



Commission on the Elimination of Racial Discrimination, 75th Session Colombia, 12th-13th August 2009

1. Introduction

Colombia reported to the Committee on the Elimination of Racial Discrimination (CERD) on the 12th and 13th of August 2009. The state report submitted by Colombia is the first in ten years and contains periodic reports 10 to 14¹. Colombia's state report was introduced by Ambassador Angelino Garzon, Permanent Representative of Colombia to the United Nations in Geneva. Mr. Garzon assured the Committee of Colombia's full collaboration and said that Colombia has recently been visited by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and has extended an invitation to the Independent Expert on minority issues. The fact that Colombia reaffirmed its collaboration with the Committee was appreciated and members of the Committee expressed their hope that Colombia will not wait another ten years to submit its next report.

In general, the Committee recognized the existing legal framework for combating racial discrimination in Colombia and the positive developments that have occurred within this area. The Committee felt a great concern however, that the implementation of this legal framework is slow and that affirmative actions to tackle discrimination is inadequate. When dealing with issues of racial discrimination the Committee emphasized the need to look at the whole Colombian society, beyond the conflict, and to direct activities towards the majority of the population. In its responses to the Committee however, the Colombian Delegation focused on the problems of illegal armed groups in Colombia, how it is affecting minority groups and what the government is doing to fight these groups.

2. Presentation of State Report

The state report recognizes that communities of afro-Colombians, indigenous people and other minority ethnic groups are victims of diverse forms of racial discrimination, was presented by Ms. Rosa Garcia, Director of the Department of Communities of African Descent at the Ministry of Interior and Justice. The problem is not one of discriminatory acts permitted by law or deliberately perpetrated by the state institutions, Ms. Garcia stated. It is, rather, a complex cultural problem with its roots in the history of Colombia and Latin America, which has engendered a scenario in which the indigenous and afro-Colombian communities have been traditionally subject to marginalization, poverty and vulnerability to violence.

Legal Framework against Discrimination

The report focuses on the various laws that exist in Colombia to combat discrimination. For example, the 1991 Constitution establishes that members of indigenous communities are not required to do military service; it establishes the mechanisms for the award of lands to afro-Colombian communities; and the mechanism for the award of royalties for the exploitation of natural resources located in indigenous territories. The government has also made efforts to improve participation in decision-making by minority ethnic groups by for example ensuring guaranteed seats in Congress and by establishing a Prior Consultation mechanism. Concerning women, the state report refers to Act No. 581 of 2000 (the "Quotas Act") which aim is to ensure that women enjoy participation at all levels in the branches and bodies of

¹ The full state report in English, Spanish and French can be found on the CERD homepage <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

public authority. In addition, there exists an Office for Indigenous Affairs and an Office for Black Communities within the Ministry of the Interior and Justice. The Vice President of the Republic is responsible for human rights policies.

Access to Social Services

To ensure social services such as health care and education for all, the Government carried out activities in 2004 with the participation of ethnic communities in order to examine the present situation of health care and to characterize and identify health problems. Ms. Garcia stated that afro-Colombians enjoy subsidized health systems and that members of minority groups can have their own health institutions. Concerning education the government is trying to work both with improved access and quality. New regional information systems have been introduced that give identification and detailed information of each student. In its strategy to ensure educational access the national government has directed additional resources for the participation of students in vulnerable groups and IDP. 4 million people are thus cared for in the educational sector, Ms. Garcia stated.

The Effect of Armed Violence on Minority Groups

Ms. Garcia continued by stating that the Colombian state has faced challenges in its efforts in the form of militarized groups. The violence has specially affected minority groups, women and children. In the context of the violence she also mentions the large number of Internally Displaced People (IDP) cause by illegal armed groups. The fundamental rights of these people have been violated and this has created an enormous responsibility for state institutions. Ms. Garcia mentioned that Colombia has put in place a national comprehensive system of care for the displaced and has established a national registry. She also mentioned different programs undertaken to improve the situation of IDPs with regard to food security, health, housing and justice. Ms. Garcia argued that the violence by illegal armed groups has a differentiated impact on women among IDPs and that the government is adopting an ethnic approach to programs relating to displaced women, which is also mentioned in the state report.

Efforts have also been made in the area of prevention, in joint work with ethnic groups to establish more appropriate measures for protection. A Committee to assess the risks for representatives of indigenous and afro-Colombians has been established to look at measures for protection. The Ministry of Defence is working to ensure that human rights are crosscutting in all activities of the armed forces. There exist institutional guidelines for the protection of minority groups. Formal training for the police and army has been undertaken and efforts are being made to establishing links between communities and the police and military.

3. Issues brought forth by NGOs

Insufficient Government Policy to Eliminate Racial Discrimination

Four NGOs submitted reports to this CERD Session on Colombia; Afroamericana, AFRODES, Internal Displacement Monitoring Centre (IDMC), and Observatorio de Discriminacion Racial in collaboration with other organisations.² They all highlighted the lack of government action to improve the situation of minority ethnic groups in Colombia. The Observatory of Racial Discrimination emphasized the fact that in Colombia there is no independent national institution that specializes in the promotion and protection of human rights and the struggle against racism and racial discrimination. Furthermore, there is no specific legislation to prosecute and punish racial discrimination.

² Full reports can be found on CERD homepage: <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm>

Right to Life, Integrity, Security and Liberty

The Observatory of Racial Discrimination stated that the rights of the members of minority ethnic groups to life, integrity, safety and liberty have been gravely affected by the violence and the armed conflict in Colombia, particularly the rights of women among these groups. In spite of this the Colombian State does not mention specific measures aimed at guaranteeing and protecting these rights in its report. Colombia has established an Early Warning System in the Ombudsman's Office as a means to protect the population. The Observatory of Racial Discrimination recommends that the Early Warning System intensify its monitoring of the human rights situation of indigenous people and afro-Colombian communities and that the Ministry of Interior and Justice guarantees adequate follow-up by governors and mayors. Furthermore, it recommends that national and local plans against racial violence be designed and implemented.

Property, Land and Forced Displacement

IDMC reported that, although CERD in its last consideration of Colombia "...urges the State party to take comprehensive steps to protect the security and promote the well-being of Colombia's large internally displaced population...", the number of IDPs has increased and the living conditions have worsened. The percentage of IDP belonging to afro-Colombian or indigenous groups have also increased and these groups generally have a lower enjoyment of their rights than the rest of the displaced population, IDMC reported. Recommendations by the Observatory of Racial Discrimination in this area include the adoption of a public policy for the prevention of forced displacement and adequate attention to internally displaced persons. It also recommends that mechanisms for registry and protection of land belonging to Afro-Colombian and indigenous populations be made effective.

Rights of Afro-Colombian and Indigenous Women

The Observatory of Racial Discrimination asks for a directive for the military forces and the police to respect the rights of indigenous and afro-Colombian women and to abstain from acts of discrimination and sexual violence. It also asks for a differentiated policy for prevention and attention to displaced person that addresses the different impacts of displacement on indigenous and afro-Colombian women.

4. Issues taken up by the Committee

On a general note, the Committee on the Elimination of Racial Discrimination expressed its appreciation for Colombia's renewed collaboration and its hope that Colombia will not wait another ten years to submit its next report. The Committee mentioned that Colombia in the past has had a tendency to deny the existence of racism in its country. Visible inequalities have not been seen as a result of discrimination but because some groups happen to live in poor parts of the country. Colombia has now recognized that minority groups are victims of racial discrimination. This recognition however, does not reduce the legal obligations of the state to correct the situation.

Insufficient Implementation and Affirmative Action

The Committee recognized the existence of a legal and policy framework for the protection of the rights of minority groups in Colombia, within the Constitution, within a number of laws adopted, decisions by the Constitutional Court, and the National Development Plan. However, the Committee emphasized the need for full and rapid implementation of this framework. The Committee therefore renewed its recommendations from its previous consideration of Colombia, to improve the implementation of laws and affirmative action to combat discrimination. Several Committee Members stated that some laws regarding discrimination have not been implemented and some have not been given effect, such as laws concerning displaced women and displaced indigenous populations.

Legislative and Judicial Issues

- The Committee pointed out that there is no specific law on racial discrimination in Colombia.
- The Committee wished to know whether an independent National Human Rights Commission will be established in Colombia. The Committee noted that the Office of the Ombudsman is not able to deal with all issues connected to the Bill of Rights of Colombia.
- The status of the draft Bill on Equal Opportunities was requested.
- The need for sufficient attention to the problem of impunity was raised. The Committee also urged for the use of regular courts for all cases and not military tribunals.
- The Committee asked for an explanation of measures to take into account local customs and traditions in the field of justice.
- The need to extend community defenders to all indigenous and afro-Colombian communities was stressed.
- The Committee asked for an account of evolutions regarding the strengthening of Councils of black communities.
- Members of the Committee mentioned the fact that there are still a number of complaints of extra judicial arrests and forceful disappearances in Colombia and asked for renewed efforts by the government to eliminate such practices.
- Another issue brought forth by the Committee was military actions during government efforts to eradicate the production of illegal crops. The Committee asked for an account of the government's efforts to find a balance between the economic security of people and the need to stop illicit crops.

Consultation with Communities

In the report and in the presentation, a Prior Consultation mechanism was mentioned, it was established to ensure the participation of ethnic minorities in decisions that affect them. The Committee asked for more information regarding this mechanism; if consent is required after consultation; and how the consultations proceed. The Committee stressed the importance of taking local customs and traditions as starting point.

The Committee mentioned that indigenous people and afro-Colombians have been affected by so called mega-projects on their territories. Concession has for example been granted to foreign mining companies without prior consultations with communities affected. Other examples include the take-over of territories by bio-fuel companies. In addition, plantation of oil palms and sugarcane lead to changes of traditional ways of life of ethnic groups and are destroying the environment. The state should make sure that no projects are accepted without consultation with communities.

Need for Comprehensive and Continuous Data

Several Members of the Committee stressed the need for comprehensive and continuous data, on discrimination, on the socio-economic situation of different groups, access to education, health and justice, differentiated by ethnic variables and by sex. Reliable data is vital in order for the government to design policies and affirmative action. This data needs also to be provided to the Committee in order for it to make relevant conclusions and recommendations.

The Committee brought forth a finding made by the Special Rapporteur on indigenous people that some minority groups in Colombia are on the brink of extinctions. The government needs to recognise the existence of these people and their inclusion in Colombia.

Protection of Civilians in the Context of the Armed Violence

Concerning the armed violence in Colombia, one issue raised by the Committee was the relation between armed groups and the population living in the areas where these groups operate. The people living in these areas are mostly poor farmers. How do these people move to centres of decision-making in order to receive the same services as other groups of the population, and, is this population under administrative control of the armed groups, where questions raised by Committee Members.

The Committee was concerned about the government's efforts to protect the population. Colombia's position regarding R2P was requested. In general, the Committee asked for more information on challenges in the government's duty to protect. An account of the procedures and effectiveness of the Early Warning System was requested. It was stressed that local and civilian authorities should be involved in the Early Warning System.

The fact that women are the ones who suffer most in the context of the conflict and Internally Displaced People was stressed by several Committee Members. Women among these communities deserve special attention and the government must take special measures to assist women. The high prevalence of violence against women and sexual violence was stressed and the Committee asked for more information on efforts by the government and to prevent this and improve the protection of women.

Demobilization and Justice

Another issue raised by the Committee was that of demobilisation and the Justice and Peace Law. The fact that individuals who have been involved in the armed violence can enjoy reduced penalties through the involvement in the demobilisation process does not take into account remedies to their victims, the Committee argued, and it asked for more information about this mechanism.

National Unity and Understanding

We may be tempted to focus on the conflict but we need to look at the situation in Colombia as a whole, beyond the conflict, Mr. Diaconu argued. Racial discrimination is a cultural problem. Activities need to be directed towards the majority of the population in order to create national unity, understanding and inclusion of all, argued Members of the Committee. In this spirit, one Committee Member asked about the national narratives outlined in schools. Appropriate coverage of the history of afro-Colombians, Roma, Indigenous populations and other groups may contribute to a re-evaluation of national identity and understanding.

Education in general is the key to improving the living standard of impoverished groups and to encourage understanding between different groups. The Committee wondered about the situation of education in different languages and free education for all, which is a legal provision in Colombia. The Committee also wished to know what the government intends to do to overcome obstacles such as lack of clean water, health service and education, problems that contribute to high rates of poverty and mortality among minority ethnic groups, in order to implement its policies.

5. Responses by the Colombian Delegation

Government's Commitments to Ending the Violence

In its responses to the comments and questions raised by the Committee, the Colombian Delegation focused on issues related to the armed violence. Ambassador Garzon began by explaining how the government is aware that civil servants, including the police and armed forces, have been involved in illegal activities and have been linked to illegal armed groups on an individual basis. He assured that most of these individuals have been arrested and

punished. In this effort Colombia also attempts to show the world that the existence of armed groups in its country has not affected the democratic Constitution. Governors in all regions are elected by popular vote. The illegal armed groups do not have territorial control; they have presence in territories, not territorial control, Mr. Garzon emphasized.

The Colombian Delegation talked about the close relation between armed groups and drug-trafficking in Colombia. Armed forces in Colombia are increasingly professional. Resources produced by drug-trafficking feeds back to armed groups who systematically threaten the civilian population through kidnapping, recruitment of children and terrorist attacks against the civilian population, especially minority groups. It is a complex situation relating to organized crime groups, Ms. Garcia argued. The government tries to determine which organized crime groups need police attention and which need military attention.

Protection of Civilians in the Context of the Armed Violence

Regarding reports about violence against afro-Colombians and indigenous people in the context of the conflict with FARC the Colombian Delegation responded by stating that because the collective lands of afro-Colombian and indigenous people are in areas strategically connected to drug trafficking the government has a right to enter by armed forces. The government policy is zero tolerance to human rights violations and there exist specific guidelines that guarantee that the armed forces operate within the legal framework.

Regarding protection of civilians, the Early Warning System of the Office of the ombudsman was established to prevent forced displacements. Through the Early Warning System the Ombudsman office monitors areas very risks exists and analyse and evaluate its findings. If any imminent risk is found the matter goes to the Ministry of Interior and Justice who studies the risk report by the ombudsman office. The report is then transmitted to local authorities who analyse the situation and issue orders to local civil authorities, who thereby play an important role in this early warning system.

Demobilization and Justice

Regarding the Justice and Peace law, an independent judicial process has been established that makes assessment in order to take informed decision about benefits for demobilized soldiers. To receive benefits three criteria must be met; 1) complete confession of all actions committed; 2) commitment never to do it again; and 3) provide reparation to the victims. The law is controlled by the Constitutional Court.

6. The next steps

The fact that Colombia recognizes the existence of racial discrimination in its country is a positive step. The Colombian delegation also mentioned the particularly perilous situation for women in the context of the armed violence and IDPs in Colombia. What is needed now is affirmative action by the state to work towards the elimination of this discrimination and ensure the protection of all its citizens. Efforts to eliminate discrimination must not be overshadowed by the conflict. NGOs play an important role in holding the government accountable and verifying that policies and legislation are fully implemented. The government and civil society need to work together, as one single country, in order to overcome the obstacles and achieve a more equal society. Colombia's next periodic report to the Committee on the Elimination of Racial Discrimination is due 2010. Civil society need to be active in making sure that the government does produce another report.

Colombia will also be reporting to the Committee Against Torture (CAT) on 2-20 November 2009 and to the Committee on Economic, Social and Cultural Rights (CESCR) in May 2010.