

29 de enero de 2021, Bogotá D.C, Colombia.

**Dear Member of the Expert Mechanism on the Right to Development**

**Ref. Response to the Call for input: Thematic studies of the Expert Mechanism on the Right to Development**

In response to the call of the Expert Mechanism on the Right to Develop and in accordance with the questionnaire specifically addressing: “Racism, Racial Discrimination, and the Right to Development,” Ilex Acción Jurídica, as a civil society organization comprised of Afro-descendant women lawyers who, through socio-legal research, strategic litigation, and communications, fight for racial justice in Colombia, presents relevant information on the above-mentioned topics.

1. *Do you consider racism and racial discrimination nationally and internationally to be obstacles to implementing the right to development in the country concerned? (e.g. does it affect social inclusion, economic equality, and poverty?)*<sup>1</sup>

Yes. The dynamics of racial discrimination and racism have caused populations that have been historically discriminated against without justification, such as Afro-descendant people, to be in situations of inequality and social exclusion that directly impact their possibility of accessing essential goods and services, and, in consequence to guarantee their economic, social, cultural, and political development.

This situation of exclusion to a large extent explains the concentration of the Afro-descendant population in economic poverty, which implies the lack of access to quality education, the lack of political participation, precarious levels of access to health, and excessive exposure to violent contexts that obstruct life projects and the improvement of their conditions.<sup>2</sup> These dynamics are perpetuated because racism forms part of the structure of institutions and governments, which are mainly responsible for the marginalization and concentration of the population in specific areas of each State.

Concrete facts such as those published by the Economic Commission for Latin America in 2019 indicate poverty does not affect distinct Latin American population groups equally. The incidence of extreme poverty is greater in differentiated groups that suffer racial discrimination, such as indigenous people and the Afro-descendant population, which results

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<sup>1</sup> See: <https://www.corteidh.or.cr/tablas/r34025.pdf>

<sup>2</sup> Inter-American Commission on Human Rights (IACHR). The Situation of People of African descent in the Americas. December 5, 2011. Paras. 81-102.

in social inequality according to the specific characteristic of ethno-racial belonging.<sup>3</sup> Additionally, in 2018 the World Bank<sup>4</sup> reported that Afro-descendant people in Latin America are 2.5 times more likely to live in chronic poverty than the white or mestizo population, reaching the conclusion that discrimination plays an important role in social gaps, and, logically, in the right to development. This is in part because governments have failed to promote the recognition of Afro-descendant identities in their policies, generating inequity in redistributive justice and access to opportunities that affect future generations, which leads to systemic discrimination.

An additional phenomenon that hinders the guarantee of the right to development is the dynamic of invisibilization of Latin American States of the specific needs of the Afro-descendant population, which means States fail to recognize or address the demands of these situations, especially those affected by the social and economic gaps imposed on societies. This invisibilization is reflected in the lack of statistical data, the lack of an obligation to capture the ethno-racial affiliation of people, and the implementation of public policies without an ethno-racial approach.

In Colombia in particular, racism has subjected the population to situations of poverty that impede their socioeconomic growth and effective access to political participation. The Constitutional Court of Colombia has established that this phenomenon is present in everyday life because “structural discrimination continues to be immersed in the dominant cultures of the different peoples, communities, and social groups that inhabit Colombia. Classist, sexist, or racist patterns persist in legal, social, and institutional structures, sometimes so intimately linked to everyday practices they simply become invisible. They are structural discriminations that are simply not seen.”<sup>5</sup>

Before proceeding to show the inequalities to which Afro-descendant communities are subjected, it is useful to begin with the current situation, which also forms part of this dynamic of structural racism, which is the statistical invisibilization of the Afro-descendant population based on the results the National Department of Statistics (DANE) presented after the 2018 Population Census. This Census involved an update of the country’s population, after more than a decade without recent figures. However, this update directly impacted Afro-Colombians, as more than a million people were not counted. The DANE concluded that the Black, Afro-descendent, Raizal and Palenquera (NARP) population included 4,311,757 people in the 2018 Population Census, which is a decrease of 31 percent from the population

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<sup>3</sup> CEPAL. (2018). Panorama social de América Latina. Santiago [Latin American Social Panorama]. Retrieved from [https://repositorio.cepal.org/bitstream/handle/11362/44395/11/S1900051\\_es.pdf](https://repositorio.cepal.org/bitstream/handle/11362/44395/11/S1900051_es.pdf)

<sup>4</sup> World Bank. (2018). Afro-descendants in Latin America: Toward a Framework of Inclusion. Washington, DC. Retrieved from <https://openknowledge.worldbank.org/bitstream/handle/10986/30201/129298-7-8-2018-17-30-51-AfrodescendientesenLatinoamerica.pdf?sequence=5&isAllowed=y>

<sup>5</sup> See: <https://www.corteconstitucional.gov.co/relatoria/2012/T-691-12.htm>

recorded in the previous Census. This undercount of the Afro-descendant population is the result of various, predictable errors in the execution of the Census and the lack of awareness of the importance of registering ethnic-racial affiliation.<sup>6</sup>

This violates the right of Afro-descendant people to development because these data are input to assign specific resources to the population, which determines coverage in health, education, and unmet basic needs. They also serve as guides for the formulation of public policies with an ethnic-racial approach.

This is only an indication of how the Afro-descendant population in Colombia has been affected, which is also reflected in the socioeconomic conditions they face, as well be described in detail below. Thirty-seven percent of the population that identifies as Afro lives in poverty, a level of poverty that indicates extreme inequality with the rest of the Colombian population by nearly ten points. This impacts the level of satisfaction of various services and rights. In terms of education, the educational lag of the Afro population is 35 percent in main cities, while in town centers and rural areas the lag is 40.5 percent, and at 36.3 percent at the national level. The situation is the same in health coverage, 11.6 percent of the Afro-Colombian population lacks health coverage. This number is 10.8 percent in main cities and increases to 14.1 percent in town centers and rural areas. Additionally, barriers to accessing health care are also concerning, at the national level 8.9% percent of the Afro-Colombian population face such barriers, which breaks down to 11.2 percent in town centers and in 8.2 percent in municipal capitals.<sup>7</sup>

These inequalities represent the perpetuation of the conditions of poverty of the population, which hinders the guarantee of their right to development. It is very difficult to develop models that ensure a dignified level of life with such marked differences, which is an impact of the structural racism in the country.

*1- How do racism and racial discrimination nationally and internationally affect vulnerable communities in the concerned country?*<sup>8</sup>

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<sup>6</sup> DANE. (2019) Población negra, afrocolombiana, raizal y palenquera. Resultados del censo nacional de población y vivienda 2018 [Black, Afro-Colombian, Raizal, and Palenquera population. Results of the National Population and Housing Census 2018]. Available at: <https://www.dane.gov.co/files/investigaciones/boletines/grupos-etnicos/presentacion-grupos-etnicos-poblacion-NARP-2019.pdf>

<sup>7</sup> DANE. (2020). Encuesta Nacional de Calidad de Vida ECV 2019 [National Survey on Quality of Life ECV 2019]. Available at: [https://www.dane.gov.co/files/investigaciones/condiciones\\_vida/calidad\\_vida/2019/Presentacion\\_ECV\\_2019.pdf](https://www.dane.gov.co/files/investigaciones/condiciones_vida/calidad_vida/2019/Presentacion_ECV_2019.pdf)

<sup>8</sup> Los Andes University (2020) La cara étnica de la pandemia en Colombia [The Ethnic Face of the Pandemic in Colombia]. Available at: <https://repositorio.uniandes.edu.co/bitstream/handle/1992/41164/nota-macroeconomica-24.pdf?sequence=1&isAllowed=y>

Structural racism particularly affects the Afro-descendant population of Colombia because its members are subjected to inequity and marginalization, in particular in areas of the country with a greater concentration of Afro-Colombians. This is reflected in differentiated figures of multi-dimensional poverty, access to education, and health, as well as in the little access to information and communication technologies, in comparison with the rest of the population.

Regarding the effects of racism, in terms of rights, we can mention the right to education, which is one of the main debts the country owes to the Afro-descendant population and is clearly evidenced in comparisons with the white/mestizo population. This is a recurring gap that negatively affects the Afro-Colombian population in terms of access, quality, and availability of education services, especially in higher education, in universities or more specialized levels of study. The limitations created by social and economic conditions clearly impact the possibility of attending an educational institute, and thus have an intergenerational step to improve their living conditions.

A reflection of the above is the 2012 data on the literacy levels of the Afro population, in which a very worrisome situation occurred. The Afro population within the highest age groups has a large gap, almost 10 percentage points, compared to those who do not belong to a racial-ethnic group, and mainly affects Afro women. This trend changes among younger generations, where the gap is reduced; nevertheless, the probability of an Afro-Colombian being illiterate is one and a half times higher than that of a white/mestizo person.<sup>9</sup>

Another situation that determines access to education for the Afro-Colombian population is school absenteeism, which is higher among the Afro-Colombian population, regardless of age or region. This becomes greater as the level of specialization of the educational system increases, especially at the higher education level. The latter is a matter of attention, as it reflects that there is a higher opportunity cost of joining the market at an early age and factors of discrimination in the educational system.<sup>10</sup> In addition, it should also be analyzed that the poor quality of schools and academic performance prevents broad access to university.

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<sup>9</sup> Rodríguez, M., & Mallo, T. (2012). Los afrodescendientes frente a la educación. Panorama regional de América Latina [Afro-descendants and Education. Regional Overview of Latin America]. Madrid: Fundación Carolina. Available at: <https://www.fundacioncarolina.es/wp-content/uploads/2014/08/AI75.pdf>

<sup>10</sup> Urrea, F., & Viáfara, C. (2016). Di seim fu aal, abarika jomainta, pe savogengue sa Igualdad para un buen y mejor vivir: Información y visibilidad estadística de los grupos étnico-raciales en Bogotá [Di seim fu aal, abarika jomainta, pe savogengue sa Equality for Good and Better Living: Information and Statistical Visibility of Ethno-racial groups in Bogota]. Cali: Universidad del Valle. Available at: [http://www.sdp.gov.co/sites/default/files/2016\\_igualdad.pdf](http://www.sdp.gov.co/sites/default/files/2016_igualdad.pdf)

An analysis of Racial Discrimination Watch concludes that for the year 2009,<sup>11</sup> access in conditions of equality to the educational system is an unmet need. This has not changed, if data regarding educational lags for the NARP population are considered, and if one considers the difficult access conditions to the area of greatest representativeness.

The Formal Education Technical Bulletin (EDUC) the DANE published in 2019 shows that the total of those registered in the system with special characteristics, as established by the category of the institution, represents 16.5 percent. Of those, 9.7 percent of men and 9.6 percent of women are from ethnic group. Unfortunately, the Bulletin does not provide more detailed information.<sup>12</sup>

For the guarantee of the right to health, the situation does not improve, the isolation to which the Afro-descendant populations are subjected, especially in the peripheral areas of the country, have been characterized by a weak infrastructure, which does not attend or guarantee the life of the communities. Along with this, there is also other data regarding coverage, the possibilities of affiliating to a health care entity, which attends to the diseases or diagnoses presented and, as a consequence, of receiving a quality service.

The right to health implies having the appropriate services, elements, and people at hand to comprehensively address contingencies and guarantee the highest possible enjoyment of health. However, Afro-descendant populations face many barriers to access services, a situation that has been recognized by the Constitutional Court in 2009 with Order 005, when it recognized inequalities in insurance. The Court has also recognized that the health of the Afro-Colombian population, those displaced, is more vulnerable than others, because the basic conditions to ensure health are not guaranteed. In various decisions, the Court has recognized that precisely because of the discrimination the Afro-descendant population faces, it is subject to special constitutional protection, in which the guarantee of the right to health takes on another dimension in accordance with international commitments to provide adequate and organized services in the exercise of the principle of equality.<sup>13</sup>

However, most territories with concentrations of Afro communities do not have such indispensable tools at their disposal, since specialized health centers are generally located in capital cities, where they must be transferred in the event of a complex emergency.

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<sup>11</sup> Rodriguez, C., Alfonso, T., & Cavelier, I. (2009). Raza y derechos humanos en Colombia Informe sobre discriminación racial y derechos de la población afrocolombiana [Race and Human Rights in Colombia. Report on Racial Discrimination and Rights of the Afro-Colombian Population]. Bogota: Los Andes University. Available at: [https://www.dejusticia.org/wp-content/uploads/2017/04/fi\\_name\\_recurso\\_202.pdf](https://www.dejusticia.org/wp-content/uploads/2017/04/fi_name_recurso_202.pdf)

<sup>12</sup> DANE. (2020) Boletín Técnico Educación Formal (EDUC) 2019 [Former Education Technical Bulletin (EDUC) 2019]. Bogota. Available at: [https://www.dane.gov.co/files/investigaciones/boletines/educacion/bol\\_EDUC\\_19.pdf](https://www.dane.gov.co/files/investigaciones/boletines/educacion/bol_EDUC_19.pdf)

<sup>13</sup> Constitutional Court of Colombia. Judgment T-576 of 2014. (P.M. Luis Ernesto Vargas Silva)

There are several data that show how complicated the health situation is in the population. In the epidemiological profile, the Afro population has a high incidence and prevalence of communicable diseases, which is explained by the fact that it has the highest rates of unsatisfied basic needs (UBN), low quality of life, marginalization, and poverty. Women and children are the most exposed to these deficiencies in meeting their needs, and according to ECLAC figures, the probability of a child dying before the first year of life is 1.6 times higher than that of non-Afro children.<sup>14</sup> These inequalities are also present in maternal mortality rates, which for Afro-descendant women is double the national average.

Health gaps also exist in coverage regarding the affiliation of Afro-descendants. According to figures from the Pan American Health Organization, 21 percent of Afro-Colombians belong to the subsidized regime and 26 percent to the contributory regime, while the percentages for the white/mestizo population are 23 percent to the subsidized regime and 36 percent to the contributory. Affiliations to either regime involves determining scores based on socioeconomic conditions are done online, which means that the lack of connectivity in regions with high Afro-Colombian populations is another barrier to access to health.

This reflects the fact that most of the Afro-descendant population belongs the subsidized health care system or has no coverage at all. This is due to the lack of economic security to contribute to services, which in turn is the result of barriers the State has failed to sufficiently address. This also affects how the population perceives their health, which is the subjective measure that people have based on the dimensions of their quality of life. Thirty-three percent of Afro-Colombians rate their health as “bad,” which is higher than the number for the majority population.<sup>15</sup>

Another important point to consider regarding rights violations of the Afro-descendant population is the lack of access to information and communication technologies (ICT), which, as the SDG recognize, represents, a barrier to development and combating poverty.

The right to digital equality- connecting to the internet to access essential services and rights such as education, health, and justice- is a fundamental tool to guarantee rights. However, 92.6 percent of households headed by NRP individuals have access to electricity (essential to internet access), as compared to 96.3 percent nationally. Additionally, only 26.9 percent of Afro-Colombian households have home internet coverage, while the national figure is 43.4

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<sup>14</sup> Id. at parr. 3.

<sup>15</sup> See: <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/VS/ED/PSP/informe-afros-25042017.pdf>

percent.<sup>16</sup> In municipalities with a majority NARP population, the number of NARP households with internet access drops to 12.9 percent, while in majority white/mestizo municipalities, 37.7 percent of the NARP population has home internet access.<sup>17</sup>

These numbers lend themselves to two partial conclusions: First, municipalities with greater Afro-Colombian presence have precarious levels of internet access, due to State abandonment and insufficient infrastructure, while territories with a majority mestizo population have greater internet access. Second, within majority Afro municipalities, inequalities in internet access disproportionately affect the Afro-descendant population.

State exclusion of the Afro-Colombian population translates into barriers to the right to a dignified quality of life that would allow them to break free from the poverty concentrated in Colombia's peripheral areas, as well as to develop territorially. This abandonment of Afro communities and the violation of their fundamental rights not only impedes the creation of conditions necessary for the enjoyment of human rights, but also creates environments that violate them, in conjunction with the structural discrimination and centralism that characterizes the Colombian government's management.<sup>18</sup>

### **COVID- 19 and the impact on the development of the Afro-descendant population.**

Within the panorama described in the previous section, in its report on the impact of COVID-19 on the Afro-descendant population, the United Nations Population Fund (UNPF) stated the following:

The Afro-descendant population of Latin America and the Caribbean represents about 24% of the total population of the region (130 million Afro-descendants) and, according to their socioeconomic and demographic profile, they face significant

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<sup>16</sup> DANE. (2020). Encuesta Nacional de Calidad de Vida ECV 2019 [National Survey on Quality of Life]. Available at: [https://www.dane.gov.co/files/investigaciones/condiciones\\_vida/calidad\\_vida/2019/Presentacion\\_ECV\\_2019.pdf](https://www.dane.gov.co/files/investigaciones/condiciones_vida/calidad_vida/2019/Presentacion_ECV_2019.pdf)

<sup>17</sup> Id. at parr. 16.

<sup>18</sup> Olaya, A. (2018) Discursos y representaciones racistas hacia la región pacífico y comunidades afrocolombianas [Racist Discourses and Representations of the Pacific Region and Afro-Colombian Communities]. CLACSO. Available at: <https://www.jstor.org/stable/pdf/j.ctvn96gn4.19.pdf?refreqid=excelsior%3A04bc8eb1540d0d41056ec96ff09d864f>



inequalities and equity gaps *that impact their sustainable development* and that of the countries and communities in general.<sup>19</sup> (Italics added).

The pandemic has had disproportionate negative effects on the Afro-descendant population, including the violation of the rights to health, education, work, and the regression of conditions that improved their quality of life. The preexisting inequalities to the pandemic are the main cause of the regression the community is currently facing and will have long-term effects, as stigmatization and discrimination has deepened against the Afro-descendant population concentrated in poverty and in the periphery of Latin American countries,<sup>20</sup> unless States adequately respond to Afro-descendant communities' necessary demands.

There are several points to contextualize the consequences of the discrimination to which the Afro-descendant population is subjected, in Latin America generally and then in Colombia specifically during the pandemic. Inequalities in terms of education, health and work disproportionately affect growth, more than the measures that have been taken have been able to impact society generally. For example, mandatory quarantine and the closure of economic sectors related to social activities forced many people to suspend their employment, in particular those in the tertiary sectors of the economy, of which more than 80 percent are Afro-descendants. This is reflected in the loss of jobs and the economic insecurity of thousands of people who cannot meet their basic needs. An additional aggravating factor is that government aid measures have focused on the formal economic sectors, ignoring the enhanced obligation to protect informal workers, in particular Afro-descendant people. This includes as women who undertake care work or do not have a formal contract, who are thus isolated from labor markets and their personal development.

In terms of effects on education, regarding the SDG, it is worth noting the inequalities between the Afro-descendant population and the majority. Territories with the highest concentration of Afro-descendants have difficulties in terms of electricity, internet access, infrastructure, and accessing computer equipment, which directly affects Afro-descendant youth through an increase in dropout rates. These forms of exclusion interrupt generational growth of enjoying better living conditions than one's parents and grandparents.

This regional panorama and its effects on Afro-descendant communities is reflected in the Colombian case, based on a comparison between Afro-Colombian majority territories and white/mestizo majority areas. First, the conditions of poverty to which the Afro-descendant population is subjected have been prevalent and increased over time, according to data from

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<sup>19</sup> UNFPA. (2020). *Implicaciones del COVID-19 en la población afrodescendiente de América Latina y el Caribe [Implications of COVID-19 on the Afro-descendant Population of Latin America and the Caribbean]*. Available at: <https://lac.unfpa.org/sites/default/files/pub-pdf/2-Covid-Afrodescendientes%20%281%29.pdf>

<sup>20</sup> Id.



the National Statistics Department (DANE) from 1993, 2012, and 2018. Evidence of this is that the highest proportion of people in conditions of misery in 2012 were Afro-Colombian – 31 percent – while for the majority population this number was 18.3 percent. The figures mentioned above support these numbers.<sup>21</sup>

In municipalities where more than 75 percent of the population is Afro-descendant, the health system puts the population at a serious disadvantage, as the capacity of health care institutions is comparatively lower than in other municipalities. For example, in Afro-Colombian majority municipalities, there are 42 beds (cots, surgery beds) and nine rooms per 10,000 residents, while other municipalities have 107 beds and 17 rooms per 10,000 residents. The situation is the same with respect to available medical personnel, as Chocó is the department with the fewest number of professionals in any area of health (nurses, specialists, and others).<sup>22</sup> A study from the Los Andes University reported that intensive care units, which are used to attend to those who become seriously ill from the virus, are located farther away from indigenous and Black communities than in other areas of the country.<sup>23</sup> For example, an individual from an indigenous community must travel an average of 198.53 km to reach an intensive care unit, and an individual from a Black community on the Pacific Coast must travel on average 81.49 km.

The report, “The Ethnic Face of the Pandemic in Colombia” tells us something more illustrative:

For the 75 community councils scattered along the coast of Nariño, which have no care beyond the most basic available at their health posts, the only option to care for a patient with complications is to take them to Pasto, the capital of the southwestern Colombian department.<sup>24</sup>

According to the Colombian National Health Institute, COVID-19 has affected the Afro-descendant population to a greater extent in terms of mortality, with 0.71 percentage points above the percentage of the non-ethnic population. In addition, infected Afro-descendants are in vulnerable socioeconomic conditions: based on information from the Ministry of Health and Protection, 35.55 percent of Afro-descendants were in a low stratum and 20.92 percent in a very low stratum. In recent studies, Viafara and Larrahondo established the

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<sup>21</sup> See: <https://www.dane.gov.co/index.php/estadisticas-por-tema/pobreza-y-condiciones-de-vida/necesidades-basicas-insatisfechas-nbi>

<sup>22</sup> See:

<https://app.powerbi.com/view?r=eyJrIjoiNjc0ZGRmZTEtZmQxMi00Mzg2LWlyNTAtNjRhYWE5YTZhMjVlIiwidCI6ImI2MmYxMjY2LWUzYzctNDhiYi1iZmUwLWUxOTRmZTk3OTk2NiIsImMiOiR9>

<sup>23</sup> Los Andes University (2020) La cara étnica de la pandemia en Colombia [The Ethnic Face of the Pandemic]. Available at: <https://repositorio.uniandes.edu.co/bitstream/handle/1992/41164/nota-macroeconomica-24.pdf?sequence=1&isAllowed=y>

<sup>24</sup> Id.

fatality rate for COVID-19 is 25 percent higher for the Afro-Colombian population than for the white/mestizo population.<sup>25</sup>

Regarding the right to work, the Afro-descendant population has probably faced the worst impacts, as a result of labor instability (in particular in the informal sector, which already lacks protections) due to government measures and the temporary closure of several economic sectors. In 2019, the informal employment rate in Quibdó and Cartagena, with large Afro-descendant populations, was 63 and 57.9 percent, respectively. This means during the pandemic many people faced worsening conditions of vulnerability and mandatory quarantine without a basic livelihood or the conditions to quarantine themselves, the purpose of which was to prevent contagions. This implies the conditions of inequity have increased, as have existing gaps between Afro-descendant territories and the rest of the country.

Inequalities facing the Afro-descendant population are also evident in quality-of-life conditions, especially housing quality, first defense against contagion. At the national level, 33.6 percent of Afro-Colombians do not have access to minimum living and sanitary conditions; in Quibdó that number jumps to 69.7 percent. Moreover, areas with a high density of Afro-Colombians on average face critical overcrowding conditions, in which three or more people sleep together in the same room. Overcrowding makes it impossible to comply with an essential protection measures in the pandemic, social distancing.

Education is also affected in the pandemic. This is mainly because access to education clearly depends on access to internet, which, as discussed above, is considerably lower in Afro-descendant households and territories. This prevents the development of Afro-descendant children and adolescents, as evidenced by pandemic dropout, which reached 3.7 percent in the case of Afro-descendant children.

The situation we have described affects the development of the communities and condemns them to increasing regressions, as they are disconnected and exposed to the social, economic, and political consequences of the pandemic. Although the entire country has been affected, Afro-descendant communities have suffered the most serious gaps and inaction of the State to prevent the widening of gaps between territories. To this end, it is important to note that containment and vaccination plans are essential to reactivate territories and guarantee access to fundamental rights, considering the State's inability to develop differential public policies. Although this strategy is logical, the Colombian government has not yet begun vaccination campaigns or even approved a national plan, and, as evidenced, increased delays cause disproportionate effects on Afro-Colombian communities.

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<sup>25</sup> Larrahondo & Viáfara. 2020. Anotaciones preliminares sobre la Covid-19 y la población afrodescendiente en Colombia [Preliminary notes on Covid-19 and the Afro-descendant population in Colombia]. Available at: [http://www.dcimarron.org/images/D\\_9\\_1/y\\_Carlos.pdf](http://www.dcimarron.org/images/D_9_1/y_Carlos.pdf)

The National Vaccination Plan regulations were developed during December 2020 and January 2021 via Law 2064 of 2020,<sup>26</sup> which declared the immunization strategy and the model decree of the National Vaccination Plan to be of general interest.<sup>27</sup> The plan prioritized populations to receive the vaccine dose, and failed to take into account the high levels of exposure of the Afro-descendant population, and set out the logistics regarding distribution and application protocol, and the overarching principles of this process. However, the Plan provides no route or logistics for vaccinating the Afro-Colombian population, in particular dispersed communities, and those far from urban areas. There is also no clarity on the capacity of territorial entities to execute this process, which is concerning given the fragility of the health network in the Afro-Colombian municipalities. Finally, the Plan does not provide information regarding the vaccination of those without internet access, as the process is done online.

The human rights organization Dejusticia make the following comments to the Vaccination Plan, and the failure to consider ethnic communities:

We consider both groups within collective territories, Black communities, reservations, and indigenous settlements, should be prioritized in stage 3 of the vaccination plan, due to the housing conditions that facilitate contagion and acute and chronic illnesses of the virus, the distance to adequate and timely health care in case of need, and the ease of vaccination in shelters and community centers within these territories. Also, several of these collective territories have been plagued by violence and environmental threats over the past year. This reduces compliance with preventive isolation and social distancing measures. It is likely that violent attacks on these populations or exposure to the risk of natural threats will not diminish in the near future. Therefore, it is necessary to prioritize the vaccination of ethnic communities in collective territories under these special circumstances.<sup>28</sup>

This failure exposes Afro-Colombian populations to further insecurity. At this point, when they have been subject to restrictions on education, work, and confinement in untenable

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<sup>26</sup> Congress of Colombia. (December 9, 2020). Law whereby the strategy for the immunization of the Colombian population against COVID-19 and the fight against any pandemic is declared of general interest and other provisions are enacted. [Law 2064 of 2020] DO: 51472

<sup>27</sup> Ministry of Health and Social Protection. (2021) Draft Decree defining the Vaccination Plan against COVID-19 and issuing other provisions. Available at: <https://scare.org.co/wp-content/uploads/Se-definir-el-Plan-Nacional-de-Vacunacion%CC%81n-contra-el-COVID-%E2%80%9319.pdf>

<sup>28</sup> : Comentarios al proyecto de decreto por el cual se define el Plan Nacional de Vacunación contra el COVID –19 y se dictan otras disposiciones [Comments on the Draft Decree defining the National Vaccination Plan against COVID-19 and issuing other provisions]. Available at <https://www.dejusticia.org/wp-content/uploads/2021/01/Comentarios-Decreto-Vacunacion%CC%81n-Dejusticia.pdf>

conditions to avoid contagion, vaccination is the only possible measure to even partially reactivate Afro-descendant territories and economic activities to subsist and develop.

2- *How is the concerned country addressing racism nationally and internationally in the context of operationalizing the Right to Development for enhanced implementation of SDGs? (e.g. through laws, policies and other pragmatic interventions)"*

Colombia does not have a direct approach to combat discrimination to implement the right to development in the framework of the SDG, but only several slowly developed policies and laws. In general, formal terms, the State has sought to combat racism through the symbolic and ineffective application of an ethnic-racial differential approach in its public policies, defined by the Constitutional Court as:

the right of Afro-Colombian communities to be considered as 'peoples', considering the social, cultural, and economic conditions that distinguish them from other sectors of the national community, in addition to the fact that they are governed by their customs and traditions and have their own legislation.

However, prior to this pronouncement, there was precedent for addressing the development of Afro-descendant communities based on inclusion and recognition of their differences, to close the gaps. On this topic, Law 70 of 1993 is of particular importance. The central premise of the law gives Afro-Colombians the right to collectively own and occupy their ancestral lands, but also recognizes their rights to planning and promoting development. It states: "The State must guarantee communities the right to develop economically and socially, taking into account the right to an autonomous culture." The Constitutional Court gives broader meaning to the application of this norm and has determined protection will not be limited to lands adjudicated to Black communities, but also to territories where migrations due to the armed conflict and extreme inequality have led the Afro population to settle.

Along with this law, public policy documents called CONPES were structured, which sought to guarantee the right to development by addressing the inequalities to which the Afro-descendant population is subjected. CONPES 3660 of 2010 sought to implement solutions to generate concrete options for sustainable development that would reduce the gaps between the living conditions of the Afro-Colombian population and the rest of the country. CONPES 3310 of 2004 sought this same goal through identifying and increasing the Afro-descendant population's access to State programs to improve their living conditions.

Only since decree 1372 of 2018, has the regulation of the Space for Prior Consultation of legislative and administrative measures of a general nature, susceptible to directly affect Afro-Colombian communities been implemented. This represents a space for dialogue that facilitates the partial reparation of the processes of exclusion, by connecting communities with the national government, and responds to the institutional obligation to disseminate and discuss drafts of regulatory acts, laws, or administrative acts.

However, prior consultation has only served as a mechanism to give viability to projects or decisions that involve Black populations, as the community's position is not decisive in such decisions. Likewise, decree 1320 of 1998 has been criticized for failing to respect communities' timeframes and restricts prior consultation to duly titled territories, which ignores the great complications and delays of these processes.<sup>29</sup> This means Colombia lacks a norm that adequately regulates the prior consultation process, which leads to insufficient information, weak and partial institutional support, and a prior consultation limited to an installation meeting and the notarization of the consultation.<sup>30</sup>

In addition, the interests of legal economic projects - often associated with inefficient prior consultation processes – as well as illegal ones, the impact of the armed conflict in Afro-Colombian territories, and the centralized decision-making processes in Colombia have prevented Community Councils and other forms of autonomous government from carrying out their own development or ethno-development projects. Such projects would materialize community aspirations to live well; improve the quality of community life, carry out agricultural, fishing, and mining projects; achieve higher levels of food sovereignty, and exercise the right to territory in general.

Specifically, the National Development Plan (Law 1955 of 2019),<sup>31</sup> integrates the SDG with three specific objectives aimed at the Afro-Colombian, Rrom and indigenous population: (1) increase early childhood comprehensive care; (2) improve access to and health outcomes, incorporating an intercultural approach, and (3) reduce the gap in access to water and basic sanitation services. This is to be achieved through strengthening productive projects, food security, and economic sustainability. Likewise, the Plan foresees developing a planning model that responds to comprehensive territorial attention, with the objective of meeting the 2030 agenda goals.

In the development of this Plan, CONPES 3918 has also been structured, which has three key points focused on the implementation of the SDGs: (1) the reduction of the gaps of ethnic

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<sup>29</sup> <https://www.urosario.edu.co/jurisprudencia/catedra-viva-intercultural/Documentos/CONSULTAPREVIA/>

<sup>30</sup> [https://scielo.conicyt.cl/scielo.php?script=sci\\_arttext&pid=S0718-52002016000200005](https://scielo.conicyt.cl/scielo.php?script=sci_arttext&pid=S0718-52002016000200005)

<sup>31</sup> Congress of Colombia. (May 25, 2019) "Whereby the national development plan 2018-2022 "pact for Colombia, pact for equity" is issued." Law 1955 of 2019. DO:

groups to achieve equality of opportunity in relation to the rest of the population through the elimination of discriminatory regulations, and (2) to promote and apply laws and policies that respect the right to equality in sustainable development.<sup>32</sup> To this end, the government has structured a concept from the aforementioned Law 70: the ethno-development plan, which includes instruments that define the mission of development to preserve cultural integrity and achieve a better, dignified life from the pillars of sustainable development and social welfare.

However, for all these measures, the conditions of implementation and monitoring do not yet show impacts, as the data reflects. Indeed, one of the main criticisms of current and previous governments is the lack of effectiveness of these measures, due to constant marginalization, the persistence of poverty, and the overrepresentation of Afro populations in the most vulnerable areas of the country.

An example of this is the meager implementation of the ethnic chapter of the Peace Agreement signed with the FARC-EP in 2016, which according to its structure was to be an essential piece for the development of ethnic communities, especially Afro-descendants and indigenous communities. To be clear about their relevance, the agreed points should be considered. The main component is integral rural development with a territorial and ethnic approach, which proposed development programs with a territorial approach (PDET) that seek to implement life plans and the perspective of ethno-development and territorial planning. This was to be a key point for territories affected by the conflict and state neglect, to respond to needs that had been deprived for so long and to would work simultaneously to organize policies based on the guarantee of education, health, and economic progress of their populations. In addition, as part of the solution to the problem of illicit drugs, which has plagued Afro-Colombian populations, caused violence, affected their livelihood, and paralyzed development through co-option of land by illegal armed groups for illicit crops. The establishment of Territorial Action Plans sought to promote the development of productive projects, social infrastructure works (schools, hospitals, tertiary roads), environmental sustainability, and property recovery and formalization plans.<sup>33</sup>

Notwithstanding the agreements, until August 2020, according to a report by the Colombian Ombudsman's Office, communities have been disarticulated from the supposed participatory and territorial approach of the PDETs, and there is no clear route for structuring productive projects.<sup>34</sup> With the pandemic, there is a risk of defunding the projects, which would further

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<sup>32</sup> National Council for Economic and Social Policy. (2018) Strategy for the Implementation of the Sustainable Development Goals (SDG) in Colombia. CONPES 3918.

<sup>33</sup> CODHES. (2018) Cartilla étnica del acuerdo de paz: El camino hacia la implementación efectiva del capítulo étnico. Available at: [https://issuu.com/codhes/docs/cartilla\\_etnica\\_2](https://issuu.com/codhes/docs/cartilla_etnica_2)

<sup>34</sup> National Ombudsman. (2020) Ombudsman Report: Post-Agreement in Ethnic Territories. Available at: <https://www.defensoria.gov.co/es/nube/noticias/9482/Defensor%C3%ADa-presenta-informe-que-busca->



expose Afro-descendant populations, as these plans form the basis for the protection of peoples in emergencies. In addition, with respect to drug policy, there is no differential ethnic route that would allow for a substitution program from the perspective of collective subjects. This, in addition to a policy that tends to resume forced eradication measures and the use of glyphosate spraying, condemns communities to severe social, economic, and environmental impacts, contrary to all the SDGs to which the State has committed itself.

*3- Does the concerned country have an anti-racism legal or policy framework? If so, which actors are actively engaged in the implementation?<sup>35</sup>*

The Colombian State has a framework of actions against racism that at first glance seems broad, but in reality, does not have the desired effects, as inequalities and gaps are still prevalent. The Anti-Discrimination Law (Law 1482 of 2011) is an important part of this framework, and aims to guarantee the rights of persons, group of persons, community, or people, who are violated through racist or discriminatory acts. However, this law is punitive in logic, does not address the root of the structural dynamics of racism, and been ineffective. For example, an investigation by Ilex Acción Jurídica on police violence against Afro-descendants tried to determine the characteristics of individuals involved in acts of racism, discrimination, or harassment, and although data is provided, there is no detailed record of the victim population, nor of the victimizers. This failure prevents an analysis of actions against a given population, which in turn impedes the determination of problems and their true impact, in addition to promoting the underreporting of complaints.<sup>36</sup> In addition to the lack of data, public officials generally lack knowledge regarding the application of this law, which results in a practically useless tool for combating discrimination.

Article 15 of the Unified Disciplinary Code (Law 734 of 2002) requires authorities provide equal treatment, and prohibits differentiated treatment based on race. Similarly, in the field of education, Law 1620 of 2013 establishes diversity as a principle of the school coexistence system, and excludes any discriminatory practice based on ethnicity. Additionally, at the national level, the "Hour against Racism" campaign involves social mobilization accompanied by symbolic gestures to take a stance against discriminatory and intolerant acts.

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[contribuir-con-el-avance-en-la-implementaci%C3%B3n-de-los-acuerdos-de-paz-derechos-%C3%A9tnicos-acuerdo-de-paz-Defensor%C3%ADa.htm](#)

<sup>35</sup> CEPAL. (2016) Políticas públicas para afrodescendientes Marco institucional en el Brasil, Colombia, el Ecuador y el Perú [Public Policies for Afro-descendants. Institutional Framework in Brazil, Colombia, Ecuador, and Peru]. Available at: [https://repositorio.cepal.org/bitstream/handle/11362/40854/1/S1601272\\_es.pdf](https://repositorio.cepal.org/bitstream/handle/11362/40854/1/S1601272_es.pdf)

<sup>36</sup> Ilex Acción Jurídica. (2020) Abuso policial y discriminación racial hacia afrodescendientes: estudio de caso en las localidades de Usme y Kennedy de Bogotá, D.C. [Police Abuse and Racial Discrimination Against Afro-Descendants: A Case Study in the Usme and Kennedy Boroughs in Bogota, D.C.] Available at: <https://www.ilexaccionjuridica.org/wp-content/uploads/2020/06/Abuso-Policial-Final-web.pdf>



There are several authorities responsible for guiding the application of laws and the proscription of racist practices. The Ministry of the Interior is in charge of guaranteeing the rights of Afro-Colombian communities and their relationship with the State, based on protection and monitoring management. This Ministry has a Directorate for Black, Afro-Colombian, Raizal and Palenquero communities, and an Observatory against Discrimination and Racism (Resolution 949 of 2017), which receives online complaints of discrimination and follows up and articulates with Afro-descendant social and academic organizations. However, this entity does not undertake the constant investigative activity it should. The Observatory has only published two reports on its public portal and one of them is from 2012. Moreover, it has no activity sanctioning cases of discrimination or undertaking follow-up. As such, the Observatory is an inoperative entity that does not meet its own regulations.

In addition, within the structure there is also a Technical Subcommittee on the differential approach, which is responsible for designing and implementing policies for prevention, assistance, and reparation to victims of discrimination. However, ECLAC stated in 2017, this entity has not functioned as actively as was expected at its creation.<sup>37</sup> There is also the Office of the Attorney General Delegate for Prevention in Human Rights and Ethnic Affairs (Decree 262 of 2000), which has preventive and vigilance functions to monitor and control government agencies that may affect the rights of Afro-descendant communities.

The Colombian State's laws and policies reflect a deficient regulatory framework and, more concerningly, the absence of unified public policies to address racial discrimination. We do not ignore the application of the racial-ethnic differential approach in policies, but this does not bring about major changes to racist practices, and much less is it reflected in the management of entities responsible for addressing these issues. In part, this is because there is no updated information to establish an overview of discrimination cases or successful practices at the national level that are guidelines for best practices.

*4- Are there any targets or indicators for assessing/measuring the effectiveness of actors responsible for implementing national and international anti-racism laws/policies/programs?*

There is no public information on indicators that measure the effectiveness of the actors responsible for applying policies and legislation to combat discrimination.

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<sup>37</sup> Id. parr. 42.