



**University of Oklahoma College of Law
International Human Rights Clinic
The United States of America**

Report on the Republic of Colombia to the 16th Session of the Universal Periodic Review, Human Rights Council, 22 April–3 May, 2013

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EXECUTIVE SUMMARY

The International Human Rights Clinic of the University of Oklahoma College of Law (IHRC-OU) submits the following report to the 16th Session of the Universal Periodic Review, Human Rights Council. This report concerns indigenous communities of Colombia and surveys Colombia's compliance with certain human rights obligations. The report focuses on the selected areas of Violence Against Indigenous Women, Internal Displacement, Education, Access to Potable Water, and Property Rights. The purpose of this report is to provide a balanced view of indigenous concerns in Colombia and recommend measures to address those concerns. The IHRC-OU notes the commitment expressed by Colombia to develop and expand programs and policies for the protection of indigenous peoples.

I. VIOLENCE AGAINST INDIGENOUS WOMEN

Normative and Institutional Frameworks

International Provisions: The 2009 UPR recommended that Colombia take measures to prevent sexual violence and investigate and punish perpetrators. In its response Colombia recognized that it must strengthen investigatory measures and guarantee victims full access to justice. Gender-based violence remains a high concern.

Domestic Undertakings: In 2008, Constitutional Court Award 092 emphasized that indigenous women comprise a group of particular vulnerability; the incidence, frequency and severity of sexual violence is inordinately high. The award ordered the creation of programs to address this situation within three months; however, the order has not been implemented. The 2009 UPR recommended that Colombia implement Award 092 in regards to (1) gender-based vulnerabilities in armed conflicts, (2) sexual violence against women and girls, and (3) forced displacement. In its 2009 UPR Response, Colombia accepted, but has not implemented this recommendation. Colombia has not allocated sufficient resources to raise awareness of, and prevent and punish all forms of violence against women.

Human Rights on the Ground

Violence against indigenous women remains alarmingly elevated. Indigenous women face discrimination three-fold, because they are: (1) typically among the poorest in the country, (2) indigenous peoples, and (3) women. Military, paramilitary and mining operations cause a high rate of violence, sexual violence, exploitation and enslavement of indigenous women. Armed groups use sexual violence as a war strategy and as a retaliatory act against real or suspected helpers of the enemy. Mining operations increase the probability of and demand for sex slavery and trafficking, and disproportionately threaten indigenous women.

Women are overrepresented among internally displaced persons due to the armed conflict. Displacement results in violence and sexual abuse. Indigenous women have not been adequately protected against such systemic violence.

Recommendations

Consider granting formal enforcement authority to the Constitutional Court.

Comply with Constitutional Court Award 092 of 2008 by identifying and developing necessary infrastructure and implementing the programs therein.

Demand all parties in the armed conflict cease acts of violence against women and girls.

Require all parties to take measures to protect women and girls from sexual violence.
Uphold international obligations regarding the prevention, investigation and prosecution of gender-based violence.
Invite the Special Rapporteur on violence against women to investigate.

II. INTERNALLY DISPLACED PEOPLES

Normative and Institutional Frameworks

International Provisions: The UN High Commissioner for Human Rights (OHCHR), in its 2009 Annual Report on Colombia, urged the State “to take specific preventive measures to halt the disturbing trends of increased displacement, and to protect the displaced population, by making better use of the Ombudsman’s early warning system.” Many indigenous groups have tried to use the early warning system, only to have their leaders assassinated and their people displaced. In fact, the number of displacements per year has increased since the last review period.

In 2009 the Committee on the Elimination of All Forms of Racial Discrimination (CERD Committee) noted its concern over the growing number of displacements, particularly the disproportionate number of Afro-Colombian and indigenous peoples. Because displacement harms individuals, families and communities, the 2009 UPR recommended that Colombia increase efforts to address the plight of displaced persons. It also recommended increasing social and economic initiatives to reinforce the full enjoyment of human rights by displaced persons, particularly indigenous peoples and Afro-descendants.

Domestic Undertakings: Colombia has discussed the creation of various programs affording more individual rights. Significantly, the State passed the Victims and Land Restitution Law (Law 1448 of 10 June 2011) for the purpose of recognizing a set of judicial, administrative, social, economic, individual, and collective rights to benefit victims of violations under the Act within a transnational justice framework. The Act also is intended to prohibit future violations and recognize their status as victims through the materialization of their constitutional rights.

Human Rights on the Ground

Displaced people live in a state of extreme poverty with unsanitary and unsafe living conditions, substandard health care and education, and the destruction of their cultural heritage.

Displacement not only prevents displaced persons from enjoying their land, but also harms community identity and culture. Indigenous cultures are so entwined with the land that uprooting them from their traditional homes irreparably disrupts or destroys cultural practice.

Article 10 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) recognizes the right to possession of land. However, forced displacement of indigenous communities occurs at a disproportionately high level, and families are often separated for extended, indefinite periods.

Recommendations

Take the necessary measures to enforce Constitutional Court decision T-025 of 2004 and subsequent related decisions, as recommended by the CERD Committee in 2009.

Continue including indigenous leaders in the decision-making processes that directly affect the lives of displaced indigenous peoples.

Demonstrate stronger efforts to comply fully with the UNDRIP and Article 27 of the International Covenant on Civil and Political Rights, which recognizes that indigenous

peoples have “the right to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

Report the results and implementation course of the “ethnic safeguard plans” to combat the threat of cultural or physical extinction for those indigenous groups at risk.

Ensure displaced indigenous families are under no circumstances separated.

III. EDUCATION

Normative and Institutional Frameworks

International Provisions: In its 2010 concluding observations, the Committee on Economic, Social and Cultural Rights (CESCR) expressed concern that access to free and compulsory primary education is not fully ensured, because families are required to pay for school-related items, such as exam reports. Further, remote schools require lengthy and dangerous travel.

In 2009 the CERD Committee commended Colombia for its commitment to provide an ethnically sensitive education, but noted concern over free primary education and staggeringly high illiteracy rates. The Committee recommended that steps be taken to ensure free primary education and consult the affected communities. The 2009 UPR recommended that Colombia adopt concrete measures to ensure universal access to quality primary education.

Domestic Undertakings: Colombia has announced two goals to be achieved by 2015: (1) universal primary education and (2) the reduction of illiteracy to one percent in the 15-24 year age. In 2010 the Constitutional Court held that the right to free primary education, including the right to not pay school fees, applies to all.

Human Rights on the Ground

The government published *Revolución Educativa*, a broad plan to meet the Millennial Development Goal regarding universal primary education. The plan sets forth ways to integrate displaced children and defines appropriate educational methods for specific indigenous groups. This program has not been implemented in indigenous communities.

A social stigma attaches to speaking an indigenous language or using an indigenous number system, pressuring children to assimilate and stop using their native language. Such stigma harms the individual, the community and their culture.

Recommendations

Continue to work towards the CESCR recommendations regarding the enforcement of the constitutional right to free education.

Consistent with UNDRIP Article 14, work with indigenous leaders to establish integrated curricular models that promote preservation of native language and traditional knowledge and encourage literacy.

IV. ACCESS TO POTABLE WATER

Normative and Institutional Frameworks

International Provisions: The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has twice recommended “that investment, infrastructure, natural resource extraction and exploitation, industrial production and other major projects should not be promoted without full and genuine prior consultation with and the

involvement of the indigenous people.” In 2010 the CESCR called upon Colombia to adopt a national safe drinking water policy, especially for rural areas. The OHCHR 2012 Report on Colombia observed that in rural areas “there are qualitative shortfalls in terms of housing and access to water and sewage services, compared to the average in urban zones.”

Domestic Undertakings: Colombia has begun to address water quality issues and to develop a national water policy. The State has created a specific governmental unit to address issues of water resource management and water quality. At UNICEF’s urging, 243 municipalities have created solid waste management plans to increase access to safe drinking water.

Human Rights on the Ground

Environmental degradation, climate change and lack of infrastructure limit access to clean drinking water. Unsafe water causes members of the Wayuu community to suffer acute diarrhea, a leading cause of death in children under age five. To access the only alternative, salinized tap water, women must walk long distances across the desert. Privatization has increased the cost of water, reducing access. Only 12.5% of Colombia’s Departments offer safe water. Deforestation and pollution of surface and groundwater threaten human health and degrade ecosystems. Attacks on oil installations and pipelines cause oil spills, contaminating fresh water sources.

Recommendations

Work with indigenous communities to create infrastructure and management of water resources to ensure that indigenous communities have access to potable water.

Consider amending the Constitution to guarantee access to clean water.

Continue efforts of the government to develop a national water policy.

Uphold international obligations that require access to potable water.

Increase protection of waterways and groundwater from degradation.

Consider ratifying the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD).

V. PROPERTY RIGHTS - RESTITUTION

Normative and Institutional Frameworks

International Provisions: Colombia endorsed the UNDRIP in April 2009, which Articles 26 and 28 oblige the State to recognize and protect indigenous property rights. The 2009 CERD Committee report recommended that Colombia “pay particular attention to the restitution of land titles to displaced...indigenous communities.” The OHCHR 2012 Report on Colombia recommended that the State (1) include victims and their organizations in implementing the Victims and Land Restitution Law and (2) complete the “land restitution process with rural development and income-generation programmes.”

Domestic Undertakings: Law 1448 of 2011 authorizes reparations for internally displaced victims of Colombia’s armed conflict. Decree Law 4633 of 2011 is secondary legislation providing a legal framework to deliver reparations such as restitution of territorial rights and compensation to indigenous peoples who are victims of the armed conflict.

Human Rights on the Ground

Colombia has taken positive steps toward the recognition of indigenous rights to property and restitution by enacting Law 1448 and Decree Law 4633. However, Colombia has largely failed to deliver the benefits of these laws to the indigenous population. The restitution programs have

been ineffective to indigenous communities in Colombia due to lack of: (1) available funds, (2) structural development, and (3) beneficiary education.

Recommendations:

- Strengthen 4633 by addressing the deficiencies caused by lack of budgetary resources, institutional capacity and beneficiary education.
- Take measures to ensure physical security of advocates for indigenous property restitution.
- Guarantee registration for restitution to all Afro-Colombian and indigenous peoples.

VI. FREE, PRIOR, AND INFORMED CONSENT (FPIC)

Normative and Institutional Frameworks

International Provisions: The 2009 CERD report recommended the State implement consultation procedures consistent with ILO Convention No. 169, which Colombia ratified in 1991.

Domestic Undertakings: Colombia enacted Law 1320/98 to require consultation with indigenous communities, however, in 2011 the Constitutional Court issued ruling No. T-129, holding that the State's consultation policy was inconsistent with ILO Convention No. 169. The Court acknowledged that the indigenous peoples' right to FPIC includes veto power for actions affecting indigenous communities.

Human Rights on the Ground

Colombia's consultation policy having been held to be inconsistent with the Constitution of Colombia and ILO Convention No. 169, Colombia systematically fails to ensure FPIC to indigenous communities. This failure has permitted third-party companies to divide and coerce indigenous communities and government ministries in order to acquire natural resource exploration and extraction privileges. This failure constitutes a violation of indigenous human rights protected by ILO Convention No. 169 and the Constitution of Colombia.

Recommendations

- Commence an investigation into all current resource development and extraction programs on indigenous territory and suspend projects found to be inconsistent with ILO No. 169.
- Revise Decree Law 1320/98 to fully implement the FPIC requirement of ILO No. 169 and T-129 and ensure participation of indigenous peoples in the revision process.
- Take measures to officially recognize indigenous ownership interests in sub-surface resources as a means to subdue coercion and influence of third-party extractive companies.