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International Human Rights Clinic
United States of America

Report on the Republic of Colombia to the 44th Session of the Universal Periodic Review
(UPR) Human Rights Council.

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Executive Summary. The University of Oklahoma College of Law International Human Rights Clinic (OU-IHRC), United States of America submits the following report on the Republic of Colombia

(hereinafter “Colombia”) to the 44th Session of the Universal Periodic Review (UPR) Human Rights Council. This report concerns Indigenous Peoples of Colombia and how Colombia has implemented the recommendations received during its third cycle of the UPR. Specifically, the report focuses on the selected area of: **(I)** Right to Permanent Access of Safe Drinking Water and Sanitation; **(II)** Preservation of Indigenous Language and Culture through Education; **(III)** Situation with Afro-Colombians and Indigenous People in Colombia; **(IV)** Violence Against Indigenous Women and Children During Armed Conflict; **(V)** Land Restitution, Safety, and Security of Indigenous Peoples.

The purpose of this report is to provide a focus on the challenges faced by the Indigenous Peoples in Colombia in related with the selected areas, and offer recommendations with the hope that these concerns will be addressed by Colombia.

I. Right to Permanent Access of Safe Drinking Water and Sanitation. La Guajira is a northern region of Colombia that is 20,848 km² big and mostly desert. The Wayuu people is the largest indigenous community within La Guajira, with about 380,000 people in 2021. The Rancheria River is the most important and critical water source in La Guajira, which has been identified as one of the most environmentally vulnerable communities. The deterioration is illustrated by the degradation of aquifers along the Rancheria River. One of these aquifers, *Bruno Creek*, is the main source of drinking water for the communities of Uribia, Manure, Riohacha, Maicao, and others among the Wayuu people. For decades now, mining companies have diverted and polluted the water of the Rancheria River for mining operations. In 2013, Carbones del Cerrejon Limited Company diverted water in Bruno Creek for carbon exploitation. With the Wayuu people having their main source of water diverted, many people died due to lack of water. This especially affected children, who had no choice but to drink the polluted water and got waterborne diseases from it. In 2017, the Constitutional Court of Colombia (Judgment SU698/17) granted the “protection of the fundamental rights of water, food security and health, in the face of the threat of violation caused by the partial modification project of the cause of the Bruno Creek by Carbones del Cerrejon Limited Company.” The Colombian Constitutional Court ordered the restoration of Bruno Creek back to its natural form, as well as its passage of water.

The Wayuu people’s access to water and the pollution caused by mining companies has also been noted by the Special Rapporteur of Water and Sanitation in the 2022 thematic report on “Human Rights to safe drinking water and sanitation of indigenous peoples” (A/HRC/51/24, para. 11).

IACHR Standards and Rulings. In response to Wayuu people’s access to safe drinking water, a petition was sent to the Inter-American Commission on Human Rights (IACHR) in 2015 requesting precautionary measures to be implemented to stop the exploitation of natural resources of the Wayuu people. The IACHR found that members of the Uribia, Manaure, Riohacha and Maicao communities were in a serious and urgent situation and requested that the State of Colombia adopt necessary measures to guarantee the life and physical integrity of children and adolescents. Among these measures included the immediate access to safe drinking water and food in sufficient quantity and quality. In 2017, the Inter-American Court of Human Rights rendered an advisory opinion pursuant to a request from Colombia (Advisory opinion OC-23/17, para. 1). The Court found that among substantive human rights, States have an obligation to refrain from “any activity that denies or restricts access to a decent life” and “illegal pollution of the environment.” This includes the obligation of prevention of environmental damages within their jurisdiction. Under this advisory opinion, Colombia must take measures to prevent the deterioration of the Rancheria River’s aquifers such as Bruno Creek, as well as its polluted water.

Extension of Precautionary Measures before the IACHR and State Responses. In January 2017, the IACHR extended the scope of precautionary measures for the sake of pregnant and nursing women

within the Wayuu peoples of Manaure, Riohacha, and Uribia. The IACHR decided on this extension due to the dire conditions of the lack of food and water in the area. In January 2020, Colombia created the Intersectoral Commission for the Department of La Guajira. Its objective was to respond to the precautionary measures set out by the IACHR.

However, unfortunately the state reports do not show any effective measure to combat the food and water shortage, nor evidence the implementation of the Colombian Constitutional Court order of restoration the Bruno Creek back to its natural form and its passage of water. In fact, members of the Wayuu communities have stated that the situation has only worsened for them. During the Third Cycle of the 2018 UPR, Colombia has not addressed the issue of the lack of food and water among the Manaure, Riohacha, and Uribia communities. Colombia stated that the Special Rapporteur on the Rights to Water and Sanitation would be visiting Colombia in 2019 (A/HRC/39/6. para. 117), but the status of this visit appears such as reminder since the first quarter of 2020.¹

Recommendations. Bearing in mind that there are grave obstacles to the effective functioning of safe drinking water for La Guajira, and that there is a very high risk for the lives and integrity within the indigenous communities in La Guajira, OU-IHRC found reasonable grounds to respectfully recommends:

- That the State, in coordination with the indigenous communities in La Guajira, create an effective mechanism that guarantees a permanent access to safe drinking water.
- Consider accepting the invitation for a state visit from the Special Rapporteur on Water and Sanitation in the second semester of 2023, and present the result of that visit in the next State report.
- Provide information on both the Alliance for Water and Life in La Guajira Program (2015) and Guajira Azul Program (2018-2022) and what the programs specifically did to improve access to safe drinking water. Present the results in the next State report.
- Adopt in coordination with the indigenous communities in La Guajira, international practices that ensure that the right to the use equitable and reasonable share of the water when awarding mining contracts are near or in the indigenous communities, and present the changes that will be implemented in the next State report.
- That the State, in coordination with the indigenous communities in La Guajira, promote cooperation with other social actors on issues such as water management, and present the results of the coordination in the next State report.

II. Preservation of Indigenous Language and Culture through Education. Colombia has made efforts to improve the education of indigenous peoples, and in 2018 launched Community Education Projects under the Ministry of Education with the purpose of protecting their native languages and promoting bilingualism. These projects were to be implemented in such ways that recognized and respected the intercultural education systems of the indigenous communities. (CERD/C/COL/17-19, paras. 193–94). Unfortunately, we do not have any recent data on the effectiveness of these projects, specifically with respect to the budgetary demands, infrastructure development, teachers' qualifications, and the advance of bilingualism within the communities.

In its Consideration of Reports Submitted by the States Parties from 2016, Colombia highlights the successive decline of school dropout rates of children and young persons from 2010 to the time of writing, but there is no mention of the dropout rate pertaining to indigenous communities.

¹ Available at <https://spinternet.ohchr.org/ViewCountryVisits.aspx?visitType=all&country=COL&Lang=en> last viewed April 03, 2022).

(E/C.12/COL/6, paras. 228-29). Colombia also outlined three “lines of action” to promote, protect, and strengthen the ethnic languages of the country. However, information about the specific implementation of these actions as well as any data regarding their effectiveness is unavailable. (E/C.12/COL/6, para. 225).

In 2018, there was still a significant concern about the disparity in education affecting indigenous children and their high dropout rates. In the report from 2018, The Committee on the Rights of the Child also noted “insufficient measures to identify and address [the] root causes” of this disparity. (A/HRC/WG.6/30/COL/2, para. 71).

The Inter-American Commission on Human Rights sent to its Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (REDESCA), Soledad Garcia Muñoz to Colombia between October 1 and 3 of 2022 to gather information on the Economic, Social, Cultural and Environmental Rights of the indigenous peoples, specifically in the La Guajira region. In the framework of its working visit, the Special Rapporteur, Soledad Garcia Muñoz observed that there are serious challenges to respecting and guaranteeing inter-American standards on education, cultural rights, likewise deficiencies in teacher recruitment, school transport, and educational center infrastructure.

Recommendations. Bearing in mind the Office of the Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (REDESCA), Soledad Garcia Muñoz, observations during its working visit to Colombia between October 1 and 3, 2022, to the Department of La Guajira, OU-IHRC found reasonable grounds to respectfully recommends:

- Ratify the UNESCO Convention against Discrimination in Education 1960.
- Issue invitation in 2023 to Special Rapporteur on Education to gain better understanding of the “boots on the ground” situation. The timing is ideal as there has not been a Special Rapporteur on Education visit since 2003.
- In coordination with the indigenous communities in La Guajira offer internship and scholarship opportunities for teachers and administrators for teaching, training, and infrastructure development of schools in the indigenous communities. The cost to the State would be minimal as the recipients could get cost of living and relocation stipends as well as credit towards degree.
- Allocate resources needed for training, materials, and development of infrastructure to address the deficiencies noted by the Office of the Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (REDESCA), Soledad Garcia Muñoz, during its working visit to Colombia between October 1 and 3, 2022, to the Department of La Guajira.

III. Situation with Afro-Colombians and Indigenous People in Colombia. The Republic of Colombia has an international duty to address indigence, infighting and underrepresentation of Afro-Colombian and Indigenous Colombian people. While Colombia has addressed international concerns with these groups, it must renew and add to its efforts to address this situation to remain productive. This report identifies international concerns of the situation including with census reporting and gathering, with minority participation in decision making, with the need to address the risk of extinction to certain groups, with extrajudicial killings, with maltreatment, and with the need for Colombia to join with other Conventions. It also identifies actions Colombia is carrying out to address these issues and the current status quo. This report ends by making recommendations to extenuate ongoing problems.

In 2020, the Committee on the Elimination of Racial Discrimination report, regretted effective measures have not been taken to prevent people at risk of extinction, particularly the Awa and Uitoto people, and is concerned about the extrajudicial killings, violence, threats, intimidations, and reprisals against human

rights defenders, leaders of Indigenous people and leaders of Afro-Colombians. (CERD/C/COL/CO/17-19. para. 22 and 24).

However, Colombia has undertaken domestic measures to address international concerns of indigence, infighting and the underrepresentation of Afro-Colombian and Indigenous people. In 2022, Colombia elected its first Afro-Colombian woman Vice President, Francia Márquez. This is a remarkable achievement for promoting the representation of Afro-Colombians.

Recommendations. OU-IHRC found reasonable grounds to respectfully recommends:

- Develop methods of data collection to ensure correct reporting of Afro-Colombian populations living in the Republic of Colombia.
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Recruit and use local governments to aid in enforcing and upholding the 2016 FARC peace accord.
- Continue to include local people of African descent and Indigenous people in decisions and decision-making bodies addressing poverty, discrimination and land rights.

IV. Violence Against Indigenous Women and Children During Armed Conflict. Violence against indigenous women and children has been a persistent problem in Colombia, with various United Nations bodies expressing concern about the issue and urging the country to provide for the safety and welfare of these victims. In his 2010 *Report on the situation of human rights and fundamental freedoms of indigenous people*, Special Rapporteur James Anaya noted the violence perpetrated against indigenous women and children during armed conflict at that time. The number of cases of sexual violence against indigenous women had been rising, and children faced killing and maiming, abduction, and sexual violence. A/HRC/15/37/Add.3. Anaya urged the Colombian government strengthen its programmes responding to violence against women and children, taking into account their specific needs.

In the 2018 Working Group Report, Malaysia recommended it “continue taking effective measures to prevent sexual violence against women, and ensure that all cases of sexual violence are investigated and perpetrators are brought to justice in a timely manner and victims are provided with support, including medical and psychosocial services.” A/HRC/39/6, para. 120.125; 120.143. Additionally, the Philippines recommended Colombia “ensure access to justice for victims of the armed conflict, particularly women and indigenous people, and guarantee their right to truth and comprehensive reparation.” A/HRC/39/6, para. 120.125; 120.143.

In 2019, the Committee on the Elimination of Discrimination against Women (CEDAW), recommended that the Colombian government strengthen its efforts to implement a national plan for the protection of gender-based violence towards women and girls, including indigenous women. CEDAW/C/COL/CO/9. para. 26. (a).

In 2020, the Committee on the Elimination of Racial Discrimination (CERD), recommended the state “take the necessary measures to prevent sexual violence against indigenous women and women of African descent and ensure that victims have access to appropriate assistance and effective and culturally appropriate protection mechanisms.” CERD/C/COL/CO/17-19, para. 25. (b).

It also recommended that Columbia “ensure the effective implementation of Act No. 1719 of 2014 on access to justice for victims of sexual violence . . . and compliance with Constitutional Court decisions No. 92/08 and No. 9/15, thus guaranteeing that all cases of sexual violence are duly investigated, that the

perpetrators are prosecuted and duly punished, and that victims receive comprehensive reparation.” CERD/C/COL/CO/17-19, para. 25. (c).

Recommendations. Bearing in mind that there is a very high risk of Violence Against Indigenous Women and Children During Armed Conflict, OU-IHRC found reasonable grounds to respectfully recommends:

- Consider accepting the visit request of the Special Rapporteur on Violence against Women and Girls, pending since 2012, for a state visit in the second semester of 2023, and present the result of that action in the next State report.
- Continue to bring women and children to the forefront of the discussion of violence in Colombia.
- Work with indigenous community leaders and women to identify indigenous female victims of abuse, especially sexual abuse, during armed conflict (including during the post demobilization era) and provide them with recognition, counseling, and health and legal services.
- Continue to pass, and enforce, legislation that criminalizes violence, including physical, sexual, and emotional, against indigenous women and children by both state actors and guerilla groups.
- Continue to create a justice system and programs that address the geographic location and intersectional needs of indigenous women.
- Develop ways to train indigenous leaders and police officers in rural areas that do not rely heavily on the internet.

V. Land Restitution, Safety, and Security of Indigenous Peoples.

Recommendations. OU-IHRC found reasonable grounds to respectfully recommends:

- Guaranty those directions for filing a land restoration claim, court procedure for land restoration claims, and court ruling are translated into the appropriate indigenous language.
- Description clear and concise of the differences between individual title restitution process and the collective title restitution in the next State report.