



Indigenous people

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Implementation of recommendations from the previous period

In the third UPR cycle, sixteen countries recommended that Colombia guarantee the rights of Indigenous communities. The recommendations include implementing collective protection measures (United States); applying State policies to reinforce the right to equality and combat all forms of discrimination (Dominican Republic, Nigeria, Serbia, Congo, Senegal, and Venezuela); guaranteeing effective participation (Holy See, Peru, Palestine, and Switzerland); and fully implementing the ethnic chapter of the Final Peace Agreement (Peru and Haiti).

However, there has been no significant progress to comply with these recommendations during this period. Despite the recommendation from the United States to implement protection measures for Indigenous communities, this population continues to face the consequences of the internal armed conflict. Today, renewed or recycled actors such as the paramilitary group known as the Autodefensas Gaitanistas de Colombia (Gaitan Self-defense Forces of Colombia), have—together with other armed actors—placed sixty-four Indigenous peoples at risk of extinction. (1)

Regarding recommendations to fight the discrimination faced by Indigenous peoples, we found that the communities ancestrally inhabiting the Colombian territory experience challenges since Colombia, as a nation, does not understand their worldviews, ways of inhabiting the territories, and uses and customs. Spaces that are of vital importance to Indigenous peoples' way of life have been allocated to the voracious exploitation of resources, accompanied by a marked absence of social programs or a State presence of any kind.

Likewise, Indigenous women face two-fold discrimination, because of their ethnicity and their sexualized bodies. These women experience unequal and historical abuse and victimizing actions from armed groups present in the territories, who seek to control resources and territories. The report “La Ley de la Selva” (2)(Law of the Jungle), shows that the violence experienced by women's bodies is not only due to the actions and complicity of the armed forces, but also a lack of State action and interest in addressing the extreme levels of vulnerability.

(1) Documentation available in the Truth Commission Archive: <https://archivo.comisiondelaverdad.co/la-verdad-del-pueblo-indigena>

(2) Press release available at: <https://www.univision.com/noticias/america-latina/la-ley-de-la-selva-ninas-indigenas-de-amazonia-colombiana-son-victimas-de-violaciones-sexuales-en-medio-de-crisis-alimenticia>

On the search to guarantee effective participation, significant differences are noted in guaranteeing the right to prior consultation in Colombia. Colombian judicial bodies have recognized the fundamental right of Indigenous peoples to participate in decisions that could affect their territory. (3) Meanwhile, the Colombian executive branch has taken actions demonstrating that this right is seen as a mere formality, while the State continues to implement measures that are harmful to Indigenous peoples. A few examples are the failed online prior consultation procedures (4) (the circular was withdrawn due to citizen pressure) or charging a fee (5) to perform prior consultations (subsequently eliminated by Colombian judiciary).

It is noteworthy that the National Authority for Prior Consultation (under the executive branch) was created via court order. Between 2020 and early 2022 the entity assumed 3357 processes that could affect Indigenous territories. Of these, only 15% (6) resulted in an effective community consultation, the remaining processes were discarded by the body based on technical arguments.

Finally, despite the recommendations included in the ethnic chapter of the Final Peace Agreement with the FARC, six years after its signature, we found that just 13% of goals were met for indicators related to ethnic peoples and 74% of the goals had a minimum implementation or implementation had not yet begun. (7)

(3) Colombian Constitutional Court Ruling SU 123 of 2018.

(4) Circular CIR2020-29- DMI-1000 dated 27 March 2020

(5) ARTICLE 161. The party interested in carrying out a prior consultation shall pay into the Ministry of the Interior - Office of Prior Consultation Fund, which is constituted as an autonomous asset through a commercial trust contract, a fee for the coordination services to perform prior consultation and for the use of and access to information on community presence. Laws since 1992 - Express validity and control of constitutionality [LAW _1955_2019_PR003] (secretariassenado.gov.co)

(6) Torres Saez, G. M., & Torres Saez, S. C. Análisis de los avances en materia de Consulta Previa en Colombia, durante el periodo de 2019-2021

(7) Cinco años después de la firma del Acuerdo Final: Reflexiones desde el monitoreo a la implementación. Kroc Institute for International Peace Studies, Keough School of Global Affairs. <https://doi.org/10.7274/z029p270x6d>

Recommendations

1. Respect the prior consultation processes of Indigenous peoples on issues concerning their territory, as established in International Labor Organization (ILO) Convention 169.
2. Repeal environmental licenses granted to the private sector that allow them to perform mining or oil exploration and exploitation on ancestral and Indigenous territories.
3. Initiate, continue, and expedite the processes to establish borders and legalize land ownership for Indigenous communities.
4. Advance investigations to establish those responsible for human rights violations, especially murders in Indigenous communities.
5. Promote the implementation of the Final Peace Agreement with the FARC in relation to the ethnic chapter, using a differential and ethnic approach.
6. Follow the Security Council recommendations in Resolution 1325 on women, peace, and security.
7. Strengthen participation mechanisms for ethnic peoples, especially those associated with prior consultation, so that community participation is free, binding, informed, and complete.