersectorial para el Avance de la Población Afrocolombiana, Palenquera y Raizal), regarding which no consultation was held. A large sector of the Afro-Colombian movement and its social organizations therefore emphatically rejected it and as a result the Commission was set up in an exclusive manner guided by exclusively political criteria. In this respect see Rodríguez, Alfonso y Cavalier, 2009. *op. cit.*, chapter 8 on legislation.

H. Property, Territory and Forced Displacement

H.1 Territory and Forced Displacement

43. Undoubtedly, forced displacement most gravely affects the full enjoyment of the rights of the ethnic groups. This phenomenon has worsened the situation of extreme poverty and marginality that has historically affected the indigenous peoples and Afro-descendent communities, to the point where it has resulted in a great humanitarian crisis that generates systematic violation of an extensive number of their rights.
44. This special impact of forced displacement on indigenous peoples and black communities is due to four main factors. First of all, because many of their territories are located in areas and zones that are strategic for the actors of the armed conflict. Secondly, because their territories are attractive for carrying out highly profitable economic activities, both legal and illegal. Thirdly because of the secular marginalization and discrimination of which they have been targets. And finally because of disputes over possession and ownership of lands, which have been a common factor in a number of cases of forced displacement.
45. Despite this worrisome situation, the Colombian State has not developed serious policies to address this problem, and of the few measures that have been introduced, they lack effective implementation.
46. With respect to the indigenous peoples, the State's response to forced displacement has been limited to issuing certain regulatory documents, which make limited reference to the obligation to adopt measures for prevention and attention with an ethnic focus. Two of these are: the National Plan for Attention to the Displaced Population and the National Council for Attention to the Displaced Population.
47. The National Plan for Attention to the Displaced Population (“Plan”) was approved in 1997 and contains certain measures for special attention to the indigenous peoples, while including the “differential focus” as part of its guidelines for attention to the displaced population. It also enshrines the State's obligation “to deploy (specific) measures” to prevent the displacement of indigenous peoples and Afro-descendent communities.
48. However the formulations of the Plan have not been translated into effective actions to guarantee the rights of indigenous peoples in a situation of displacement nor to prevent their risk of displacement. On the contrary, the Constitutional Court of Colombia has drawn attention to the deficiencies in public policy for attention to the indigenous and Afro-descendent population in a condition of displacement. In this sense, it has stated that even though the indigenous peoples, along with the Afro-descendent communities, have suffered a proportionately greater effect compared with all of the victims of forced displacement, “[f]orced displacement is one of the areas in which one of the most worrisome gaps has been detected in the policy of attention [to displacement]”⁶⁶.
49. The National Council for Attention to the Displaced Population (“Council”) is a consultative and advisory body, charged with formulating public policies and guaranteeing budgetary allocation for their execution. In exercising these functions, the Council has issued diverse documents aimed at protecting the indigenous peoples and Afro-descendent communities⁶⁷. While these documents seek to bring state actions into line with international obligations in the field of differential attention to

⁶⁶ Constitutional Court Order 218 of 2006.

⁶⁷ Among them, we would point out the following: Agreement 03 of 2006, “by means of which actions are defined to guarantee the right of the displaced population to be protected against discriminatory practices”; Agreement 08 of 2007 “By means of which measures are adopted aimed at creating a differential policy for attention to the population in a situation of displacement”; and the Comprehensive Plan to Support Indigenous Communities with a High Degree of Vulnerability and Risk of Disappearances.

the indigenous peoples, they involve precarious measures that are insufficient to achieve the proposed objectives. This was the conclusion reached by the Constitutional Court, when it stated recently that “it is difficult to see how these documents have been translated, in practice, into concrete actions to prevent the disproportionate effect of the armed conflict on the Colombian indigenous peoples, to prevent forced displacement caused by the armed conflict, or to provide differential and opportune material attention to their victims”⁶⁸.

50. The insufficiency of the measures adopted by the Colombian State also becomes evident if it is borne in mind that the situation of displacement of the indigenous peoples is increasing and continues to worsen. In this sense, a 2007 report by UNHCR revealed that, between 2004 and 2007, nearly 30,000 indigenous people were forcibly displaced from their territories⁶⁹.
51. One paradigmatic example of this situation is the Awá indigenous people, who in February 2009 denounced the commission of two massacres in their territory. The FARC acknowledged responsibility for the murders of 8 members of this people, alleging their links to the State security forces, and the forced displacement of 400 others. These events occurred despite constant denunciations by the authorities and leaders of the Awá people, who had even gotten the Ombudsman's Office of Colombia to issue Risk Report N° 53 of June 5, 2008 as well as other follow-up reports.
52. Regarding the Afro-descendent communities, there are regulations that protect their rights to collective ownership of the territories they have traditionally occupied, the most important of which is Law 70 of 1993. However, these rights have not been truly protected in practice, due to the existence of diverse factors that impede the guarantee of this right, such as partial application of the law, the armed conflict, the expansion of monocultures, the implementation of megaprojects and fumigations of illicit crops. All of these elements considerably affect the permanence of the Afro-Colombian population in their territories and generate high rates of forced displacement among them.
53. Along with these difficulties, there are certain legal deficiencies that impede the Afro-descendent communities from effective enjoyment of property rights to their territories. In this sense, it is important to stress that the Colombian State has still not regulated the chapters of Law 70 that relate to the use of land and the protection of natural resources (Chapter IV), mining resources (Chapter V) and the planning and promotion of economic and social development (Chapter VII), which impedes enjoyment of the right to collective property.
54. Insufficient protection of the right to property is one of the main causes of forced displacement of Afro-descendent communities. In this regard, the Constitutional Court noted that there is a clear and direct link on the one hand between the existence of conflicts deriving from the issuance of collective property deeds for lands and on the other forced displacement caused by illegal armed groups interested in using these territories⁷⁰.
55. According to data supplied by CODHES (*Consultoría para los Derechos Humanos y el Desplazamiento*), Afro-Colombians are the most numerous ethnic minority among the group of displaced persons in Colombia. In fact, they account for nearly one fourth of the displaced population in the country (22.5%). In total, 12.3% of all Afro-Colombians are in a situation of forced displacement⁷¹.

⁶⁸ Constitutional Court Order 004 of 2009.

⁶⁹ UNHCR, 2007. *op. cit.*, page 284.

⁷⁰ Constitutional Court, Order 005 of 2009.

⁷¹ Consultoría para los Derechos Humanos y el Desplazamiento (CODHES), *Afrocolombianos desplazados, un drama sin tregua*, May 22, 2008, consulted at the web page: http://www.codhes.org/index.php?option=com_content&task=view&id=157.

56. The situation is especially grave in the territories for which collective property deeds have been granted to black communities in the Pacific region. A total of 252,541 Afro-descendants have been expelled from these territories⁷². This figure represents 79% of the Afro-Colombian population that is registered as subject of the right to collective property deeds⁷³.
57. The example of the department of Nariño illustrates this situation. In 2007, the Afro-Colombian Community Councils of the municipality of El Charco denounced the grave humanitarian situation they face in terms of displacement: scarcities of food, medications and fuels, which keep people from receiving health care; and physical, verbal and psychological aggressions have gravely affected the physical and mental health of the communities⁷⁴. An inhabitant of Tumaco said: “just look at the abuse that the displaced population of our municipality of Tumaco receives from government officials, who abuse and offend us, causing psychological and physical disorders and making people run around to be able to receive food and this has caused accidents”⁷⁵.

H.2 Megaprojects, Monocultures and Illicit Crops

58. The territories that have traditionally been inhabited by indigenous peoples and Afro-descendent communities have been seriously affected by the existence of infrastructure projects, monocultures and illicit crops.
59. In the case of the Afro-descendent communities, they have been particularly affected by infrastructure projects being carried out in the Pacific region, along with wax palm monocultures and illicit crops. The palm planting companies have cut down huge sections of primary forest, drained soils and built road infrastructure in the collective territories to facilitate these monocultures. These actions have modified soil use in the territories and created serious environmental impacts with grave implications on the food security of the communities, because as palm cultivation penetrates the collective territories, their subsistence crops disappear and the inhabitants are forced to leave in search of other means of subsistence.
60. One example is that of the leaders of the Community Council of Alto Mira y Frontera, along with those of Bajo Mira y Frontera, who have suffered from constant threats for defending their territory, which have resulted in homicides and forced displacement⁷⁶. This displacement of the leaders of the black communities has serious consequences, such as the arrival of settlers in the territory who have occupied lands and property and in some cases have planted illicit crops. As a result, the state authorities continue with aerial fumigations of the illicit crops without the black communities being able to take any part in the decision.

⁷² Afrodes y Global Rights, 2007. *op. cit.*

⁷³ Ibidem.

⁷⁴ Afrodes y Global Rights, 2007. *op. cit.*

⁷⁵ Constitutional Court, 2009. *op. cit.*

⁷⁶ On June 25, 2008, the Secretary General of the Community Council of the Bajo Mira was murdered within the collective territories by unknown individuals. Three months later, on October 7, 2008, an officer of the Board of the Community Council of the Alto Mira y Frontera was murdered within the urban center of the municipality of Tumaco by an unknown individual. In the wake of this event, the other members of the Board of the Community Council found it necessary to leave the territory and go to a different urban center far from their lands without until now (February of 2009) having been able to return.

61. The situation of the indigenous peoples is just as alarming. Their rights to territories have been affected by fumigations aimed at eradicating illicit crops as well as by the building of dams and ports on lands to which they have deeds and on their ancestral territories. Because of these events, from 1993 to 2006 the Constitutional Court has ruled in favor of the indigenous peoples in 18 *tutelas* (injunctive actions) in cases of violations of the right to territory stemming from intervention projects or large infrastructure works.
62. One paradigmatic case has involved the building of the Urrá dam in territory of the Embera Katío people. The Urrá dam was built without adequate consultation of the indigenous peoples, with serious effects on their culture and traditional subsistence practices and directly threatened their survival as an ethnic group. The Embera Katío communities were displaced from their zones of habitation and resettled in places where they found it impossible to continue with their subsistence practices, such as fishing and hunting⁷⁷. These impacts were demonstrated during the *tutela* brought before the Constitutional Court, which then decreed settlements and damage mitigation actions on behalf of the Embera people. The state and private actors involved were made to set up a committee to follow up on those obligations and on measures to enable re-adaptation by the indigenous people.

H.3 The Right to Prior Consultation

63. The right of indigenous peoples and Afro-descendent population to prior consultation has been constantly violated by the Colombian authorities in cases of projects involving infrastructure or natural resource exploitation, which, as previously stated, are one of the main causes of forced displacement in the country.
64. Faced with non-fulfillment by the Colombian authorities of their obligation to respect this right, the indigenous peoples have appealed to the Constitutional Court to request protection of their fundamental right to be consulted. While on various occasions the Court has decided to support the right to consultation, the infrastructure projects have nevertheless been implemented and damages have thus been caused to the indigenous peoples which have threatened their survival as ethnic groups.
65. One case that illustrates the constant violations to this right suffered by the Afro-Colombian population is that of the Curvaradó and Jiguamiandó river basins in the Chocó department. Since the late 90s, these communities have denounced the entry of investors and palm plantations in their territories without the required prior consultations having been held. This phenomenon of territorial dispossession has been accompanied by harassment and threats against the population to the point where many families have been forcibly displaced from their territory⁷⁸.
66. After many years of violence and efforts to gain recognition of the territory, in 2001 the Colombian State awarded collective title to the communities of Curvaradó and Jiguamiandó. In 2005 the Incoder (Colombian Rural Development Institute) issued two resolutions to mark the boundaries between the collective property and private property belonging to private individuals. However, as of December 2008, those resolutions had not led to the material handing over of nearly 8000 hectares that had been usurped from the black communities of the municipality of Carmen del Darién in the Curvaradó and Jiguamiandó river basins. This occurred even though in 2007 the ILO established that the right to prior consultation had been violated along with the right to cultural integrity and the right to territory. The ILO asked the Colombian State to carry out the consultation with these

⁷⁷ Constitutional Court ruling T-652 of 1998. Speaker Magistrate: Carlos Gaviria Díaz.

⁷⁸ Colombian Commission of Jurists, 2007. *op. cit.*

communities and guarantee restitution of the lands⁷⁹. However, many of the families have been unable to return to their territory due to the continuing presence of paramilitary groups, the lack of guarantees for a safe return and the harassments that have continued unabated, as verified by the Constitutional Court in 2009⁸⁰.

H.4 Return, Resettlement and Reintegration

67. The Colombian State has not implemented measures aimed at ensuring the process of return or resettlement of the members of the indigenous peoples and Afro-descendent communities that are in a situation of displacement, thereby making their socioeconomic stabilization difficult. Nor has the State established measures to protect and restore the property abandoned by them at the moment of displacement.
68. Even though since 2006 a “Protocol for the accompaniment of processes of return or relocation of the displaced population” has existed, execution of which is the responsibility of *Acción Social*⁸¹, and which contemplates accompaniment by the State in return processes, in practice this Protocol has not functioned properly. This has happened because many displaced Afro-Colombians have been abandoned at the moment of return or resettlement, or have encountered serious difficulties when attempting to do so.
69. One illustrative case is that of the communities of the rural zone in the lower part of the Naya River in the municipality of Buenaventura. In 2001 a group of paramilitaries arrived in the zone and massacred more than 40 indigenous peoples and Afro-Colombians. The survivors massively displaced to avoid being killed and six years later had still been unable to return due to the lack of security guarantees⁸².

I. Economic, Social and Cultural Rights

I.1 Right to Work of the Afro-Colombian population

70. In Colombia there are no measures aimed at eradicating and preventing discrimination in employment. This gap can be seen in various scenarios. In the first place, there are no legislative measures aimed at protecting the ethnic minorities’ right to work free of discrimination. Secondly, there are few official figures to get an idea of the number of Afro-Colombians who work in government, or of the conditions under which such labors are performed. And thirdly, the limited figures that do exist show that the proportion of Afro-descendents holding government jobs is very low, and that in most cases they perform administrative or general service duties, whereas very few hold leadership posts.
71. The Constitutional Court has also underlined the absence of measures aimed at protecting this right of the displaced Afro-Colombian population. In this regard, the Court stressed that “[b]efore displacement, 70.6% reported having employment, meaning that they produced income; 60.1% had housing that they had totally paid for and in general their sons and daughters went to school, which

⁷⁹ International Labour Organization (ILO), 2007. CEACR: Individual Observation concerning Indigenous and Tribal Peoples Convention, 1989 (No. 169).

⁸⁰ Constitutional Court, 2009, *op. cit.*

⁸¹ *Acción Social* is the “Presidential Agency for Social Action and International Cooperation” is a governmental institution responsible for channeling all national and international resources for the execution of all social programs under the Presidency of the Republic and to assist vulnerable populations affected by poverty, violence and drug trafficking. For more information on this institution, see <http://www.accionsocial.gov.co/portal/default.aspx>.

⁸² Afrodes y Global Rights, 2007, *op. cit.*

guaranteed the family's physical and emotional stability. After displacement, 74.2% lost their jobs and only 3.5% had totally paid for their housing, with support from the 3.2% of the people who worked. Using these figures... it was estimated that prior to displacement 65.3% of household needs were satisfied, whereas after displacement this figure fell to 38.8%, representing a 59% deterioration in quality of life for displaced Afro-Colombians” (footnote omitted)⁸³.

1.2 Right to Housing of the Afro-Colombian population

72. The Afro-Colombians are in a very unequal situation with respect to enjoyment of their right to housing compared to the rest of the population. Their housing conditions are generally characterized by a lack of legal security regarding possession. This circumstance to a considerable extent is a result of the situation of precariousness, insecurity, violence and constant threats to which this population is subjected in their ancestral territories. Additionally, their housing tends to have less availability of utilities, materials, facilities and infrastructure and is therefore less fit for habitation⁸⁴.
73. In response to this problem, the State has not drafted a public policy to promote the existence of fair conditions for enjoyment of the right to housing by the Afro-Colombian population. On the one hand legislative measures have not been adopted with a differential focus aimed at improving the housing conditions of the Afro-Colombians and which would take into account the criterion of adapting the housing to their culture. On the other hand, there are no precise state indicators to facilitate measuring the degree of lack of satisfaction of this right with regard to the Afro population, which makes it more difficult to design a serious public policy that would have the firm purpose of optimizing the Afro-descendent population’s enjoyment of the right to housing⁸⁵.
74. The housing situation of the displaced Afro-descendents is even more precarious. The Constitutional Court, in its order 005 of 2009, included a study by the Corporation for Social and Entrepreneurial Development of the Afro-Colombian Peoples (Corporación para el Desarrollo Social y Empresarial de los Pueblos Afrocolombianos - ECODESARROLLO). The study was done in 2005 in Bogotá and in the departments of La Guajira, Atlántico, Bolívar, Cesar, Sucre, Córdoba, Antioquia, Chocó, Cauca, Valle and Nariño by interviewing 17,043 people. It showed that prior to displacement 60.1% of the Afro-Colombians had their own housing, whereas after displacement just 3.5% were homeowners⁸⁶. The quality of their housing also worsens after displacement. “[B]efore displacement 65.6% of the Afro-Colombian population surveyed lived mainly in houses, 19.2% lived in hovels or shacks and 1.9% lived in apartments. But after displacement, 33.4% lived mainly in hovels or shacks, 32.7% in houses, 10.4% in rooms, 7.5% in huts made of cardboard and plastic and 6.1% in apartments”⁸⁷.

1.3 Right to Health

75. The health care system in Colombia has deficiencies in terms of protection and guarantee of the right to health of indigenous peoples and Afro-descendant communities, in addition to gaps in the production of information that would include the ethno-racial variable in the field of health.

⁸³ Constitutional Court Order 005 de 2009, *op. cit.*

⁸⁴ Rodríguez, Alfonso y Cavelier, 2009, *op. cit.*, chapter 5 on housing.

⁸⁵ Ibidem.

⁸⁶ Constitutional Court Order 005 of 2009, *op. cit.*

⁸⁷ Ibidem.

76. With respect to the indigenous peoples, in 2001 a law was adopted to regulate their participation in the social security system in health⁸⁸. This law comes in response to a healthcare system that was inadequate for the indigenous peoples because it did not take their customs and traditions into account; it did not recognize their autonomy in decision-making and it did not propose policies that would be able to improve their living conditions. The approved law recognizes their ethnic and cultural diversity, regulates the incorporation of indigenous authorities into bodies responsible for designing and implementing policies; establishes special protection for pregnant indigenous women and indigenous children under the age of five; and recognizes indigenous knowledge and practices as part of the plans and programs that define the health services which the communities have the right to receive.
77. However, implementation of the law has limitations in appropriately guaranteeing the rights to health of the indigenous peoples who live in remote areas with difficult access to traditional means of transport. Additionally, the law does not contain similar provisions to be applied on behalf of the Afro-descendent communities.
78. Regarding the Afro-Colombian population, although the Ministry of Social Protection, through its Ethnic and Gender Affairs Group, has since 2004 been carrying out a process to create a diagnosis and design a health policy for the ethnic groups in Colombia⁸⁹, this initiative has still not been translated into concrete public policy results for the health of the Afro-Colombian population.
79. The Afro-Colombian population is in a very precarious situation in the four areas that comprise the right to health: availability, accessibility, acceptability and quality of healthcare. The most notorious deficiency is the lack of hospitals, clinics and healthcare centers in good condition throughout the Pacific coast, where most of the Afro population lives, and the fact that the Afro-Colombian population is the sector with the lowest rates of health insurance coverage and the largest percentage of people affiliated with the subsidized health insurance system⁹⁰. The ODR found this situation in the four departments of the Pacific coast: Chocó, Valle del Cauca, Cauca and Nariño. The situation in Chocó, where more than 81% of the population is Afro, is particularly worrisome. In that department, health care provision is concentrated in the urban zones where, however, only a minority of the population lives⁹¹. The rural zones of Chocó only have healthcare stations, which “do not have sufficient equipment to provide adequate attention and the physical installations for the most part are in bad condition, which creates further difficulties for their users”⁹².
80. In addition, the Afro-descendent population in Colombia mostly lives in zones where the epidemiological profile is characterized by a high incidence of morbidity and mortality as well as the prevalence of diseases such as malaria, dengue, acute diarrhea illnesses, acute respiratory infections and tuberculosis⁹³.

⁸⁸ Principally see Law 691 of 2001, “*by means of which participation by ethnic groups in the General System for Social Security in Colombia is regulated*”.

⁸⁹ Interview with the Coordinator of the Ethnic and Gender Affairs Group of the Ministry of Social Protection, February 22, 2008, Bogotá.

⁹⁰ In Colombia, the health insurance system is divided in two: the contributive system, which covers people with the ability to pay and who contribute towards the social security system, and the subsidized system, which covers people without the ability to pay and whose affiliation with the system is partial or totally subsidized by public funds from the contributive system.

⁹¹ The majority of the population of Chocó lives in rural zones (57%). Response of March 25, 2008 by the Administrative Department of Health and Social Security of Chocó to the request of information submitted by the ODR.

⁹² Municipal Council of Quibdó. 2003. *Acuerdo No. 008 de 2004 “Por medio del cual se aprueba el Plan de desarrollo del Municipio de Quibdó periodo 2004-2007”*. Quibdó. Consulted on the web page: http://quibdo-choco.gov.co/apc-aa-files/66613734633264383130633137613465/Plan_de_desarrollo.pdf.

⁹³ Rodríguez, Alfonso y Cavelier, 2009. *op. cit*, chapter 4 on the right to healthcare.

81. Two significant examples of the Afro-Colombian population's health situation are the child mortality rate and life expectancy. In effect, the child mortality rate for Afro-descendent children is much higher (1.78 times) than for the rest of the population⁹⁴. The average life expectancy of Afro-descendents is six years less than the national average, whereas a black woman on average can expect to live nearly 11 years less than the national average⁹⁵.

1.4 Right to Education

82. Protection for the right to education of the ethnic groups continues to be a pending task. In 1994 the General Law on Education⁹⁶ was promulgated, which recognizes the right of indigenous peoples and Afro-descendent population to have a specific educational model, which it referred to as “ethno-education”. However, the establishment of ethno-education has various restrictions that limit the full enjoyment of the right to education, such as: i) government measures have been adopted that limit the application of the law; ii) necessary measures have not been adopted so that educational coverage apply to all members of the indigenous peoples and Afro-Colombian communities; and iii) the ethno-education model does not enshrine norms that would guarantee access by the members of the ethnic groups to all levels of education. For example, there is no public policy that promotes and provides opportunities so that the members of ethnic groups (particularly indigenous peoples) can enter universities.

83. One example that illustrates the situation of the indigenous peoples in the field of education can be found in the jurisprudence of the Constitutional Court. In ruling T-1105 of 2008⁹⁷, the Court studied the case of an indigenous woman who was denied allocation of the special quota supposedly reserved for members of indigenous peoples by a university. The quota was denied because the indigenous woman did not fulfill the university's requirement for students to have finished their high school studies at a school in the region to which the reserve in which her community lives belongs. The indigenous woman argued that she was unable to do so because she was displaced from that area and had to flee the region due to the armed conflict. At the conclusion of the legal proceedings, the Constitutional Court ordered the university to adopt the necessary measures to open the way for the enrollment by the plaintiff.

84. In the case of Afro-descendents, the figures show that the rates for illiteracy, repeating school years, being too old for their grades and dropping out of school are higher in the Afro-Colombian communities than among the *mestizo* population⁹⁸. According to data from the 2005 census, the Afro population's lack of access to primary, secondary and middle school education is worrisome. This is a problem that aggravates the cycle of marginality that afflicts the Afro-Colombian population. At the level of basic primary education, 10% of black boys and girls between the ages of 6 and 10 do not have access. This percentage is 27% higher than among *mestizo* boys and girls. In basic secondary education (ages 11 to 14), the lack of coverage is 12%. At the level of middle school education, the situation is notably worse: 27% of Afro-Colombians between the ages of 15 and 16 are left out.⁹⁹

85. There are different types of discrimination in access and permanence in the educational system that affect both the indigenous peoples and the Afro-descendent population. For example: i) non-fulfillment of the State's obligation to guarantee free primary education to all of the country's Afro-

⁹⁴ Rodríguez, Alfonso y Cavalier, 2009, *op. cit.*, chapter 2 are statistics about discrimination.

⁹⁵ *Ibidem*.

⁹⁶ Law 115 de 1994, “By means of which the general law on education is promulgated”.

⁹⁷ Constitutional Court ruling T-1105 of 2008. Speaker Magistrate: Humberto Antonio Sierra.

⁹⁸ *Ibidem*.

⁹⁹ National Administrative Department of Statistics (Departamento Administrativo Nacional de Estadística - DANE), *Censo nacional de poblaciones*, 2005. Available at: <http://www.dane.gov.co/censo/>, consulted in June of 2009.

descendent girls and boys¹⁰⁰; ii) lack of public funds that would guarantee adequate infrastructure, sufficient numbers of teachers, availability of adequate educational materials and access to resources to facilitate closing the technological gap; and iii) children who are able to gain access to the system face a structure that does not respect their cultural identity, does not generate incentives to retain students and does not adapt to their educational needs¹⁰¹.

J. Access to public establishments

86. The Afro-Colombian population is still the victim of discrimination in access to public establishments. Proof of this can be observed in cases that have occurred in the cities of Cartagena and Bogotá regarding access to night clubs.
87. The first case involves two young Afro-descendants who in December of 2004 were denied entry to two night clubs in the city of Cartagena because of their race¹⁰². In response, the Constitutional Court declared that this was a case of racial discrimination that violated the right to equality, honor, free development of personality and human dignity and ordered “that the legal representatives of the discotheques be prevented...in the future from impeding entry into those establishments of anyone because of their race”¹⁰³. The young people also brought civil suits in which, after a four-year process, each night club had to pay 50 million pesos. However, as a result of the sentence, the plaintiffs have been the victims of threats to their integrity and lives¹⁰⁴.
88. Six months later, an Afro-Colombian woman brought a *tutela* regarding similar events in the same public establishments. On this occasion, the *tutela* was also reviewed by the Constitutional Court and the ruling was adapted to the precedent of the ruling from the previous year, although monetary settlement was not ordered¹⁰⁵.
89. However, the Court's decisions have not been effective in preventing similar situations to occur. Three years after the first Constitutional Court ruling, three discotheques in Bogotá –Genoveva, Gavanna and Sciroco- barred a group of six Afro-descendants from entering their establishments, with the same arguments put forward by the night clubs in Cartagena.
90. This group of Afro-descendants brought a *tutela* action with the help of the ODR requesting protection of their rights to honor, human dignity and equality¹⁰⁶. The first-instance ruling declared that this involved an act of racial discrimination, but only in the case of one of the three bars targeted by the legal action. The ODR appealed the ruling before the Supreme Court of Justice which partially overruled it and extended the sentence to all three night clubs.
91. These recent cases show the high degree of ineffectiveness of the previous judicial rulings to eradicate discriminatory actions as well as the absence of the application in practice of administrative measures that would facilitate progress in the fight against discrimination in the realm of access to public establishments.

¹⁰⁰ Rodríguez, Alfonso y Cavelier, 2009. *op. cit.*, chapter 6 on the right to education.

¹⁰¹ Ibidem.

¹⁰² Corte Constitucional ruling T-1090 of 2005, Speaker Magistrate: Clara Inés Vargas Hernández.

¹⁰³ Ibidem.

¹⁰⁴ Telephone interview with Johana Acosta, February 2009. *El Universal* newspaper “Amenazan a mujeres que ganaron demanda por Discriminación Racial. Fallo Histórico contra discotecas por racismo”, February 6, 2009. *El Tiempo* newspaper “Por racismo, obligan a pagar 100 millones de pesos a reconocidas discotecas de Cartagena”, February 9, 2009.

¹⁰⁵ Constitutional Court ruling T-131 of 2006, Speaker Magistrate: Alfredo Beltrán Sierra.

¹⁰⁶ *Tutela* (injunctive action) brought by the ODR, July 23, 2008.

Article 6

K. Lack of an Appropriate and Effective Legal Remedy for Cases of Racial Discrimination

92. The prohibition of racial discrimination in Colombia is found in four isolated norms: i) the configuration of an aggravating factor for punishment of criminal conducts according to which, if the punishable conduct is inspired by intolerance and discrimination referring to race or ethnicity, among others, this constitutes a circumstance subject to greater punishment; ii) the prohibition of acts of racial discrimination in the context of the armed conflict; iii) the disciplinary punishments for government employees who carry out any of their duties based on intolerance or discrimination and iv) the prohibition of acts of racial discrimination, specifically against the Afro-Colombian population (Art. 33 of Law 70 of 1993), although without establishing the appropriate judicial action for seeking punishment by the State.
93. The above-mentioned norms do not establish a specific action to facilitate the prosecution of the discriminators and obtaining reparation for the victims. Therefore, most such cases are not denounced or brought to trial. In addition, these norms are not in accordance with the criteria established in the ICERD because they do not contemplate concrete judicial actions to prosecute, punish and prevent racial discrimination. The *tutela* action is therefore the only existing mechanism within the Colombian legal system that can be used in cases of discrimination. However, this is a subsidiary action as opposed to an ordinary one, which means that it can only be used in those cases in which there is no other judicial means to protect the rights, or as a transitory mechanism to avoid an irreparable damage while at the same time the corresponding ordinary action is in process. Nor is it possible to obtain reparation for the victims using the *tutela*¹⁰⁷. In the few cases in which the victims have brought *tutela* actions, they have obtained judicial decisions without practical repercussions for the discriminators and without reparation.

Article 7

L. Persisting Deficiencies in the Ethno-education Policy and the Afro-Colombian Studies Area

94. In Colombia, the General Law on Education¹⁰⁸ establishes two types of measures. The first seeks concrete actions aimed at the entire population to eliminate racist stereotypes, and the second regulates ethno-education.
95. These measures have various weaknesses. The main weakness of the first measure is that it is not being effectively applied. For example, the implementation of the Afro-Colombian Studies Area¹⁰⁹,

¹⁰⁷ The Constitutional Court in Ruling C-543 of 1992 declared unconstitutional the regulation that authorized the *tutela* judge to order the payment of damages through the *tutela* action. The Court found that it is a preventive action that is not aimed at remedying the damages caused and that the abstract or *in genere* settlement is the judicial declaration that there is a damage that must be repaired, but it does not define the nature or amount of the settlement. To achieve this, the person must bring a civil action.

¹⁰⁸ Law 115 of 1994.

¹⁰⁹ Regulated in decree 1122 of 1998.

which aims “to integrate Afro-Colombian studies in curricular processes”, has been limited in the country. In addition, the educators (teachers) have stated that the authorities in charge of curricular direction of the programs have distorted ideas about Afro-Colombian culture, shaped by a folkloric vision of teaching about Afro-Colombian culture and society, so that they assume that the contents are only associated with such aspects as dance or cooking¹¹⁰.

96. The second type of measures related to ethno-education, which is an education especially aimed at ethnic groups, has been addressed by hiring teachers and, because it has been assumed that the ethnic aspect arises from the ethnicity of the teacher and not the institutions, the ethno-teachers encounter considerable opposition from their colleagues when attempting to incorporate ethnic contents and carry out curricular and extracurricular activities as part of the right to ethno-education¹¹¹.

Article 14

97. The Colombian State, despite repeated recommendations from CERD (1986, 1999), continues to not recognize the competence of the Committee for the Elimination of all Forms of Racial Discrimination to receive and examine individual communications regarding violations of the rights contained in the Convention. The State’s main argument for refusing to make the declaration is that there are sufficient domestic legal remedies available to victims of racial discrimination in Colombia. However, as has been shown, existing judicial remedies do not adequately guarantee their rights and are also ineffective. This leaves the victims of racial discrimination and racism in Colombia without the possibility of comprehensively satisfying their right to justice, reparation and guarantees of non-repetition, and without the possibility of appealing to international human rights bodies such as CERD or the Inter-American Commission on Human Rights.

¹¹⁰ Interviews with ethno-educators from Tumaco and its surrounding areas in April 2008 and with ethno-educators teachers from Cartagena and its surrounding areas in June 2008.

¹¹¹ *Ibidem*.

Proposals for recommendations to the Colombian State

Article 2

- That legislation be enacted to prosecute and punish acts of racial discrimination, ensure the victims' right to reparation and provide guarantees of non-repetition, as well as legislation aimed at implementing affirmative action measures in of the field of employment and in access to housing, health and education.
- That legislation be enacted that would recognize the cultural rights of the Afro-Colombian population, as is the case with other ethnic groups.
- That clear procedures be established to guarantee participation by the Afro-Colombian communities and indigenous peoples in the discussion and enactment of legislative and administrative measures that affect them, in accordance with ILO Convention 169.
- That an independent entity be created to coordinate and execute the policy against racial discrimination and which would centralize the functions and responsibilities regarding policy for the Afro-descendent population and indigenous peoples, and that a National Action Plan be formulated to promote diversity, equality, fairness, social justice and equality of opportunities and participation in all spheres.

Article 3

- That a public policy be put into practice aimed at eradicating the *de facto* segregation of which the Afro-Colombian population in the urban zones is still the victim. This policy should include follow-up mechanisms to facilitate measuring their impact.
- That studies be carried out and published to gather and analyze information on the current situation regarding access to dignified housing by the Afro-Colombian population, in both rural and urban areas.

Article 4

- That draft legislation be put forward to declare discriminatory acts and organizations based on ideas of racial superiority punishable, and that the necessary reforms to the Criminal Code be considered and adopted to establish actions and procedures to prosecute discriminatory acts.
- That Colombian government officials stop stigmatizing and publicly accusing members of indigenous peoples and Afro-descendent population as well as defenders of the human rights of these ethnic groups of being “collaborators” of the guerrillas or “allies of terrorism”, and that the Procurator General's Office (*Procuraduría General de la Nación*) open disciplinary investigations into these statements, pursuant to Presidential Directive N°7 of 1999 and Ministry of Defense Directive N° 9 of 2003.

Article 5

Equality in Access to Justice

- That protocols be created to gather information on ethnic groups for public entities involved in the justice system and that it include a standardized system of categories and forms of record-keeping, using the self-identification criterion.
- That a system be created for oversight, control, investigation and punishment of discriminatory acts by government employees and private actors.

Rights to Life, Integrity, Security and Liberty

- That the Colombian State provide full guarantees for effective enjoyment of the human rights of the indigenous and Afro-descendent populations and take the necessary measures so that those responsible for such violations are tried and punished and to guarantee the victims' right to reparation.
- That the Ombudsman Office's Early Warning System (SAT from its Spanish acronym) intensify its monitoring of the human rights situation of the indigenous peoples and the Afro-descendent communities, for which purpose the Colombian State must allocate the necessary resources for the operations of the SAT and guarantee timely issuance of the early warnings.
- That the Ministry of the Interior and Justice guarantee that the governors and mayors adequately and opportunely apply the recommendations issued by the SAT in their Risk Reports and Follow-up Notes, particularly in the case of indigenous and Afro-Colombian populations.
- That the ethnic-racial perspective be included in all programs for attention to victims of the armed conflict at the national and local levels.
- That national and local plans be designed and implemented for the elimination of violence with racial motives, and that they include strategies for making those who have been the victims of racial discrimination aware of the possibilities for denunciation and attention provided by the State.

Indigenous Peoples in Danger of Extinction

- That the Colombian Government invite the Secretary General's Special Representative for the prevention of genocide to carry out a diagnosis, by means of an *in situ* visit, of the grave situation of the indigenous peoples in danger of extinction and formulate recommendations to overcome this situation.

Rights of Representation and Political Participation

- That a draft law be promoted to establish the procedure of prior consultation on legislative measures, and that the Government reform decree 1320 of 1998 that regulates prior consultations with the indigenous peoples, in fulfillment of the recommendations in this regard formulated by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and by the Constitutional Court.
- That the Colombian Government make the right of the indigenous peoples and the Afro-Colombian population to prior consultation effective in the context of the processing and approval of legislative measures and for any action that affects their right to territory, under free, prior and informed

consent, within the parameters established in the United Nations Declaration on the Rights of Indigenous Peoples¹¹² and ILO Convention 169.

- That the Colombian Government recognize the fifteen indigenous peoples that have not been recognized as such.

Property, Lands and Forced Displacement

- That a public policy be adopted and applied to prevent forced displacement of Afro-Colombian communities and indigenous peoples based on respect for and guarantee of human rights and international humanitarian law, and that a public policy be created to provide attention to internally displaced persons pursuant to the UN Guiding Principles on Internal Displacements and the Principles on the restitution of housing and patrimony of refugees and displaced persons.
- That existing databases on the displaced population be updated and unified, particularly in terms of ethnic membership.
- That measures be taken to modify the system of registry of the displaced population to include those persons who have been the victims of displacement for reasons not directly related to the armed conflict.
- That a public policy be designed and implemented for return, resettlement and reintegration in accordance with the ethnic characteristics of the indigenous peoples and the Afro-Colombian population.
- That processes for collective issuance of property deeds on behalf of the black communities throughout the national territory be accelerated and streamlined.
- That a priority solution be given to applications for constitution, enlargement and reorganization of indigenous reserves.
- That the Colombian State complies with the recommendations of the Secretary General's Special Representative on the human rights of internally displaced persons, specifically in terms of the displacement of indigenous peoples and Afro-Colombian communities and protection and restitution of their territories.
- That mechanisms for registry and protection of lands belonging to Afro-Colombian and indigenous populations be made effective.
- That the Colombian Government comply with orders issued by the Constitutional Court regarding attention for displaced indigenous and Afro-Colombian populations, and specifically that it adopt the necessary measures to comply with ruling T-025 of 2004 and court orders 004 and 005 of 2009.

Economic, Social and Cultural Rights

Right to Work

- That a detailed diagnosis be made of the situation of access by the indigenous and Afro-descendent populations in all sectors of employment.
- That the Colombian State take measures aimed at eradicating discrimination in the labor market, promoting access to employment by ethnic minorities and eradicating racist stereotypes of which the members of the ethnic groups are victims.

¹¹² On April 21, 2009, in a statement during the Durban Review Conference, the Colombian Government announced “its unilateral support for the United Nations Declaration on Indigenous Peoples, its spirit and the principles that inspired it.”
Ver <http://web.presidencia.gov.co/sp/2009/abril/21/10212009.html>.

Right to Health

- That a law or a development of Law 70 of 1993 be approved to specifically contemplate the health of the Afro-Colombian population as a vulnerable, ethnic, racial and culturally diverse population, with a traditional approach to medicine, illness, healing and health (such as, for example, Law 690 of 2001 for the indigenous peoples).
- That complete and detailed diagnoses be made of the state of healthcare in Colombia, to include the ethnic-racial variable and to facilitate creating public policy solutions aimed at addressing the specific needs of the ethnic minority populations.
- That specific strategies be included within public policies aimed at resolving the health problems of the Afro and indigenous populations, not only at the national level but also at the departmental and municipal levels.
- That detailed diagnoses be included in development plans and national and local health plans, to include differentiated objectives, goals and strategies aimed at addressing the specific needs of the Afro-Colombian and indigenous population, particularly in terms of maternal-child mortality, with respect to the offering of healthcare services (healthcare networks, medical personnel) and conditions associated with the right to health (basic sanitation: potable water, sewers, food, access routes).
- That actions be put into practice to strengthen or increase the level of health insurance coverage in zones where the Afro-Colombian population makes up the majority.
- That effective mechanisms be established to improve the availability and quality of healthcare throughout the Pacific coast, particularly for strengthening the hospital network, sanitary and supply conditions in the centers for medical attention, the training and permanence of specialized medical personnel and the provision of medications.

Right to Adequate Housing

- That legislative measures be approved on behalf of the Afro-Colombian population specifically on the right to adequate housing, which should include affirmative actions regarding their access to housing, to urban and rural housing subsidies, to the availability of basic utilities and quality and inhabitable housing, always taking their traditional practices and cultural identity into account.
- That legislative measures be approved that would prohibit discrimination based on ethnic-racial motives in access to housing, housing credits and housing subsidies, access to basic utilities and sanitation.
- That a complete and detailed diagnosis be made of the housing situation of the Afro-descendent population in Colombia, taking into account the ethnic-racial variable in all components of the right to adequate housing, to facilitate the design of a comprehensive and adequate public policy in the field of housing for this population.
- That a national housing strategy be adopted and implemented, to include affirmative actions for the Afro-Colombian population victim of racial discrimination in the field of housing; to follow up on implementation of policies for affirmative action at the national and local levels in the field of housing, taking into account all components of the right to adequate housing.
- That the Executive efficiently coordinate the design and implementation of public policies in the field of housing for the Afro-descendent population in Colombia.
- That a specific and effective strategy be adopted and implemented to guarantee legal security for the holding of collective territories to which deeds have been awarded on behalf of the Afro-descendent communities.

- That measures be adopted and implemented specifically aimed at improving the housing situation of the displaced Afro-Colombian population and to guarantee their return to their territories of origin and restitution of their lands and housing.
- That the State comply with the obligations established in the United Nations *Basic Principles and guidelines on evictions and displacement generated by development* in the case of Afro-Colombian communities and indigenous peoples.
- That the existing benefits and those that will exist in the future for access to urban housing subsidy be extended to the rural sector, and that follow-up mechanisms be adopted to facilitate oversight of the effective implementation of this type of affirmative actions by the entities charged with doing so.
- That all housing programs and plans, whether they are specifically aimed at the Afro-Colombian population or the general population that includes the Afro-Colombian population, take into account the traditional practices and cultural identity of the Afro-Colombian population in their approach to inhabitability, housing and the surroundings.

Right to Education

- That the State, as a priority, allocate the necessary resources to guarantee that primary education be universal, free, of quality and available to all Afro-Colombian and indigenous boys and girls.
- That affirmative actions be adopted in the educational system to guarantee access and permanence of the Afro-Colombian and indigenous populations, close the gap between those populations and the *mestizo* population and lower the illiteracy rates.
- That measures be taken to promote academic contents and programs starting from the first years of basic education that would counteract racist stereotypes that are rooted in Colombian society and families.
- That a system be created for implementation and monitoring of the ethno-educational policy to comprehensively guarantee protection of cultural diversity in the educational system.

Access to Public Establishments

- That training programs on human rights and discrimination be established for public employees charged with handling and controlling public establishments, as well as for the owners of private establishments open to the public.
- That specific punishments be established for acts of discrimination regarding access to public establishments.
- That campaigns be designed and implemented for sensitizing the population regarding the right not to be discriminated against in terms of access to public establishments, the right to equality and nondiscrimination, and the possibilities for denunciation and punishment in cases of racial discrimination in access to public establishments.

Rights of Afro-Colombian and indigenous women

- That a directive be issued for the Military Forces and the National Police to respect the rights of indigenous and Afro-Colombian women and to abstain from committing acts of discrimination and sexual violence.

- That the Colombian State take measures to design and adopt policies that take into account the specific needs of indigenous and Afro-Colombian women in the context of the armed conflict in terms of health, education and justice.
- That a differential focus regarding gender be adopted in the policy for prevention and attention to displacement that would address the differential impact of displacement on indigenous and Afro-Colombian women, pursuant to recommendations made by international bodies and the orders of the Constitutional Court.
- That specific measures be adopted to enable displaced indigenous and Afro-Colombian women to return in a voluntary, dignified and secure manner to their places and communities of origin, and recover their rights to the lands and housing abandoned due to displacement.

Article 6

- That specific legislation be enacted regarding judicial actions and punishments to combat impunity surrounding acts of racial discrimination, in order to guarantee access to an appropriate remedy for the victims of discriminatory acts.

Article 7

- That sufficient resources be ensured for implementation of the contents of the Afro-Colombian Studies Area, including resources allocated for research and pedagogical innovation.
- That mechanisms be established to institutionalize both the Afro-Colombian Studies Area as well as ethno-education in all of the country's educational institutions, not only by hiring ethno-educators, but through the inclusion in the curricula of these two means of teaching for the elimination of racial discrimination and racist stereotypes, and to promote understanding, tolerance and friendship between the ethnic groups and the rest of the national population.
- That a mechanism be created for systematic and representative evaluation of the implementation of the Afro-Colombian Studies Area for all private and public educational establishments in the cities and in the countryside. This mechanism should also include specific questions on implementation of the Afro-Colombian Studies Area in the tests and examinations administered to students at the educational establishments.

Article 14

- That the Colombian Government make the declaration provided for under Article 14 of the Convention for the Elimination of all Forms of Racial Discrimination and thereby recognize the competence of the Committee for the Elimination of Racial Discrimination to receive individual communications, as a way of enlarging guarantees for the protection of the rights of indigenous peoples and of Afro-Colombians.