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مجلس حقوق الإنسان

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البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير الخبرة المستقلة المعنية بقضايا الأقليات، غاي ماك دوغال

إضافة

بعثة إلى كولومبيا**

موجز

يحظر الدستور والقانون في كولومبيا التمييز العنصري، ويحميان المساواة ويُعززانها من باب القانون ويُقران بالتنوع الإثني في البلد. وترمي سياسات حكومية عديدة إلى معالجة الفوارق القائمة. ورغم ذلك، لا تزال آثار الرق متجلية في التهميش الاجتماعي والاقتصادي للكولومبيين المنحدرين من أصل أفريقي، والسود، والرايسال والبالنكيرو. وإذا كان البلد يعيش عموماً تراجعاً في الاقتتال والتزاع المسلح، فإن العديد من الجماعات الكولومبية المنحدرة من أصل أفريقي وقادتها، لا سيما على طول ساحل المحيط الهادئ، لا يزالون يعانون هجمات عنيفة. ويعتقد الضحايا أن مرتكبي تلك الجرائم في حقهم من العقاب فالتون.

* يُعمَّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيعمَّم كما ورد، باللغة التي قدّم بها وبالإسبانية فقط.

** تأخر تقديم هذه الوثيقة.

وترمي أعمال العنف والترويع الآن إلى سلب السود ما يملكون من الأراضي، بما فيها المخصصة لزراعة نبات الكوكا والاتجار بها بشكل غير مشروع. ثم إن الخطط الإنمائية الجديدة الموضوعة على مستوى الاقتصاد الكلي والمصالح التجارية الساعية إلى امتلاك الأراضي واستغلال الموارد الطبيعية هي أيضا حوافز لتزع الملكية. وهكذا يرى المشردون العائدون إلى أراضيهم أن أشخاصاً آخرين قد ادعوا في غيابهم ملكيتها أو حقوق استغلالها. ورغم غزارة التشريعات والمبادرات الحكومية على مستوى السياسة العامة والبرامج، يظل واقع الحال متجسداً في ضعف التنفيذ، وقلة الموارد والنتائج التي هي أبعد ما تكون عن تلبية احتياجات الكولومبيين المنحدرين من أصل أفريقي.

Annex

Report of the independent expert on minority issues on her mission to Colombia (1-12 February 2010)

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I. Introduction

1. The independent expert visited Colombia between 1 and 12 February 2010 and was honoured to meet with President Álvaro Uribe Vélez and numerous senior Government representatives. She consulted leaders of Afro-Colombian communities and met directly with hundreds of community members. She thanks the Government of Colombia for its cooperation with her mandate, the non-governmental organizations (NGOs) and individuals that provided information and the Office of the High Commissioner for Human Rights in Colombia for its exceptional support. Since her visit a new Government has been elected under President Juan Manuel Santos.

2. The independent expert's evaluation of minority issues in Colombia is based on the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (A/RES/47/135) and other relevant international standards, from which she has identified four broad areas of concern relating to minorities globally. These are: (a) the protection of minorities' survival, through combating violence against them and preventing genocide; (b) the protection and promotion of the cultural identity of minority groups and the right of national, ethnic, religious or linguistic groups to enjoy their collective identity and to reject forced assimilation; (c) the guarantee of the rights to non-discrimination and equality, including ending structural or systemic discrimination and the promotion of affirmative action when required; and (d) the guarantee of the right to effective participation of members of minorities in public life, especially with regard to decisions that affect them.

II. Overview

3. The story of Afro-Colombians begins with slavery and gross violations of the rights of African descendants. As slaves escaped coastal plantations, they were forced to find refuge in geographically remote regions of the Pacific and Atlantic coasts. They built communities and livelihoods under extreme climate conditions, in isolation and poverty. Consequently, Afro-Colombians have a special attachment to their ancestral lands, as a source of refuge and survival and the environment in which their distinct cultures have been maintained.

4. According to the 2005 census, Afro-Colombians make up 10.62 per cent (4,311,757) of the population. However, the National Statistics Department (Departamento Administrativo Nacional de Estadística – DANE) and the Ombudsman's office acknowledge deficiencies in data gathering, stating that the actual figure is close to 25 per cent, or 10.5 million people. The census failed to accurately capture the demographic and socio-economic reality of the Afro-Colombian population¹. Certain Afro-Colombian areas were considered inaccessible and population estimates replaced verified statistics.

5. The focus of the independent expert was on communities who identify as Afro-Colombian, Black, Raizal² and Palenquero³. She visited Bogotá and Colombia's

¹ Census statistics from 1993 recorded only 1.5 per cent as Afro-Colombian due to the limited questioning on racial identification. The 2005 census broadened ethnic questions to allow ethno-cultural self-identification as Raizal, Palenquero, Black, mulatto, Afro-Colombian or Afro-descendant.

² Raizal is the name given to the native population from the islands of San Andrés and Providencia.

³ Palenquera is the name given to the Afro-descendant population of San Basilio de Palenque in the Province of Bolívar.

Caribbean/Atlantic and Pacific Coastal regions where Afro-Colombian communities are prominent, including Cartagena, San Basilio de Palenque, Turbaco (Bolívar), Urabá region and Curvaradó (Chocó/Antioquia), Apartado, Quibdó (capital of Chocó), Cali, Buenaventura (Valle del Cauca) and the municipality of Suárez (Cauca).

III. Legal framework and enforcement mechanisms

6. Colombia's Constitution provides under article 7 that the State "recognizes and protects the ethnic and cultural diversity of the Colombian Nation". The right to equality and non-discrimination is incorporated into the Constitution via components including: (a) a general principle whereby all persons are born free and equal before the law and shall be given equal protection and treatment by the authorities; (b) prohibition of discrimination; (c) the State's duty to promote conditions for ensuring that equality is real and effective for all persons (art. 13); and (d) the possibility of instituting special measures to improve the circumstances of groups that are discriminated against or marginalized (art. 13)⁴.

7. An institutional framework exists to formulate policies to protect the rights of ethnic groups. The Department of Indigenous, Minority and Roma Affairs and the Department of Black, Afro-Colombian, Palenquero and Raizal Community Affairs exist within the Ministry of the Interior and Justice. Additionally, the Vice-President chairs the national Intersectoral Commission for the Advancement of the Afro-Colombian, Palenquera and Raizal People.

8. Law 70 of 1993 "In Recognition of the Right of Black Colombians to Collectively Own and Occupy their Ancestral Lands" is the primary national legislation dedicated to the rights of Afro-Colombians and is exemplary in its provisions to protect and promote their rights. Article 1 states: "The object of the present Law is to recognize the right of the Black Communities that have been living on barren lands in rural areas along the rivers of the Pacific Basin, in accordance with their traditional production practices, to their collective property". Law 70 establishes a wide range of collective and individual rights including the right to education and protection of cultural identity.

9. Law 70 establishes the process for the granting of collective property title based on a technical evaluation of requests and information including a physical description of the land, ethno-historic antecedents, demographic description, and details of traditional practices of production. Collective territories are to be "non-transferable, imprescriptible, and non-mortgageable"⁵. Article 5 requires each community to form a Community Council as its primary internal administrative body in order to receive adjudicable lands as collective property.

10. On the basis of Law 70, the Government states in its 2008 report to the Committee on the Elimination of Racial Discrimination (CERD/C/COL/14), that at that time collective titles had been allocated for 5,128,830 hectares, benefiting 60,418 families. The Colombian Institute for Rural Development (Instituto Colombiano de Desarrollo Rural – INCODER) has processed applications for collective titling since 2008 that have increased the total by

⁴ See the 14th periodic report of Colombia to CERD of May 2008, CERD/C/COL/14, considered by the Committee in August 2009.

⁵ Article 7 of Law 70 states that: "Only areas assigned to a family group can be transferred, whether through the dissolution of the group or any other cause indicated in the Law, but the preferential right to occupy or acquire the land can only fall to other members of the community, and, in their absence, to another member of the ethnic group, for the purpose of preserving the integrity of the lands and the cultural identity of the Black Communities."

an additional 454,152 hectares. In aggregate, that is an estimated five per cent of the national territory.

11. Afro-Colombian land rights under Law 70 do not include rights to renewable and non-renewable natural resources or rights to the subsoil. However, under the provisions related to use of the land and protection of natural resources and the environment, article 24 establishes that “For purposes of land resource exploitation priority will be given to proposals from members of the Black Communities”.

12. The newly elected Government of Juan Manuel Santos has announced that it is giving a high priority to human rights and that significant progress has been made towards a human rights National Action Plan⁶. A National Development Plan currently under discussion has a chapter devoted to human rights. The new Government has created a Presidential Programme for Afro-Colombian Affairs whose Director is Afro-Colombian and has committed to form a High Level Commission responsible for recommendations to improve the living conditions of ethnic minorities. Human rights provisions already exist in a number of public policy instruments at the national and provincial levels. There is currently a human rights policy for the Ministry of Defence.

13. In 2000, the Presidential Programme for Human Rights and International Humanitarian Law was created under the Vice Presidency⁷. Its objective was to design a national policy that would increase collaboration among Government institutions, including the offices of the Procurator General, the Attorney General, the Superior Council of the Judiciary, the Ombudsman, the National Planning Department, and the Ministry of the Interior and Justice.

14. The Office of the Ombudsman (Defensoría del Pueblo) is independent, in compliance with the Paris Principles, and has responsibility for ensuring the protection and promotion of human rights. The Ombudsman has a Division for Ethnic Minorities. It reports annually on human rights issues to the Congress of the Republic, receives complaints and provides assistance, information, and public defence lawyers for criminal processes. The Ombudsman has established an important early warning/risk assessment system. The Office of the Attorney General has established a unit for the prosecution of human rights and international humanitarian law violations.

15. Colombia has ratified human rights treaties most relevant to minorities including the International Convention on the Elimination of All Forms of Racial Discrimination. Article 93 of the Constitution establishes that international human rights treaties and agreements have primacy in domestic law and that the Constitution must be interpreted in conformity with them.

IV. Discrimination and poverty

A. Discrimination and racism

16. The legacy of slavery endures and is manifested in socially and economically marginalized communities facing racist attitudes and structural discrimination. The

⁶ Despite the current suspension of the National Action Plan consultation process, some 27 Government institutions worked towards content of the Plan for eventual consultation with civil society.

⁷ Available at http://colombiaemb.org/index.php?option=com_content&task=view&id=39

Government acknowledges that: “Afro-Colombian and indigenous communities are still victims of various forms of racial discrimination ..., 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”. The Government notes that its recognition of these problems has promoted meaningful affirmative action programmes to reduce inequality in the provision of public services and to close social gaps experienced by Afro-Colombians and other historically vulnerable populations.

17. The 2005 census introduced ethnic categories in an effort to provide statistical information required to inform public policies and affirmative action programmes to combat discrimination against Afro-Colombians. However, there is still very little official socio-economic data disaggregated by race or ethnicity to reveal inequalities experienced by Afro-Colombians. Even the human rights statistics of the Presidential Programme for Human Rights and international humanitarian law differentiate between homicides against indigenous people, trade unionists or politicians, but do not have a category for Afro-Colombian victims⁸. When considered together with the gross statistical undercount of Afro-Colombians, it seems probable that Government policies are ill-informed about the extent of the problems facing Afro-Colombian communities.

18. Afro-Colombian representatives highlight pervasive structural discrimination, including access to quality education, employment and participation in economic life, housing, effective political participation and access to justice. The estimated illiteracy index within the Afro-Colombian population is 30 per cent, compared with the national average of 16 per cent⁹. Nearly 10 per cent of Afro-Colombian children from 6 to 10 years of age do not access primary education, with the percentage believed to be far higher in some regions¹⁰.

19. Afro-Colombians are grossly underrepresented in public sector employment, rarely represented at senior levels and face discriminatory barriers in private sector employment. Due to discrimination and poor educational achievements the employment opportunities of Afro-Colombians are largely limited to the informal sector in such areas as itinerant trading. Most rural communities rely on subsistence farming and, in some areas, on small-scale mining. Afro-Colombian women noted their overrepresentation as domestic workers and unskilled staff, often the only employment available to them.

20. In 1999, the Committee on the Elimination of Racial Discrimination, in its concluding observations (CERD/C/304/Add.76), described “de facto racial segregation in urban centres” and discrimination which results in Afro-Colombians being consigned to the poorest neighbourhoods and low quality housing. The independent expert’s consultations revealed that this situation continues in 2010. Discrimination in access to public places reportedly persists, despite at least one high-profile prosecution of a nightclub for denying entry to young Afro-Colombians¹¹. The Government asserts that such incidents are not prevalent throughout the country. Afro-Colombians report that the media perpetuates negative racial stereotypes and images of Afro-Colombian people, trivializes their problems and gives little attention to their contributions to society.

⁸ See www.derechoshumanos.gov.co/observatorio_de_DDHH/default.asp

⁹ World Bank, *Colombia 2006-2010: Una ventana de oportunidad – Notas de políticas presentadas por el Banco Mundial*, Colombia, April 2007, p. 149.

¹⁰ César Rodríguez Garavito, Tatiana Alfonso Sierra, Isabel Cavelier Adarve, *Racial Discrimination and Human Rights in Colombia: A report on the Situation of the Rights of Afro-Colombians*, Observatory on racial discrimination, 1st ed., December 2008, p. 43.

¹¹ Decision T-1090 of 2005 of the Constitutional Court.

21. Discrimination, poverty, and violence have had far-reaching impacts on Afro-Colombian culture and community structures. For example, community members in San Basilio de Palenque, where inhabitants maintain unique cultural elements of their African heritage, described to the independent expert how discrimination, loss of territory, poor access to education, public services and economic opportunities have led to social problems and cultural erosion. The Government, however, notes its commitment to ensuring the survival of Afro-Colombian, Black, Raizal and Palenquero cultures, languages and identities.

B. Afro-Colombians' disproportionate experience of poverty

22. The map of high-density Afro-Colombian populations overlaps almost completely with the map of areas of extreme poverty. Some Afro-Colombian rural areas and town ghettos experience extreme poverty rates of over 60 per cent and lack access to social services and assistance programmes. The five departments with the highest percentage of the population in poverty and with the lowest quality of life are those with the highest concentrations of Afro-Colombians (Bolívar, Cauca, Córdoba, Chocó, and Nariño). Surveys and Government sources¹² reveal disturbing statistics. Some 80 per cent of Afro-Colombians do not have basic needs met. The 2005 census revealed that nearly 15 per cent of Afro-Colombians go hungry one or more days a week, over double the national average. Nearly a quarter of Afro-Colombians lack sufficient income to ensure a basic nutritional diet. Access to clean water, sanitation and electricity is at markedly lower levels for many Afro-Colombians. Chocó has the lowest per capita level of social investment and ranked last in education, health, and infrastructure.

23. Life expectancy for Afro-Colombian women (66.7 years) is nearly 11 years less than the national average, while for men (64.6 years) it is nearly 6 years less. In Chocó, the child mortality rate is 54 per 1,000, compared with Medellín where it is 8 per 1,000¹³. The average female infant mortality rate for the Afro-descendant population is 43.9, while the national average is 21¹⁴. The maternal mortality national average is 74.9 deaths for every 100,000 live births, while in Chocó the rate is 227.4¹⁵. Access to health-care services is extremely poor for many, particularly rural communities.

24. Those living in the most remote and inaccessible rural localities face particular and extreme challenges. The Government highlights problems of service delivery to such areas including lack of access and infrastructure for development and ongoing security concerns in areas strategically important for illegal armed groups. Afro-Colombian representatives believe that discrimination and neglect are important components in the poor delivery of services.

25. In predominantly Afro-Colombian urban centres, including Quibdó and Buenaventura, levels of poverty are disproportionately high and living conditions markedly deprived. Many Afro-Colombians live in poverty on the margins of urban centres as a consequence of violence and forced displacement from rural areas. Displaced rural communities, particularly women and children, have few resources and are ill-equipped for

¹² Including the 2005 Census, Constitutional Court Order 005 of 2009 and the Intersectoral Commission for the Advancement of the Afro-Colombian, Palenquera and Raizal Population.

¹³ National Health Survey (ENDS), 2005.

¹⁴ DANE, *Racial discrimination and human rights in Colombia: A report on the Situation of the Rights of Afro-Colombians*, p. 29

¹⁵ Ministry of Social Protection, Panamerican Health Organization, *Situación de salud en Colombia: Indicadores Básicos 2008*.

hostile urban areas where they have few options for income generation. As many as 80 per cent of displaced Afro-Colombians live in the poorest and most dangerous areas of major cities.

26. Colombia's Constitutional Court cites research showing that 96.5 per cent of Afro-Colombians registered as displaced are living below the poverty line¹⁶. According to 2005 Census data, 30 per cent of displaced Afro-Colombians did not have sufficient money to eat for at least one day a week and 69 per cent of displaced Afro-Colombian children had no access to education.

27. In Buenaventura, Colombia's largest port, estimated to be over 90 per cent Afro-Colombian, private and Government interests have brought huge investment and wealth to development of the port; however the city remains among the poorest and most neglected in Colombia. Most Afro-Colombians endure poor wages and labour conditions and substandard housing. Thousands displaced from the surrounding region live in conditions of poverty.

C. Responses of the Government to discrimination and poverty

28. State officials and institutions described to the independent expert a plethora of policy initiatives and programmes for Afro-Colombian communities including: the Long-term Integral Plan for Black, Afro-Colombian, Palenquera and Raizal Peoples 2006-2010; the National Development Plan "Community State: Development for All", 2006-2010; the National Development Plan Resources 2006-2010 for Afro-Colombian People; the Goals and Advancements of the State's Policy for the Pacific (CONPES 3491, 2007); "Affirmative Action Policy for Black or Afro-Colombian People" (CONPES 3310, 2004); and the Formulation of the Long-term Integral Plan Proposal for Black, Afro-Colombian, Palenquera and Raizal people.

29. In 2008, the Government established the Intersectoral Commission for the Advancement of the Afro-Colombian, Palenquera and Raizal People. Headed by the Vice-President, it includes key ministries and Government departments, advisors, municipal representatives, and legal representatives for Community Councils. The Commission's objective was to evaluate living conditions and present recommendations to improve Afro-Colombians' economic and social advancement and the enjoyment of their civil rights¹⁷.

30. The Commission's recommendations seek to address issues including racism and discrimination, low participation in political life and decision-making, weak institutional capacity, inequality in education and access to employment, lack of recognition and social valuing of diversity, poor legal security of collective property rights, and limited access to subsidy programmes. Consultations with officials however revealed that implementation currently remains at the planning stages.

31. Notable in regard to international cooperation, in January 2010, Colombia and the United States signed a joint Action Plan on Racial and Ethnic Equality with the objective of cooperation to promote equality and to eliminate racial and ethnic discrimination. They are to cooperate in areas covered under bilateral initiatives and recommendations from the Intersectoral Commission.

32. Regardless of the number of Government programmes, communities and NGOs described a reality of poor consultation, weak implementation, inadequate resources and

¹⁶ Constitutional Court order 005, 2009, para. 55

¹⁷ Workshops reportedly took place in 17 cities and had the participation of over 4,000 representatives.

failure to deliver sufficient tangible results. For example, housing subsidies for displaced persons do not cover the market costs of housing and few have additional resources to cover the deficit. It is evident that financial resources allocated to projects are too often failing to trickle down to the communities which urgently need services.

V. Violence and displacement

A. Disproportionate displacement of Afro-Colombians

33. Decades of armed conflict between the Government, paramilitaries and guerrilla forces have played out largely in Afro-Colombian territories. Paramilitary groups have been officially demobilized and the official position of the Government is that the “armed conflict” has ended, even though some violence continues¹⁸. Nevertheless, in every rural Black community that the independent expert visited she heard credible stories of ongoing violence, murders and threats. Whole communities are forced to flee their lands to seek security in towns and hostile urban environments. Communities believe that there is impunity for those who commit crimes against them.

34. While large-scale massacres and atrocities are now less common, the opinion expressed to the independent expert in many communities that she visited is that the names, uniforms or tactics of illegal armed groups may have changed, but violence remains in the form of selective murders, disappearances, intimidation and forced confinement. Their experience is that demobilization has not put an end to the violence; paramilitaries have regrouped under new names such as “Las Águilas Negras” (the Black Eagles) or “Los Rastrojos”. Afro-Colombian communities still report consistently high levels of violence and intimidation.

35. Non-governmental organizations report an alarming escalation in the violence in recent months, including some 20 murders of Afro-Colombian leaders in 2009, either that had not been investigated or where investigations had produced no results¹⁹. The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions²⁰ documented ongoing killings by illegal armed groups and members of the security forces, including cases of “false positives”²¹. He confirmed that “Indigenous and Afro-Colombian communities have been victimized by all parties to Colombia’s conflicts” and that “historically, paramilitaries, sometimes in collusion with State forces, appropriated land from the indigenous or Afro-Colombians and committed massacres to intimidate local populations or overcome their resistance”. The Government states that these acts constitute criminal phenomena which do not indicate a State policy or pattern of racial or ethnic

¹⁸ The Government states that it recognizes that the problems caused by the armed conflict persist and that it maintains efforts to resolve any situations of violence.

¹⁹ Documented cases include José Félix Orejuela, from the Los Manglares Community Council, Municipality of López de Micay in the Cauca Coast; Miladis Belaide, a leader internally displaced from Urabá, Chocó, to Cartagena, and member of the National Association of Solidarity Assistance; Milton Grueso Torres, leader of the Community Council of San José, also from López de Micay, Cauca; and Argenito Diaz, member of the Community Council and Organizations of Bajo Atrato, Chocó (ASCOBA).

²⁰ See A/HRC/14/24/Add.2.

²¹ The unlawful killings of civilians, staged by the security forces to look like lawful killings in combat of guerrillas or criminals.

discrimination, and, further, that important steps have been taken to investigate such acts and punish those responsible.

36. The phenomenon of “confinement” of communities (through violence, threats and economic blockade) is a cause for concern. Those in areas occupied by illegal armed groups that wish to exert control over territories and movement within them are sometimes confined to localities through force. Curfews are enforced and normal access to rivers, agricultural fields, bordering territories or markets is denied. Affected Afro-Colombian communities may consequently have little access to basic necessities and limited opportunities to continue their farming and economic activities.

37. Afro-Colombian territories are strategically important for illegal armed groups involved in narcotics production and trafficking. While violence and threats remain the initial forces propelling displacements, the motivations have changed over recent years. New macro-economic development plans have targeted these regions for one-crop agri-business investments including palm oil and banana cultivation; and for mining concessions, ranching and logging operations. Aerial fumigation by the Government to control illicit crops has also reportedly caused massive displacement and health problems due to the poisoning of lands otherwise used for legitimate food crops. The Government does not recognize fumigations as a cause of displacement; therefore these IDPs are not eligible for registration as displaced and are unable to access certain assistance programmes.

38. The experiences of communities inhabiting the river basins of Curvaradó and Jiguamiandó were described during the independent expert’s visit to Curvaradó. Community sources estimate that 3,000 Afro-Colombians were forcibly displaced from their collective territory, where they conducted small-scale sustainable agriculture. The region is strategically important to different armed groups and was the scene of military operations during the 1990s, causing initial displacements. This rich, bio-diverse region was subsequently sought after by agro-business “megaprojects”, including large-scale palm oil cultivation. Consequently, populations were displaced by paramilitaries, narco-traffickers, and those seeking to acquire lands illegally for plantations and cattle ranching. One community member recalled being warned “if you don’t leave, we’ll negotiate with your widow”.

39. In 2007, the NGOs the National Association of Displaced Afro-Colombians (AFRODES) and Global Rights reported that a total of 252,541 people had been displaced from collective Afro-Colombian territories located in 50 municipalities. That represented 79 per cent of the population registered as eligible for the right to collective land title. As of the end of 2009, NGOs estimated that Afro-descendants represented almost a third of Colombia’s displaced population²², and that over 12 per cent of all Afro-Colombians are living in a situation of forced displacement²³. These estimates are considerably higher than the numbers officially registered²⁴.

40. In 2009 and 2010, mass displacements of Afro-Colombians continued. On 17 August, 2009, 117 community members were displaced due to confrontations between

²² Estimated by the Government to be around 3.2 million people and by NGOs to be some 4.9 million at the end of 2009.

²³ According to a survey by the Consultancy on Human Rights and Displacement (CODHES) in 2008. Other estimates put the figure at over one third.

²⁴ CODHES estimates that 286,389 persons were displaced during 2009, compared to official registration of 111,414 new displacements (17,844 of whom identified as Afro-Colombian). CODHES notes that 83 per cent of mass displacements (i.e. concerning over 50 people) involved Afro-Colombian and indigenous communities.

illegal armed groups for control of the Bajo Baudó River area. Intensive aerial fumigation of crops in collective territories in Guapí, Cauca, reportedly caused the internal displacement of 56 persons. During late 2009, three major internal displacements were recorded by AFRODES as a consequence of intensive aerial fumigations, Colombian army operations, and confrontations with illegal armed groups. On 2 March 2010, combat between the military and FARC allegedly caused displacement of 576 Afro-Colombians in the municipality of López de Micay, Cauca. Fumigation in January 2010 reportedly caused the displacement of 48 people to the Municipality of Guapí.

41. In Chocó in 2010, confrontations between armed groups caused forced displacement in Antioquia. On 5 January, 96 persons of the Afro-Colombian Community Puerto Luis in Alto Baudó were displaced due to confrontations between army forces and National Liberation Army guerrillas. On 15 and 16 February, 11 families were forcibly displaced in the rural area of Barrancón at Urrao municipality in Antioquia due to combats between military forces and FARC guerrillas. On 29 March, 234 members of the Dipurdú community in Medio San Juan in Chocó were forcibly displaced as a consequence of intimidation by “Los Rastrojos”, a new illegal armed group. On 17 April roughly 100 Afro-Colombian persons abandoned their lands in Itsmina and San Juan towns, Chocó, due to confrontations between illegal armed groups. On 15 August, 180 Afro-Colombians of the Unión Berrecuy community at Medio Baudó were forcibly displaced after the kidnap of 3 members of their community and threats from Los Rastrojos.

42. The threat of displacement is ever present for other communities. During her visit to Buenaventura, community leaders informed the independent expert that expansion of port facilities, in a private/public partnership, will lead to displacement of approximately 3,400 families. Communities report that they have yet to be consulted. Afro-Colombian fishing communities are concerned that displacement away from coastal areas will restrict them from traditional fishing-based livelihoods. Communities fear that not all displaced families will be eligible for re-housing. Projects to build a new road connecting Buenaventura with the Pan-American Highway and expansion of a military base were also identified as potentially leading to displacements.

43. Displaced Afro-Colombians have little choice but to move to urban areas,, frequently inhospitable environments of poverty, discrimination and fear. Impoverished city neighbourhoods provide a fertile recruitment ground for armed groups who coerce young people living in poverty to join them.

B. Afro-Colombian women’s experience of violence and displacement

44. Colombia’s Constitutional Court identified 13 risk factors making women affected by violence and displacement more vulnerable than men, including the risk of sexual violence, exploitation for their labour, and persecution for their membership in women’s organizations. Afro-Colombian, female, displaced and poor is a potentially fatal combination for discrimination, trauma and vulnerability. An NGO survey of displaced women found that the majority of displaced Afro-Colombians are women, many of whom are heads of households with children. During their displacement, women surveyed frequently reported physical aggression and sexual violence. Few victims register complaints due to fear or ignorance of channels of complaint. Afro-Colombian women in Suárez in Cauca described to the independent expert their experiences of forced labour, violence and rape committed by illegal armed groups. Many children were born as a consequence of rape and both mothers and children are ostracized within their communities. Women expressed their concerns regarding their children being forced and coerced into joining armed groups.

45. Afro-Colombian women who serve in leadership roles in their communities reported lack of recognition and disrespect for their roles from Government officials called upon to protect them and asserted that threats against them are not given the same credence given to threats against male leaders. The independent expert met with women leaders in the “City of Women” in the municipality of Turbaco (Bolívar) established by displaced women (the League of Internally Displaced Women) in 2003, which is home to some 500 primarily Afro-Colombian women and children.

46. They obtained funding to purchase land and build their houses. They described their experiences of displacement and violence and their efforts to document cases and seek redress. The community provides practical, psychological and social support to members who feel they have received little Government support. The community has conducted training for women leaders and developed economic initiatives with micro-finance loans. Women in this community described continuing insecurity and fear of further displacement and violence. The community meeting centre was burned down in an arson attack. New illegal armed groups give rise to constant insecurity. Community women described security strategies, including moving in groups and quickly mobilizing in response to danger. They acknowledged some protection measures provided by the State, however noted that many of the measures were ill-suited to their realities.

47. Law 1257 on “Measures to raise awareness, prevent and punish all forms of violence and discrimination against women”, adopted in 2008, recognizes a wide range of acts of violence in both private and public spheres. Women’s groups expressed concern, however, regarding the lack of its implementation. The Government emphasizes that, among other measures, the Presidential Office on Equality for Women, the Ombudsman and the Office of the Attorney General have set up a Monitoring Committee to promote implementation of Law 1257 with the participation of women’s organizations.

C. Responses of the Government to violence and displacement

48. Law 387 of 1997 requires measures to be adopted for the prevention of forced displacement, and for assistance, protection, and the socio-economic stabilization of persons internally displaced by violence. The Law underscores that forced displacement is a crime; however, reportedly less than one per cent of all criminal cases are prosecuted under this law.²⁵

49. The National System for Comprehensive Assistance to the Displaced Population (SNAIPD) identifies official entities at the national and local levels with duties with respect to internally displaced persons (IDPs). The Presidential Agency for Social Action and International Cooperation, Acción Social, is the primary body responsible for providing services for IDPs, vulnerable populations, and victims of violence and has specific initiatives targeted towards Afro-Colombian communities. It is responsible for registration of displaced populations and providing assistance to them. In 2009 the Government budget for assistance to IDPs was 1.3 trillion pesos (approximately US\$650 million)²⁶.

50. The Families in Action Programme aims to improve nutrition, health, and education, specifically by promoting registration and access to benefits and subsidies. The Network for Food Security, ReSA, supports sustainable subsistence farming, including through the

²⁵ See report of the Representative of the Secretary-General on the human rights of internally displaced persons (A/HRC/4/38/Add.3)

²⁶ U.S. State Department, 2009 Human Rights Report: Colombia, available from <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136106.htm>

return of individuals to their lands and territories where possible. Additional projects aim to provide emergency humanitarian assistance; essential goods to the poorest and most vulnerable populations; infrastructural development projects; housing and basic dwelling support; habitat improvement projects; and psychosocial support.

51. Assistance programmes are targeted towards officially registered IDPs. However, several factors impede registration of the entire affected population, excluding some from receiving assistance. Among those factors are lack of awareness of the registration process; fear of coming forward; lack of access to registration locations; administrative barriers; and rejection on the basis of criteria which exclude certain causes of displacement (for example displacement due to aerial fumigations). The Constitutional Court directed the Government to improve registration systems; however, in 2009 *Acción Social* refused 36 per cent of registration applications, citing fraudulent claims as the main reason for rejection and ineligible claims in a small percentage of cases²⁷. The Government notes that as of 31 October 2010, 4,516,246 people have claimed to be victims of forced displacement. Of these, 3,573,179 (79.1 per cent) were included in the Registry of Displaced Persons and 20.9 per cent of claimants were rejected. NGOs identify a high percentage of arbitrary denials.

D. Responses of security forces

52. The Vice Minister of Defence and commanders of operational brigades in Afro-Colombian regions²⁸ described to the independent expert efforts to integrate into the training of every soldier and police officer respect for the human rights and the needs of Afro-Colombian communities. They emphasize that through supervision, training, outreach and accountability, steps are being taken to break with the pattern of past violations. Directive 07 of 2007 of the Ministry of National Defence is aimed at strengthening the policy for recognition, prevention and protection of the rights of Afro-Colombians.

53. Government initiatives may have improved security in some areas. However Afro-Colombian community members claim that certain practices, including increased military presence in sensitive areas and the extensive use of civilian informers, may put communities and individuals at heightened risk by feeding the perception by illegal armed groups that they are collaborating with the security forces. Civilian community members have been murdered or subjected to detention when armed groups or security forces accuse them of collaborating with their enemy²⁹. Communities consequently feel threatened by all armed actors.

E. The Office of the Ombudsman

54. The Office of the Ombudsman was widely praised for its activities to protect Afro-Colombian leaders and communities, particularly through an early warning (*Sistema de Alerta Temprana – SAT*) and risk assessment system coordinated with local government and public security forces. The Ombudsman has local representatives (*defensores comunitarios*) in highly sensitive areas where the presence of State authorities is weak. They have the trust of communities and often operate under difficult conditions and sometimes death threats from illegal armed groups.

²⁷ *Idem*.

²⁸ Including XVII Brigade and District Police in Chocó and 2nd Marine Brigade in Buenaventura.

²⁹ See A/HRC/4/48, para. 64.

55. Civil society and community groups can submit reports to representatives of the Ombudsman, who act as a link to regional authorities. While the Ombudsman's office identifies credible threats on the ground, their alerts are assessed by a senior national-level committee, the Comité Interinstitucional de Alertas Tempranas (CIAT), of the security forces and civil institutions, which has frequently discounted the credibility of those alerts. The Ombudsman does not sit on that committee but must rely on it to initiate protection measures. Communities expressed a high level of frustration that the CIAT denies the legitimacy of the threats against them.

56. The Ministry of the Interior and Justice undertakes security assessments and determines protection measures based on specific requests from Afro-Colombian and Indigenous leaders, unionists and journalists. The measures include increased military presences, vehicles, bodyguards, relocations, mobile phones and transport subsidies. However, some measures were reportedly imposed without full consultation and were not appropriate to the situation.

F. Transitional justice, reparations and restitution

57. Colombia is developing a transitional justice process to provide justice, truth and reparations for victims of violence. Part of the legal framework was established with Law 975 of 2005, known as the "Justice and Peace Law". This regulates the procedures to be followed with demobilized members of illegal armed groups who are responsible for serious crimes and establishes judicial benefits based on their contribution to justice and reparation. Subsequently, in 2008 the Government adopted Decree 1290 aimed at establishing an administrative programme for reparations.

58. Nevertheless, Afro-Colombians commonly expressed their frustration and anger to the independent expert over a transitional justice process that they feel has failed them. Most do not believe that justice has been served. They believe that the full truth of the past has not been revealed, crimes have led to few prosecutions and the vast majority of those displaced from their lands have received no reparations. Between August 2002 and October 2009, 51,992 persons were individually and collectively demobilized and 3,957 are facing charges under Law 975. By December 2009, 737 voluntary depositions were under way³⁰. By September 2010, only two persons had been sentenced for charges under the Justice and Peace procedures. The main mechanism available to satisfy the right to truth continues to be voluntary depositions under the Justice and Peace Law.

59. Although the State provides some benefits to victims of violence, such as social programmes targeting internally displaced persons, reparations have largely failed to reach the victims. Indeed, Decree 1290 of 2008 only applies to the victims of illegal armed groups and ignores victims of State agents. This legal distinction unfairly reduces the possibility of reparations for thousands. In addition, Decree 1290 has not been allocated the necessary financial resources. By December 2009, of the over 275,000 requests received, resources had been approved for just 10,593 persons³¹. Afro-Colombians represent a substantial number of victims of forced displacement yet no official records exist with respect to them, either in the context of the administrative programme of reparations or in the framework of the available judicial process. The reparations programme does not provide economic compensation for crimes involving property rights or collective violations of the rights of communities.

³⁰ A/HRC/13/72, footnote 22.

³¹ A/HRC/13/72, para. 84.

60. The Government states that the process of Justice and Peace is creating important if gradual change allowing a return of peace to communities affected by violence. It claims positive results, including that truth is emerging gradually, judicial proceedings against demobilized forces are under way, progress is being made in the compensation of victims, former combatants have been placed in reintegration programmes, increased security has been achieved, and new spaces for dialogue have opened up.

61. The right to restitution of dispossessed lands of Afro-Colombians is an urgent matter that remains pending. The new Government has initiated two legislative reforms including a Bill for the restitution of land to forcibly displaced people and a Bill relating to the rights of the victims of the armed conflict. These legal initiatives are important and should include legal mechanisms clearly aimed at providing restitution of lands to Afro-Colombian communities as part of a complete reparation programme which considers victims on an equal basis while establishing specific measures for Afro-Colombians.

62. Given cases of intimidation, threats and murders against community leaders who are claiming land restitution, documented by OHCHR in 2008, 2009 and 2010, it is vital to take effective measures to protect victims and to investigate the perpetrators of such crimes. The independent expert's consultations with many affected individuals and communities lead her to concur with the conclusions of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions who visited Colombia in June 2009 and stated: "groups composed of formerly demobilized paramilitaries, have also carried out many killings and the numbers are rising. The groups' existence and growth are largely due to demobilization and transitional justice processes that have resulted in impunity for paramilitaries' human rights violations. Neither victims nor the nation at large have seen justice done. The truth of why tens of thousands died and who was responsible remains hidden, and victims and their loved ones have been deprived of reparations."

G. Findings of the Constitutional Court

63. In decision T-025 of 2004, the Constitutional Court analysed hundreds of cases of forced displacement and declared the situation to amount to an "unconstitutional state of affairs". According to Decision T-025: "The public policies for assisting the displaced population have failed to counter the serious deterioration of displaced persons' conditions of vulnerability, they have not secured the effective enjoyment of their constitutional rights, nor contributed to surmount the conditions that cause the violation of said rights". The decision emphasized the requirement for affirmative action measures for special groups within the displaced population. It identified 18 measures to be taken within strict timescales. In response the Government adopted a National Plan of Assistance for the Displaced (Decree 250 of 2005).

64. In Order 005 of January 2009, the Constitutional Court noted that Afro-Colombians suffer from a disproportionate impact of displacement on their collective and individual rights. It found that the Government has failed to respond with comprehensive, practical measures to solve the critical situation and that "[...] a policy focusing on the special needs of the displaced Afro-Colombian population is missing: attention to this population is limited to programmes and policies designed for the displaced population in general, and the Afro-Colombian displaced population has marginal access to this attention".

65. The Court concluded that the causes of disproportionate Afro-Colombian displacement are (i) structural exclusion that results in greater marginalization and vulnerability, (ii) mining and agricultural processes which impose severe strains on their ancestral territories and has encouraged dispossession, and (iii) inadequate judicial and institutional protection for the collective territories of Afro-Colombians, which has

facilitated the presence of armed groups³². It emphasized the need for differentiated approaches towards solving the problems faced by Afro-Colombian communities.

66. The Court ordered the Government to design and implement a Comprehensive Plan for the Prevention, Protection and Attention to forcibly displaced Afro-Colombian communities, including 62 specific plans aimed at identified communities and a roadmap for the protection of ethnic territories. Despite a deadline of the end of October 2009, at the time of the independent expert's visit, these requirements had not been effectively implemented.

VI. Dispossession of Afro-Colombian lands

67. Afro-Colombian lands, while isolated and neglected for centuries, have in recent years been identified as the most fertile and resource rich in Colombia. This has placed once isolated, largely self-sufficient communities directly in harm's way. Violence and threats against Afro-Colombians are now most prominently associated with the ultimate aim of controlling land and natural resources resulting in the dispossession of Afro-Colombian lands. Communities described ongoing violence and threats in pursuit of acquisition, control or exploitation of their collectively owned lands. While few displaced communities have returned to their lands, those who do often find that others have claimed ownership or rights of usage in their absence.

68. Economic development "megaprojects" have increasingly led to the dispossession of Afro-Colombian collective territories. These projects have been associated with brutal forced displacement, mass violence and selected killings. Persistent reports indicate that armed groups collude with national and foreign companies (including palm oil and mining companies), and often with local government and business actors to acquire and control land and resources. Black communities rarely benefit from these megaprojects and have grave concerns about encroachment on their land rights and adverse environmental impacts. Equally, the manipulation or co-opting of community leadership and Community Councils creates divisions within Afro-Colombian communities with the aim of acquiring land.

69. In some situations involving claims of usurped land, the interest of the Government appears to be complex. Massive single-crop agro-business development projects, such as palm oil plantations, and large-scale mining industry, figure prominently in national development plans. The Government provides financing for projects that accord with national planning goals, which some claim have financed projects on usurped Afro-Colombian lands. Local or departmental governments may have an ownership stake in public-private projects, as is the case in the planned port expansion project in Buenaventura, which threatens to displace thousands. Consequently, when Afro-Colombian communities seek Government assistance in regaining their lands or in bringing legal cases, they are unclear whether the Government is acting as a neutral referee or as an interested party.

70. Two high-profile regions which the independent expert visited illustrate the experiences of many Afro-Colombian communities. Afro-Colombian communities have conducted small-scale farming and artisanal gold mining in Suárez, North Cauca, since the 17th century. However, communities complained of licences being granted to companies for large-scale mining on their ancestral lands without prior consultation with them., resulting in communities being denied access to ancestral mining areas or facing eviction. Following her visit, eight Afro-Colombian miners were killed in April 2010 allegedly by

³² Constitutional Court order 005, 2009, para. 67

illegal armed groups. In Curvaradó and Jiguamiandó agro-businesses have usurped lands of displaced communities to plant African palm. The courts have confirmed the land title held by the communities; however, thousands of hectares remain controlled by illegal armed groups in cooperation with agro-businesses³³.

VII. The right to consultation and participation in decision-making

A. Political participation

71. Civil society groups emphasized the poor levels of Afro-Colombian representation in political institutions at all levels. At the time of the independent expert's visit, there were 10 self-identified Afro-Colombian members of the House of Representatives out of 166 elected members, two of whom occupied seats specifically reserved for Afro-Colombians. The 102-member Senate has no Afro-Colombian members and no reserved seats for Afro-Colombians, while 2 seats are reserved for indigenous peoples. In the newly elected Government, none of the 13 Cabinet Ministers is Afro-Colombian; there are no Afro-Colombians on any high court.

72. In the executive and administrative branches of Government there is apparent gross underrepresentation of Afro-Colombians. In the national police and military, Afro-Colombians are concentrated at the lowest levels.

73. In the departments and municipalities where the population is overwhelmingly Afro-Colombian, many of the politicians are considered to be corrupt or as not truly representing the interests of Black people.

B. Community Councils

74. Law 70, Article 5, requires each community to form a Community Council as its internal administrative body to receive title to ancestral lands. Community Councils are also to oversee the conservation and protection of collective property, the preservation of cultural identity, and the use and conservation of natural resources. Community Councils are required to identify a representative from the respective community to act as a friendly conciliator in internal conflicts. Community Councils offer essential leadership structures and potential for local governance, allowing Afro-Colombians to manage their own affairs.

75. Leaders in Buenaventura and Suárez complained that their Community Councils were being denied registration, effectively denying them the right to claim collective land title and to be consulted over megaprojects. The reasons identified for the denial of registration were often bureaucratic requirements that may not have been met with precision or claims that registration had already been granted to another competing Council claiming legitimacy. Community members and NGOs interpreted both rationales as being ploys to wrest control away from the legitimate representatives in favour of those more compliant with the ultimate purpose of expropriating the land title or enabling use of the land by outside interests.

³³ See http://www.wola.org/index.php?option=com_content&task=viewp&id=870&Itemid=8

76. Competing interests related to land ownership are blamed for creating tensions within some communities. In the situation in Curvaradó and Jiguamiandó, it is evident that divisions have emerged within communities and between Community Councils over land ownership and the legitimate representation of communities. In such complex and long-standing situations of displacement and dispossession of lands, research must take place to establish the historic membership of communities and collective rights to ownership of lands, with the vital involvement of community elders. The Government should facilitate dialogue and act as an honest and impartial broker.

77. Civil society organizations note that Community Councils have been designing territorial management plans and have presented several sustainable development plans to the National Planning Council (CONPES). They claim that these have received no consideration³⁴. Community representatives urge measures to ensure the legitimacy of Community Councils, including election only by identified community members.

C. The right to free, prior and informed consultation and consent

78. Afro-Colombian communities have the right to free, prior and informed consultation and consent relating to the exploitation of natural resources within their territories. Colombia has ratified International Labour Organization (ILO) Convention 169 on Indigenous and Tribal Peoples – Law 21 of 1991 – and an ILO expert committee has acknowledged the applicability of this Convention to the Afro-Colombian peoples³⁵. Moreover, the Constitutional Court has defined Afro-Colombians as tribal peoples³⁶ and has issued decisions in favour of their right to free, prior and informed consultation³⁷.

79. However, Afro-Colombian communities commonly complained that consultation was not taking place or was held with people who do not legitimately represent community interests, and that procedures are unclear. In La Boquilla, an ancestral Afro-Colombian fishing community near Cartagena, Bolívar, the community explained that they had not been consulted regarding development of the coastal tourism industry that is encroaching upon their ancestral lands. Community representatives believe that the municipal authorities have earmarked their lands for sale to developers. One leader stated: “Before the judges even handed down a ruling they were already building. We are doomed to disappear”.

80. Decree 1320 of 1998³⁸ requires prior consultation when a project or activity is proposed on lands under collective ownership of an Afro-Colombian community, or permanently inhabited by communities even if they do not have property titles. It established consultation procedures which include the participation of representatives of Afro-Colombians, the Ministry of Interior, the Ombudsman’s Office and the Procurator General’s Office. If parties do not reach agreement about the impact of a project and measures to prevent, correct, or compensate for any damage, the environmental authority decides on the future of the project and the measures to address its impacts. The Government emphasizes the different stages of the consultation process including a Pre-

³⁴ See AFRODES briefing paper at <http://www.afrocolombians.com/pdfs/ACfactsheet.pdf>

³⁵ *Comisión de Expertos*, 76.a sesión, 2005, Observación, Colombia (2006).

³⁶ See decision C-691 of 2001.

³⁷ For example, decisions T-955 of 2003, C-175 of 2009, T-769 of 2009

³⁸ This Decree incorporates into domestic law the Government’s obligations under ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples Convention, which it ratified in 1991. Importantly, ILO Convention 169 requires the prior and informed consent of communities before projects are implemented.

consultation phase³⁹ in order to define the framework for consultation, train communities on issues relating to their right to consultation, and identify appropriate representatives and methodology⁴⁰.

81. Concerns, including lack of consultation with Afro-Colombians and Indigenous People in the drafting of Decree 1320 and with the procedures established for prior consultation processes, led the Constitutional Court to declare Decree 1320 incompatible with the protection provided to ethnic groups in the Political Constitution. Nevertheless, officials drew attention to the work of the prior Consultation Group established in 2008, with responsibility to coordinate implementation of consultation with ethnic groups for development projects affecting them and their territories.

82. Presidential Directive 001 of 26 March 2010 aims to establish a revised general framework for prior consultation. However the United Nations Committee on Economic, Social and Cultural Rights in its consideration of Colombia in May 2010 found that this Directive may not be sufficient and that indigenous and Afro-Colombian peoples were not adequately consulted regarding the Draft Bill prepared by the Working Party on Prior Consultation of the Ministry of the Interior.

83. The Government highlights additional initiatives to meet its obligations to ensure consultation and participation in decision-making, including the establishment of the High Level Advisory Commission incorporating 27 representatives of Afro-Colombian organizations and Afro-Colombian members of the House of Representatives. The Commission, together with consultative commissions at the provincial and regional levels, disseminates official information and review policies protecting Afro-Colombian rights. Some Afro-Colombians noted their reservations over the Advisory Commission, describing its members as not reflecting the choice of the community and its purpose as being to circumvent the legitimate consultative structures.

VIII. Conclusions and recommendations

84. The Government of President Juan Manuel Santos has reiterated its commitment to the Afro-Colombian population and has an important opportunity to act decisively to address the immense challenges confronting Afro-Colombians. To meet these challenges effectively will require a transformation in the approach of Colombia's Government to emphasize implementation and enforcement of the rights of Afro-Colombians on an equal status with that of all other citizens. This will require the investment of considerable additional resources and a focus on results and outcomes.

85. Despite a commendable constitution and a plethora of Government institutions, programmes and policy initiatives created to advance the realization of Afro-Colombian rights, implementation remains woefully inadequate. Where steps have been taken, no real enforcement has followed. Nearly two decades after Law 70, many communities remain displaced, dispossessed and unable to live on or work their lands.

³⁹ Required by Constitutional Court judgement C-461 of 2008.

⁴⁰ Further phases include: an Opening phase; Analysis and Identification of Impacts and Measures; Recording of Agreements; Systematization and Monitoring; and a Closing phase and signing of agreements by participants. It notes that during the period 2003 to 2006, 51 prior consultation processes took place relating to transportation projects, energy, mining, hydrocarbon and other natural resource utilization. Between 2007 and May 2010, an additional 260 had taken place.

86. Racism and structural discrimination have a significant impact on the lives and opportunities available to Afro-Colombians and are a direct cause of marginalization, poverty and vulnerability to violence. While anti-discrimination and equality provisions exist in the Constitution, discrimination against Afro-Colombians persists in all walks of life.

87. The Government is therefore urged to enact comprehensive anti-discrimination legislation banning discrimination on all grounds including race. Such legislation should provide for effective enforcement mechanisms and establish appropriate civil as well as criminal penalties for acts of discrimination committed by both public and private actors. Importantly, implementation must be rigorously enforced by Colombia's courts.

88. The statistical data which exists reveals the disproportionate poverty and relatively poor social and economic conditions experienced by many Afro-Colombians. While numerous policy initiatives and recommendations exist with the aim of improving the conditions of Afro-Colombians, these have not been effectively implemented. It is essential to move rapidly towards implementation of policies and recommendations, including those of the Intersectoral Commission for the Advancement of the Afro-Colombian, Palanquera and Raizal People, and concrete measures that will impact upon their lives. Most importantly, the provisions of Law 70 must be fully respected and upheld.

89. Despite improvements evident in the 2005 Official Census, the lack of accurate and disaggregated statistical data relating to the demographic and socio-economic situations of Afro-Colombians creates a major obstacle to accurately revealing their situation. At the national, regional and local levels data gathering and social surveys should be conducted and analysis undertaken to substantially improve the accuracy of data on Afro-Colombian communities. This will assist in the design and implementation of appropriate, differentiated and effective policy and programme responses that address the specific needs of those communities.

90. The violence committed against Afro-Colombians is ongoing, is perpetrated or motivated by a variety of actors and is manifested in numerous ways both physical and psychological. For many Afro-Colombians the experience, memory or threat of violence is a constant in their lives. The independent expert fully shares the concerns expressed by the Inter-American Commission on Human Rights and other bodies regarding the lack of judicial resolution for most of the crimes of violence that have affected Afro-Colombian communities and caused their displacement. The legal and administrative avenues currently in place are failing to address this unacceptable situation and must be reviewed, strengthened and rigorously enforced.

91. The Government must take urgent and effective steps to protect the safety of Afro-Colombian leaders, their organizations and the human rights non-governmental organizations that champion their rights. This is particularly crucial with respect to members of Community Councils and others who are advocating for land restitution.

92. The Early Warning and Risk Assessment system should be reviewed with a view to strengthening the operation of this essential protection system and the activities of the Human Rights Ombudsman's Office, including through increasing resources provided to it. Afro-Colombian women are particularly vulnerable to violence, including sexual violence and forced labour. It is essential that Law 1257 of 2008 on measures to raise awareness, prevent and punish all forms of violence and discrimination against women is fully implemented and enforced. Women who take on leadership roles must be recognized and afforded equal and appropriate protection.

Consultation with communities at risk must take place regarding security policies and measures designed for their protection.

93. The Government must take effective steps to protect and implement the “pre-emption” rights of Black communities in the context of the issuance of mining concessions on ancestral or collectively titled lands (Law 70, art. 27). Technical and financial assistance from Government ministries, including loans for business development and mine exploitation, should be available as a priority to those exercising their rights of pre-emption. Additionally Government should establish a programme of loan guarantees to encourage private banks to lend to Afro-Colombian communities and individuals wishing to develop agro-businesses, mines and other enterprises.

94. Forced displacement has massively impacted on the lives of Afro-Colombians and has devastated communities. Displacement is a current reality; not simply the legacy of a depleted war. The motivations of the perpetrators have evolved from tactical conflict-related to commercial, related to the acquisition of lands for illegal crops, agricultural megaprojects, economic development and exploitation of natural resources. Displacement continues to affect individuals and communities and remains a major concern of the Afro-Colombian communities.

95. The Government should implement the measures required under Constitutional Court Order 005 of January 2009 as a matter of the highest priority. The administrative process for reparations should be adequately resourced and transformed to effectively meet the needs of the displaced communities. Compensation and humanitarian assistance programmes must be appropriate to the needs of victim communities. Efforts and strategies to prevent further displacement should be intensified and targeted towards the specific situations of Afro-Colombian communities identified to be at risk, in close consultation with those communities. Equally, efforts to facilitate the safe return of Afro-Colombians to their lands must be intensified as a high priority.

96. Dispossession of Afro-Colombian lands is a violation of this people’s fundamental rights that remains unresolved. Implementing the rights of victims to reparations and restitution is a priority to be enforced through the courts and with rigorous implementation of court rulings. Where lands have been unlawfully appropriated by others, environments damaged and livelihoods destroyed, additional and long-term assistance must be provided to communities to help them to rebuild and restore their communities. Furthermore, private companies and public officials who contributed to violent or deceitful land grabbing must be investigated and punished.

97. Afro-Colombians’ right to truth, justice and reparations must be effectively protected within a comprehensive and systematic transitional justice process, which protects Afro-Colombian victims on an equal basis, taking into account their differing circumstances. The package must guarantee the rights of victims to reparations and property restitution for the complete range of crimes suffered by Afro-Colombians individually and collectively perpetrated by both State and non-state actors. Any new laws on reparations and land restitution must comply with relevant Constitutional Court rulings, be consistent with the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons and take into account the specific needs of Afro-Colombian communities and specifically protect the rights of women in the process. The legislative process should be used as a vehicle for meaningful consultations with all victim communities and include the voices of those communities in the Congressional debates.

98. Concrete and robust measures must be taken to address the under-representation of Afro-Colombians in political structures, State institutions and decision-making bodies at all levels. The fact that there are two reserved seats in Congress for Afro-Colombians is positive; however further measures, including in recruitment and training, must be taken to ensure that Afro-Colombians are represented throughout all levels of the executive and administrative branches of Government and in public employment. The independent expert draws attention to the recommendations of the Forum on Minority Issues on minorities and effective political participation (A/HRC/13/25) and urge their appropriate implementation.

99. 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. The right to free, informed prior consultation and consent must be respected and enforced in relation to all decisions that would affect Afro-Colombians and their territories. The rapid adoption of appropriate legislation to codify the right to prior consultation would be beneficial in this respect. Directive 001 must also be reviewed and revised appropriately to achieve that objective. Moreover, any bill on prior consultation and consent must itself be subject to a previous consultation process.

100. Community Councils offer essential representative structures and possibilities for local governance. However, there has been a lack of recognition and respect for Afro-Colombian leadership and decision-making structures and credible evidence of the manipulation or co-opting of Community Councils, often leading to divisions within communities. Community Councils must be legitimately elected by the communities that they represent. They should guarantee the equal representation of women.

101. Afro-Colombian cultural identity, traditions, languages and traditional livelihoods are an important part of the history and rich and diverse cultural mosaic of Colombia that must be protected. However, the damage inflicted by discrimination, racism and poverty, and the impact of violence, forced displacement and dispossession of territories, is immense. Solutions must focus on preventing further displacement and facilitating the urgent and secure return to their lands.
