



DECLARATION FROM THE NATIONAL CONFERENCE OF AFRO-COLOMBIAN ORGANIZATIONS AND THE NATIONAL INDIGENOUS ORGANIZATION OF COLOMBIA

IN THE CONTEXT OF THE EVENT "A REGIONAL ANDEAN DIALOGUE ON PRIOR CONSULTATION"

The *Andean Dialogue on Prior Consultation* took place July 12-13, 2011, in Bogotá, Colombia. Several Afro-Colombian and indigenous leaders participated, in addition to the following organizations: National Conference of Afro-Colombian Organizations (CNOA), the National Indigenous Organization of Colombia (ONIC), Oxfam, Lawyers without Borders – Canada, DeJusticia, the Institute for Legal Defense of Peru, the Office of the High Commissioner for Human Rights of the United Nations in Colombia, the Center for Development and Society of Ecuador (CIDES), Spanish jurist and historian Bartolomé Clavero, the Human Rights Ombudsman, and the Consultancy for Human Rights and Displacement of Colombia (CODHES), among others. During the event, attendees reflected on the role and responsibility of state actors, academics, private entities and ethnic groups; the principal challenges that inhibit the application of the right to Prior Consultation; and the opportunities to secure the enjoyment of said right in the Andean region.

The productive dialogues came to the following conclusions:

* The indigenous and afrodescendent movements (in Colombia, this is understood as the group that self-identifies as black, *palenqueros* and *raizales*) determined the need for a Regional Andean Alliance that includes regional actors, such as the Andean Community of Nations (CAN), UNASUR, and other equally important groups, given the vulnerability of their rights and the non-application of prior consultation as a basic right that affects peoples and ethnic groups of the region.

* The request for a more engaged attitude on behalf of the United Nations regarding the unequal position of these peoples before corporations and the state during the prior consultation process, and a serious commitment from the state to perform its duties as regulator and guarantor of free, prior and informed consultation (FPIC).

* FPIC is a right that guarantees and incorporates various other fundamental rights (the rights to life, territory, participation, culture, inclusion, self-government, self-determination, diversity, choice of a development strategy and autonomy, among others) and an integral process that requires a timeframe and pace that is in accord with the



dynamics and practices of each people. This also implies that there be an institutional framework that permits its effective implementation.

* The fundamental right to prior consultation is not a simple administrative formality in the development stage of a project or the legislative process. It has been seen as a formality by government entities and companies that defend the development of an economic model that is contrary to the interests of afrodescendent and indigenous peoples in the region.

* Consent should be prior, free and informed; as a *right*, it is the option that ethnic groups and communities possess where they may decide whether or not to permit a project or legislative initiative. Nevertheless, indigenous and afrodescendent peoples still find themselves in a highly vulnerable situation, largely due to the history of economic subjugation and social marginalization that they have endured. States have limited themselves to a prior consultation process that does not respect the binding decisions made by afrodescendent and indigenous peoples.

* For the indigenous and afrodescendent movements, the government's absence from important discussions regarding the effective enjoyment of the right to prior consultation demonstrates that once again state institutions view this right as a simple prerequisite or mere formality lacking any real substance.

* In the context of the armed conflict, the afrodescendent and indigenous peoples are exposed to a dual risk: that of extinction on the one hand, and the impossibility of exercising their fundamental rights on the other.

* The participation of these peoples in projects that affect them should not be limited to prior consultation. The peoples subject to consultation should agree to the conditions. If, after this, they agree to participate, they should be included in the development of the projects as a reaffirmation of their autonomy and self-determination. If the precepts of inclusion are complied with, the consultation would represent an opportunity to overcome the conditions of poverty, exclusion, and vulnerability of the communities via the real, equitable distribution of the utilities.

* The right to prior consultation does not exclude the right of the ethnic peoples to implement their own development models.



*The processes of prior consultation require permanent dialogue geared towards agreement, consent, and understanding between the state and the afrodescendent and indigenous peoples.

* International norms require the state to consult the presence of armed forces in their indigenous and afrodescendent territories with the affected peoples .

We identify challenges, opportunities, and strategies to develop compliance with and effective enjoyment of the Fundamental Right to Prior Consultation. We emphasize the following:

- The need for spaces for analysis and understanding between indigenous and afrodescendent peoples. Unity among ethnic peoples provides opportunities to influence the enforceability of the Law of Prior Consultation.
- The process of Free, Prior, and Informed Consultation should be widely understood by the ethnic peoples.
- The active and equitable participation of women in processes of free, prior, and informed consultation and consent is fundamental. All human rights and basic liberties should be applied without discrimination.
- The dissemination of information regarding all national and international mechanisms that can force a company or institution to respect the fundamental rights of the afrodescendent and indigenous peoples, including the right to free, prior, and informed consultation and consent, is necessary.
- It is necessary to recognize the existence of asymmetries in participation. Until now, prior consultation has not been a dialogue among equals because indigenous and afrodescendent peoples have always occupied an inferior position before the state and private enterprises. The proliferation of legislative initiatives does not guarantee enough real and effective time for the peoples to develop their own, autonomous processes.
- The scope of free, prior, and informed consultation is not limited to indigenous peoples; it also includes the afrodescendent and *Rrom*.
- The states' responsibilities to participate processes of prior consultation cannot be delegated; the right to consultation demands that they organize and reach an agreement with indigenous and afrodescendent peoples in order to achieve said consultation. The state should not impose a model for consultation.
- Consultation is and should be a good-faith dialogue. The agreements that are settled upon during the consultation among businesses, state entities, and afrodescendent and indigenous peoples should conform to the agreed-upon terms.



- The participation of ethnic groups should take place before, during, and after the administrative or legislative measure is implemented. Consultation begins during the stage where the instruments, regulations, and manner in which the consultation is going to be executed are being designed. This provides people with the ability to effectively understand the scope of the measures that they attempt to bring to fruition.
- Free, prior, and informed consultation should include mechanisms that guarantee both collective and individual rights.
- If ethnic peoples agree to participate, they should outline the conditions in which the projects should be undertaken and what is subject to consultation. When consent is given, it is the duty of the state to implement the equitable distribution of the benefits that result from the development of the projects. The application of *compensation*, as a concept, is flawed and infringes upon the rights of the indigenous and afrodescendent people.
- If rights are infringed upon, restitution and reparation of the territories to indigenous and afrodescendent peoples should not be subject to processes of prior consultation; the guarantee and restitution of the infringed-upon rights are the responsibility of the state for any citizen, man or woman, individual or group. The criteria and policies of reparation and restitution of lands are what should be subject to prior consultation.

Finally, an invitation is extended to continue an interdisciplinary and intercultural dialogue (among experts and those with local knowledge) with the peoples and states of the region to build alliances and strategies that strengthen opportunities to exercise the fundamental right to free, prior, and informed consultation and consent as a foundation and protector of other rights.

Given in Bogota, July 13, 2011