



Afro-Colombian Human Rights: The Implications for U.S.-Colombia Free Trade Agreement

The Bernard and Audre Rapoport Center for Human Rights and Justice recently sponsored a human rights delegation to Colombia, and has issued a report for the Inter-American Commission on Human Rights on the human rights of Afro-Colombians. This memorandum contains a summary of those portions of the Report we believe are most relevant to any proposed U.S.-Colombia Free Trade Agreement (FTA) followed by some recommendations for the consideration and negotiation of such an agreement.

I. SUMMARY

Background:

Afro-Colombians are a diverse population, often with distinct cultures, lifestyles, and belief systems. They comprise roughly one quarter of the Colombian population, the majority of which lives in cities, with a sizable minority comprised of rural communities living on the country's Pacific and Caribbean coasts. The report focuses on legislation aimed at the protection of these latter communities' territorial rights (beginning with Ley 70 in 1993), but considers those rights in the context of development and systemic discrimination.

Collective land titling and community-oriented development are among the principle objectives of Ley 70 and subsequent legislation. The delegation found that, while the legislation itself has progressive and positive aims, its realization has been hampered by a number of obstacles, including pervasive systemic discrimination. These obstacles are set forth in pages 21-38 of the report, and are summarized below.

Obstacles to the fulfillment of Afro-Colombians' rights:

A. Right to Collective Land Title

- Ley 70 provides the mechanism by which Afro-descendant communities, at least in the Pacific region, may collectively title their land.

- Illegal armed actors – The Colombian state is not sufficiently protecting Afro-Colombian communities from the disproportionate violence targeted at them, especially by paramilitary organizations.
- Export-oriented Agro-business – These operations, often with the explicit and complicit participation of the government displace Afro-Colombians from their collective lands.
- Tourism mega-projects – Particularly in the Caribbean coastal region, these projects are displacing Afro-Colombian communities, including some communities that have resettled in the area as a result of displacement from the war.

B. Right to Development and Prior Consultation (*Consulta Previa*)

- Ley 70 - Although the right to sustainable development is guaranteed for Afro-descendent communities in Ley 70, the legislation has yet to be implemented.
- Prospective Legislation – New and proposed laws threaten to undermine communities’ ability to determine their own strategies for development and use of natural resources on their lands.
- Right to prior consultation/informed consent (*consulta previa*)
 - Afro-Colombians are guaranteed the right to be consulted about all development projects that may affect their land use patterns; this right has been consistently abrogated in favor of the interests of agricultural and tourism investors.
 - *Consulta previa* entails the consultation and participation of local communities in the design, approval, implementation, and evaluation of development projects that could affect them and their territories.
 - Both domestic legislation and international treaties to which Colombia is a party afford to Afro-Colombians the right to *consulta previa*. Colombia has ratified ILO Convention 169, which further requires *consulta previa* for any legislative or administrative measures that affect the document’s targeted “peoples,” which, according to the Colombian Constitutional Court, includes “black communities.”
 - Afro-Colombians are rarely, if ever, consulted by “developers” regarding the potential impact of specific projects on their communities and lands.

C. Right to be Free from Discrimination

- Ley 70, the Colombian Constitution, and international law to which Colombia has assented protect Afro-Colombians from racial discrimination.
- Nevertheless, Afro-Colombians are disproportionately affected by forced displacement, endemic poverty, and political and cultural exclusion.

- The widespread belief that Afro-Colombians are not discriminated against on basis of race or culture, and that racism does not exist in Colombia maintains their exclusion and their status as an invisible minority.
- The Colombian government has not compiled necessary data to assess, much less offered proposals to address, the specific needs of the many thousands of Afro-Colombians displaced from their homelands and living in makeshift housing.

II. IMPLICATIONS FOR A FREE TRADE AGREEMENT

The Rapoport Center’s delegation is deeply concerned with how a U.S.-Colombia FTA could further endanger the rights of Afro-Colombians.

- ❖ The entrance of foreign investment to impoverished areas has thus far detracted from the economic development of local Afro-Colombian communities. This foreign investment results in development projects that are often:
 - Imposed, including by force.
 - Contrary to Afro-Colombian community objectives and cultural and traditional patterns of land use.
 - Destructive of the bio-diversity of regions in which Afro-Colombian people have lived in ecologically sustainable ways for generations.
- ❖ Transnational corporations operating in Colombia have already admitted to (Chiquita Brands) or been charged with (Drummond Co.¹) employing paramilitary forces to abuse and intimidate workers and local populations.

The delegation fears that the atmosphere of increased and unrestricted investment brought by an FTA threatens to exacerbate the already tenuous link between Afro-Colombians’ legal protections and their lived reality.

In the absence of marked improvements in the abuses just noted, an FTA would send the wrong message to the Colombian government – one saying that the United States government:

- Approves of or is apathetic toward the Colombian government’s egregious rights abuses.
- Does not require human rights compliance from the governments that are considered geopolitical allies.

III. RECOMMENDATIONS

Given the serious rights violations committed against Afro-Colombians, the United States should not enter into an FTA with Colombia without receiving proof of concrete, measurable, and sustained progress in a number of areas that directly or indirectly affect the rights of Afro-Colombians. The delegation has elaborated below two sets of recommendations to ensure that any FTA facilitates, rather than impedes, the full

¹ See “US Coal firm linked to Colombia militias,” *Associated Press*, July 6, 2007.

implementation and enjoyment of the rights of Afro-Colombians. Afro-Colombian communities should be able to develop for themselves meaningful economic and political arrangements as outlined in Ley 70 and subsequent regulating legislation.

1. Require the Colombian government to demonstrate an established commitment to Afro-Colombian communities' rights to prior consultation on development projects.

- ❖ Given that the right to *consulta previa* has not been observed with regard to Afro-Colombian communities, the U.S. government must see to it that *consulta previa* moves from being merely a norm in law to a norm *in fact*.
 - Before being considered for an FTA, the Colombian government should be required to show evidence of a real change in policy through **eighteen to two years of successful enforcement** of *consulta previa*, carried out in good faith with Afro-Colombian communities to whom the right is promised.²
 - To be practiced in “good faith,” consultation *must*:
 - Be free from any coercive action toward local communities;
 - Be carried out with truly representative members of the community, based on the community’s own standards of representation;
 - Be carried out in a way that does not exploit or manipulate power and information differentials that exist between negotiating parties.
- ❖ Any free trade agreement with the United States should be contingent upon the Colombian government holding those investors who have not complied with Afro-Colombians’ right to *consulta previa* accountable for past abuses. This should include material compensation equal to the amount of capital extracted from, or necessary to reverse damages done to, Afro-Colombian territories.
- ❖ If, and only if, the above changes are made over an 18-24 month period may the United States government consider designing an FTA with Colombia.
- ❖ Should that process occur, the governments of the United States and Colombia should set a good example by engaging in *consulta previa* with Afro-Colombians “whenever consideration is being given to legislative or administrative measures which may affect them directly,”³ *beginning with that which will negotiate and implement the proposed FTA itself*.

2. Require the Colombian government to recognize and provide evidence of effective action to curtail discrimination, including systemic discrimination, against Afro-Colombians.

- ❖ Before discussions of an FTA with Colombia resume, its government should:

² Although the delegation did not investigate the extent to which the right to *consulta previa* has been enforced with regard to indigenous communities, these same conditions should obviously apply to them as well.

³ ILO Convention No. 169, Article 6 (1(a)).

- Publicly acknowledge that racism and ethnocentrism have contributed to inequalities in Colombian society, and provide evidence of steps that it has taken to remedy these inequalities;
 - Adopt an integral antidiscrimination legal framework, which includes affirmative action;
 - Enlist competent independent researchers (*including Afro-Colombians themselves*) to produce information concerning the causes of and potential solutions for the disproportionate effects poverty, violence, and political disenfranchisement have had on Afro-Colombians;
 - Immediately begin the process of producing disaggregated data and culturally-appropriate plans of action on Afro-Colombian displacement;
 - Ameliorate the shocking degree to which Afro-Colombians are represented among the forcibly displaced population of the country;
 - Take immediate concrete measures to improve the socio-economic situation of Afro-Colombians in areas such as education, health, and housing. Such measures would include the effective response to and prevention of humanitarian crises facing much of Colombia's impoverished population. One such avoidable crisis was witnessed earlier this year when dozens of children unnecessarily lost their lives to starvation in the department of the Chocó, where 85% of the population is of African descent.⁴ The Colombian government should also make significant progress toward reducing the rate of infant mortality in rural and urban areas predominantly occupied by Afro-Colombians.⁵
- ❖ Once these benchmarks have been accomplished over the coming 18-24 months, any FTA should include mechanisms for verifiable, continued progress toward the eradication of circumstances indicative of systemic discrimination against minority ethnic populations.

3. Means for measuring whether the requirements set forth in these recommendations have been met must be established *in accord with the objectives of, and in consultation with, Afro-Colombian communities themselves.*

⁴ This situation went virtually unnoticed in the U.S. press. For a short, incomplete report, see: <http://news.bbc.co.uk/2/hi/americas/6505201.stm>.

⁵ For example, currently the infant mortality rate in the Pacific coastal region is approximately four times that of the rest of the country. Santiago Arboleda Quiñonez, "Los afrocolombianos: entre la retórica del multiculturalismo y el fuego cruzado del destierro," *Journal of Latin American and Caribbean Anthropology*, Vol. 12, No. 1 (April 2007), 218.