



经济及社会理事会

Distr.
GENERAL

E/CN.4/2004/18/Add.3
24 February 2004

CHINESE
Original: FRENCH/SPANISH

人权委员会
第六十届会议
临时议程项目 6

种族主义、种族歧视、仇外心理和所有形式的歧视

当代形式的种族主义、种族歧视、仇外心理
和相关的不容忍现象问题特别报告员
杜杜·迪埃提交的报告

增 编

对哥伦比亚的访问 * **

* 本访问报告的内容提要以所有正式语文分发。报告本身载于内容提要的附件，以英文、西班牙文和法文分发。

** 本文件迟交是为了列入最新资料。

GE. 04-11139 (C) 170304 180304

内 容 提 要

应哥伦比亚政府的邀请，当代形式的种族主义、种族歧视、仇外心理和相关的不容忍现象问题特别报告员执行其任务于 2003 年 9 月 27 日至 10 月 11 日访问了哥伦比亚。通过访问，特别报告员得以评价落实旨在改善非洲裔哥伦比亚人和土著人民状况的各种政策和措施方面的进展情况，特别是在前任特别报告员德莱莱·阿汉汉佐 1996 年对该国的访问之后(见 E/CN.4/1997/71/Add.1，第 66-68 段)。特别报告员还考察了罗姆人的情况，他们显然未列入按种族分列的哥伦比亚人口数据，罗姆人很少得到人权捍卫者的重视他们自认是百年歧视的受害者。尽管如此，这次访问的主要目的是在哥伦比亚暴力政治再度复发的情况下，着手全面分析这些社区的情况。

特别报告员认识到，自 1991 年以来，哥伦比亚宪法、相关法律和机构均承认并保护土著多样性和文化，保障人权并为民主奠定了基础。但是，特别报告员同样注意到，由于哥伦比亚所有各行为者所为暴力事件的持续甚至升级，建立基于尊重人权和法治的社会的工作受到了深刻和严重的影响。

政治和军事暴力，及其必然结果，所有各方优先考虑军事解决办法，以及尊重人权问题被边缘化，一贯地侵犯人民的基本权利的情形极为严重，使得这些社区的情况更加不确定，并陷入经济和社会困境以及受到歧视、尤其是种族和民族歧视。土著人口和非洲裔哥伦比亚人社区在经济和战略地位十分重要的地区以及冲突地区的大量存在使他们更容易受到这种暴力的伤害。据政府估计，流离失所者的人数在 89 万至 300 万之间，其中 3.75% 为土著人口，而土著人民仅占总人口的 2%。非洲裔哥伦比亚人则占流离失所者的 17%。冲突对这些人口的灾难性影响是在文化和社会范围内出现的，其特征是对他们的种族和民主歧视的历史遗留的心态。哥伦比亚武装冲突对种族和族裔造成的影响是一个严峻的现实。因此，特别报告员尤其围绕下列问题提出其建议：政治解决办法和人权、反对种族主义和歧视的国家方案、流离失所者的情况、反对歧视的智力战略、以及 San Andrés 岛问题。

Annex

**REPORT BY MR. DOUDOU DIÈNE, SPECIAL RAPPORTEUR ON
CONTEMPORARY FORMS OF RACISM, RACIAL
DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE
ON HIS MISSION TO COLOMBIA**

(27 September-11 October 2003)

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Introduction

A. Purpose and conduct of the mission

1. At the invitation of the Colombian Government, and in accordance with his mandate, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited Colombia from 27 September to 11 October 2003.
2. The Special Rapporteur was able to visit 4 of the country's 32 departments, as well as the capital. He travelled to Bogotá; to Cartagena (Bolívar), a popular tourist destination on the Caribbean coast, where the shantytowns of displaced populations are a blot on the landscape; to San Andrés island, where the indigenous people, known as Raizales, informed him of their "double marginalization": demographic marginalization as a result of large-scale migration of Spanish-speaking Colombians from the mainland, and economic and social marginalization, owing to their low participation in the economic and touristic development of the island; to Cali (Valle del Cauca), a city of refuge for a large number of displaced persons from the Pacific zone; and to Quibdó (Chocó), where the abandoned, predominantly Afro-Colombian, population is suffering the tragic consequences of political and military violence between the government army, paramilitary forces and guerrillas.
3. In Bogotá, the Special Rapporteur met with the Vice-President of Colombia, Mr. Francisco Santos Calderón, the Vice-Minister of the Interior, Mr. Juan Carlos Vives Menotti, the Minister for Foreign Affairs, Ms. Carolina Barco Isaacson, the Minister of Social Protection, Mr. Diego Palacio Betancourt, and with the Ombudsman, Mr. Volmar Antonio Pérez. In Cartagena, he met with the Mayor, Mr. Carlos Díaz Redondo, and visited two communities for displaced persons, Pablo VI Segundo and El Posón. In San Andrés, he met with the Governor, Ms. Susanie Davis Bryan, and her team and with the Special Representative of the President of the Republic for the islands of San Andrés and Providencia, Mr. Juan Guillermo Angel. In Cali, he met with the Governor of the department of Valle del Cauca, Mr. Germán Villegas Villegas, the Mayor of Cali, Mr. Jhon Maro Rodríguez, and the candidate for mayor – who is blind – Mr. Apolinar Salcedo. In Quibdó, the Special Rapporteur met mainly with representatives of the Afro-Colombian and indigenous communities and visited their ramshackle dwellings, and with representatives of the Catholic Church who are providing assistance to many displaced persons.
4. At all stages, the Special Rapporteur met with representatives of civil society, particularly members of Afro-Colombian and indigenous communities. In Bogotá, he held very productive working meetings with the Roma community and also visited the Roma district.
5. The Special Rapporteur wishes to thank the Government of Colombia for its cooperation and the efforts that it made to ensure the smooth conduct of his mission. He also expresses his gratitude to the representatives of human rights institutions and thanks all the representatives of civil society who, through their testimonies and their information, enabled him to gain a better understanding of the situation in Colombia. He is particularly grateful to the Colombian Commission of Jurists, which coordinated all of his meetings with non-governmental organizations.

B. Ethno-demographic data

6. In 2002, the population of Colombia was estimated at 43,775,839.¹ Afro-Colombians (including the Raizales of San Andrés and Providencia) account for 26.83 per cent of the population, or 11,745,403 persons; indigenous peoples comprise approximately 2 per cent of the population, or 875,516 people. The overwhelming majority of Afro-Colombians live along the Pacific coast in the departments of Chocó (85 per cent), Valle (60 per cent), Cauca (39 per cent) and Nariño (17 per cent); they also live in large cities along the Atlantic coast: Barranquilla (48 per cent), Cartagena (60 per cent) and in the capital, Bogotá, where they are estimated to number more than 1 million. Divided into 84 groups speaking 64 languages, the indigenous peoples live mostly in rural areas, particularly in Amazonia, in the departments of Magdalena, César and Guajira (Sierra Nevada de Santa Marta), Cauca and Chocó. The Roma, or Gypsies, who are generally not included in statistics, told the Special Rapporteur that there are some 8,000 Roma, a large part of which lives a settled existence in such large cities as Bogotá, Cali and Medellín.

I. EVALUATION OF THE GOVERNMENT'S EFFORTS FOLLOWING THE SPECIAL RAPPORTEUR'S VISIT IN 1996

A. Constitutional, political and legislative framework of efforts to combat racial discrimination

7. The new Government pledged to respect Colombia's international human rights commitments and cooperates to this end with the Office of the United Nations High Commissioner for Human Rights in Bogotá. It also extended a standing invitation to the Thematic Special Procedures in 2003 (statement of the Vice-President of Colombia at the fifty-ninth session of the Commission on Human Rights). Colombia has several national human rights protection mechanisms, including the Ombudsman and the services of the General Procurador. Colombia is a party to the principal international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination. However, Colombia has not recognized the competence of the Committee on the Elimination of Racial Discrimination to examine individual complaints under article 14 of the Convention. Moreover, in spite of the preceding Special Rapporteur's recommendation following his visit in 1996 (E/CN.4/1997/71/Add.1, para. 68), Colombia has not yet adopted a general act on racism and racial discrimination.

8. It should be recalled that the 1991 Constitution recognizes Colombia's ethnic and cultural diversity and is the basis for government action against all forms of discrimination. Thus, article 13 of the Constitution provides that all Colombian men and women are equal before the law and are entitled to equal protection and treatment by the authorities. This provision prohibits discrimination based on race, national or family origin, language or religion. It also expressly stipulates that the State "shall promote the conditions necessary in order that equality may be real and effective, and shall adopt measures in favour of groups which are discriminated against or marginalized".

9. Based on this constitutional framework, legislation and regulations have been adopted to ensure respect for traditions and to improve the economic development of the Afro-Colombian and indigenous communities, which are recognized as distinct collective subjects in Colombia.

10. Act No. 70, which recognizes the right of the Black communities to collective ownership of the uncultivated land of the regions that they inhabit, was adopted in 1993. The most significant features of the Act are:

- (a) The right to collective ownership for the communities that have been occupying uncultivated land in rural areas adjoining the rivers of the Pacific basin;
- (b) Rights over the resources of the subsoil;
- (c) The right to an education geared to the needs and cultural aspirations of these communities (ethnic education);
- (d) Participation by the Black communities in the fundamental bodies for defining social policies, such as the territorial planning councils (*consejos territoriales de planeación*) and the executive boards of the autonomous regional assemblies (*consejos directivos de las corporaciones autónomas regionales*).

11. With regard to the indigenous populations, it is important to note at the outset that their assertion of identity and aspirations to autonomy led in the colonial era to the delimitation of territories enjoying a degree of autonomy, the *resguardos*, which were under the authority of Amerindian chiefs, the *cabildos*. These protected areas over which the indigenous communities have inalienable collective ownership rights were maintained and strengthened by Act No. 89 of 1890. Subsequent laws would be based on those acquired rights and new *resguardos* would continue to be established.

12. Thus, in accordance with the 1991 Constitution, the indigenous communities acquired the right to govern themselves according to their traditions and customs. Article 330 of the Constitution provides that:

“In accordance with the Constitution and the laws, the indigenous territories shall be governed by councils formed and regulated according to the customs of their communities and shall exercise the following functions:

“(a) Supervise the application of the legal regulations concerning the use of land and settlement of their territories;

“(b) Design the policies, plans and programmes of economic and social development in their territory, in accordance with the National Development Plan;

“(c) Promote public investments in their territories and supervise their proper implementation;

“(d) Collect revenue and distribute funds;

“(e) Supervise the conservation of natural resources;

“(f) Coordinate the programmes and projects executed by the various communities in their territory;

“(g) Cooperate in maintaining public order within their territory in accordance with the instructions and decisions of the national Government;

“(h) Represent the territories before the national Government and the other entities within which they are integrated; and

“(i) Other functions stipulated by the Constitution and the law.”

13. The same article provides that:

“Natural resources in the indigenous territories shall be developed without harm to the cultural, social and economic integrity of the indigenous communities. The Government shall encourage participation by representatives of the communities concerned in decisions adopted in relation to that development.”

14. Article 246 of the Constitution confers jurisdiction on the indigenous communities, and article 171 provides for the introduction of a special constituency for the election of two senators for the indigenous communities who must have held positions of traditional authority in their respective communities.

15. In order to follow up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (the Durban Conference), on 21 March 2003 the Government established an inter-ministerial working group made up of representatives of the United Nations, the World Bank, the Inter-American Development Bank and the Organization of American States with a view to drawing up a national plan to implement the Durban Programme of Action. The Working Group has already defined a thematic framework for following up the Durban Conference and is continuing its consultations with representatives of the populations concerned.

B. Measures in support of the Afro-Colombian and Raizal communities

16. Following the adoption of Act No. 70, a national development plan in support of the Afro-Colombian populations for the period 1998-2002 was drawn up in cooperation with the populations concerned. This well-crafted plan provided for the allocation of some 1.6 billion pesos to improve the living environment of Afro-Colombian populations by providing public amenities and basic social services, improving education and strengthening the organization and participation of Afro-Colombian communities, developing road and port infrastructures and carrying out job-creating economic projects. Since the necessary resources were not allocated, the plan remained largely unimplemented.

17. The new Government headed by President Uribe opted for a reformulation of the policy in support of Afro-Colombians by including it in an overall policy in favour of ethnic groups. Thus, the Directorate of Black Community Affairs that had previously been responsible for developing and implementing programmes in support of those communities was abolished and its responsibilities were transferred to the new Office of Ethnic Affairs within the Ministry of the Interior. A presidential adviser now coordinates the formulation of ethnic policies. The President of Colombia has also appointed a high commissioner for the islands of San Andrés and Providencia.

18. The Government informed the Special Rapporteur of its recent initiatives to reformulate its policy in support of Afro-Colombians. The Office of Ethnic Affairs has been promoting a plan of action that identifies specific measures for meeting the needs of these communities, mainly by strengthening their organizational base and raising the awareness of other State bodies of their special and differential treatment. The plan seeks to give organizations access to opportunities offered by the State, and involves local bodies in the achievement of this objective.

19. Within the framework of the National Development Plan for the period 2002-2006, the Office of Ethnic Affairs supported the holding of two Afro-Colombian conferences organized by grass-roots organizations of the Black communities as part of a plan to strengthen those communities. The conferences were held in Bogotá in November 2002.

20. The Office also supported the holding of the first Conference on the Strengthening of Afro-Colombian Institutions, which was held in Cartagena in July and August 2003. The Conference, which was promoted by the Association of Pacific Coast Mayors, focused on the following topics: the human rights situation, the social and economic development of the Afro-Colombian population and the proposal on the strengthening of Afro-Colombian organizations. The Conference involved the broad participation of members of the Afro-Colombian Social Movement, local and national authorities, including the President of Colombia himself, who attended the closing ceremony, and prominent international delegates.

21. The commitments assumed by the President of Colombia include the decision to adopt a document of the Economic and Social Policy Council (CONPES) for the Afro-Colombian population, and to hold a communal council (a forum for open dialogue between the head of State and the community) next year. In order to further the development of CONPES, a series of actions are being taken to identify specific and time-limited programmes. In addition, two essential elements for sustaining its development are involved:

- (a) Formulation of a system of information on the Afro-Colombian population;
- (b) International management for the development of proposed programmes.

22. The Government indicated that the basic needs to be covered by the programmes are defined in terms of unsatisfied basic needs, namely, health, education, housing and generation of income, and as strategic interests that involve the following basic areas: protection of human rights, progress in developing regulations pursuant to Act No. 70 of 1993, completion of the process of granting collective land titles, strengthening of institutions and organizations and, lastly, strengthening of cultural identity.

23. Other actions proposed by the Government include:

- (a) Under an inter-institutional support agreement between the World Bank, the National Department of Statistics and the National Planning Department, the Office of Ethnic Affairs is taking steps to include the ethnic variable in the next national census; there are plans to hold two workshops, the first with Brazilian and Afro-Colombian experts on the topics of self-determination and statistics, and the second with the participation of Afro-Colombian organizations;

(b) In addition, in order to promote the first action, draft regulations of the Mining Code were prepared jointly with the Ministry of Mines and Energy; the Code develops the key elements for regulating the use of land and protecting natural resources and the environment, and for planning and promoting economic and social development;

(c) As a basic aspect of Act No. 812² on the strengthening of ethnic groups, support is being given to the drafting of a long-term comprehensive development plan that takes account of ethnic and cultural particularities;

(d) A strategy is being developed to strengthen local processes on the basis of CONPES document No. 3238.³ The implementation of this document should lead to better management and greater recognition of ethnic groups by territorial bodies. This action would create a favourable atmosphere for including the ethnic variable in local development plans, programmes and projects, and for decentralizing national resources;

(e) In addition, with the support of the World Bank, an exploratory document on displaced Afro-Colombian women is being drafted. The aim of this action is to allow the Government to gain a better understanding of and become more involved in the situation and current policies dealing with gender and forced displacement so that it can support the Council for the Equality of Women in addressing the special situation of displaced Afro-Colombian women;

(f) In order to implement CONPES document No. 3180,⁴ the National Planning Department established an inter-institutional team with a view to redirecting actions and investments as a means of making reparations for the Bojayá massacre, which occurred in May 2002.⁵ The team will be responsible for drafting the programme and will support the internal resource management of each entity responsible for the achievement of an objective.

24. One area where the Colombian Government has been effective is the distribution of collective land titles to communities living in the Pacific basin, in accordance with Act No. 70. Thanks to the efforts of the Colombian Agrarian Reform Institute (INCORA), which is now the Colombian Rural Development Institute (INCODER), between 1996 and 2003 4,611,248 of the 5,600,000 hectares of land provided for in the land distribution plan were distributed to 1,943 communities, corresponding to 53,235 families and 267,826 persons. In order to complete the programme, 988,752 hectares remain to be distributed. The programme did not deal exclusively with land distribution; it also provided a technical framework and financial support for land development or the use of watercourses.

25. However, some representatives of Afro-Colombian communities have expressed the fear that the holders of land rights cannot really exercise those rights in view of incursions by guerrilla and paramilitary forces. Many families have had to flee the violence and aggression perpetrated by these armed groups and to abandon their land. For example, after massacring 150 people from the community on the Naya river, paramilitary troops attacked the community of Palenque de Desparramado on the Yurumanguí river in the department of Valle del Cauca; on 23 May 2000, the community had obtained a collective title to 54,000 hectares. Seven persons were killed and 1,450 members of this community were forced to flee for their lives to the town of Buenaventura. Some consider the paramilitaries to be the instrument of powerful economic and financial interests that would like to exploit the abundant natural resources in the

Pacific basin but are hampered by the collective land titles. However, the Colombian Rural Development Institute assured the Special Rapporteur that the land titles that have been granted are inalienable.

C. Measures in support of indigenous peoples

26. The Government also informed the Special Rapporteur of the measures that it is taking in support of indigenous peoples. The Government stated that it was making progress in strengthening the ability of institutions to meet the needs of indigenous peoples. For example, budget allocations to improve the health of indigenous peoples and the budget allocation for the indigenous territories designated as *resguardos* have been increased.

27. Act No. 691 of 2001 guarantees indigenous peoples' right of access to health services and their participation in them, in decent and appropriate conditions, observing due respect for and protecting Colombia's ethnic and cultural diversity. The regulations governing social security provide that persons without resources shall be protected by a subsidized system. To date, 497,000 indigenous people have been covered by this system, which costs 90,000 million pesos a year, or nearly US\$ 31 million. Approximately 205,000 indigenous people are affiliated with enterprises created by their own communities, which administer some US\$ 13 million a year.

28. The indigenous *resguardos* have the right to a share of the resources that the State transfers to subnational territorial entities. These resources must be invested, under the projects and initiatives of the same indigenous communities, in education, health and basic sanitation, housing and rural development. Between 1994 and 2002, the total amount of resources was 319,809 million pesos, or US\$ 109.9 million. This year, the *resguardos* will receive 61,878 million pesos, or US\$ 21 million.

29. The Government is preparing to establish the first indigenous territorial entities, which will be a significant step towards the development of autonomy and independent development since, in addition to being governed by their own authorities, they will be able to receive directly the resources allocated to them by the State, establish their own taxes and administer the services required by their inhabitants, in accordance with their development plans.

30. Moreover, the Government informed the Special Rapporteur that it intended to reactivate the Commission on the Human Rights of Indigenous Peoples, which would be responsible for drafting a concrete plan of action that can be implemented together with the indigenous communities. Last year, the Commission was not able to meet owing to difficulties in reaching agreement on its working methods.

31. In order to begin prompt measures to guarantee the protection of the indigenous peoples, while the necessary consensus for the drafting of the aforementioned plan of action is being reached, the Office of Ethnic Affairs has been preparing a strategy for the protection of the human rights of ethnic groups in order to take full account of the needs of those groups; the strategy will be drafted with the participation of indigenous organizations, authorities and peoples in the venues legally designated for this purpose: the National Commission on the Human Rights of Indigenous Peoples and the High-level Advisory Commission for the Black Communities.

II. PRESENTATION OF THE SITUATION BY THE COMMUNITIES CONCERNED

32. The representatives of the indigenous peoples, the Afro-Colombian and Raizal communities, as well as the Roma, have stated the Government's efforts to improve their situation remain insufficient. They described their respective situations by providing figures on the impact of the domestic conflict on members of their communities. They drew attention to the precarious economic and social conditions in which they lived and the persistence of an ethnocentric culture that tended to place emphasis on Colombia's Hispanic heritage and to marginalize the diverse contributions of the indigenous peoples, Afro-Colombians and the Roma to the creation of the Colombian nation, in spite of the fact that the Constitution proclaims that Colombia is a multicultural State.

A. Situation of the indigenous peoples

33. The representatives of the indigenous peoples expressed their dissatisfaction to the Special Rapporteur regarding their economic and social situation and their relations with the Government. They consider that the national and local authorities do not respect the autonomy that they have been granted by texts (particularly Act No. 152/94). They believe that the indigenous territories are in a state of economic, political, social and environmental emergency owing to the increase in poverty and the diseases that are rife in their communities, and the lack of respect for their way of life, which is highly dependent on the natural environment. National and local development plans do not take account of the aspirations of the indigenous peoples, and the exploitation of natural resources, particularly oil and wood, without the consent of the populations concerned encroaches on their territorial rights and is harmful to their environment. In general, the level of education in the *resguardos* is low owing to a lack of teachers and educational facilities.

B. Situation of the Afro-Colombian Raizal communities

34. The impact of government policies on the economic and social situation of Afro-Colombians is still weak. Representatives of the Afro-Colombian communities consider that the progress made by previous Governments in support of their communities has eroded. In its communication, the Government acknowledges that 82 per cent of Afro-Colombians continue to live in conditions where basic needs (running water, electricity, sanitation and so on) were not met; and that the illiteracy rate among the Afro-Colombian population is three times higher than that of the rest of the population (43 per cent in rural areas and 20 per cent in urban areas as opposed to 23.4 per cent and 7.3 per cent, respectively, for the rest of the population); out of 100 Afro-Colombian young people, only 2 go on to higher studies; the infant mortality rate is 151 per thousand, while the national average is 39 per thousand; and 76 per cent of Afro-Colombians live in conditions of extreme poverty and 42 per cent are unemployed. The department of Chocó, where the Special Rapporteur visited Quibdó, the principal city, is symbolic in this regard. Quibdó, which concentrates all the problems faced by Afro-Colombian communities, seems to have been abandoned. Similarly, in Cartagena, the beautiful Caribbean tourist resort, there are many pockets of poverty in which Afro-Colombians live. The same situation can be seen in the streets of Cali and the huge shantytown of Agua Blanca in which 600,000 people live in very unhealthy conditions.

35. The Raizales of the islands of San Andrés and Providencia, who number 24,444 according to official statistics,⁶ told the Special Rapporteur that they considered themselves to be victims of racial discrimination. As the product of a mixture of African, British and Amerindian populations, the Raizales claim an identity distinct from other Colombians. Their native languages are English and Creole, and they are predominantly Protestant. They also consider that they have been subjected to discrimination as a result of emigration from the mainland, which the Government has encouraged. Today, of the 80,000 to 100,000 people living on the island of San Andrés, which has a density of 3,000 inhabitants per square kilometre, the indigenous people are in the minority. They claim that they are victims of political discrimination that excludes them from decision-making processes concerning their department. They are confronted with the cultural domination of Colombians from the mainland in the educational and judicial systems; the exclusive language of instruction is Spanish, while the courts use only English.

36. Although Colombia is a secular State, the Raizales believe that they are subjected to religious discrimination because they are not Catholic, the dominant religion. The State has given the Catholic Church control of educational institutions, and the Church has undertaken to convert the indigenous population to Catholicism, provoking opposition from that population. The economy of the islands, which is based on tourism and the import of manufactured products (San Andrés is a free port), is in the hands of the Colombians from the mainland, who employ very few indigenous people. The unemployment rate among the indigenous population is estimated at 70 per cent.

37. The Special Representative of the President of the Republic told the Special Rapporteur that the Government was aware of the special situation of San Andrés and was in the process of preparing a strategy to remedy the problems raised. This plan will make it possible to grant loans to persons who wish to create family inns for tourists or set up other types of enterprises.

C. Situation of the Roma

38. The Roma have been in America since the fifteenth century, first as a result of their deportation from Spain and Portugal and later as the result of voluntary emigration beginning in the nineteenth century. Most of the Roma in Colombia belong to the Vlach, or Wallachian, ethnic group and arrived voluntarily in Colombia between 1880 and 1920. The Roma faced a process of assimilation, which they resisted, choosing to turn in on themselves. They were thus able to preserve their language and their traditional organization. However, as in Europe, stereotypes of Colombian Roma are widespread in society, where they are called “vagabonds”, “thieves” and “magicians”.

39. The Roma organization PROROM (Organizational Process of the Roma People of Colombia) is committed to bringing the Roma people out of their state of marginalization and out of the shadows in which they were forced to live owing to the intolerance of the majority, gaining recognition of Roma identity and, like the indigenous peoples and the Afro-Colombian communities, fighting for their collective rights. In 1998, Colombia began a process of recognizing the Roma by accepting that International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries applied to the

Roma. The Government indicated that it would establish the necessary mechanisms to reaffirm and protect the cultural rights of the Roma and promote programmes to improve their living conditions.

III. ANALYSIS AND EVALUATION OF THE SITUATION WITH REGARD TO RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA

A. General evaluation of the impact of the armed conflict on the protection of human rights

40. For over 40 years, Colombia has been confronted with a large-scale domestic armed conflict which, on the one hand, opposes government forces against several well structured and heavily armed guerrilla movements - the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP) and the National Liberation Army (ELN) - and, on the other, paramilitary groups, particularly the United Self-Defence Groups of Colombia (AUC), against the guerrilla movements. The 1991 Constitution, which recognizes ethnic and cultural diversity, guarantees human rights and establishes the foundations of democracy, gave rise to great hopes for the restoration of peace and the establishment of a society based on the rule of law. However, the emergence of such a society is constantly jeopardized by persistent, and even increasing, violence.

41. In this context, human rights violations are, at best, considered as "collateral damage" and, at worst, as a political weapon that seeks to deprive the adversary of all legal or judicial protection. In 2002, at least 7,000 people were murdered for political reasons, and many politicians receive death threats from rebel and paramilitary forces that the legal forces often cannot control. The civilian population, especially the civilian population in the rural areas where the conflict is taking place, is particularly vulnerable to acts that violate fundamental human rights, such as the right to physical integrity and to life.

42. The Colombian drama is the result of two factors: on the one hand, the political impasse and its corollary, the military solution as the only strategy for all parties, and, on the other hand, the hostage-taking of the population, which is forced to take sides or pay a terrible price in human suffering and economic and social destitution. The Government's "democratic security"⁷ strategy is determined more by security considerations than by a concern for democracy.

43. This strategy is reflected by two political trends that have a particularly negative effect on respect for human rights and the strengthening of democracy. Thus, democratic legitimacy is invoked by the democratically elected Government to require public statements, at all levels of power, that the population supports its security option and is actively participating of its own free will in the Government's military operations and its strategic choices against the guerrilla movements. The neutrality, even when passive, of the population is in this context considered by the armed forces in the field as, at best, hostility towards the Government and, at worst, as connivance with or support for the guerrilla movements. As a result, the priority of the security forces is no longer to protect the population from violence perpetrated by the various armed groups but to use the population for its own strategic ends and to repress it.

44. Moreover, the Government's policy towards human rights organizations seems to be based on the same logic. Such organizations are considered as obstacles to the "democratic

security” strategy. This relationship of suspicion, mistrust and even hostility towards these organizations was the subject of a statement made by President Uribe on 8 September 2003, in which he reacted to criticism of his policy of democratic security by referring to human rights defenders as “traffickers in human rights, [...] writers and political intriguers who support terrorism and who cowardly hide behind the banner of human rights” (*traficantes de derechos humanos, [...] escritores y politiqueros que sirven al terrorismo y que se escudan cobardemente en la bandera de los derechos humanos*).

45. All the armed groups also make use of the population for their political and strategic ends. Basing themselves not on democratic but on ideological and political legitimacy, these groups consider that the population, whose higher interests they believe they are defending, has no other choice than to accept the ideology of the armed groups, provide them with active support and take part in their military activities and operations.

46. As the sacrificial victim of these Manichaeian strategies, the population consequently bears the full brunt of all forms of violence: displacement, kidnapping, murder, public execution, torture and so on. The indigenous and Afro-Colombian communities are at the centre of this violence, owing to their political, economic and social vulnerability caused by longstanding and far-reaching discrimination and the fact that their old and often tribal settlements are situated in geographical areas considered as strategic by the different groups involved in violence in Colombia.

B. Ethnic and racial dimensions of the armed conflict

47. The presence of indigenous peoples and Afro-Colombian communities in regions with a growing economic and strategic importance that coincide with the conflict zones (Pacific coast, Darien zone) make them highly vulnerable to socio-political violence. Indigenous peoples account for 3.75 per cent of the displaced population (estimated by the Government to be between 890,000 and 3 million), while they represent only 2 per cent of the total population. The ethnic groups Embera, Nasas, Kankuamos, Ingas, Embera Chami, Embera Catio and Pijaos in the departments of Chocó, Cauca, César, Putumayo, Córdoba, Antioquia, Tolima, Arauca and Cauca are the most affected (see appendix). Moreover, the leaders of these peoples are routinely assassinated by the guerrillas or the paramilitaries. Between 2002 and the first half of 2003, the Kankuamo people of the Sierra Nevada de Santa Marta in particular paid a heavy price: 51 of its members were murdered; 36 murders are attributed to paramilitary groups, 10 to guerrillas and 5 to unidentified persons.⁸

48. Afro-Colombians account for 17 per cent of displaced persons.⁹ The Special Rapporteur was able to witness this strong presence among displaced persons in the streets of Bogotá and Cali, where they engage in informal trade, and in Cartagena, where he visited the communities of Pablo VI Segundo and El Posón. Afro-Colombian leaders and prominent figures are also assassinated or threatened by the guerrillas or paramilitaries.

49. As the Special Rapporteur on violence against women has already pointed out (E/CN.4/2002/83/Add.3, paras. 66-73), women, particularly indigenous and Afro-Colombian women, suffer most from the conflict and account for 48 per cent of displaced persons. Children between the ages of 5 and 14 are also severely affected and constitute 75 per cent of the

displaced population. Aside from displacement per se, girls and women are victims of ill-treatment ranging from forced recruitment into illegal forces to rape and illegal confinement for domestic work.

50. Owing to its extent, the phenomenon of displacement is one of the most serious humanitarian problems facing Colombia as a result of the domestic armed conflict. This phenomenon constitutes not only a serious violation of human, civil and political rights but also, and especially, increases the poverty and vulnerability of populations by destroying their social structures and human capital. The autonomy of the communities and the representativeness of their traditional authorities have been considerably affected by the conflict. Displaced persons often lose their economic resources and live an uprooted life, frequently falling into extreme poverty and indigence.

IV. CONCLUSIONS AND RECOMMENDATIONS

51. **The Special Rapporteur has found that, more than 10 years after Colombia's recognition of its ethnic and cultural diversity, and in spite of the adoption of laws and the establishment of promising institutions, the situation of the indigenous peoples, Afro-Colombian communities and the Roma remains precarious. The domestic conflict, which taps the largest part of the State's resources, poses a serious obstacle to the implementation of otherwise well-prepared policies. Aside from the relative progress in granting land titles to the Afro-Colombian communities, the economic and social conditions of these populations remain a cause for concern. Moreover, not all of the population has necessarily understood the meaning of Colombian's cultural diversity and holds on to prejudices against certain groups. For this reason, the Special Rapporteur has formulated the following recommendations:**

(a) In order to achieve a lasting solution to the crisis in Colombia, the Government and all persons active in political life should devote themselves to the fundamental objective of building a society based on solidarity instead of the current security-obsessed society, through:

- (i) Linkage of any lasting political solution to the conflict with the promotion of respect for human rights;**
- (ii) Recognition of the deep-rooted historical legacy of racism and discrimination and its economic, social and political consequences;**
- (iii) Democratic preparation of a national programme to combat racism, discrimination and xenophobia, based on the Durban Declaration and Programme of Action;**

(b) The Special Rapporteur wishes to stress the need to adopt urgent and priority measures, supported by appropriate budgetary resources, to alleviate and put an end to the precarious economic and social situation of the communities most vulnerable to political violence, particularly in the areas of housing, health, education and work;

(c) The Special Rapporteur recommends the establishment, as a matter of priority, of a national commission on displaced populations, which should have a double mandate: to conduct an in-depth study of the economic, social and security situation of the displaced populations and to propose solutions and measures to remedy problems that have been identified. Special attention should be given to the housing, health, working and education conditions of the displaced populations. The commission should comprise four elements: government representatives (particularly representatives of the principal ministerial departments concerned); members of the democratic opposition; representatives of the main human rights and civil society organizations; and representatives of the displaced populations;

(d) The adoption of a general act prohibiting racial discrimination, and the establishment of a national commission to combat racism and discrimination with a view to promoting democratic and interactive multiculturalism with the participation of the indigenous, Afro-Colombian and Roma communities and of civil society, particularly human rights organizations and the democratic opposition, and representatives of the main religions and spiritual traditions;

(e) The Government of Colombia should declare that it recognizes the competence of the Committee on the Elimination of Racial Discrimination to examine individual complaints of racial discrimination under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination;

(f) The Government should launch an intellectual and ethical strategy with a view to eradicating the deep-rooted racist and discriminatory culture and attitudes and building democratic and interactive multiculturalism based on solidarity. This strategy should be based on the following measures:

(i) The writing and teaching of the history of Colombia that gives appropriate coverage to the history of the indigenous peoples, Afro-Colombians, the Roma community, and Colombians of European origin. The Government is invited to base its efforts in this area on the series of regional histories published by the United Nations Educational, Scientific and Cultural Organization, particularly the history of Africa, the history of Latin America and the history of the Caribbean;

(ii) The creation of a Colombian national identity, unitary in its foundation and multi-ethnic and multicultural in its composition and expression;

(g) The Government is invited to consider the possibility of granting special status to the island of San Andrés with a view to guaranteeing its cultural and linguistic identity and strengthening the participation of its indigenous population (the Raizales) in the management and economic development of the island;

(h) In general, the Government should involve the communities concerned in the preparation of development projects and in decisions that concern them. It should also

ensure their effective participation in institutions responsible for community affairs, such as the Advisory Commission on Afro-Colombian Populations and the Inter-Institutional Commission on the Human Rights of the Indigenous Populations.

Notes

¹ Estimate provided by the National Department of Statistics (Departamento Administrativo Nacional de Estadísticas (DANE)).

² Act No. 812 of 2003 approving the National Development Plan for the period 2003-2006, “Towards a community-based State”.

³ CONPES document No. 3238 of 2003, on a strategy for departmental strengthening, delegates to departments, through the planning offices, the registry of organizations, community councils and organizations of Afro-Colombian communities and the resolution of conflicts arising from collective ownership.

⁴ CONPES No. 3180 of 2002: “Programme for the reconstruction and sustainable development of the Antioquian and Chocoan Urabá and Bajo and Medio Atrato”.

⁵ On 2 May 2002, 119 persons died in Bojayá, in the department of Chocó, when an explosive device launched by the Revolutionary Armed Forces of Colombia-People’s Army (FARC-EP) exploded in the church where part of the population had taken refuge (see the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 24 February 2003, E/CN.4/2003/13, para. 57).

⁶ Population and Housing Register (pilot census), Department of the Archipelago of San Andrés, Providencia and Santa Catalina, May 1999.

⁷ According to the document entitled “Defence policy and democratic security”, published in 2003 by the Ministry of Defence and the Office of the President of the Republic, the policy of “democratic security” may be defined as a plan to “strengthen and guarantee the rule of law throughout the territory through the strengthening of the democratic authority, and guarantee the safety of citizens. It also aims to enable the State to regain complete control over the territory, defeat terrorism and involve the civilian population in the security process, particularly by cooperating with and supporting the authorities and military forces”.

⁸ Information provided by the Colombian Commission of Jurists.

⁹ Figures supplied by the Government. Afro-Colombian organizations estimate that Afro-Colombians account for between 45 and 50 per cent of displaced persons.

Appendix

Year	Displaced persons	Department	Indigenous peoples
2001 and 2002	12 884	Chocó, Cauca, César, Putumayo, Córdoba, Antioquia and Tolima	Embera, Nasas, Kankuamos, Ingas, Embera Chami, Embera Catio and Pijaos
First half of 2003	2 981	Putumayo, Arauca, Cauca, Chocó, Tolima and César	Ingas, Guahibos, Eperara Siapidara, Emberas, Pijaos and Kankuamos
Total	15 865		

Murders

Year	Displaced persons	Department	Indigenous peoples
2002	127	Cauca, César, Chocó, Antioquia, Putumayo, Antioquia Córdoba and Tolima	Nasas, Kankuamos, Embera, Huitotos, Zenu and Pijaos
First half of 2003	52	César, Chocó, Antioquia, Arauca, Tolima, Caldas, Cauca and Guajira	Kankuamos, Embera, Guahibos, Pijaos, Embera Chami, Tules, Nasas and Wayu
Total	179		

Responsibility for murders in 2002 and the first half of 2003

Organizations/persons responsible	Murders	Per cent
United Self-Defence Groups of Colombia (AUC)	62	35
Revolutionary Armed Forces of Colombia (FARC)	44	25
National Liberation Army (ELN)	13	7
Army	9	5
Unknown	51	28
Total	179	100

Source: National Indigenous Organization of Colombia (ONIC).
