



**University of Oklahoma College of Law International Human Rights  
Clinic**

**The United States of America**

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Report on the Republic of Colombia to the 30<sup>th</sup> Session of the Universal Periodic  
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**Executive Summary**

The International Human Rights Clinic of the University of Oklahoma College of Law (IHRC-OU) (United States of America) submits the following report on the Republic of Colombia to the 30 Session of the Universal Periodic Review, Human Rights Council. This report concerns indigenous peoples of Colombia and how has implemented the recommendations received during its first review. Specifically, the report focuses on the selected areas of (1) **Safe Drinking Water for Guajira Region**; (II) **Prevention of Physical and Cultural Extinction of Indigenous Peoples**; (III) **Racial Discrimination and Affirmative Action Measures**; (IV) **Good Practice of Business and Human Rights in Colombia**; and (V) **Legal framework for access to Potable Water**. The purpose of this report is to provide a balanced view of indigenous concerns in Colombia and recommend measures to address these concerns. The IHRC-OU notes the commitment expressed by Colombia to continue to develop and improve the rights of ingenious peoples.

**I. Safe Drinking Water for Guajira Region.**

International Provisions: IACHR, Precautionary Measures No. 51/15 – Children and adolescents of the communities of Uribía, Manuare, Riohacha, and Maicao of the Wayúu people, in the department of the Guajira, Colombia, December 11, 2015, para. 26(a)(ii). The IACHR requested to the State of Colombia to adopt the necessary measures, so that the beneficiary communities have, as soon as possible, access to drinking water in a sustainable and sufficient way for the subsistence of children, and adolescents. The IACHR urges the State of Colombia to act because members of the Wayúu community are in a serious and urgent situation. The Precautionary Measures No.51/15 granted on December 11, 2015 have not yet been lifted by the IACHR. However, the State of Colombia has implemented and continues to implement potential solutions for the water crisis of the Wayúu people. The National Economic and Social Policy Council provides for potable water and sewer systems in rural areas by promoting access through specifically tailored solutions for each community. In addition, the Ministry of Housing has developed the Rural Water and Sanitation Supply Program to guarantee that the Wayúu people will have access to adequate drinking water.

Domestic Undertakings: The Committee on the Elimination of Racial Discrimination (CERD/C/COL/CO/15-16) at its eighty-seventh session from August 3 to 28, 2015 para 36, urges the State party to take urgent steps to ensure access to water by the Wayúu people. The Committee recommended that the State of Colombia provide and ensure access to safe, potable drinking water and sanitation to indigenous population, including the Wayúu population in Guajira. In addition, the Committee recommended that the government take the necessary steps to guarantee that the mining industry is not negatively impacting the indigenous population's access to safe drinking water. These recommendations include finding methods of desalinating the water brought to the indigenous populations. The Committee specifically asks the government to act urgently regarding the Wayúu community and the Rancheria River in the Guajira region of Colombia. Additionally, in 2014 the Ombudsman's office constructed a report, "Humanitarian Crisis in the Guajira," para. 3, and found 37,000 cases of malnutrition. However, the State of Colombia has attempted to offer support by occasionally bringing food and water to the Wayúu community.

Recommendations:

- Government should work with the Wayúu people of the Guajira Region to construct and engineer channels that will enable access to safe drinking water.
- Create methods of sterilizing and desalination of that water in order for it to be safe and accessible.
- Conduct a study on how the coal mining industry is affecting the Wayúu people in the Guajira.

## **II. Prevention of Physical and Cultural Extinction of Indigenous Peoples**

International Implementation: The Committee on the Elimination of Racial Discrimination (CERD/C/COL/CO/15-16) at its eighty-seventh session (3 to 28 August 2015) recommended in paragraph 41 that the State party ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The state party has not implemented this obligation.

Domestic Undertakings: The Committee on the Elimination of Racial Discrimination (CERD/C/COL/CO/15-16) at its eighty-seventh session (3 to 28 August 2015) recommended in paragraph 16 that the State party expedite the design and implementation of effective ethnic protection plans for peoples recognized as at risk of physical or cultural extinction and the inclusion of peoples during plan development and in paragraph 38 take the necessary steps to ensure that ethnic education and intercultural education promote and preserve the cultural identity of indigenous and Afro-Colombian peoples. The State party is in the process of implementing the CERD's recommendations with the adoption of Native Languages Act No. 1381, guaranteeing the preservation, safe-guarding, and strengthening of indigenous languages, and with the establishment of the "Programme to Guarantee the Rights of Indigenous Peoples." The Committee of Economic, Social, and Cultural Rights (E/C.12/COL/CO/5) at its forty-fourth session from 3 May to 21 May 2010 recommended in paragraph 29 the State take immediate measures to ensure access to free and compulsory primary education to all children without discrimination, and in paragraph 30, the Committee recommended the State party take all necessary measures to combat illiteracy, including conducting awareness campaigns to sensitize parents, particularly indigenous, Afro-Colombian, and rural-residing peoples, to the importance of education for children. The State party has partially implemented the Committee's recommendations through the creation of the National Development Plan that outlines the strategy planned to make Colombia the most educated state in Latin America by 2025. Additionally, Colombia has reallocated resources to give priority to areas facing the greatest challenges in providing compulsory education.

The Working Group on the Universal Periodic Review (A/HRC/24/6) at its twenty-fourth session on April 23, 2013 indicated that recommendations 116.93, 116.101, 116.109, and 116.111 made by Congo, State of Palestine, Egypt, and New Zealand were examined by Colombia and enjoyed its support. The State party has partially implemented these recommendations with the establishment of the National Development Plan and the "Programme to Guarantee the Rights of Indigenous People."

### Recommendations:

- Continue work towards the CERD recommendations regarding design and implementation of ethnic protections plans for the indigenous groups recognized as at risk of physical or cultural extinction and the promotion and preservation of the cultural identity of indigenous and Afro-Colombian peoples.

- Continue to work towards the ESCR recommendations regarding the State ensure access to free and compulsory primary education without discrimination.
- Develop campaigns to inform indigenous and Afro-Colombian peoples on the importance of primary education for children and to promote literacy of the populations.

### **III. Racial Discrimination and Affirmative Action Measures**

International Implementation: The Committee on the Elimination of Racial Discrimination (CERD/C/COL/CO/15-16) at its eighty-seventh session (3 to 28 August 2015) paragraph 41 recommends the State party ratify the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance. Likewise, Colombia has yet to ratify the Inter-America Convention against all Forms of Discrimination and Intolerance.

Domestic Undertakings: The Committee on the Elimination of Racial Discrimination (CERD/C/COL/CO/15-16) at its eighty-seventh session (3 to 28 August 2015) paragraph 10 recommends the State party introduce a definition of racial discrimination into its legislation in accordance with article 1, paragraph 1, of the Convention. The Committee urges the State party to take the necessary measures to ensure the effective implementation of the Act by carrying out thorough investigations of cases of racial discrimination and adequately punishing those responsible. Colombia passed Act 1482 in 2011, which criminalizes acts of racial discrimination. The Act criminalizes acts that constitute harassment based on race and national origin but makes no mention of color or ethnic origin. The Convention's definition of racial discrimination includes race, color, lineage, or ethnic origin. Colombia has not moved to broaden their definition of racial discrimination.

The Committee on the Elimination of Racial Discrimination (CERD/C/COL/CO/15-16) at its eighty-seventh session (3 to 28 August 2015) paragraph 34 recommend the State party allocate adequate resources to the health sector and redouble its efforts to ensure accessibility, availability, affordability and quality of health care, paying particular attention to the needs of indigenous and Afro-Colombian peoples. The Ministry of Health and Social Security actively participates in two national forums for dialogue with the indigenous peoples: the Standing Committee for Consultation with Indigenous Peoples and Organizations and the Standing Committee's Subcommittee on Health.

These consultations with indigenous peoples have resulted in a series of actions to bolster indigenous medicine and promote intercultural adjustments for the provision of differentiated health care including: inclusion of a special section on indigenous health in the 10-year public health plan; implementation of the healthy environment strategy in indigenous communities using a differentiated approach; design of specific and intercultural health models for the indigenous peoples; Indigenous and Intercultural Health System. In addition, in 2011 the Ministry of Health and Social Security also set up and now actively participates in the National Social Security Committee for the Afro-Colombian Communities and the Roma Health Committee, two forums for joint drafting of public health policies, established in compliance with the undertakings made with these groups under annex IV, chapter 1.1, of Act No. 1450 of 2011, on (finalization of the prior consultation with ethnic groups on the National Development Plan 2010–2014).

#### Recommendations:

- Ratify the Inter-America Convention against all Forms of Discrimination and Intolerance. Likewise, ratify the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance.

- Amend current legislation to expand the definition of racial discrimination to be in accordance with Article 1, Paragraph 1 of the Convention.
- Expand the National Agency for Overcoming Extreme Poverty to offer more services to Afro-Colombians.
- Increase resources sent to Afro-Colombians and increase efforts to ensure accessibility, availability, affordability and quality of health care to the indigenous and Afro-Colombian peoples.

#### **IV. Good Practice of Business and Human Rights in Colombia.**

International obligations: IHRC welcomed efforts to promote good practice between the Guiding Principles on Business and Human Rights and the rights of indigenous peoples. Colombia is in the process of implementing good practices. Companies like Repsol have started this process and leading the way in creating a template for good practice that Colombia can use with future companies and businesses.

The close collaboration between the State party and the United Nations Development Program (UNDP) has formed a mechanism in which this can be accomplished and where the indigenous peoples can receive needed forms of compensation, like water systems, and have them implemented quickly.

Domestic Undertakings: The Working Group on the Universal Periodic Review (A/HRC/24/6) at its twenty-fourth session (April 23, 2013) indicated that recommendations, No. 116.36 to continue its efforts to introduce a human rights perspective in business and trade made by the Philippines and were examined by Colombia and enjoy their support.

The Committee on the Elimination of Racial Discrimination (CERD/C/COL/CO/15-16) at its eighty-seventh session (3 to 28 August 2015) recommended in paragraph 24 that encourages the State party to, “guarantee the full and effective enjoyment by indigenous and Afro-Colombian peoples of their rights over the lands, territories and natural resources that they occupy or use, in the face of incursions by outsiders who exploit natural resources, both legally and illegally.” Also, they urge that the State party, “Guarantee that indigenous and Afro-Colombian peoples affected by natural resource activities in their territories receive compensation for damage or loss suffered and participate in the benefits arising out of such activities.” These have been partially implemented and are in the process of being more fully implemented by the State.

#### Recommendations:

- Consider creating a good practice and guidelines for corporations working with indigenous groups on their lands for the exploitation of natural resources.
- Consider creating easier communication between the Indigenous leaders and the central government of Colombia.
- Require all corporations working on indigenous lands to abide by tribal laws.
- Require all corporations working on indigenous lands to recognize these populations as the owner of such lands and resources.
- Require corporations to follow set guidelines to avoid any human rights violations of the indigenous peoples or their lands.

#### **V. Legal framework for access to Potable Water.**

International obligations and its implementation: Colombia has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) the

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These international instruments include legal obligations relating to the human rights to water and sanitation.

In accordance with these international frameworks, the rights for access to water in the Wayúu community next to the Rancheria River in the Guajira region of Colombia are inconsistent and poor application. The amount of liters of water per day supplied by the State to the Wayúu community is unknown. In this regard, according to international standards, most people need a minimum of 7.5 liters per day per person to meet all their basic needs, including food and hygiene, this insufficient lack of water has exposed to the Community to a serious and urgent situation of risks and disease because the water of the Rancheria River are blocked for floodgates of a dam. In 2009 the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has highlighted the shortage of useable water for indigenous peoples in Columbia as a human rights crisis.

Domestic Undertakings and its implementation: Since the last evaluation, Columbia has worked with both international business partners and the UN to improve the access to potable water in the Guarija peninsula. Specifically, by partnering with the United Nations Development Program (UNDP). More than 3,000 people have managed to get access to drinking water. The construction of two small wells and four jagüeyes have benefited 1,600 people from 18 communities. 1,200 wells and mills in the region will have ongoing maintenance that will benefit 650 families. 180 families are participating in the food production program. The local indigenous communities are trained to repair the water wells and windmills themselves, certifying 25 technicians who will benefit 650 families.

It is essential to point out that, the rights for access to water in the Wayúu community next to the Rancheria River in the Guajira region, were recognized by ruling of the Supreme Court of Colombia in 2016, which ordered to open the floodgates of this dam and release water back into the Rancheria River through its natural flow.

Nonetheless, the State has failure to enforce the 2016 judgment by the Supreme Court of Justice of Colombia that ordered open the floodgates of this dam

Recommendations:

- Continue to work with the UNDP and other partners to bring water to the indigenous people of the Guarija peninsula. Increasing funding for the drilling, maintenance and repair of underground water in the Guarija peninsula.
- Take steps to enforce the 2016 judgment of the Supreme Court of Justice of Colombia that ordered open the floodgates of this dam and release water back into the Rancheria River through its natural flow. Considering a constitutional amendment that would guarantee access to water for indigenous peoples, structured so as to protect the indigenous people from domestic actions, third party actors, and multinational corporations.
- Incorporate in the next report information about the quantity and type of water delivered per day to the Guajira region of Colombia. Ie. Drinking water in bottles, tanks of water for irrigation, water for washing and sanitation etc.
- Implement policies that require any international or domestic corporation operating in the Guarija region to partner with the indigenous people and work in concert to protect scarce

water resources while developing strategies to improve the quality and quantity of useable water in the region.