

Universal Periodic Review of Colombia UPR - 2018 Third Cycle

Joint Reports presented by the Indigenous Peoples National Indigenous Organization of Colombia and Tolima Regional Indigenous Council

Colombia received 17 recommendations (from Peru, Norway, Korea, Senegal, Egypt, Italy, New Zealand, Mexico, Bolivia, Brazil, Canada, South Africa and United Kingdom and Denmark and Sweden). Colombia accepted the recommendations made and agreed to seven voluntarily commitments in relation to Indigenous Peoples. [1]

The 17 recommendations refer to:

- Physical protection of leaders and communities;
- Improving the quality of life for these communities;
- Participation and consultation of communities in determining policies that affect them;
- Protection of the right to property of land, as well as, other territorial rights;
- Prevention of displacement;
- Measures to reduce poverty and confront the social exclusion faced by indigenous peoples.

However, advancement in meeting these recommendations has been minimal. Worse yet, risks pertaining to the physical and cultural survival of indigenous peoples have increased.

GENERAL RECOMENDATIONS

Request an official visit of the United Nations special rapporteur on indigenous peoples.

Adopt in an integral manner without reservations, the United Nations and Inter American System of Human Rights Declarations on indigenous peoples and take out the explanatory notes on the same.

UNIVERSAL PERIODIC REVIEW COLOMBIA 2018 The situation of indigenous peoples in Colombia

Indigenous Human Rights Defenders, Violations of Human Rights and IHL Infractions

This protection, assistance, attention and reparation deficit should be overcome in the context of implementing the Final Accord between the Colombian Government and the FARC. The rights of indigenous victims should be guaranteed within the Truth, Justice and Reparations Framework.

RECOMENDATIONS

Immediately make effective the Constitutional Court's orders on protecting indigenous peoples at risk of extinction (Order 004 of 2009).

Design and implement effective measures that provide collective protection of indigenous person. These must be done in a manner that strengthens indigenous systems, as well as, their security mechanisms and self-protection efforts. They must adhere to previous consultation and concertation.

Guarantee the rights of indigenous peoples, their participation and previous consultation. Make effective the integration of the ethnic focus within the Truth, Justice, Reparation System (Special Jurisdiction for Peace, Truth Commission, and Search Unit for Disappeared Persons).

Recognition, protection and strengthening of the indigenous guard as a self-defense mechanism in the territory and the rights of indigenous persons.

As such, it has put forth a number of orders to protect their rights which authorities have not effectively implemented.

November 1st, 2016 – October 31th, 2017

3,800 indigenous persons were displaced

827 confined. Furthermore,

122 indigenous were threatened and

38 leaders (female and male) and comuneros suffered homicides.

2014-2016 peace negotiation process between the National Government and the FARC-EP

11,644 human rights and IHL violations indigenous peoples occurred [3].

58 indigenous were assassinated



Land and Territories

Despite the advancements in territorial rights, a gap persists between the formal recognition and actual realization of rights. While this is an advance in terms of recognition of territorial rights the matter has not advanced despite the expedition of Decree 2333 of 2014 that refers to the protection of occupied or ancestrally possessed territories. It also is the case despite the existence of 72 requests within the framework of this decree by indigenous peoples.

Mining titles in indigenous territories

396 active mining titles in indigenous territories and

927 requests of mining titles [4]

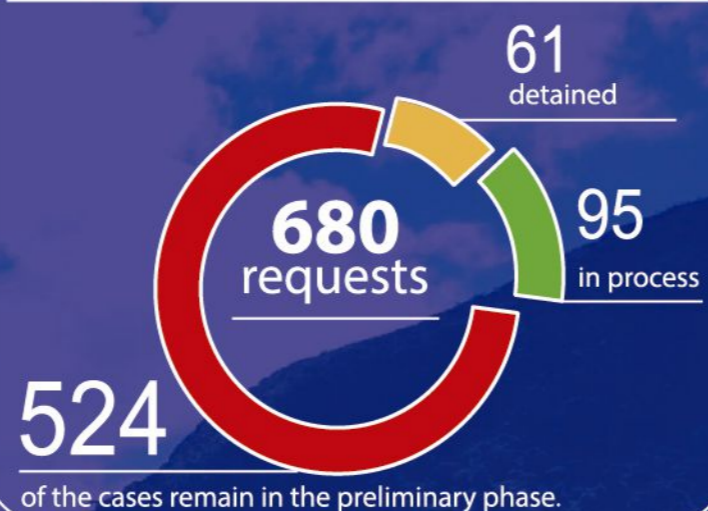
RECOMENDATIONS

Meet the agreements pertaining to protection and territorial consolidation that is guaranteed with the implementation of Decree 2333 of 2014. Also the titling, expansion and sanitation of indigenous reserves and the endowment and buying of lands with appropriate resources that are easily attainable is required.

Guarantee the right to free, prior and informed consultation and consent with regards to the initiative to modify law 160 of 1994.

Suspends applications for mining permits and works, projects or activities that constitute a threat to the physical and cultural survival of indigenous peoples and implies regression in their rights to lands, territories and resources.

Constitution, amplification and sanitation of the reserves



LEGISLATION AGAINST THE TERRITORIAL RIGHTS OF INDIGENOUS PEOPLES

This puts in jeopardy their cultural and physical rights

Law 1776 of 2016: Zones of Rural, Economic and Social Development Interest (ZIDRES). This law contemplates the use of indigenous ancestral territories without titles belonging to the indigenous of Amazonia and Orinoquia of Colombia. The Colombian government had not consulted this law with the indigenous peoples.

Initiative to modify law 160 of 1994 proposed by the national government. This seeks to adjudicate forest reserve zones to large extractive industries companies. This goes against what was agreed to in the peace accord and the agreements with indigenous peoples

Free Prior and Informed Consultation and Consent

Barriers continue to exist for the full exercise of the right to free, prior and informed consultation and consent –FPIC-. Convention 169 of the United Nations on indigenous peoples and the Interamerican Court of Human Rights and Colombian Constitutional Court establish this right. Indigenous organizations report that that FPIC in Colombia is far from being a mechanism that preserves their ethnic and cultural integrity. Rather it has become an avenue that grants legitimacy to public works, projects and other activity in ethnic territories. Despite the fact that these projects impact the lives and cultural integrity of indigenous persons, the communities' decisions on the matter are not considered obligatory. Added to this is the fact that the National Government expedited Presidential Directive 10 of 2013 and Decree 2613 of 2013. These regulate the right to FPIC and go against ILO Convention 169 by reducing this right to an administrative process that imposes a timeframe and arbitrary rules on the communities. Indigenous peoples were not consulted about these normative instruments. Recently, the National Government presented to indigenous peoples, a new previous consultation project that limits the coverage established in ILO Convention 169, the United Nations Declaration for Indigenous Peoples and the Colombian Constitutional Court's jurisprudence.

RECOMENDATIONS

Meet the obligations made in the 1,392 agreements made between the National Government and indigenous peoples with appropriate budgetary resources that are provided opportunistically.

Immediately and effectively comply with all of the agreements made with indigenous peoples in previous consultations, mingas with the necessary budgetary resources required to do so.

Apply an agreed upon route with prior, free and informed consent of the Indigenous Peoples of the Permanent Concertation Table. The later should include all efforts to regulate the previous consultation, like the construction of differentiated protocols to the fundamental right to free and informed consultation and consent established by ILO Convention 169.

Within the framework of the Ethnic Commission for Peace of the indigenous and afro descendant peoples a advocacy process was realized that urged the Colombian Government and FARC-EP integrate the Ethnic Chapter within the Final Accord signed between the Colombian Government and the FARC-EP. This was achieved at the last minute. This Chapter establishes a series of transversal safeguards and guarantees that apply to all of the points within the accord and interpretation of the same. This includes the previous consultation in the norms and measures formulated to implement the final accord. All of these must incorporate and ethnic focus, as well as a gender, women, family and generations focus. Within the framework of the needed norms to implement the Peace Accord, the National Government stated that it would consult with indigenous persons on 18 norms. However, this was established in an arbitrary fashion without clear criteria on which norms would be consulted. This also excludes a large number of decrees and laws that affect the indigenous population. Of the more than 30 decrees with legal force expedited, only 3 (10%) were consulted with indigenous peoples [5]. An example is Decree 896 of 2017, that deals with the substitution of illicit crops, an issue that directly affects indigenous peoples was not consulted.

RECOMENDATIONS

Guarantee the right to free, prior and informed consultation and consent of indigenous peoples, as well as, the include the ethnic focus that is found in the Ethnic Chapter when it comes to norms, plans, projects measures undertaken to implement the Accord. This must be done with sufficient and specific budgetary resources.

Guarantee effective compliance of the rights of indigenous rights in the norms developed to implement the final accord, the framework plan for its implementation and the in the peace dialogues between the National Government and the ELN.

Peace Agreement

The Nukak Peoples

Based on the Report written by Akubadaura Community of Jurists

RECOMENDATIONS

Effectively and urgently complies with the terms of the special agreement pertaining to the Nukak people which is contained in the Ethnic Chapter of the Final Peace Agreement. Mine-clearance activities in ethnic territories; and the program for the settlement, return, devolution and restitution of the Nukak people's territories must be agreed through concertation and must guarantee the participation of this indigenous people.

Recognizes and strengthens the Nukak organization and self government, specially the council of authorities Mauru Munu.

The Final Accord's Ethnic Chapter contemplates specific actions concerning the Nukak in terms of return, devolution of land and demining. The Nukak are a nomadic people that recently was contacted by the outside world located in Guaviare Department. This indigenous group whose population is no greater than 600 is in grave risk of physical and cultural extinction due to dispossession, forced displacement and other human rights violations. Hence this is the reason that meeting what was established in the Final Accord is fundamental [6].

Incidencia conjunta:



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Fotografía: ONIC - Akubadaura

[1] Human Rights Council. Report of the Working Group on the Universal Periodic Review- Colombia. Addendum .A/HRC/24/6/Add.1 Available in: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/156/67/PDF/G1315667.pdf?OpenElement>
[2] El Espectador. 20 de marzo de 2013. 65 pueblos indígenas corren peligro de desaparecer. ONIC. <http://www.elespectador.com/noticias/nacional/articulo-411328-65-pueblos-indigenas-corren-peligro-de-desaparecer-onic>
[3] Information System on indigenous peoples rights, Human rights, International Humanitarian Law and peace-ONIC.
[4] Right of petition sent to National Mining Agency -Agencia Nacional Minera-. Information updated August 11, 2017.
[5] Decree law 902 de 2017- Land Access Process and creation of a land Fund; Decree 893 of 2017 -PDET- Development Programs with a territorial based approach; Decree 870 of 2017 payment for environmental services.
[6] Final Observations about periodic reviews 15.y 16.º Colombia*. Recommendation CERD with regards to peoples in first contact and voluntary isolation. - par 16-. CERD/C/CO/15-16/.