

Statement by the United Nations Independent Expert on minority issues, Ms Gay McDougall, on the conclusion of her official visit to Colombia, 1 to 12 February



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OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
Statement
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During the course of my official visit to Colombia, between 1 and 12 February, I have had an opportunity to meet with both President Uribe and numerous senior government officials and to consult directly with representatives and members of Afro-Colombian communities. My visit allowed me a unique opportunity for dialogue in relation to my mandate on minority issues and to promote implementation of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities. I wish to express my thanks to the Government of Colombia for its cooperation in the preparation and conduct of my visit.

The focus of my visit to Colombia has been communities who identify as Afro-Colombian, Black, Raizal and Palenquero. In view of this I have visited numerous cities and regions of Colombia, including Bogotá, Cartagena, San Basilio de Palenque, Turbaco (Bolívar), Urabá region (Chocó/Antioquia), Apartado, Quibdo, Cali, Buenaventura (Valle del Cauca) and the municipality of Suárez (Cauca) and the surrounding areas where these communities are prominent.

The views expressed in this statement are of a preliminary nature and are not comprehensive. My findings and recommendations will be fully developed when I report on my visit to the United Nations Human Rights Council.

I. Overview

The story of Afro-Colombians begins with slavery and the massive and gross violations of the rights of African descendants that terrible chapter in history entailed, not only in Colombia but in the entire region. In Colombia, the most prominent slave-labor operations were established in coastal areas. As slaves escaped, they were forced to find refuge in nearly uninhabitable, geographically remote regions of the Atlantic and Pacific Coast. There they strived and remarkably succeeded, to build communities and livelihoods under conditions of extreme isolation, harsh climate, and often extreme poverty. Except for nearby communities

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of Indigenous peoples, these settlements have been all Black for centuries. Colombia has recognized the ownership rights of Afro-Colombians to these territories.

As in many other countries, the legacy of slavery endures and is manifested in communities that are socially and economically marginalized, facing racist attitudes and structural discrimination. It must be acknowledged that the Colombian government has made efforts through provisions of its Constitution, legislation and policies to address certain aspects of the disparities faced by Afro-Colombians. Nevertheless, the legacy of slavery continues to have a profound impact on the lives of Afro-Colombians, Blacks, Raizal and Palenquero communities.

In addition, new and emerging challenges face Afro-Colombian communities. They include violence and oppression at the hands of a variety of armed actors, the ongoing struggle for their lands and territories, displacement, the impact of agro-business, logging and mining interests and “megaprojects” aimed at economic development and exploitation of natural resources. Some communities face a daily struggle for survival, displaced from their lands and forced into conditions of extreme vulnerability and insecurity, lacking basic needs, including adequate food, water and electricity, health care and education for their children. The situation of many Afro-Colombian communities in both rural regions such as Chocó, and urban environments to which they have often been displaced in towns such as Quibdo, Suarez, Buenaventura, Cartagena and Cali, which I visited, can only be described as critical.

Afro-Colombian settlements, in rural areas and town ghettos, rival only the reservations for Indigenous peoples as the very poorest in Colombia, with extreme poverty rates of over 60 percent. In Colombia, the extreme poverty map and the map of high density Afro-Colombian populations coincide. Surveys suggest that 80 percent of Afro-Colombians do not have basic needs met. Infant mortality rates in Chocó and Cauca are 54 per thousand of the population. Life expectancy in Afro-Colombian regions is only 55. Illiteracy rates for Afro-Colombians are estimated to be twice the national average. The responses of the national Government and regional authorities to the poverty and lack of basic needs of these communities have been inadequate and must be addressed as a matter of urgency.

Afro-Colombian communities officially make up approximately 10.62 percent (4.311.757) of the population according to the 2005 census. The Ombudsman’s office considers that the figure is close to 25 percent or 10.5 million people. Both government and community sources concur that the census failed to capture the full demographic and socio-economic picture of the Afro-Colombian population. Additionally there is virtually no disaggregation of socio-economic data by race, so government policies are based on faulty data. I often heard from Afro-Colombians that they feel statistically “invisible”, and that consequently their

issues are ignored, their lives are less valued and that government policies dedicated to their needs are not achieving the desired improvements to their situations.

II. The Legal Framework

Colombia has an impressive and commendable legislative framework that recognises many rights of Afro-Colombians, starting with the Constitution of 1991 which recognizes not only the right to non-discrimination but also the right to equality for all citizens. It also pledges to protect the ethnic and cultural diversity of the country and it promotes the political participation of minorities by establishing two reserve seats in the House of Representatives for Afro-Colombians.

In the context of Afro-Colombian communities, key among Colombia's laws is Law 70 of 1993 which recognises the right of black Colombians to collectively own and occupy their ancestral lands. Law 70 therefore legally guarantees the right of collective property for black communities as well as enshrining protection of their cultural practices and traditional uses of natural resources and guaranteeing the economic and social development of their communities. Under Law 70, these lands are to be "inalienable, imprescriptible and non-attachable." Law 70 also reinforces rights to education, health and political participation.

While the constitutional and legislative measures are praiseworthy, the vast majority of communities and organizations that I consulted complain that implementation of Colombia's legislation on Afro-Colombian communities remains woefully inadequate, limited and sporadic. Most importantly, where steps have been taken, no real enforcement has followed. Close to two decades after Law 70 was adopted, despite the granting of collective titles to some 90 percent of Afro-Colombian ancestral lands, many communities are displaced, dispossessed and unable to live on or work their lands. As one woman told me, "the laws say all the right things but still, nothing has happened."

III. Displaced and dispossessed

Displacement from their lands was highlighted as the highest priority issue for many Afro-Colombians whom I met. Those lands onto which run-away slaves were forced to retreat, while isolated and neglected for centuries, have in recent years been identified as the most fertile and resource rich of Colombia's territory. This has placed these once isolated, largely self-sufficient communities directly in harm's way.

Decades of armed conflict between the Government, paramilitaries and guerrilla forces have played out largely in the territories of Afro-Colombians. These are also some of the most

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strategically important regions for guerrillas, former paramilitaries and other armed groups currently involved in narcotics production and trafficking. While the government has adopted a political position that the armed conflict has ended and paramilitary groups have demobilized, in many rural black community that I visited I heard emotional and credible stories of murders and threats to the lives of community leaders. Whole communities are being forced to flee their lands and leave all of their possessions to seek better security in towns, where they are ill-equipped to negotiate an urban environment.

The official number of internally displaced persons stands at 3,073,010 persons or 695,354 households as of May 2009, constituting the world's second largest internal displacement situation. Civil society estimates go as high as 4 million IDPs and there is a common agreement that exact figures are difficult to ascertain. While few communities have eventually returned to their lands, those who do, find that others have claimed ownership or rights of usage in their absence.

Many of the displacements have occurred as a consequence of military confrontations between different armed groups. The government reports that the violence has decreased considerably and communities confirm to me that massacres and large-scale atrocities are now uncommon. However many described an escalation in the killing of selected community leaders. The message from many in communities that I visited is that while the names, uniforms or tactics of the illegal armed groups may have changed, the violence remains in the form of selective murders, disappearances, intimidation, continuing displacement and confinement. The experience of many is that demobilization of paramilitary groups has not put an end to the violence; they have just re-grouped under new names like the "Black Eagles." They remain as active as ever in intimidation of Afro-Colombian communities. While urgently wanting protection, communities fear that army or police presence in their communities can lay communities open to retaliatory attacks from guerrilla and Illegal armed groups.

In many cases, it is believed that the perpetrators of crimes are identified by victims as persons belonging to illegal armed groups and guerrillas. However, victims and communities believe that there is complete impunity for all of those who commit crimes against them. On August 17, 2009, 117 members of an Afro-Colombian community were displaced due to confrontations between two illegal armed groups for the control of the Bajo Baudó River area. Afro-Colombians organizations and their leaders that resist receive death threats and there have been numerous recent murders. The memories of seeing family and friends slaughtered are vivid and are routinely recalled by credible threats from those persons who the communities recognize as having committed the past atrocities.

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I was pleased to meet with the Vice Minister of Defense and representatives of the police and the military during my visit. I was told of important steps being taken to build armed services that are aware of and responsive to the rights of Afro-Colombian communities and to break with the pattern of past violations. These efforts are welcome and should be enhanced. However, it is equally clear to me that more must be done to protect vulnerable communities and their leaders who continue to be threatened and killed on a regular basis. It is the primary role of the armed services to protect all of Colombia's communities to their utmost ability. There must be no compromise to this principle and no tolerance of those who deviate from it. Much remains to be done to regain the confidence of vulnerable communities.

I would like to commend the work of the Ombudsman's office in establishing a system of early warning and risk assessment for communities and leaders under threat. Communities seem to trust the Community Ombudsmen and their local representatives, many of whom are themselves under death threats. Regrettably much remains to be done to ensure that this process is effective in delivering timely and appropriate measures of protection. While the Ombudsman's office has the capacity to identify the credible threats on the ground, their alerts must be assessed by a committee of the security forces and civil institutions at the national level, which has frequently discounted the credibility of the alerts. The Ombudsman does not sit on that committee but must rely on it to undertake protective measures.

While violence and threats of more violence are still the initial forces propelling displacements, the motivations have changed somewhat over the recent years. Armed groups seek lands for the illegal coca cultivation and trafficking in these regions. New macro-economic development plans have targeted these regions for one-crop agri-business investments that include palm oil and banana cultivation; for mining concessions, ranching and logging operations and other economic interests.

Displacement has a massive impact on the lives and rights of individuals and communities. The phenomenon of displacement of Afro-Colombians has particularly affected women who have been displaced to urban areas in greater numbers than black men and who suffer extreme vulnerability when they are. Ancestral lands from which Afro-Colombians are displaced are not only the source of livelihood and survival for communities, they are also essential for the preservation of Afro-Colombian culture, livelihood, language, tradition and for maintaining the social fabric of communities. Displacement has given many Afro-Colombians little choice but to move to urban areas where they frequently find inhospitable environments of poverty, discrimination and fear. As a result the effects of displacement require solutions for both rural and urban communities. These were among the finding of a

landmark decision of the Constitutional Court, Order 005 of 2009.

The Court's conclusions that Government must act comprehensively to address the rights and needs of Afro-Colombians who are displaced, along with the specific measures ordered by the Court, have not to date been effectively implemented on the ground. Departmental and Municipal authorities admit extremely poor levels of service delivery and support to displaced families.

While my meetings with officials and institutions of the State, including the Ministry of the Interior and Justice and Acción Social, have revealed a plethora of Plans of Action, policy initiatives, and dedicated programmes in relation to displacement and in such fields as education, health care and housing, the reality is that implementation is hard to identify and resources and outputs are failing to match the expectations and needs of Afro-Colombians. It is evident that the financial resources allocated to projects that look positive on paper, are too often failing to trickle down to the communities who urgently need the services which have been promised.

I welcome the establishment of the President's Intersectoral Commission for the Advancement of the Afro-Colombian Population and its recommendations. Those recommendations focus primarily on the situation of Afro-Colombians in urban environments, where admittedly the majority now live due to displacements and the poor enforcement of their land rights. It is my hope that those recommendations will quickly move from the planning phase to the phase of actually impacting the lives of those who are currently suffering.

IV. Afro-Colombian Women and Violence

Afro-Colombian women have spoken to me of their experiences, the violence committed against them, including sexual violence, the fear and trauma that they have endured on a daily basis and the challenges of their lives as women and mothers living under conditions of conflict, displacement and poverty. Theirs is a story that must be told and a situation that must be resolved. Women have told me of the multiple discrimination that they face as Afro-Colombians, women, displaced and poor, a potentially fatal combination that leaves them in a situation of extreme vulnerability. Responses must be urgently put in place that recognize the extreme impact of violence and displacement on women and create conditions of security, dignity and justice. The rights of women to return to their community lands in security must be considered a priority.

When men have been killed, disappeared or forced to flee, women have assumed leadership

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roles in their communities and have shown remarkable resilience and resistance. However they do not receive the necessary recognition as community leaders and are not afforded the protection measures that they require. Mothers also spoke of losing children to forced recruitment into guerrilla and illegal armed groups and noted that extreme poverty, threats and intimidation, the regular presence of armed groups in their neighbourhoods and promises of money to help their families, create the conditions under which children are easy targets for recruitment into guerrilla or illegal armed groups.

V. Economic interests and inconvenient rights

Many Afro-Colombians have been displaced by “megaprojects”, large-scale economic operations, often involving national and multinational companies, promoted by the government as bringing development and economic gain to the whole of Colombia. The communities however, have grave concerns about encroachment on their land rights and adverse environmental impacts. But, in the face of such economic interests and megaprojects it appears that the rights of communities are “inconvenient rights” and that the laws put in place to protect them are equally inconvenient.

Afro-Colombian communities have the right to prior and informed consultation under Decree 1320 of 1998, which purports to incorporate International Labor Organization Convention 169 into domestic law. It requires that “prior informed consultation” must take place with Afro-Colombian and indigenous communities for the exploitation of natural resources within their territories and that Afro-Colombians are to elect Community Councils to represent their interests in those consultations. Prior consultation is a central principle in the protection of all rights of Afro-Colombian communities and is particularly relevant as they seek to maintain control of their lands under considerable pressure from State and private actors.

However the law does not adequately define important features relating to how that consultation should take place and with whom. I was informed that projects have been implemented without consultation or with consultations held with people who do not legitimately represent communities and their interests. Consultations must be meaningful and effective and respect to the highest degree the rights of minorities to participate fully in decisions that affect them and their territories. Importantly ILO Convention 169 requires that the prior and informed consent of communities should also be achieved before projects are implemented on their lands.

I have been informed by the government that there are cases in which ongoing processes are underway to resolve disputes between the companies behind proposed megaprojects

and communities which claim collective titles to the land. In the well-publicized case of Curvaradó and Jiguamiandó where agro-businesses usurped land of displaced communities to grow palm oil trees for bio-fuel production, the Vice Minister of Agriculture and the Ministry of Interior and Justice informed me that the court seized of that matter has confirmed the title held by the communities. Community members, however, told me that in fact the unauthorized use of the land is continuing and they are still displaced. According to the Attorney General's office, their investigation of penal charges in that case has not yet concluded.

In some situations involving claims of usurped land rights, the interest of the government is complex. One crop agro-business development projects, such as palm oil plantations, figure prominently in national development plans. The government has a program of loans and financing for projects that accord with national planning goals in agriculture and mining, which some claim have financed projects on usurped land of Afro-Colombians. Local or Departmental governments in some cases, as I was informed by the Governor's office in Buenaventura, may have an ownership share in public-private projects like the expansion of the port there, as well as benefitting from increased tax revenues. This means that when Afro-Colombian communities seek government assistance in regaining their full land rights, they are unclear whether government is acting as a referee or as an interested party. Actually, under the constitution and Law 70, the government role should be to protect fully the legal rights of communities.

VI. Participation in Decision-making

Political participation and representation is a key minority issue, enabling minorities to have a voice in decision making bodies and to ensure that the issues of minorities are adequately represented at all levels. However Afro-Colombians are extremely poorly represented in political structures and institutions in Colombia and consequently the voices and issues of Afro-Colombians are not being sufficiently heard or given the attention that they deserve. While it is noted that a quota of two seats in Colombia's Congress are reserved for Afro-Colombians, much more must be done to ensure that they are adequately represented and attention must be given by all political actors, including political parties, to improve the representation of Afro-Colombians. In the Executive and administrative branches of government there is also serious under-representation. While the national police told me that there are a high percentage of Afro-Colombians in their ranks, they are concentrated at the lowest levels. In Department and Municipal offices in regions with overwhelming Afro-Colombian populations, black officials are often seen as not truly representing the interests of black people.

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At the local level, the Community Councils offer essential representative structures and possibilities for local governance and autonomy. Community Councils must, however, be legitimately elected by the communities that they represent. In general I have been informed of a lack of recognition and respect for Afro-Colombian leadership and decision making structures. Many have described to me the manipulation or co-opting of community leadership and Community Councils, creating divisions within Afro-Colombian communities with the aim of acquiring land.

These are my preliminary findings based on my two week visit to Colombia. I will be making a series of recommendations to the Government of Colombia in my full report to the Human Rights Council.

ENDS

Ms. Gay McDougall (United States) was appointed as the first holder of the post of UN Independent Expert on minority issues in July 2005. The mandate of the Independent Expert was established to promote implementation of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and to identify challenges as well as successful practices in regard to minority issues.

Learn more about the mandate and work of the Independent Expert:
<http://www2.ohchr.org/english/issues/minorities/expert/index.htm>

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