

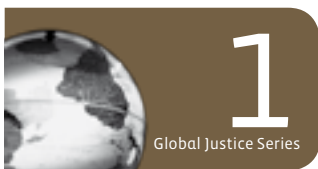


Racial Discrimination and Human Rights in Colombia

**A Report on the Situation
of the Rights of Afro-Colombians**

Observatory on Racial Discrimination

**César Rodríguez-Garavito
Tatiana Alfonso Sierra
Isabel Cavalier Adarve**



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César Rodríguez-Garavito
Tatiana Alfonso Sierra
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Researchers:
Eliana Fernanda Antonio Rosero
Juan Pablo Mosquera Fernández
Natalia Orduz Salinas
Maria Laura Rojas Vallejo
Nelson Camilo Sánchez León

OBSERVATORY ON RACIAL DISCRIMINATION
Program for Global Justice and Human Rights, University of the Andes
Black Communities Coalition (PCN)
Center for Law, Justice, and Society (Dejusticia)

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Isabel Cavalier Adarve

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Centro de Investigaciones Sociojurídicas - CIJUS

Address: Carrera 1ª N° 18A- 10. Edificio RGC.

Tel: 332 4099 - 339 4999. Ext: 3370

Bogotá D.C., Colombia

cijus@uniandes.edu.co

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<http://ediciones.uniandes.edu.co>

infeduni@uniandes.edu.co

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Presentation

The Myth of Racial Democracy in Colombia and the Purpose of the Report

César Rodríguez-Garavito*

From the Myth of Racial Democracy to the Recognition of Discrimination

Climbing out of the canoe that brought us from Tumaco to a village on the Mira River in the Colombian Pacific, we noticed something strange on the stomach of Dayerli, a little black girl who ran out naked to greet us. A colleague at the Observatory on Racial Discrimination (ORD) told me that the growth on the child's stomach was a hernia caused by improper birthing techniques. She also tells me that the sight is so common that it has become a symbol of the health care system's abandonment, which is especially hard on children.

The statistics produced in Bogotá and compiled in Chapter 2 of this report support this idea. The 2005 census shows that infant mortality among Afro-Colombians is almost double that of the rest of the population. And among minors like Dayerli it is more than double: 44 of every 1,000 black female children die before celebrating their first birthday. This gap continues throughout their lives. According to the same census, Afro-Colombian women live on average 11 years less than other women, and among men, the difference is five years. None of this is surprising if you look at the numbers on access to health care services presented later in this report; services which would have avoided Dayerli's hernia.

Dayerli's tense stomach conjures up memories of the soccer ball sized stomachs of malnourished children in black villages and neighborhoods around the country I visited with the ORD, from Aguablanca in Cali to the Nelson Mandela neighborhood in Cartagena. I remember the children from La Boscana who played with the trash that the tide brought in from Buenaventura. I will never forget the children from Chocó state who in 2007 bombarded the news media when the scandal irrupted around 49 hunger-related deaths.

* Director of the Global Justice and Human Rights Program at the University of the Andes; Coordinator of the Observatory on Racial Discrimination. This text is an adaptation of the article "¿Colombia racista?", published by the author in *El Espectador*, May 22, 2008.

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Again, this testimony sheds light on the statistics: 14% of Afro-Colombians went without eating at least one day during the week of the 2005 census. That is more than two times the already alarming number of mestizos who suffer from hunger.

All of this calls into question the myth of racial democracy: the idea that in Colombia there is no racism because, unlike South Africa and the United States, all races and cultures have mixed creating a happy blend of people. In the end, all of us dance salsa, merengue or cumbia and idolize black Colombian soccer players. It, in fact, has to do with one of the fundamental beliefs about Colombian identity, as Cartagena historian Alfonso Múnera notes in his book *Fronteras Imaginadas*: “the old, successful myth of the mestizo nation, according to which Colombia has always been, since the end of the eighteenth century, a country of mestizos, whose history is free from conflicts and racial tensions.”

High officials of different governments have reproduced this same myth, maintaining that there is no racial discrimination in Colombia. It is also confirmed by the fact that for a decade (1998-2008) the Colombian government did not fulfill its obligation to report to the UN Committee for the Elimination of Racial Discrimination on any measures taken to combat racial discrimination.

The myth would be intriguing if it were not tragic. For the reality of this exclusion in a country at war includes violence against and massive displacement of black communities. Here, again, official census statistics speak for themselves. As you will see in chapters 2 and 3 of this report, among Afro-Colombians the probability of being displaced is 84% higher than for the majority mestizo population. As the ORD has documented, alongside these statistics is the struggle for territories inhabited by black communities, including lands in the Pacific region that the state has titled in accordance with Law 70 of 1993. These territories have become strategic for those in the drug business, including guerrillas, paramilitaries and narco-traffickers battling each other over for them. And today this territory is the frontier of expansion for large mono-cropping agribusiness investing in the production of biofuels.

It is precisely in these zones where black communities live in a cross-fire and are displaced daily. This is demonstrated in the powder keg that has become of working-class neighborhoods in Buenaventura, where the

armed forces and illegal groups dispute block by block over this territory. Or massive displacement of black people from Tumaco, Jiguamiandó, Curvaradó, Guapi or Naya River, who can now be found seeking charity at traffic lights in Bogotá or Medellín, with the shame of someone accustomed to owning land and living from the fruits of their labor.

Finally, if we switch from rural to urban exclusion, we get the full picture of discrimination. It is the everyday racism of bouncers at Bogotá and Cartagena nightclubs who continue to prohibit the entry of black clients, before the passive eye of local and national authorities. Or that of some Cali employers that, as the ORD has documented in various interviews, have a “NB policy” (No Blacks) in hiring. And those Afro-Colombians who are rejected when trying to hail a taxi or are detained by the police in the streets of Pasto or Bogotá (even those high achieving Afro-Colombians from professional actors to university professors who were interviewed for this report). If we connect the dots among these disperse realities, it is possible to watch a clear picture of racial discrimination in Colombia emerge.

The Origin and the Purpose of this Report

In light of the deep-rooted myth of racial democracy and the grave violations of the Afro-Colombian population’s rights, the ORD was founded in 2007 as a space for research and discussion in order to document practices of racial discrimination and racism in Colombia, and to develop legal action against such practices. Since its start, the ORD combined academic research with human rights advocacy drawing on collaboration among the participating organizations: the Global Justice and Human Rights Program at the University of the Andes, the Black Communities Coalition (Proceso de Comunidades Negras, PCN) and the Center for Law, Justice and Society (Dejusticia).

This text is the translation of the abridged version of the book *Raza y derechos humanos en Colombia: Primer informe sobre discriminación racial y derechos de la población afrocolombiana*.¹ As explained later, the report is the result of two years of systematic research including fieldwork across Colombia, document and statistical analysis, and 174 solicitations

1. The book can be downloaded from the ORD’s webpage: <http://odr.uniandes.edu.co>.

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for information to 145 state entities at the national, state and municipal levels.

This report –the first of its kind in the country – serves a dual purpose. First, it aims to offer a sound, well-informed diagnostic on the state of the Afro-Colombian population and the extent of the realization and violation of their rights. To do so, the report compares the reality of Afro-Colombians’ rights, on one hand, to the national and international juridical commitments that the state has adopted for the realization of these rights, on the other. This diagnostic report consists of reviewing the advances, setbacks, voids, and pending tasks in the fight against racial discrimination on the part of the Colombian state.

Second, based on this review, the report aims to make concrete public policy proposals and recommendations that help realize equality and anti-discrimination rights. As such, the ORD’s critique of the state’s denial of racial discrimination and its limited measures to combat it, is not in and of itself the goal of this report. More than blaming the Colombian state, the objective of this report is to point out challenges and concrete proposals that state entities need to put forward in order to guarantee Afro-Colombian rights.

As you will see in the following pages and at length in the full version of this report, the state (and civil society) have a long way to go to achieve this goal. The first step is for the state to set an example and recognize the problem of racial discrimination. It has already made some attempts (like the Plan for the Afro-Colombian Population of 2007) that move in the appropriate direction but have been left as unfulfilled promises due to the lack of political will and a budget.

The next step is for the government and private sector (from firms to educational institutions) to adopt policies for Afro-Colombians’ to achieve real access to employment, quality education and other citizen rights. All of these steps must be part of a sincere, long-term commitment, and not based on quick temporary fixes or external pressures.

The perfect occasion for this collaboration between the state and civil society is in the upcoming 2009 world process to propel the Declaration and Program of Action against racism and other forms of discrimination that participating states, including Colombia, made in Durban, South Africa. We hope that when the ORD publishes its second periodic report

in 2010 – after two years of further research – we can report greater advances in the fight against racial discrimination and racism in Colombia.

Acknowledgements

A research effort like this report faces many challenges. First, fieldwork often takes place under complicated circumstances and in difficult zones. As you will see in the chapter on territory and violence, some of the communities that participated in the workshops and interviews are located in the middle of armed conflict and are in constant risk of attack or displacement. Second, given that the ORD includes, in addition to research and human rights centers, grassroots social organizations (gathered under PCN), the methodology attempts to be participatory and decentralized. For this reason, as described later, the research included numerous workshops, focus groups, and conversations around the country with leaders, activists, teachers, functionaries, students and other people involved in the cause against racial discrimination. Finally, for academic and social reasons that would take some time to explain, the topic of racial discrimination has not received the attention as other topics of Colombian academic and public debate. As such, unlike other countries like Brazil, anyone approaching the topic in Colombia needs to start almost from scratch.

For all these reasons, the work of the ORD would not have been able to advance so quickly without the help of people who supported it in distinct ways to overcome, at least in part, these obstacles. At risk of forgetting the names of people and organizations that deserve recognition, we want to thank the following individuals and institutions. First, the members of the black communities and organizations that sacrificed a Saturday or Sunday to share with the ORD in long workshops, their experiences, opinions, and proposals on racial discrimination. Among them are those in Buenaventura, Cali, Tumaco, Quibdó, Bogotá, Medellín, Palenque and Cartagena that have been involved since the start of the ORD thanks to the national coordination of PCN.

Second, we would like to thank the scholars who generously shared their knowledge with the ORD. We recognize with special gratitude the help of Claudia Mosquera Rosero-Labbé at the National University of Colombia, and Fernando Urrea and Carlos Viáfara at the University of Valle.

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Third, the support of members of the ORD's organizations was fundamental in pushing forward this project. In PCN, we thank members of the National Coordination team and their Bogotá office members. Among those, the support of Carlos Rosero, Libia Grueso and José Santos was essential; they participated in the ORD from its conception and contributed their exceptional experience in activism and Afro-Colombian studies.

At the University of the Andes, the generous and permanent support of Eduardo Cifuentes Muñoz, Dean of the Law School, was invaluable. Without the personal commitment and professionalism of Carolina Reyes Rey, Administrative Coordinator at The Andes and the ORD, it would have been simply impossible to carry out this project and make this report. The work of Edna Martínez and Magnolia Prada, ORD researchers, was key to guiding fieldwork, lawsuits, and communication strategies of this project. The collaboration of Julián Berrío, Héctor Herrera, Ana María Sánchez and Juan Pablo Wills as research assistants at different moments of production of this report was also fundamental.

Fourth, the European Commission Delegation for Colombia and Ecuador allocated a significant part of the funds that made the ORD possible. Particularly we would like to thank Marcela Salazar Posada, whose help went above and beyond her duties as a Commission contact for the ORD and became essential support for the project.

Finally, we express our gratitude to the many friends from abroad who offered their voluntary support to the ORD and whose only compensation was their hope of contributing to the fight against discrimination. Ariel Dulitzky's and Gastón Chillier's support was instrumental to the internationalization of the ORD. The English translation of the report was made possible thanks to the solidarity and outstanding work of Fatimah Williams, as well as the careful and generous editorial work of Tianna Paschel.

Point of Departure: Towards the Recognition of Racial Discrimination and the Content of this Report



In 1981 the Colombian state ratified the UN International Convention on the Elimination of All Forms of Racial Discrimination. Over a quarter of a century later, despite the fact that the state reiterated its commitment against racial discrimination in the Constitution of 1991 and supported the Declaration and Program of Action of the World Conference against Racism in Durban in 2001, such commitment has yet to be realized.

“The battle against racial discrimination begins with recognizing that the problem exists and documenting its manifestations.”

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This human rights report on racial discrimination—the first of its kind in Colombia—demonstrates that Colombian policies and laws addressing these issues have been weak and inconsistent. Further, they resulted more from pressure from civil society and international human rights entities than of the state’s political will to recognize and combat longstanding practices of racial discrimination in the country.

This report focuses on discrimination against the Afro-Colombian, black, palenquero, and raizal populations.¹ It draws from two years of systematic social science and legal research in various regions across the country.

The lack of human rights reports on this subject itself is the result of two phenomena that are detailed in this document: the *denial* of the existence of racism in Colombia and the *invisibility* of the Afro-Colombian population vis-à-vis the Colombian state and society.

The Colombian state has customarily denied the existence of racial discrimination, a position that is frequently reiterated by high-level public officials. Successive administrations have defended this notion with the argument that neither institutional nor legal discrimination exists and that processes of miscegenation have produced equal conditions for all communities.

Nevertheless, the Fourteenth Periodic Report presented in 2008 by the Colombian government before the UN Committee on the Elimination of All Forms of Racial Discrimination appears to signal a shift in the state’s position on the topic. Although this report followed ten years of the state’s failure to comply with its obligation to send periodic reports to this committee, the state declared that “it is necessary to recognize that Afro-Colombian and indigenous communities continue to be victims of distinct forms of racial discrimination in the country” (Republic of Colombia 2008: 13-14).

The state has also maintained that given the high levels of miscegenation, the Afro-Colombian population is relatively small. As we will see, however, the size of this sector of the population is under intense debate between the state and Afro-descendent organizations.

The invisibility of the black population vis-à-vis the state is the second thread that runs through all the issues addressed in this report. Evidence of this can be found in the most common response to requests by

“ In Colombia, racism begins with a denial of the existence of discrimination on the part of the state and society”.

1. This statement requires two clarifications. First, the emphasis on this sector of the national population does not ignore that other groups and communities, including indigenous peoples and the Rom or gypsy population, are victims of multiple forms of racial discrimination. Second, there is an academic and social debate on which term, i.e., black, Afro-descendant, or Afro-Colombian, should be used to refer to the population whose rights are the subject of this report. The terms palenqueros and raizals refer to those persons with origins in the town of Palenque and the archipelago of San Andres and Providencia, respectively. Given that this report does not attempt to intervene in these debates, but instead concentrates on documenting human rights violations, we do not prefer any one term over another. For practical reasons, we use the most inclusive terminology which was adopted by the 2005 National Census as a result of pressure from the Afro-Colombian social movement: black, Afro-descendant, palenquera and raizal populations. Also, we frequently use abbreviated terms employed by various social and state actors, such as “Afro-descendent population,” “Afro-Colombian population,” or “black population.” Whenever this abbreviated terminology appears in the report, it is meant in the most inclusive and extensive terms.



the Observatory, on Racial Discrimination (ORD) to state institutions for information relevant to this study: their reports lack specific data on the racial composition of their employees, clients or consumers, beneficiaries or other groups with whom they interact.

This combination of denial and invisibility confirms the existence of the deeply rooted myth of racial democracy, that is, the idea that miscegenation in Colombia gave way to egalitarian social relations between ethno-racial groups. From the human rights perspective, the strength of this myth in Colombia situates the country at what can be deemed “level zero” in its achievement of anti-discrimination rights: meaning, the fight against racial discrimination must begin with documenting and recognizing that the problem exists.

In the context of Colombia, a country marked by the longest internal armed conflict in the world, discrimination is intertwined with violence. This report documents the differential impact the conflict has had on the Afro-descendent population—for example, the disproportionate incidence of forced displacement on Afro-Colombians as compared to other ethno-racial groups.

“The invisibility of the Afro-Colombian population in official statistics and policies confirms the myth of racial equality.”

Methodology and Themes

This report systematically evaluates the Colombian state's level of fulfillment of national and international legal obligations with respect to the Afro-Colombian population. To make this evaluation, the ORD conducted a thorough legal and social review of the most salient situations and patterns of discrimination facing these citizens. The methodology used combines qualitative and quantitative techniques. The qualitative study was based on fieldwork conducted in Bogotá, Cali, Cartagena, Medellín, Buenaventura, Tumaco and Quibdó. This research included approximately 100 interviews with social and political leaders, teachers, professionals, university students, internally displaced people, informal vendors, and other Afro-Colombians with diverse socioeconomic, age, sex, and regional origin profiles, in addition to interviews with public officials responsible for deciding on and implementing policies on this topic. This research also included ten focus groups with social leaders, teachers and university students in the aforementioned cities and five focus groups in Bogotá with the white-mestizo population in order to explore their perceptions and attitudes on racial discrimination.

The quantitative study consisted of a systematic exploration of public databases that incorporate ethno-racial variables. Among them are the National Census (2005), the National Household Survey (2007), the Quality of Life Survey (2003) and data on Colombia compiled by the Latinobarometer (2001). Based on these sources, the report offers a panorama of statistics on Afro-Colombians and documents the structural socioeconomic disadvantages of this population when compared to the white-mestizo population. This inequality is evident in data on basic demographic indicators (i.e., infant mortality and life expectancy rates), income, employment, and access to property ownership and services (i.e., household public services, education and health).

The final methodological component of this study consisted in soliciting official information from public entities by exercising the right of petition. To do this, we sent 174 solicitations for information to 145 state institutions at the national, departmental (state), and municipal level. These petitions contained questions on life conditions of the black population and on the existence and implementation of policies and programs

“ This report is based on a systematic social and legal review of the most salient statistics and cases of discrimination in Colombia.”

for this population. The responses we received reveal pertinent information as much for what they say as for what they do *not* say. In particular, the fact that the overwhelming majority of the responses reveal that the Colombian state does not have or collect statistics on the Afro-descendent population—including basic information like the number of Afro-Colombian officials that work in state entities or the proportion of Afro-descendent university students—confirms the invisibility of this sector of the population.

The report is divided into eight thematic sections:

- Statistics on discrimination and socioeconomic status of Afro-Colombians
- Displacement, violence and racial discrimination
- Education
- Health
- Housing
- Access to justice
- Legislation against discrimination

“ In light of the armed conflict, discrimination is intertwined with violence and the infringement of Afro-Colombians’ individual and collective rights.”

Statistics on Racial Discrimination and the Situation of the Afro-Colombian Population



How Many Afro-Colombians are There? Uncertainty over the Numbers

The first piece of evidence of the longstanding invisibility of Afro-Colombians in official records and statistics is the absence of reliable data on the size of this population. More than 70 years had passed since the 1918 Census (which was the only census to

“The first piece of evidence of the historic invisibility of Afro-Colombians is the absence of reliable data on the size of this population”.

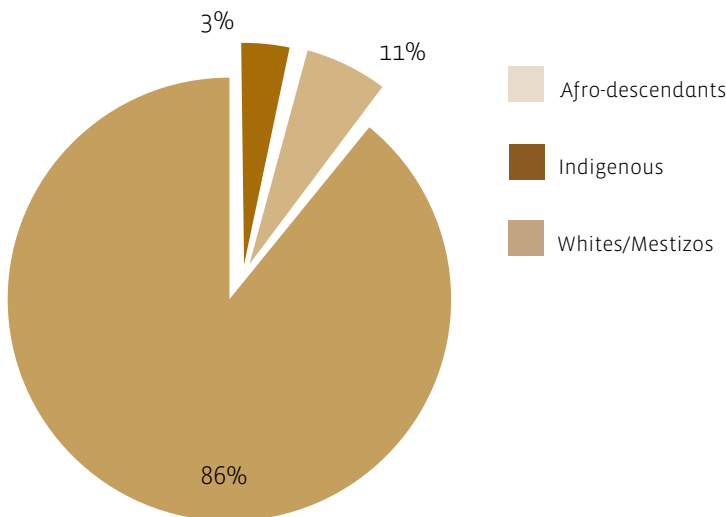
gather statistics on ethno-racial groups), before the Colombian government fulfilled its duty to collect these data again in 1993.

However, independent experts and Afro-Colombian leaders alike widely believe that the results of the 1993 Census are far from reliable. Given the ambiguous and confusing wording of the 1993 question, which asked about Colombians' ethnic or cultural membership (i.e., an ethnicity or black community) as well as the exclusion of questions on racial identification (physical features), many Afro-Colombians did not opt for an ethnic identification and were not counted as such in the census. This census question produced an unlikely statistic: only 1.5% of Colombians self-identified as black.

In light of these errors, the 2005 census broadened the question to include not only ethno-cultural self-identification, but also self-identification according to physical features. This advance was the result of pressure from the UN Committee on the Elimination of Racial Discrimination and the Afro-Colombian movement, which led to dialogue between Afro-Colombian organizations, the Administrative Department of National Statistics of Colombia (DANE) and experts on the topic. The result was a much higher statistic than the previous census: 10.62% of the population,

“Despite some questions of reliability of the statistics, it is clear that Afro-Colombians are the second largest ethno-racial group in Colombia and constitute the second largest Afro-descendent population in Latin America”.

Graph 1. Ethno-Racial Composition of Colombia



Source: ORD with data from the 2005 National Census – DANE

or about 4,311,757 Colombians, self-identified as Afro-descendant (see Graph 1).

The graph shows that even with the multiple errors of the 2005 census, which will be briefly discussed later and in detail in the full-length version of this report, Afro-Colombians are the second largest ethno-racial group in the country. In regional terms, this statistic places Colombia as the second country with the highest number of Afro-descendants after Brazil. If instead of the census we use projections of detailed and specific surveys (like the CIDSE-IRD-University of Valle mentioned in Figure 1), the number of Afro-Colombians in the national population may be considerably higher, measuring around 18.6%.

Despite the advance made by including an ethno-racial question, the process of defining the questionnaire and executing the census presented two major errors that leave the task of producing reliable statistics on the Afro-Colombian population unfinished. First, at the last minute, DANE changed the questionnaire and methodology including the modification of the most inclusive and precise question on ethno-racial classification which was drawn up by the Afro-Colombian movement. The final census form left out common designations recognized by the black population such as the term “moreno” (brown), which is used by a significant portion of this population. The exclusion of this term went against the Afro-Colombian movement’s demands, which were based on an understanding that some sectors within the Afro-Colombian population prefer not to self-identify as “negro” (black) because of the term’s negative historical connotation. This sudden change violated the state’s legal and political commitments, both national and international, to collaborate with Afro-descendant organizations to produce transparent and precise statistics.

Second, as many experts had suspected, sudden changes to the questionnaire as well the firing of the director of DANE in the eve of the implementation of the census, affected data collection and the reliability of the census overall. Specifically on the topic of counting the black population, DANE partially failed to fulfill the agreement it made with Afro-Colombian organizations to conduct or facilitate extensive informational campaigns about the questionnaire. In light of this void, these campaigns were partially undertaken by Afro-Colombian organizations themselves, which had limited resources to do so. Moreover, as the ORD documented

“Despite this advance, the 2005 Census revealed major errors in the preparation and execution phases, leaving serious doubts over its reliability and weakening the rights of the Afro-Colombian population”.

Figure 1. Uncertainty Over the Statistics: The Afro-Colombian Population According to Diverse Sources (1918-2007)

Year	Type of Study	Methodology	Question	Percentage of Afro-descendent population
1918	National Population Census	External classification by surveyor based on respondents' phenotypic characteristics	1. White, 2. Black, 3. Indigenous and 4. Mixed race	6.00
1993	National Population and Housing Census DANE	Ethnic self-identification (black community equivalent to ethnicity or ethnic group)	Do you belong to an ethnic group, indigenous group o black community? 1. Yes, which one? 2. No.	1.50
1998	Estimates from National Plan for the Development of the Afro-Colombian Population (cited by the UN 2004)	Afro-Colombian organizations' estimates	-	26.83
2001	Estimates from CIDSE Project - IRD/Universidad del Valle	Estimates based on external classification used in the CIDSE-IRD survey and the results of the National Household Survey (ENH) 110 in 13 metropolitan areas, including the use of photographs.	-	18.60
2001	Latinbarometer	Ethnic or racial self-identification using eight categories	With which ethnicity or race do you most identify? 1. Black, 2. Indigenous, 3. White, 4. Mulatto, 5. Mestiza, 6. Chinese, Japanese, Asian, 7. Arab, 8. Other, 9. None, 10. No response.	19.35
2003	Quality of Life Survey (with national representation in urban-rural areas)	Ethnic self-identification using five categories	Of which of the following groups do you consider yourself? 1. Indigenous, 2. Gypsy, 3. Raizal from the Archipelago, 4. Palenquero, 5. Black, Mulatto (Afro-descendant), 6. None of the above.	8.00

Year	Type of Study	Methodology	Question	Percentage of Afro-descendent population
2004	Ongoing Household Study II Trimester (with national representation in urban-rural areas)	Cultural self-identification in five categories	According to your culture you are: a) Afro-Colombiano, b) Indigenous, c) Rom, d) Raizal from San Andrés and Providencia, e) Palenquero, f) None of the above.	1.20
2004	Ongoing Household Survey II Trimester	Phenotypic self-classification in four categories	According to your physical characteristics you are: a) black, b) white, c) mestizo, d) mulatto, e) none of the above.	9.80
2005	National Census on Population, Housing and Economic Activities DANE	Ethnic self-identification and racial self-classification (in the same question) in five categories	According to your culture, community or physical features... Are you or do you recognize yourself as: (1) Indigenous, (1.1) Which indigenous group? (2) Rom, (3) Raizal from the Archipelago, (4) Palenquero, (5) Black, mulatto, Afro-Colombian or Afro-descendant, (6) none of the above	10.60
2007	Large Integrated Household Survey IV Trimester	Ethnic self-identification and racial self-classification (in the same question), in five categories	According to your culture, community or physical features... Are you or do you recognize yourself as: (1) Indigenous, (1.1) Which indigenous group? (2) Rom, (3) Raizal from the Archipelago, (4) Palenquero from San Basilio or descendant, (5) Black, mulatto, Afro-Colombian or Afro-descendant, (6) none of the above (mestizo, white, etc).	6.35

Sources: Urrea (2007: 6-7, 10), Castillo (2007), Latinobarometer 2001 and National Integrated Household Survey 2007.

across the country, the ethno-racial question frequently was not posed to respondents due to the rush to complete the census questionnaires. According to several accounts, some of the census takers appeared to have answered the question based on their perceptions of the ethno-racial identity of the respondent. In other cases, leaders of marginalized black neighborhoods and communities with high indices of violence maintain that census takers opted for filling out the questionnaires themselves.

In short, although the 2005 Census signals improvement in the visibility of the Afro-Colombian population and provides useful data for pre-

liminary discussions, it does not resolve questions posed by national and international actors concerning relevant statistics in Colombia. As such, the state remains indebted to fulfill its obligations under international human rights law, to gather precise and reliable information on the Afro-descendent population.

In light of census errors, there is still major uncertainty about the size of the Afro-Colombian population. Demonstrating this point is Figure 1, which includes data from the previously mentioned censuses and other surveys on the issue. There are profound disparities in the calculations, ranging from an estimated 1.2% of the national population (according to the 2004 Household Survey) to the 26% mentioned in the 1998 National Development Plan for the Afro-Colombian Population and cited by the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance in his report on Colombia (UN 2004). In demographic terms, this gap is equivalent to about 10 million people whose racial identity is uncertain. In human rights terms, this uncertainty constitutes a fundamental violation of the Colombian government's national and international agreements and a continuation of the pattern of historical invisibility of which the Afro-Colombian population has been victim.

The Geography of Racial Discrimination: The Effect of Concentration, Urbanization and Forced Displacement

The Historical Concentration of Afro-Colombians and its Effect on Discrimination

Race relations in Colombia have been characterized by geographic or regional segregation between the large concentration of Afro-Colombians on the two coasts, and the rest of the country, as shown in 2005 Census data (Figure 2). The three departments with the largest black population (Valle del Cauca, Antioquia and Bolívar) comprise 50% of Afro-descendants and the eight departments with largest black population make up 80% of Afro-descendants. The fact that these departments only have 40% of the country's white-mestizo population suggests that, beyond the afore-

Figure 2. Departments with the Highest Number of Afro-Descendants

Department	Afro-descendants		Mestizos		National	
	Number of people	% Ethno-racial group	Number of people	% Ethno-racial group	Number of people	% Ethno-racial group
Valle del Cauca	1,092,169	25.3	2,899,852	8.3	4,052,535	9.8
Antioquia	593,726	13.8	4,836,203	13.9	5,601,507	13.5
Bolívar	497,667	11.5	1,301,650	3.7	1,836,640	4.4
Chocó	286,011	6.6	18,160	0.1	388,476	0.9
Nariño	270,530	6.3	1,013,075	2.9	1,498,234	3.6
Cauca	256,022	5.9	648,730	1.9	1,182,022	2.9
Atlántico	227,251	5.3	1,839,491	5.3	2,112,001	5.1
Córdoba	192,051	4.5	1,110,321	3.2	1,462,909	3.5
Total 8 depts.	3,415,427	79.2	13,667,482	39.2	18,134,324	43.7
All other depts.	896,330	20.8	21,230,689	60.8	23,334,060	56.3
National	4,311,757	100.0	34,898,171	100.0	41,468,384	100.0

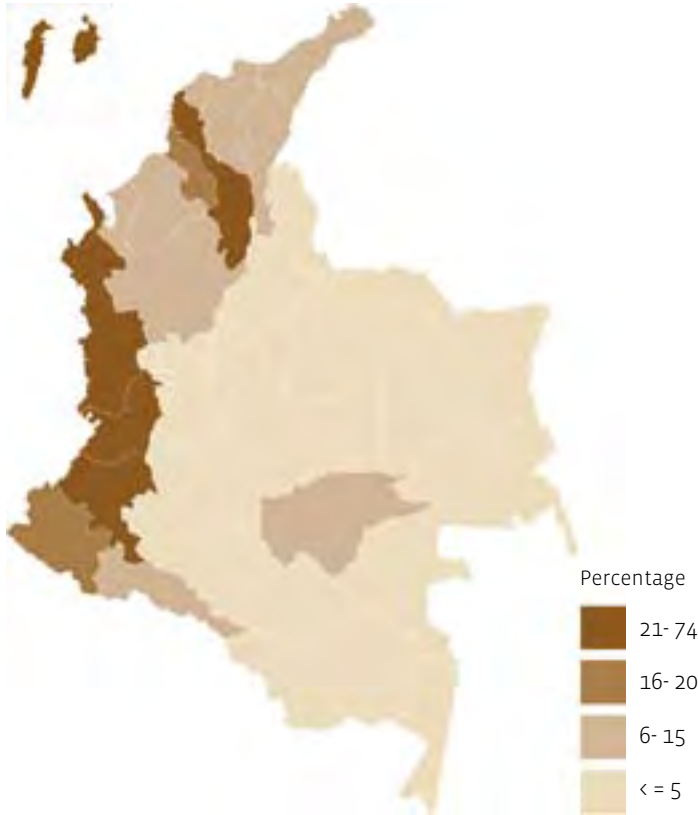
Source: ORD with data from the 2005 National Census – DANE

mentioned concentration, in Colombia there is a pattern of geographic segregation of these ethno-racial groups.

A comparison of national statistics and the data on the number of Afro-descendants in each department confirms the high percentage of blacks in the Pacific Coast, in the first place, and the Atlantic Coast, in the second place. Graph 2 shows where the largest percentage of the Afro-descendant population resides at the departmental (state) level. Notice the high concentration of this population in a few departments. The Afro-descendant population is the majority population in two departments: Chocó (82.12%) and San Andres and Providencia (57%). The full version of this report shows that there is a correlation between the percentage of the black population and poverty rates (as well as other indicators of well-being). We see this in the case of Chocó, the department with the highest proportion of Afro-descendants in the country and whose socio-economic indicators attest to the grave state of Afro-Colombians.

From a human rights perspective, this geographical pattern has two connections with patterns of racial discrimination that are worth point-

Graph 2. Percentage of Afro-descendent population by Department



Source: 2005 National Census –DANE

ing out. First, regions with high percentages of blacks occupy a subordinate role in public policies and dominant cultural conceptions in the country. This is especially clear in Colombia's Pacific region, which continues to have lowest indices of the guarantee of rights.

Second, paradoxically, the concentration of Colombia's black population in these regions, which have been marginalized by racist ideologies, also serves to deny the existence of racial discrimination and to excuse the state's inaction in these areas. In fact, one of the state's most frequent responses to the critical state of Afro-Colombians is that this situation is not a result of racial discrimination but of the fact that black people

“The traditional geographic concentration of Afro-Colombians in certain regions of the country is used as an argument to deny the existence of racial discrimination.”

live in inhospitable parts of the country. Such was the statement made by the Colombian ambassador to the United States, Carolina Barco, in response to criticism of racial discrimination in Colombia in the context of the debates on the free trade agreement with the U.S. According to press reports, Ambassador Barco, stated that “there was never historic marginalization” of blacks in Colombia; the problem, rather, has been that “the regions where they [blacks] live report the highest levels of poverty and the lowest levels of education, health, and infrastructure because these regions are very complicated” geographically (*El Universal* 2008). This vicious cycle of argumentation continues to feed the rhetorical negation of racism in Colombia and perpetuates social practices and geographic patterns that sustain it.

“ Afro-Colombians are the primary victims of forced displacement: the probability that an Afro-descendent citizen has been displaced is 84% higher than that of white-mestizos.”

A Population in Motion: Migration and Displacement

The geographic concentration of black populations has been profoundly altered in the last decades due to two types of migratory patterns. On the one hand, similar to white-mestizos, thousands of Afro-Colombians have emigrated from rural areas to the city for economic reasons. This process of urbanization is evident in the 2005 Census statistics on inhabitants of cities and rural areas, which show that 72.7% of Afro-Colombians live in urban centers, a percentage that is lower than, although very comparable to, the urban white-mestizo population (78.8%) (see Figure 3).

On the other hand, Afro-Colombians have migrated due to the one phenomenon that most gravely threatens their rights and has had a profound, disproportionate impact on them: forced displacement. As it is

Figure 3. Distribution of Afro-Descendant and Mestizo Populations According to Zone

	Afro-Descendants		Mestizos		Total Population	
	Number of people	%	Number of people	%	Number of people	%
Urban	3,135,060	72.7	27,484,575	78.8	31,510,382	76.0
Rural	1,176,697	27.3	7,413,596	21.2	9,958,002	24.0
Total	4,311,757	100	34,898,171	100	41,468,384	100

Source: ORD with data from the 2005 National Census – DANE.

known, Colombia is the country with the second highest number of internally displaced persons (IDPs) just after Sudan. According to official statistics analyzed by UN High Commissioner for Refugees (2008), nearly three million Colombians live in a condition of forced displacement.

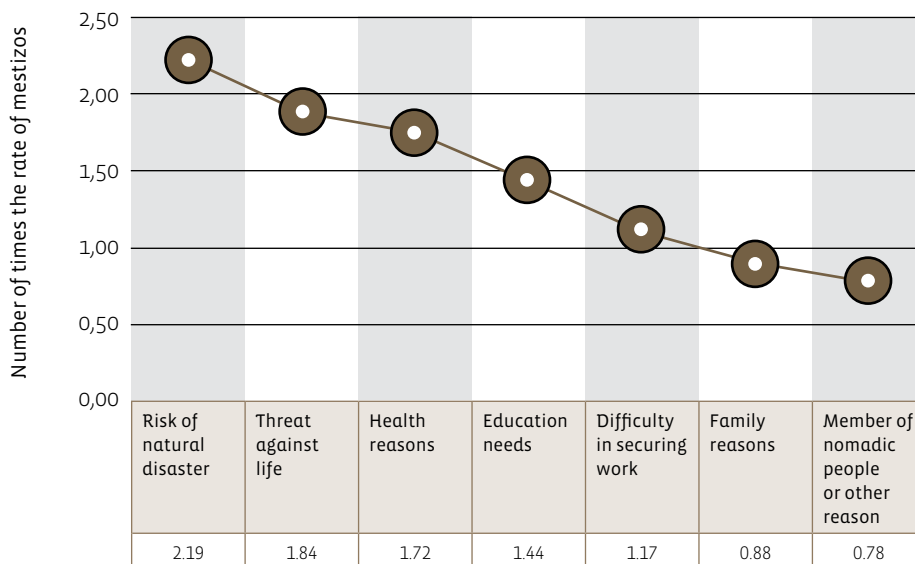
Less known is that Afro-Colombians are the most frequent victims of displacement, followed by indigenous peoples. Actually, even if we use DANE’s official numbers (which have been criticized for underestimating the magnitude of problem of displacement in Colombia), they still conclude that Afro-Colombians are most affected by displacement.

The ethno-racial disparity in migration, especially forced and urgent migration (i.e., displacement in response to threats against one’s life and natural disasters), is represented in Graph 3. This graph reveals that the rate of migration due to natural disaster for Afro-Colombians is more than double that of white-mestizos, and that the rate of forced displacement for the former is 1.84 times that of the latter.

The overwhelmingly high and disproportionate incidence of violence and forced displacement on Afro-Colombians constitutes one of the most severe and urgent human rights violations against the Afro-Colombian

“The infant mortality rate among Afro-descendants is much higher (1.78 times) than that of the general population. This disparity, however, is even more dramatic for girls, with the female infant mortality rate being more than double that of the national population.”

Graph 3. Causes of Change in Place of Residence



Source: ORD with data from the 2005 National Census- DANE.

population. As detailed in the full version of this report, the displacement of blacks is a phenomenon related to ethnic claims to land, especially in the Pacific. As such, violence and forced displacement have a direct connection with ethno-racial identity, resulting in a threat to black communities' right to not be discriminated against.

Demographic Indicators of Marginality: Mortality and Life Expectancy Rates

Structural disadvantages affecting the Afro-Colombian population are magnified upon examination of basic demographic indicators, which reveal profound differences between Afro-descendants and mestizos. The infant mortality rate describes the number of infants under one year old who die for every 1,000 children born. Data from the 2005 Census reveal profound differences in the infant mortality rate for Afro-descendants as compared to that of the rest of the nation (see Figure 4). In addition, racial differences magnify gender issues. The infant mortality rate for Afro-descendent boys is much higher (1.78 times) that of the general population. The difference is much more dramatic for girls: the infant mortality rate for Afro-Colombian girls is more than double that of the national population.

Figure 4. Infant Mortality Rate

	Afro-Descendants	Total national population	Ratio between Afro-descendants and total national population
Males	48.1	26.9	1.78
Females	43.9	21.0	2.09

Source: DANE.

The second relevant indicator is life expectancy. Figure 5 shows the gravity of the situation for the black population. This, again, dramatically increases in the case of discrimination against women. The statistics are overwhelming: Afro-descendent men live an average of six years less than the national average, while the average black woman can expect to live about 11 years less than the national average.

“ Afro-descendent men live an average of six years less than the national average, while the average black woman can expect to live about 11 years less than the national average.”

Figure 5. Life Expectancy

	Afro-descendants	Total population	Difference
Men	64.6	70.3	-5.7
Women	66.7	77.5	-10.8

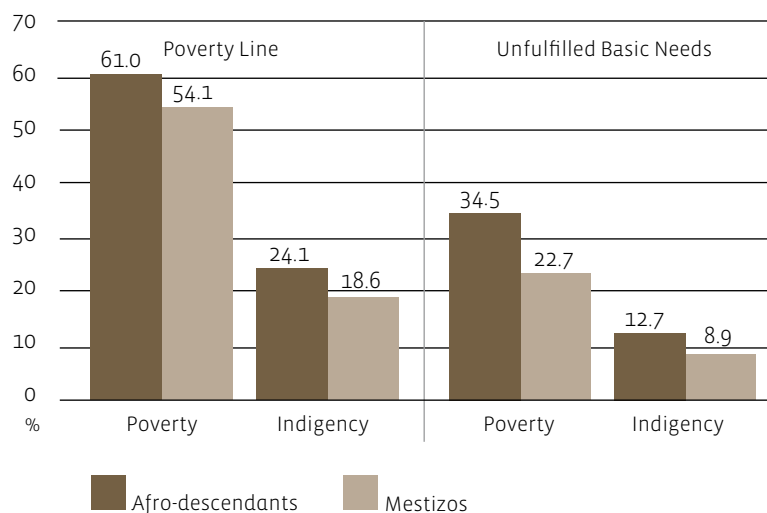
Source: DANE.

The Socio-Economic Situation of Afro-Colombians: Race, Poverty and Inequality

Poverty, Indigence and Hunger: the Disparities between Ethno-Racial Groups

How does poverty affect Afro-Colombians? Are there differences between these citizens' poverty level and that of the white-mestizo population? To answer these questions, we examine three distinct measures of marginality: the poverty line, the index of unfulfilled basic needs and the quality of life index. The results of the first two measurements by ethno-racial group are represented in Graph 4.

Graph 4. Poverty Indicators by Ethno-racial Group



Source: Urrea and Viáfara (2007: 60) with data from the Continuous Household Survey (ECV) 2003

“All indicators show that poverty and indigence are especially high among Afro-descendants”.

According to the first criterion (the poverty line), the proportion of indigents and poor among the black population is clearly higher than that of the white-mestizo population, in rural areas as well as urban areas.¹ The poverty level for blacks in Colombia is quite high. As can be seen in Graph 4, more than 60% of Afro-Colombians live in poverty. In rural areas this rate is even higher at nearly two-thirds of the population living below the poverty line. Even more striking is the fact that nearly a quarter of Afro-Colombians live in misery, that is, they do not have sufficient income to purchase food to satisfy a basic diet.

The statistic on misery and racial inequality is corroborated by data on hunger in Colombia. The 2005 Census asks respondents if they had gone without eating one or more times during the week prior to the census due to lack of money. The results (shown in Figure 6) are alarming: nearly 15% of Afro-Colombians had gone hungry, the equivalent of more than double the already high incidence of hunger among mestizos.

Figure 6. Incidence of Hunger by Ethno-Racial Group

Afro-descendants	Mestizos	National total	Ratio between Afro-descendants and mestizos
14.27%	6.11%	7.22%	2.34

Source: ORD with data from the 2005 National Census – DANE.

Afro-Colombians’ economic marginality is also evident if we use our second measure, the index of unfulfilled basic needs (see Graph 4). On the one hand, the incidence of poverty and misery is high for Afro-descendants. On the other hand, the gap between Afro-Colombians and mestizos is noticeable: the difference is ten percentage points for poverty and five points for indigence.

Lastly, we analyzed the results based on the quality of life index of Colombian households. Its range is from 0 (minimal quality of life) to 100 (maximum quality of life). The results confirm three trends that together serve as a synthesis for this section of the report. First, the socio-economic state of the black population is precarious, as demonstrated by its low quality of life index (64.7). Second, the situation is particularly grave for Afro-Colombians living in rural areas. Third, there is a glaring gap between

“The probability that an Afro-Colombian suffers from hunger is more than double that of a mestizo, who also experience a high incidence of hunger”.

1. The proportion of indigenous poor and indigent is also serious: in fact, it is higher than that for Afro-Colombians living in urban areas and in the country in general (but not higher than rates for Afro-Colombians living in rural areas). Given the focus of this report, we acknowledge but do not make additional comparisons with indigenous peoples, a group that also suffers pronounced levels of marginalization in all poverty measures discussed here.

Afro-Colombians and mestizos which amounts to a difference of 10 points in the quality-of-life index between these groups.

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“The socio-economic state of Afro-Colombians is precarious (especially for those living in rural areas), and there is a striking gap between Afro-descendants and mestizos”.

Land, Violence and Displacement: The Impact of the Armed Conflict on Black Communities



In the context of the Colombian armed conflict, the Afro-Colombian population suffers particularly severe violations against their rights. This becomes especially apparent when analyzing the statistics and cases related to forced displacement and the right to territory.

The Impact of the Armed Conflict on Black Communities

The Colombian government began to recognize the problem of displacement and the need to address it in 1995¹, and thereafter expedited specific legislation² to deal with displaced populations. Despite this, in 2004 the Constitutional Court, upon evaluating the situation of displaced persons, established that the state's policy concerning the situation was not functioning adequately (Ruling T-025 of 2004), and that the rights of displaced people were still under constant threat (Constitutional Court 2004).

The Court declared that there was a “massive violation ... of the rights of displaced persons that originates in structural factors in (state) policy” (Constitutional Court 2004), and drew up a series of mandates for various state entities responsible for addressing the issue. After this ruling, the state has been obligated to develop comprehensive public policies to prevent and address the issue of forced displacement and victim reparations.

The five-year follow-up process of Ruling T-025 of 2004 issued by the Constitutional Court has revealed evidence of the weakness of this public policy (Rodríguez-Garavito 2009). One of the aspects that the policy has neglected is to address the need for differential attention to ethnic groups (UNHCR 2007). This goes against the UN Guiding Principles on Internal Displacement, according to which “states are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands” (Principle 9). As seen below, black communities fall squarely under this category inasmuch as their forced displacement is oftentimes related to their attachment to lands that they have historically occupied and that have been formally allocated to them by the state.

The Particular Impact of Forced Displacement on Black Communities

Forced displacement has affected the Afro-Colombian population in specific ways. According to a survey conducted by the Consultation on Human Rights and Displacement (CODHES), a Colombian NGO, Afro-descen-

“30% of displaced Afro-Colombians did not have money to eat at least one day a week in 2005”.

1. CONPES document 2804 of 1995

2. Law 387 of 1997

dants are the largest ethnic minority among the population of displaced peoples in the country. They represent almost a quarter of the country's displaced population (22.5%). In total, 12.3% of Afro-Colombians live in a situation of forced displacement (CODHES 2008).

The specific effect displacement has on the black population is directly related to the communities' cultural and territorial rights, which have been officially recognized to them based on their legal status as an ethnic group. The situation in their collective territories on the Pacific Coast is dramatic. A total of 252,541 people have been pushed out of collective territories that are the property of black communities and are located in 50 municipalities (AFRODES and Global Rights 2007). This number represents 79% of the population that is registered as eligible for the right to collective land titling (AFRODES and Global Rights 2007).

The displaced Afro-descendent population finds itself in the worst living conditions when compared to other displaced groups. According to the 2005 Census, 30% of displaced Afro-Colombians did not have money to eat for at least one day a week and 69% of them were not matriculated in any educational institution.³

In addition, emergency humanitarian assistance (with its minimal provisions) does not satisfy the needs of the Afro-Colombian population, which continues to face the lowest levels of access to rights. These indicators demonstrate the grave effect of forced displacement on Afro-descendants and suggest that there is a relationship between violence and ethno-racial discrimination.

The Absence of Indicators and Statistics on the Afro-Colombian Population

An ethnic approach to the policy of prevention of and attention to forced displacement requires the production of disaggregated data by ethnic group, so that it is possible to determine structural inequalities among displaced groups, situations of highest exposure to risk and the possibility of providing sustenance for oneself (UNHCR 2007: 244). From this ethnic disaggregation, it should also be possible to determine the cultural characteristics, occupations, practices and family organization of displaced persons. This would facilitate the guarantee of ethnic groups' individual

“Sixty-nine percent of forcefully displaced Afro-Colombians do not have access to education”.

3. Observatory on Racial Discrimination using data from the 2005 Census.

and collective rights during the stage of humanitarian assistance, socio-economic stabilization, and return and resettlement. It would also help to determine adequate reparation.

The Colombian government has not been sufficiently diligent in producing this information or in constructing indicators that allow for the evaluation of the attention paid to the displacement of ethnic groups, as the Constitutional Court (2006) stated in a follow-up decision on this issue. For this reason, Afro-Colombians' right to equality and cultural diversity has been threatened at all phases of policies on displacement. In the humanitarian assistance, socioeconomic stabilization, and return and resettlement phases, it is essential to take into account the ethnic character and diversity of the Afro-Colombian population. It is equally important to consider the fact that this population faces double discrimination for its condition of displacement and for its ethno-racial characteristics. Finally, without information on ethno-racial groups, it is not possible to design adequate measures to provide reparations to victims of forced displacement.

Collective Territories, Armed Conflict and Displacement

The Threat against Black Communities' Territories

Forced displacement of Afro-Colombian communities impacts the administration and ownership of collective territories, a central element of their ethnic identity. In fact, this is one of the clearest and most concrete manifestations of the absence of an ethno-racial approach to the prevention and response to forced displacement.

On the Pacific Coast, the steps to collective titling of lands to black communities –which was mandated by a path-breaking law (Law 70 of 1993) that developed the land rights established in the 1991 Constitution– have proceeded alongside violence against and displacement of the communities and their leaders, as the case of the Southern Pacific Coast illustrates (see insert).

In light of ongoing violence against communities seeking to exercise their right to live and work in the collective lands that the state has allocated to them by virtue of Law 70, it is imperative that policy on displacement considers the reality that, for the Afro-Colombian population,

“The Colombian government has yet to gather data or construct indicators to evaluate the effect of forced displacement on Afro-Colombians and other ethnic groups”.

Territorial Violence in the Southern Pacific Coast*

Francisco Hurtado was the first legal representative elected to a community council of black communities, the council of the lower Mira (Mira River) in the southern Pacific Coast. Hurtado had fought for the recognition of the rights of black communities in the 1991 Constituent Assembly and since 1993 through procedures and paperwork for soliciting a collective land title. In February 1996 the community was finalizing its last requirement for title solicitation: the census of families living in the territory. Hurtado entered a woman's house when two men arrived on a motorcycle. One of them got off the motorcycle, entered the house and said, "Why don't you continue screwing around with this business of your Law 70!" Then he shot Hurtado to death and left a note with the same message.

For 15 years the members of the Mira River Community Council have tried to defend their collective territory. However, palm and illicit crops have arrived to their territory. Legal and illegal armed actors have also encroached on these lands. The communities continue to defend their cultural and territorial rights, but its members are constantly threatened, displaced and assassinated. In fact, in June 2008, 12 years after the first assassination, another leader of a community council was assassinated with the same note addressed to the rest of the community concerning their fight for territorial rights. Up to this moment, none of these cases have been cleared up and while the communities hold legal titles to their land, in practice they cannot exercise their culture and autonomy in these territories.

* Case reconstructed from the testimonies of community leaders in Tumaco, Cali and Buenaventura in May 2007 and August 2008.

territory is inseparable from their existence as an ethnic group. Further, because of their status as an ethnic group, displacement and violence against black communities require prevention and attention from an ethno-racial perspective.

The Violation of Black Communities' Right to Prior Consultation

The right to prior consultation is the right of ethnic groups to participate, in a free and informed manner with advanced notice, in decisions that affect them. Its main objective is to guarantee the respect of the territories and cultural integrity of peoples and communities affected by economic projects taking place in their lands (ILO Convention 169; Colombian Constitutional Court 1997).

The Colombian Constitution (Art. 7) and the Colombian state have recognized the Afro-Colombian population as an ethnic group. One of the established guarantees to provide protection to ethnic groups is the right to prior consultation. The Colombian Constitution recognized this right in Article 330 concerning cases involving the use of natural resources in indigenous territories. This norm is part of ILO Convention 169 and was ratified by Colombia in 1991,⁴ thus making this right applicable to the Afro-Colombian population, which is understood as a tribal group according to the Convention's definitions.⁵

The Constitution establishes prior consultation only for those decisions concerning the exploitation of natural resources, while ILO Convention 169 establishes consultation for all decisions that directly affect ethnic groups. The latter norm should be prioritized due to its greater protection of rights. For this reason, in 2008, the Constitutional Court began to recognize the right to prior consultation as extending to administrative and legislative measures that affect ethnic groups, including Afro-Colombians (Constitutional Court 2008).

In practice, however, the right to prior consultation has been constantly violated.⁶ In fact, black communities make it known that state and private actors enter their territories without consulting them and these interventions affect their uses, customs and governance mechanisms.⁷

In addition, the violation of the right to prior consultation has also meant serious violations of Afro-Colombian communities' territorial rights. Such is the case of the Curvaradó and Jiguamiandó communities in the lower Atrato in the state of the Chocó. Since the 1990s, these communities have denounced the presence of palm investors and cultivators in their territories, without respect to prior consultation. This phenomenon of territorial invasion has been accompanied by harassment and threats against the population, resulting in many families being forcefully displaced from their territories. In 2001, the state granted the collective title to these communities; nevertheless, three years later the Inter-American Commission for Human Rights conceded provisional measures of protection upon learning that the harassment had not stopped.

In fact, in 2005 the Workers Union Organization (USO) presented a complaint before the International Labor Organization (ILO) for the violation of the right to prior consultation and the cultural integrity of these

“Black communities' land rights are constantly threatened by violence and armed conflict”.

4. ILO Convention 169 was ratified and approved by Law 21 of 1991. The Constitutional Court has established that it is part of the “Colombian constitutional bloc”, which means that it serves as the parameter to interpret constitutional norms. As such, when there is conflict between internal legislation and international norms, the one that most favors the protection of the rights in question should be prioritized. See Corte Constitucional 1996, 1997^a, 1998, 2001, 2005.

5. Colombian legislation explicitly recognizes the right to prior consultation for black communities in Law 70 of 1993 and Law 99 of 1993.

6. Observatory on Racial Discrimination, focus groups: Buenaventura, May 2007 and Tumaco, April 2008.

7. Observatory on Racial Discrimination, focus group, May 2007, Buenaventura.

communities protected by the ILO Convention 169. In 2007, the ILO established that the right to prior consultation had been violated along with the right to cultural integrity. The ILO requested that the Colombian government carry out the consultation with these communities and guarantee the restitution of the lands. Nevertheless, today many of the families have not been able to return to their territory and the restitution of their lands has not been carried out.

This case is one of many examples of how the violation of the right to prior consultation goes directly against the survival of the Afro-Colombian population as an ethnic group and against their territorial rights. Policies on forced displacement have not adequately included such elements to guarantee the right to equality, the principle of anti-discrimination and the inclusion of cultural diversity. Nor have they considered the cultural effects that give rise to the violation of the right to prior consultation or the intimate relationship between communities' ability to exercise this right and the prevention of their forced displacement.

Recommendations

- Collect disaggregated data and design policies that are sensitive to ethno-racial diversity within the displaced population.
- Design preventive strategies against the forced displacement of Afro-Colombian communities that include the exercise of rights and an ethno-racial approach.
- Establish preventive actions to guarantee black communities' right to territory.
- Design mechanisms of participation and prior consultation that respect the ways and customs of the Afro-Colombian population.

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“The state has not guaranteed black communities' right to prior consultation, which assures that they participate in decisions that affect them”.

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“Ongoing violence, intimidation and forced displacement threaten black communities’ right to live and work in the collective lands that have been allocated to them by the state by virtue of Law 70 of 1993”.

Discrimination in the Education System and the Reproduction of Inequality



Quantitative and qualitative evidence shows that there is discrimination in the access to and the quality of education. Data also reveal an achievement gap between Afro-Colombian children and the rest of the nation at all levels. Moreover, the education system is not working to combat racist stereotypes against the Afro-Colombian population. As such, the education sys-

tem contributes to the reproduction of the cycle of poverty, exclusion and discrimination against black communities.

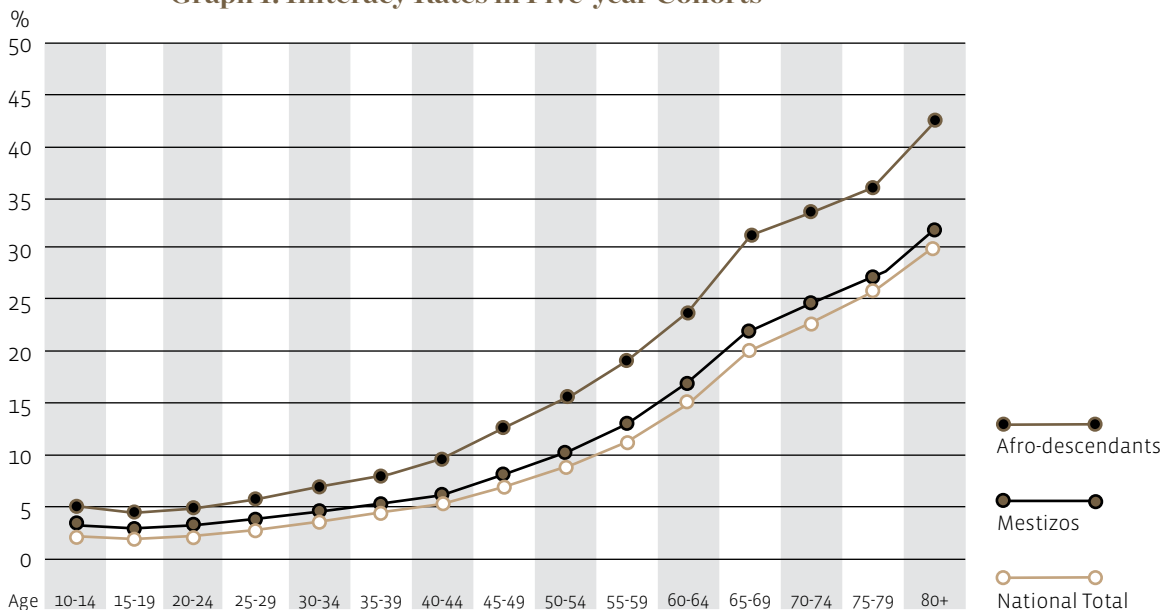
Discrimination in Access to and the Quality of Education

The Afro-Colombian population confronts distinct forms of discrimination in access to and retention in the education system. One of the principle barriers to access is the unfulfilled state obligation to guarantee free primary education to all Afro-descendent children across the country. Afro-Colombian families, including the poorest, have to cover high economic costs for their sons' and daughters' school tuition. When they are unable to meet these costs, their children are unable to matriculate into the school system.

In addition, given the lack of public resources needed to guarantee adequate infrastructure, a sufficient number of teachers, the availability of adequate educational materials, and the means needed to close the information technology gap, Afro-Colombian families—even the poorest—have

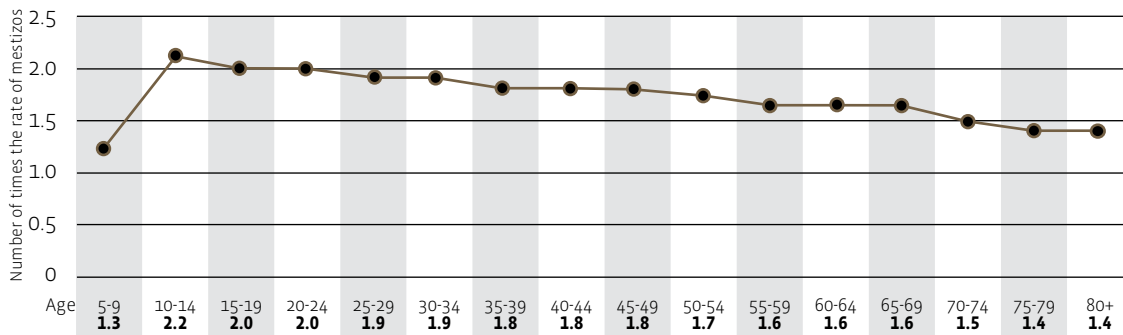
“ Among Afro-descendants, the illiteracy rate is nearly double that of the mestizo population”.

Graph 1. Illiteracy Rates in Five-year Cohorts



Source: ORD with data from the 2005 National Census – DANE

Graph 2. Illiteracy Rates in Five-year Cohorts



Source: ORD with data from the 2005 National Census – DANE

had to assume the responsibility that ultimately lies with the state. Children who overcome these obstacles to entering the school system confront a discriminatory structure that does not respect their cultural identity, generate incentives to retain students or adapt to their educational needs.

Indicators show that illiteracy, grade repetition, school overcrowding and drop out rates are higher in Afro-Colombian communities than in the white-mestizo population. Just to cite a basic but telling statistic, Graph 1 shows that for all ages, illiteracy rates are higher for Afro-Colombians than for white-mestizos. Graph 2 illustrates this gap even more explicitly. It shows that for most age groups, the illiteracy rate for the black population is nearly double the corresponding rate for the mestizo population.

Likewise, as gathered from the 2005 Census data, Afro-Colombian children’s lack of access to primary, secondary and high school education is of much concern. It is a problem that affects Colombian children and youth from all ethno-racial groups, but in the case of Afro-Colombians, it aggravates the cycle of marginality that has been described in this report. At the level of basic primary education —which, according to national and international law, the state has the obligation to universally guarantee to all children— some 10% of black children from six to ten years old do not have access to it. This amounts to a non-matriculation rate that is about 27% higher than that of white-mestizo children. In basic intermediate education (ages 11-14 years), there is a 12% lack of coverage. For high school, the situation substantially worsens, as 27% of Afro-Colombians ages 15 and 16 are not enrolled.

“ 11% of Afro-Colombian children do not attend primary school, and for high school education that rate jumps to 27%”.



“ Education for Afro-descendants does not guarantee the protection of their cultural diversity”.

In addition, a number of serious problems affect the quality of education in Afro-Colombian communities. The conditions under which Afro-Colombian children are expected to learn hinder their ability to receive a quality education. The data used to measure the quality of education are unreliable because the state has not implemented standardized methods or collected the disaggregated data needed to track the academic progress of Afro-Colombian children. Still, even with these limitations, statistics show a profound disadvantage for Afro-descendent children in the education system.

Test scores also demonstrate that private education increases the gap in opportunities for the rich and poor, and for white-mestizos and Afro-descendants. Private education is of high quality, while public education (the only type available to most Afro-Colombian children) is of poor quality. Test scores, analyzed extensively in the full-length report, indicate that departments with majority Afro-descendant population have less access to quality education. The lack of an education system that guarantees quality education increases the odds that Afro-Colombian students repeat courses, which becomes an important factor in higher drop out rates for Afro-Colombians than for the rest of the population.

Ethno-Education Policy: Insufficient Recognition of Difference

The Colombian government has adopted legislative and administrative measures to implement ethno-education policies with the goal of guaranteeing the right to cultural diversity in education and including Afro-Colombian culture and history in school curricula. Nevertheless, education authorities have assumed that the only way to develop this policy is to hire teachers with training in ethno-education and have not yet adopted institutional measures that allow for the implementation of ethno-education.

In other words, they place ethno-educators in schools but do not adopt a curriculum based in ethno-education or incorporate ethno-education content or methodologies into the schools' education projects. A few exceptions notwithstanding, existing ethno-educator posts do not involve decision-making power. As a consequence, ethno-educators' participation is limited, and thus, the possibility of modifying curricula and shaping school activities are minimal. Also, funds have not been set aside for pedagogical research, another factor that increases the marginalization of efforts to implement ethno-education.¹

The state's limited efforts to guarantee that Afro-Colombian students receive a culturally appropriate education do not allow these students to acquire the necessary skills to exercise full citizenship. The implementation of ethno-education should include measures that would permit Afro-Colombian students to demand their ethnic rights as black communities, which are guaranteed by the 1991 Constitution that defines the Colombian nation as multi-ethnic and pluri-cultural.

Finally, the state has failed to adopt measures to eradicate racist stereotypes that persist in the general education system. The education system does not include tools that educate against racism or promote values of acceptance, tolerance, and diversity nor respect for underrepresented cultures, including that of Afro-descendants. In fact, the implementation of Afro-Colombian Studies, which would help address this issue, is very limited.

“The educational curriculum, and education system more generally, do not help to counteract racist stereotypes of Afro-Colombians”.

1. Focus group with ethno-educators conducted by the ORD, Cartagena, May 2008.

Recommendations

- Prioritize the allotment of resources necessary to guarantee that quality primary education is free and universal, and available to all Afro-Colombian children.
- Adopt affirmative action policies in the education system that guarantee access to and retention of the Afro-Colombian population at all levels in order to close the gap in achievement and illiteracy rates between the Afro-descendent and white-mestizo populations.
- Foster academic programming and curricula, starting with primary education, to combat deep-rooted racist stereotypes held by Colombian families and society.
- Create a system that implements and monitors ethno-education policies in order to guarantee the protection of cultural diversity in the education system.
- Secure sufficient resources for the implementation of Afro-Colombian Studies curricula, including allotting resources for research and innovation in the field.

When Falling Ill is Not an Option: The Difficult Situation of Afro-Colombians' Right to Health



The state of health is more precarious for the Afro-Colombian population than for their white-mestizo counterparts. Despite this, the Colombian government has not implemented any clear and decisive actions to improve their situation.

Inequity in the Health System

In Colombia, structural discrimination exists in access to health care. The percentage of Afro-Colombians affiliated with the health care system is notably inferior to that of the white-mestizo population. According to official data in the 2003 Quality of Life Survey by the National Administrative Department of Statistics (DANE), only 49% of the Afro-Colombian population is enrolled in the health care system. This percentage is clearly lower than the already low level of white-mestizos' access, which according to the same source, is at 65%.

Health services available to the Afro-Colombian population are performed in unsafe conditions that do not guarantee the fundamental right of achieving overall physical and social well-being (WHO 1946). Geographical challenges, the lack of roads, the precariousness of means of transportation, and the internal armed conflict make it such that in the Pacific and the Atlantic Coasts, where the Afro-Colombian population is highly concentrated, access to health facilities or health services is not guaranteed. Also in these regions, the quality and availability of infrastructure, facilities, as well as medical personnel and medicine, are deficient. This precarious situation is made worse by other factors connected to providing health such as the scarcity of running water, potable water and sewage systems in these regions.

Despite this situation, the Colombian government has not established efficient affirmative action healthcare policies for the Afro-Colombian population. At the national level, the National Plan for Development (2006-2010) suggests specific actions toward this goal, but they have yet to be implemented. In the National Health Plan there is no mention of policies directed toward the Afro-Colombian population. At the national level, of the 16 states and municipalities consulted by the ORD,¹ only the departments of Nariño and San Andrés mention in their development plans the need to create health policies for the black population. At the state and city level, Barranquilla and Bogotá have public policies aimed at this population, but they have not put in place the mechanisms to follow-up on the results, and only Valle del Cauca exceeds them with mechanisms to assure results and follow-up.

“Only 49% of Afro-Colombians are enrolled in the health system, a much lower percentage than that for white-mestizos (65%), which is also disturbingly low”.

1. The ORD consulted departmental, district, and municipal entities throughout the country to learn about their health plans and the existence of specific programs for the Afro-Colombian population. The ORD solicited information from the departments of San Andrés, Atlántico, Bolívar, Antioquia, Chocó, Cauca, Valle del Cauca and Nariño. The cities consulted were Barranquilla, Cartagena, Medellín, Quibdó, Cali, Buenaventura, Tumaco and Bogotá.

The Cost of Getting Sick over the Weekend: Health, Illness, and Death on Barú Island*

One Friday in June 2007, Julián –the son of Afro-Colombian artisans living in Barú Island in the Colombian Caribbean– felt pain in his stomach followed by acute diarrhea in the afternoon. The diarrhea continued over the weekend until the young boy died on Sunday night, despite his parents attempts to treat him with home remedies. They could not visit the Barú medical center because the doctors had traveled to Cartagena that Friday leaving the medical center empty, without doctors or medicine. On Sundays no canoes leave the village for the city so the parents could not call for a canoe to take them. The gasoline they needed for the trip would have cost half of a monthly minimum wage salary. Between Friday, when the doctors left, and Sunday in the evening, too many hours passed, and Julián died as a result. That's the price of getting sick over the weekend.

*This is a reconstruction of a case Barú island residents recounted to the ORD in June 2008.

The Invisibility of Afro-Colombians in Public Health Policies

Colombia lacks systematic mechanisms to gather and analyze information on the health conditions of the Afro-Colombian population. Therefore, the state is unable to design policies that include ethno-racial variables, much less respond to the particular needs of this population. In the 2005 Census, DANE included a question to count the number of people who self-identified as members of ethno-racial groups. However, it did not collect basic data on health issues that the black population and the general population suffer such as incidence of tropical diseases, maternal-infant mortality and sexual and reproductive health problems. Therefore, it is impossible to crosscheck ethno-racial variables with this type of information in order to systematically analyze the situation of the Afro-Colombian population.

The state also lacks programs or plans that take ethno-racial criteria into account. Only the Valle del Cauca department, and San Andres and the city of Bogotá (to a lesser extent) have specific arms of the government directed at the Afro-Colombian population. Health plans and programs do not include black communities' traditional medicinal practices. Given that traditional medicine is only available in the regions with majority Afro-descendant population, the few public programs that have in-

corporated it (except Valle and Bogotá) have done so in order to resolve public health issues and not with the purpose of recognizing and including such practices in public policy.



When it Comes to Health Care, Afro-Colombians are not Ethnic Groups

Thanks to Law 691 of 2001, indigenous peoples have been able to establish organizations that directly provide health services to many of its communities that cannot afford to access the general social security system in Colombia. This legislation also allows them to provide health services in accordance with their traditional medical practices. However, the law only establishes these benefits for indigenous communities and leaves out the Afro-Colombian population and other ethnic groups, which according to the Constitution have the same ethnic rights.

Recommendations

- Pass a law that considers the Afro-Colombian populations' right to health from an ethno-racial perspective in order to guarantee equitable health services and the real inclusion of their cultural practices.
- Create systems to gather and analyze information on health, epidemiological profiles and medical practices of the Afro-Colombian population.
- Design affirmative action programs to guarantee the provision of quality health services to the Afro-Colombian population.
- Guarantee the availability of quality health facilities, centers and services for the Afro-Colombian population, especially in the Pacific and Atlantic regions and in other areas with majority Afro-Colombian populations.
- Recognize and incorporate black communities' traditional medicine into state health legislation and policies.

References

WHO (World Health Organization). 1946. *Constitución de la Organización Mundial de la Salud*. Principios Básicos, available at http://www.who.int/governance/eb/who_constitution_sp.pdf, accessed in April 2008.

“Black communities are not allowed to practice their traditional medicine within the Colombian health system”.

Living with Discrimination: The Status of Afro-Colombian Housing Rights



The right to adequate housing is “the right of every man, woman, young person, and child to have a safe home and community that allows them to live in peace and dignity” (UN 2008). However, the Afro-descendent population in Colombia continues to be victim to ethnic and racial discrimination which infringes upon their right to dignified and adequate housing.

“Only 56% of Afro-Colombians have access to sewage systems and only 71% have access to running water”.

The Absence of Data: Denial of the Problem

In Colombia, no reliable housing data exists on the national or local level that incorporates ethno-racial variables or provides information on the state of the Afro-descendent population with regards to this right. Despite being urged by the UN Committee on the Elimination of Racial Discrimination to present detailed and disaggregated data on the state of housing for Afro-Colombians, the Colombian government has failed to produce the requested report and makes ambiguous claims in other reports presented to the Committee.

Collective Property: Territory without Housing or Public Services

The state of the Afro-Colombian population with relation to all aspects of the right to housing is precarious. So much so, that we cannot speak of

Alto Mira and Frontera: Permanent Uncertainty*

The legal and physical security of the Afro-descendent territories of Alto Mira and Frontera is constantly threatened by multiple external factors that are beyond their control. In 2005 the state granted the community a title to collective ownership over this territory located in Tumaco, on the Pacific Coast. The actual transfer of this land, however, did not happen until three years later. During this time the community has not been able to live peacefully in its territory because of the attacks and occupation of illegal armed groups, illicit crop farmers and plantations, fumigations that contaminate the Rio Mira basin –their primary source of livelihood– and extensive mono-cultivators of palm. In addition to this, they completely lack basic public services, health services, education and roadways. The community lives in a permanent state of insecurity and uncertainty with respect to housing and living conditions. Even now that the titled land has been turned over to the community, it continues to face the impossibility of dignified and peaceful living in its territory.

*This case was reconstructed on the basis of information collected as part of the research project “The Right to Land: Toward a Reparation and Restitution Policy”, conducted by the Center for Socio-Legal Research (CIJUS) of the University of the Andes.

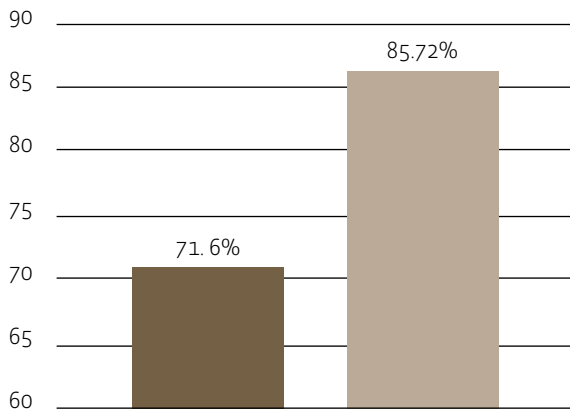
“The Colombian government has yet to fulfill its commitment to produce systematic data on the state of Afro-Colombians’ right to dignified and adequate housing”.

housing security, but rather *land tenure insecurity*. As mentioned earlier, Afro-descendants are the group that most suffers forced displacement from their territories and homes, and for whom the security to remain in their zones and areas of residence is nonexistent. Such is the case with the Alto Mira and Frontera community (see insert).

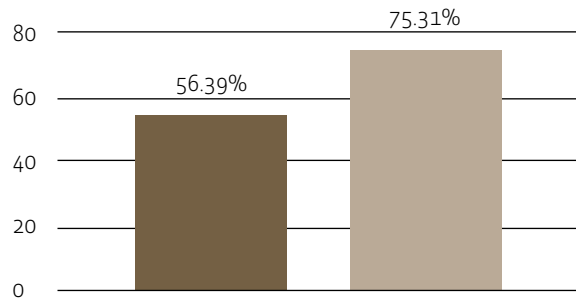
The availability of services, materials and infrastructure for the Afro-Colombian community is unsatisfactory, and contributes to living conditions that in most cases are inadequate. In Colombia, the departments (states) with the highest housing shortage are those with majority Afro-descendent and indigenous populations. Among them, the department of Chocó has the highest shortage in the entire country. In the last 17 years, the departments with the highest percentages of Afro-descendants have

“ Afro-Colombians face personal insecurity and uncertainty about their tenure and control of their territories, housing and resources”.

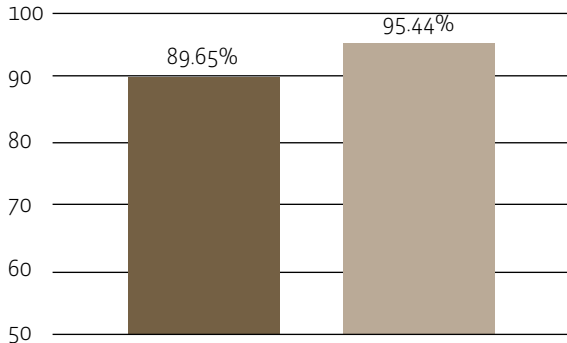
Graph 1. Access to Aqueduct



Graph 2. Access to Sewage Systems



Graph 3. Access to Electricity



Afro-descendants
 Mestizos

Source: ORD with data from the 2005 General Census-DANE

seen an increase in the shortage of housing, while the shortage average has decreased for the rest of the country.¹ Access to aqueducts, sewage systems and electricity are also worse for Afro-Colombians than for white-mestizos, as shown by Graphs 1-3.

Despite a few notable affirmative action programs for the black population to access housing credit and subsidies, the overall situation is not encouraging. The affirmative action program consists of allocating a high mark to qualifying families with Afro-descendent family members for subsidized urban housing assistance. There is not, however, information that records the number of subsidies given to Afro-Colombians through this process, and in the rare occasions that this information does exist, Afro-Colombian families benefiting from the program number less than ten since the inception and implementation of this policy on the national level and in Bogotá in 2007. The agencies responsible for administrating these subsidies do not have records that include an ethno-racial variable. Similarly, there is no data concerning access to credit in rural policies.

1. Statistics produced by the Observatory on Racial Discrimination using Census data from 1993 and 2005.

Cupica: Before and After Concrete Walls*

“Cupica breathes life. The village has been relocated and now has electricity throughout the entire day, water to spare and is far from the ocean” read the August 2005 title of *El Tiempo* newspaper the day that the national government gave the Cupicans, a small Afro-descendent community of the Pacific Coast in the department of Chocó, a new village made of concrete complete with water, electricity, a sewage system and grid-like street plans.

Prior to this, the Cupicans lived in wood houses, fresh and resistant to the humidity of the tropical rainforest. The houses were built on stilt-like foundations to withstand incoming tides from the Pacific Ocean, a primary source of the community’s livelihood. Now they live in houses made of concrete that are hot, lacking these stilt-like foundations, far from the ocean and inappropriate for the humidity. Instead, the architecture of their homes was modified to accommodate televisions, washing machines, and other electronic appliances that must be protected from rain, sun and humidity. None of the traditional architecture was conserved. Worse yet, none of the traditions that depended on this architecture live on today.

* Source: Pradilla (2005).

(In)adequate Housing

Adequate housing is less accessible to Afro-Colombians and there is no record of steps being taken to protect this right, which would also guarantee the protection of Afro-Colombian cultural identity. One example of this is the case of the Cupica community in the Chocó (see insert).

Recommendations

- Produce a detailed review of the state of housing for Afro-Colombians, beginning with data that includes ethno-racial variables.
- Create a national housing strategy incorporating affirmative action policies in favor of the Afro-descendent population.
- Design mechanisms to coordinate and follow-up on the implementation of this strategy.

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“ While access to housing has improved for the country overall, it has worsened for Afro-descendants and in the regions where they are most concentrated”.

Excluded: Afro-Colombians and the Justice System



Victims of racial discrimination in Colombia cannot count on effective judicial recourse that guarantees the persecution of perpetrators of discrimination, or just and adequate reparations for damages caused by racially discriminatory acts. The Colombian state lacks adequate mechanisms to guarantee that the ad-

ministrative justice system treat Afro-descendant citizens in an egalitarian manner, nor can it assure that Afro-descendants have sufficient representation in the system.

Ineffective Judicial Recourse

The Colombian judicial system prohibits acts of discrimination based on race or ethnicity, according to Article 13 of the Constitution. However, it does not guarantee a specific type of judicial protection that makes these rights effective. In addition to Article 13, there are four norms concerning discriminatory acts (see Table 1). None of these norms establishes legal action that allows for the prosecution of perpetrators of discrimination nor do they ensure reparations for victims. In addition, their low efficacy levels make it impossible to guarantee the right to suitable and effective recourse for victims of racial discrimination.

The *tutela* action (a constitutional writ of protection) is used as a judicial resource for racial discrimination cases in Colombia. Nevertheless, since *tutela* is a constitutional action rather than a civil action, it is im-

“ Legal cases of racial discrimination in Colombia have not granted restitution to victims, and existing legislation does not include mechanisms to prevent such acts from being repeated”.

Table 1. Norms and Actions against Racial Discrimination

Norm	Context	Judicial Action	Probable Effects of the Action	Reported Cases
Article 13 of the Political Constitution	Right to Equality-- Anti-Discrimination Principle	Tutela Action	1) Prevention of the violation of fundamental rights 2) Abstract indemnification	3
Article 58 of the Penal Code	Aggravated crimes (hate crimes) for crimes inspired by intolerance and discrimination	Judicial denouncement of other conducts	Judicial sentence	1
Article 147 of the Penal Code	Prohibits acts of discrimination in armed conflict	Penal action	Judicial sentence	8
Article 48 of the Disciplinary Code.	Sanction for public functionaries for acts inspired by intolerance and discrimination	Disciplinary action	Dismissal from office	0
Article 33 of Law 70 of 1993	Prohibition of acts of racial discrimination against the Afro-Colombian population	Complaints handled by the Police	Reprimands	0

possible to obtain reparations through it. The few cases in which victims have filed *tutela* actions have resulted in judicial declarations without repercussions for perpetrators of discrimination or reparation for the victims. Consequently, acts of discrimination continue without legislative guarantees to prevent them from being repeated.

A Night Out: People with your Skin Color are not Admitted

On December 25, 2004, Johana Acosta, her sister and several friends headed to the Cartagena nightclub “La Carbonera”. The security guard denied them entry stating that to enter they needed to have a special ID or a reservation. He also explained that the nightclub was hosting a private party at that time. Thirty minutes later the young women decided to return and ask why they were not allowed entry into the nightclub. Johana’s friends, who were young white women, approached the security guard and he responded that they could enter, but Johana and her sister, the two black women, could not.

Given the response, the young women decided to go to another nightclub in the area named “QKA-YITO.” When Johana and her sister approached to enter, the doorman did not let them in, arguing that the nightclub was full and they needed a reservation in order to enter. After further questioning from Johana, the bouncer declared: “The owners of this establishment prohibit us from allowing the people of your color enter unless they are well-known or wealthy.” Johana filed a writ of protection that was reviewed by the Constitutional Court (2005). The Court judged the writ on the basis of racial discrimination and awarded indemnification *in genere* to compensate the victim for the moral damages caused by the discriminatory act. Nevertheless, three years after this verdict, Johana has not received reparation for damages. Six months later, the same nightclubs repeated the same acts (Constitutional Court 2006).

Three years later, three nightclubs in Bogotá—Gnoveva, Gavanna and Sciroco—barred six Afro-descendants from entering their establishments using the same arguments of the Cartagena nightclub personnel. Some of the Afro-descendants that were discriminated against lodged a writ of protection soliciting the protection of their right to honor, human dignity and equality.* The Supreme Court’s ruling declared the existence of an act of racial discrimination, accepted standards of proof that facilitate the prosecution of such acts, and ordered the club owners to offer a public apology to the defendants. However, it failed to order the local and national governments to take immediate action to avoid and punish these types of cases, which continue to take place routinely.

* Writ of protection submitted with legal support from the ORD.

Equal before the Law? Racial Profiles of the Armed Services and the Judicial Branch

Public agencies in the Colombian justice system lack an information system capable of analyzing or evaluating the unequal treatment of the Afro-Colombian population. The Attorney General's Office does not include ethno-racial criteria in its database¹; the National Council of the Judiciary, the agency charged with administering the judicial branch and exercising disciplinary functions, also lacks data on Afro-descendants who have been tried by the justice system, much less those who have been sentenced.²

The National Penitentiary and Incarceration Institute (INPEC) reports percentages of the Afro-Colombian population in each prison facility, but it is not transparent about the registration system or the criteria it uses to identify the population. For these reasons, it is impossible to determine how the law is applied to Afro-Colombians in the investigation, accusation, trial and imprisonment phases of a criminal case. As such, there is no way of knowing if the justice system acts in an impartial manner when dealing with the black population in Colombia.

The National Police and the Armed Forces deny involvement in prejudicial or discriminatory practices against blacks. In spite of the lack of

“The Colombian state does not know how many Afro-descendants work in the justice system”.

“Disarm Yourself, Black Yurumanguéño!”*

Yurumanguí is a rural village in the Buenaventura municipality. Several Afro-Colombian communities are situated along the length of the Yurumanguí River. Jairo recounts his story of National Armed Forces officers occupying the area: “Since 2006, the presence of the military has increased. They say it's to combat the violence that we live in, that it's to protect us. But how do they protect us? They shout at us using megaphones, *'Disarm Yourself, Black Yurumanguéño!'* They believe that because we are black, we must be guerilla rebels. We are not victims of the war, but black rebels. They take our photos, interrogate and search us, and even detain us.”

* This story is based on testimonies of people from Yurumanguí river. Focus group conducted by ORD, Buenaventura, may, 2007.

** The name of the actor of the story has been changed to protect his identity.

1. Response on December 17, 2007 from the Attorney General's office on the right of petitions sent by the Observatory on Racial Discrimination.

2. Response on December 10, 2007 of the High Council for the Judiciary, Administrative Section, Statistical Development and Analysis Unit.

official information that would allow us to draw conclusions about discriminatory practices based on prejudice, Afro-Colombian citizens continue to publically denounce such cases without gaining access to judicial recourse.

A Multicultural Nation without Afro-Colombian Judges

The agencies that comprise the justice system do not produce systematic information on the number of Afro-descendants within in it. The Armed Forces do not know how many Afro-Colombians work in their institution because “the database does not distinguish information on the basis of race.”³ Similarly, the National Police lack a consolidated national level count of the participation of Afro-Colombians. Only three Police Departments (Nariño⁴, Valle⁵ and Cali⁶) collect this information (see Table 2). In these three cases, Afro-Colombian participation is minor.

The High Council for the Judiciary reports a total of 659 Afro-Colombian judicial employees⁷. Nevertheless, in the high courts—the Supreme Court of Justice, Constitutional Court, State Counsel and High Council for the Judiciary—there are no Afro-descendant justices.

Table 2. Afro-descendant Personnel in the National Police

Department-City	Afro-descendants	Total Personnel	Percentage of Population
Nariño	126	3106	4.05
Valle	331	3690	8.97
Cauca	42	no response	no response
Antioquia	171	no response	no response
San Andres and Providencia	63	no response	no response
Cali	523	5463	9.57
Medellin	421	no response	no response

Recommendations for the Colombian state:

- Pass specific legislation to combat the impunity of acts of racial discrimination in order to compensate victims and to guarantee that these acts are not repeated.

3. Response by the National Armed Forces to the right of petition sent by the Observatory on Racial Discrimination, April 9, 2008.

4. We solicited information from the National Police Bureau, the Police in the departments of Antioquia, Nariño, Chocó, Bolívar, Atlántico and San Andrés. We also solicited information from the Metropolitan Police in Bogotá, Cali and Medellín. We did not receive responses from the National Police Bureau, the Bogota Metropolitan Police or the departments of Bolívar, Atlantic or the Chocó.

5. Response on February 26, 2008 from the Police Department of Valle to the solicitation sent by the Observatory on Racial Discrimination.

6. Responses from November 27, 2007 and February 20, 2008 from the Santiago de Cali Police Department to the solicitation sent by the Observatory on Racial Discrimination.

7. March 7, 2008 response from the High Council for the Judiciary, Administrative Section, Statistical Development and Analysis Unit to the petition sent by the Observatory on Racial Discrimination.

- Compile and analyze information about the treatment of the Afro-descendent population in the justice system.
- Create protocols for compiling data on the Afro-descendent population—using an ethno-racial variable based on self-identification—for employees of public entities that make up the administrative justice system.
- Offer regular and adequate training on the right to equality and non-discrimination in those entities.

“**There are no Afro-descendant justices in any of Colombia’s high courts”.**

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The Legal Void: The Lack of Legislation and Policies against Racial Discrimination



Anti-Discrimination Legislation and Affirmative Action

In Colombia no specific legislation exists that prosecutes and fines acts of discrimination, and the existing legislation does not conform to criteria established by the UN Convention on the Elimination of Racial Discrimination. The Colombian Constitution establishes the

right to equality and there are four isolated norms prohibiting discriminatory acts.¹ Nevertheless, these prohibitions remain on paper and have not been effective at eradicating discrimination against the Afro-Colombian population.²

In the last two years Congress has heard three law proposals aimed at combating discrimination.³ In spite of this, neither Congress nor the government has demonstrated sufficient political will to convert these into law and uphold the obligations of Article 4 of the Convention on the Elimination of Racial Discrimination.

The state has recognized the precariousness of Afro-Colombians' social and economic situation (Conpes 3310 of 2004). Nevertheless, it has not designed affirmative action programs to comprehensively improve the life conditions of the Afro-Colombian population.

In Colombia's legal system there are three measures that can be considered steps toward affirmative action. The first one, in the area of education, guarantees increased opportunities to higher education for members of black communities and creates a special scholarship fund for students in black communities who have financial need and outstanding academic records.⁴ The second affirmative action measure is Law 649 of 2000 that assigns two seats for Afro-Colombians in the House of Representatives. The third is the affirmative action policy that was formulated in the Conpes Policy Document N° 3310 in 2004. This document recognized the precarious condition of Afro-Colombians and declared the government's commitment to implement a plan of action pertaining to basic needs like health, education, housing and public services, and the generation of employment and income for this population.

The only clear development of this commitment is the creation of the Intersectoral Commission for the Advancement of the Afro-Colombian, Palenquera and Raizal Population.⁵ In spite of this, there have been no practical developments toward improving the structural situation of the Afro-Colombian population. Additionally, important sectors of the Afro-Colombian movement have heavily criticized the process leading to the establishment of the Commission, alleging that it was not participatory and that it was driven by conjunctural political concerns.⁶

“The Colombian government has not designed affirmative action programs aimed at improving the overall living conditions of the Afro-Colombian population”.

1. Article 58 of the Penal Code; Article 147 of the Penal Code; Article 48 of the Disciplinary Code; Article 33 of Law 70 (1993)

2. In the section on the administrative justice system we analyze the difficulties in the enforcement of these norms.

3. Law Proposal 041 of 2006 presented by Congress member Maria Isabel Urrutia; Law Proposal 040 of 2007 presented by Congress members Gina Parody and Armando Benedetti; Law Proposal 068 of 2007 presented by the Office of the People's Defender (Ombudsman's Office).

4. Decree 1627 of 1996

5. Decree 4181 of 2007

6. Statement of the Afro-Colombian Conference, November 2007.

The absence of public policy against racial discrimination

Presently Colombia lacks defined public policy against racial discrimination. There is no independent agency that can ensure the development and implementation of such policies. The Bureau of Black Communities, Afro-Colombians, Palenqueros and Raizales in the Ministry of the Interior and Justice is responsible for promoting the rights of the Afro-Colombian population, but it does not have a role in coordinating such public policy. In fact, at least five national level agencies⁷ are responsible for issues and activities related to black communities but there is no coordination among them. The state has yet to formulate a national program of action against racism and discrimination that establishes mechanisms to coordinate these entities and their tasks.

Imposed Laws: Failure to Comply with the Right to Prior Consultation

The Colombian state has issued various laws concerning the Afro-Colombian population without guaranteeing the adequate participation of its members and organizations in the discussion and expedition of these norms. This violates the aforementioned right to prior consultation established in ILO Convention 169, which has been ratified by Colombia.

In 2008 the Constitutional Court struck down Law 1021 of 2006, also known as the Forestry Law. The Ministry of Agriculture had promoted this legislation, arguing that it respected the rights of ethnic groups and that it was necessary for the country's economic development. However, indigenous and Afro-Colombian organizations and communities opposed the passing of this law on the basis that it limited their rights over the territory and its natural resources, and that it did not respect the right to prior consultation. The Constitutional Court (Ruling C-030 of 2008) declared the Forestry Law unconstitutional for having violated the fundamental right to prior consultation.

When, in 2007, Congress drew up Law 1152 of 2007 (the Statute on Rural Development), it also stirred the debate on whether this type of legislation violates ethnic groups' right to prior consultation. The norm was challenged before the Constitutional Court and the case has yet to

“Colombia lacks a coordinated, specific public policy against racial discrimination”.

7. The Ministry of Interior and Justice, the Ministry of Environment and Housing, the Ministry of Culture, the Ministry of Education, and the Institute for Rural Development (Incoder).

be decided. These cases are clear evidence that existing legislation does not protect or guarantee the rights of Afro-Colombians. They also demonstrate that government-initiated legislation does not fulfill the duty to invite the participation of these communities and organizations.

Discrimination in the Law

The legal recognition of Afro-descendants' rights continues to lag behind the protection of the rights of other ethnic groups. The Colombian state has unjustifiably delayed the extension of indigenous peoples' cultural rights to Afro-Colombian communities. For instance, as noted, Law 691 of 2001 allows indigenous peoples to provide health care services, including the use of their traditional medical practices, to their communities. This right, however, has not been granted to Afro-Colombian communities.

The situation of black communities' governance mechanisms is similar. Black communities are recognized as an ethnic group with distinct production practices (Article 2, Law 70 of 1993). For this reason they are legally authorized to organize politically to solicit the right to collective lands in the territories they inhabit. The law considers the Community Councils the governing body for these territories. Despite this, existing legislation does not recognize the possibility that the Community Councils exercise a distinct system for the administration of justice as it does for indigenous peoples (Article 246 Political Constitution). Also, in theory the councils are recognized as the authority in the territories, but in practice city and state governments make final decisions on actions taken in collective territories. As such, rights of governance and jurisdiction of the territories are not only more limited for black communities than for other ethnic groups, but also more difficult to enforce.

Recommendations

- Draw up legislation that prosecutes and penalizes acts of racial discrimination to ensure the right to reparations for victims and to offer guarantees that acts will not be repeated.
- Expedite legislation toward the implementation of affirmative action measures.

“The Colombian state has failed to guarantee Afro-Colombians' right to participate in the discussion of legislation and policies that affect them”.

- Expedite legislation that recognizes the cultural rights of the Afro-Colombian population as equal to those of other ethnic groups.
- Improve the opportunities for Afro-Colombian communities' participation in the discussion and creation of legislative measures that affect them.
- Create an independent coordinating agency with the power to execute policies against racial discrimination. Such an agency should centralize policy functions and responsibilities regarding Afro-Colombians.
- Establish a National Action Plan to promote diversity, equality, equity, social justice, equal opportunities and participation for Afro-Colombians.
- Create a system to monitor and follow-up on legislation and public policy toward the Afro-Colombian population.

“ The legal recognition of Afro-descendants' rights continues to lag behind the protection of the rights of other ethnic groups”.

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p. 13, 33, 41, 47, 50, 65 Tatiana Alfonso

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p. 44 Mónica García

p. 53 David Lima

p. 59 Edwin Alexander Pira Pachón

This book questions the validity of the myth of Colombian racial democracy. According to this myth, Colombia's unique history facilitated a blending of races and cultures into an egalitarian mix rendering racism non-existent. This belief supports the denial of racism by the state and civil society, effectively enabling marginalization of Afro-Colombians.

The following is an abbreviated version of the *Report on Racial Discrimination and the Rights of Afro-Colombians*, a product of two years of systematic research conducted by the Observatory on Racial Discrimination. The study involved archival and statistical analysis, fieldwork throughout Colombia, and nearly two hundred petitions to state agencies at the national, state, and municipal levels.

The goal of this unprecedented work is twofold. First, it offers a thorough analysis of the current situation of Afro-Colombians, providing a sociological and legal basis to advocate for the promotion of their rights. And second, it formulates concrete policy proposals and recommendations to guarantee the right to racial equality, dispelling the myth of racial democracy.



Delegación de la Comisión Europea
para Colombia y Ecuador