

Working Group of Afro-Descendant Organizations ⁱ

(AFRODES, CNOA, CIMARRON, PCN)

Statement 002

Bogota, D.C., Monday, September 26, 2011

THE WORKING GROUP OF AFRO-DESCENDANT ORGANIZATIONS REJECTS THE NATIONAL GOVERNMENT'S SO-CALLED "CONSULTATION" ON THE VICTIMS' LAW AND OTHER LAWSⁱⁱ THAT DIRECTLY AFFECT THE RIGHTS AND INTERESTS OF THE AFRO-COLOMBIAN POPULATION

The Working Group of Afro-Descendant Organizations makes it known to the President of the Republic of Colombia, Mr. Juan Manuel Santos Calderon, the Constitutional Court, the Public Ministry, and other related institutions and their employees, as well as the international community and Colombian society, that we categorically reject the repeated violation of our fundamental rights as Afro-Colombian peoples. In particular we reject our fundamental right to free, prior and informed consultation and consent.

The Working Group reminds institutions of the Colombian state, especially the National Government and Congress, that:

1. In accordance with International Labor Organization (ILO) Convention 169,ⁱⁱⁱ free, prior and informed consultation and consent is a fundamental right of the Afro-Descendant population. Its effective application is a responsibility of the Colombian state. Free, prior, and informed consultation and consent are mechanisms that protect and preserve the integrity and autonomy of the Afro-Colombian population.^{iv}
2. Consultations must be prior and provide opportune and complete information. This is so that consent can be acquired in an informed manner and under conditions of free participation. Also they must be made on good faith. It is fundamental that the application of the previous consultation and consent process include these characteristics and principles. It is the only way to effectively guarantee diversity, equality, and guaranteed protection of our rights. The consultation must take place with full recognition, respect, and constructive dialogue among the parties. Consultations, in addition to being an instrument of dialogue and articulation, are mechanisms that can play a decisive role in the resolution of conflicts, inclusive development, peace, and the deepening of democracy.
3. In accordance with this mandate, every time that a legislative or administrative measure directly affects us, the State's institutions should consult with the Afro-Colombian, Black, Palanquera, and Raizales communities utilizing the appropriate procedures, particularly through their appropriate institutions and legitimate representatives (ILO 169, Art.6).

4. Similarly, the Colombian Constitutional Court through Order 005 of 2009 establishes protocols that the Colombian government and its institutions should follow in order to guarantee an effective process of free, prior and informed consultation and consent.
5. Also, to guarantee the right to free, prior, and informed consultation with the intention of reaching agreements or the consent of the Afro-Colombian population regarding policies or measures that affect them, the Colombian state and its institutions should establish measures that guarantee the effective participation of Afro-Colombian communities, their legitimate representatives (at all levels) in the adoption of decisions in the institutions responsible for the legislative and administrative measures that are susceptible to affecting them. Thereby, soliciting that the necessary resources are made available for this end, and that the resources are used to develop Afro-Colombian communities' institutions and initiatives (ILO 169, Art. 6 and 7).

In accordance with the aforementioned regulations, the Working Group maintains its opposition to the procedure that the government calls a consultation for the Victims' Law and other laws in the package – the Royalties Law, the reform of the CAR, the Rural Development Law, the Mining Code, The Environmental Law, the Sports' Law, and the Law of Genetic Resources – because they fail to follow the mandate of ILO Convention 169 and Order 005 of 2009.

1. Victims' Law 1448 of June 6, 2011, was signed on June 10 by the President of the Republic in the presence of the Secretary of the United Nations and the international community without respecting the right to previous consultation. The State did not obtain free, prior, and informed consent of Afro-descendant victims prior to its introduction. Afro-Colombians are disproportionately victimized by the internal armed conflict and its violence. This is evidenced by the reality that nearly 1.5 million Afro-Colombians are internally displaced. Decisions and reports by the Constitutional Court, United Nations and the Inter-American Human Rights Court have highlighted this on different occasions. Despite the special and reinforced protection of Afro-Colombian communities mandated by the Constitutional Court, the Congress dismissed its constitutional obligation and domestic and international regulations.
2. This violation of our right to prior, free and informed consultation and consent does not make up for Article 205 of the Victims' Law, whereby the law is approved de facto before it is consulted. Article 205 demonstrates a recurrent tendency of the government (as demonstrated in the implementation of Constitutional Court Order 005 of 2009 and the approval of other laws) to violate this fundamental right and exclude Afro-descendant victims in a deliberate manner.
3. The so-called "consultation" protocol that was implemented by the Colombian government does not comply with the protocol established by the Constitutional Court

or ILO Convention 168. The government has arbitrarily determined to exclusively “consult” with the High Level Consultative Commission. This unilateral and arbitrary decision presents several problems:

- a. The High Level Consultative Commission consists of government and Afro-Colombian representatives. It is led and presided by the government^v as dictated by Decree 3770 of 2008. Nevertheless, it did not exhaust due process in regards to free, prior, and informed consultation and consent. For this reason, a considerable number of organizations and Community Councils do not recognize some of its members as legitimate representatives of their interests, and much less representative of the interests of the victims.
 - b. The High Level Consultative Commission is unable to “consult” the Victims’ Law on behalf of the victims because it does not represent their voice or mandate. It has not exhausted a process of information, education, analysis, and decision-making with the organizations that it represents as is legally required.
 - c. As a result, it violates Afro-Colombian communities’ right to participation, consultation, and consent in the process of formulating measures providing reparations for Afro-Colombian victims.
 - d. For the Working Group, this is a bad-faith interpretation and application of free, prior, and informed consultation and consent with Afro-Colombian communities and victims. It is extremely worrisome that this practice of excluding Afro-descendant victims persists above the law.
4. For the Working Group of Afro-Descendant Organizations, the situation is exacerbated by the fact that the right to previous consultation was not only violated and implemented in bad faith in the development of the decree for the Victims’ Law. This violation has also been institutionalized and perpetuated in the development of other regulatory and administrative mechanisms of vital importance for the rights and integrity of the Afro-Colombian population. This was evidenced in the Royalties Law, the legal reform of the CAR, the Rural Development Law, the Mining Code, The Environmental Law, the Sports’ Law, and the Law of Genetic Resources, among others.

The Working Group of Afro-Colombian Organizations urges the National Government to modify the participation and consultation strategy that it has used until now. It must guarantee the participation of the Working Group, the organizations that it includes, and other Afro-Colombian organizations in the development of the Victims’ Law Decree being created so that it will guarantee Afro-Colombian victims the right to free, prior and informed consultation. This will allow them to reach consensus on this important mechanism for truth, justice, and reparation.

The Working Group urges the Public Ministry, especially the Inspector General of the Nation and the Human Rights Ombudsman, to monitor and accompany the changes required to effectively guarantee the fundamental rights of the Afro-Colombian population, its victims, and the organizations in this process. The international community and Colombian society can play an important role in demanding this process and making it visible.

ⁱ Translation into English by WOLA.

ⁱⁱ The Royalties Law, the legal reform of the CAR, the Rural Development Law, the Mining Code, The Environmental Law, the Sports' Law, and the Law of Genetic Resources.

ⁱⁱⁱ *ILO Convention 169 is part of the Constitution, and therefore the constitutional mandate that orders previous consultation should be interpreted in accord with what is established in the mentioned Convention as dictated by Article 93 of the Constitution, which states that all constitutional rights should be interpreted in accord with human rights treaties ratified by Colombia.* Constitutional Court Sentence 029 2011.

^{iv} ILO 169 (Art. 6 and 7), Political Constitution of Colombia (Art. 7 and 93).

^v This extremely arbitrary resolution of the government is supported in decrees, even though they regulate a right as sensitive as consultation, are not consulted. This is evidenced by the case of Decree 3770 of 2008 (the configuration of the High Level Consultative Commission), and therefore it is incompatible with regulatory protection provided for the Afro-Colombian population by the Constitution, jurisprudence, and ILO 169.