

Impact of the United Nations Committee on the Elimination of Racial Discrimination (CERD)

**Brazil, Colombia, Cuba,
the Dominican Republic and Peru**

**A Report of the International Institute on Race,
Equality and Human Rights**

2017



Impact of the United Nations Committee on the Elimination of Racial Discrimination (CERD)

**Brazil, Colombia, Cuba,
the Dominican Republic and Peru**

**A Report of the
International Institute on Race,
Equality and Human Rights**

2017



© International Institute on Race, Equality and Human Rights

T. (+1)202-770-9946
1625 Massachusetts Ave., NW
Suite 450
Washington, DC 20036
www.raceandequality.org
info@raceandequality.org

International Institute on Race, Equality and Human Rights

Carlos Quesada
Executive Director

Dominic Procopio
Latin American Program Officer

Laia Evia
Legal Consultant in Geneva

María del Pilar López Patiño
Editorial Coordination
AltaVoz Editores

The reproduction of the text of this edition is authorized for non-commercial, educational purposes, under the condition that attribution be given to the International Institute on Race, Equality and Human Rights.

ISBN: 978-958-56255-3-2

Photos: International Institute on Race, Equality and Human Rights

July 2017

ACKNOWLEDGMENTS



The Institute on Race, Equality and Human Rights would like to thank Dominic Procopio, Latin American Program Officer, for researching and drafting this report, and Laia Evia, Legal Consultant in Geneva, for her valuable contributions to the report.

In addition, Race & Equality would like to thank our partners from the Latin American Afro-descendant and indigenous movements for their graciousness in sharing with us the advocacy work they have done with the Committee for the Elimination of Racial Discrimination (CERD). The perspectives and insights of our partners enriched the analysis found in the report and helped strengthen the conclusions and recommendations therein.

Finally, we would like to thank the CERD members and others promoting human rights at the Office of the United Nations High Commissioner for Human Rights for their continued work and dedication to fighting racism and racial discrimination in Latin America. Race & Equality offers our special appreciation to Pastor Murillo and Carlos Vázquez, current and former Committee members, respectively, for their contributions.

It is our sincere hope that this report begins to repay the generosity shown by those who have helped in its creation, and that serves to strengthen the work of the Committee for the Elimination of Racial Discrimination and increase the cooperation between the Committee, civil society and Latin American states.

ABSTRACT



The International Convention for the Elimination of Racial Discrimination was authorized over fifty years ago. The Committee for the Elimination of Racial Discrimination, the mechanism created to oversee the implementation of the Convention in the 177 States that have ratified it, has operated for over forty years. This report seeks to evaluate the current work of the Committee in Latin America through an examination of its operations in five countries: Brazil, Colombia, Cuba, the Dominican Republic and Peru. Through an analysis of the basic documents produced in CERD's work and interviews with persons from civil society, governments and the Committee itself, the report seeks to offer an evaluation of how the Committee has fulfilled its mandate to oversee the implementation of the Convention and work toward the elimination of racial discrimination.

The report finds that while the Committee has made important contributions in the fight against racism and racial discrimination in the countries studied, it has not been fully utilized. Civil society has not sufficiently used the Committee in their advocacy efforts and have failed to harness the Committee's recommendations to pressure States to act on crucial and immediate issues. On the other hand, States have failed to take the CERD review process with the seriousness it deserves, producing reports of inadequate quality that impede the Committee from fulfilling its mandate. What's more, some States appear openly hostile to the work of the Committee, despite the fact that engagement with CERD is designed (by the States themselves) as a constructive process. Despite these shortcomings, the report points to many ways all actors in the process can take steps to heighten the impact of the Committee and achieve greater progress on racial equality.

CONTENT

Section 1. INTRODUCTION 11

1.1 The Establishment of the Convention.....	13
1.2 Objectives of the Report	14
1.3 Geographic Parameters of the Report.....	14
1.4 Temporal Parameters of the Report.....	14
1.5 Analytical Parameters.....	15
1.6 Research Methodology	16
1.7 Structure of the Report	16

Section 2. THE COMMITTEE, ITS COMPOSITION, MANDATE AND FUNCTIONS..... 19

Periodic Sessions and State Reviews.....	21
Concluding Observations	21
General Recommendations.....	22
Early Warning Measures and Urgent Action Procedures.....	22
Thematic Discussions	22
Individual Complaints.....	23
On the Importance of Quality Committee Members	23
On the Critical Role of Rapporteurs.....	24
On the Role of the Secretariat.....	24
On the Committee's Limited Budget.....	24

Section 3. CEDR IN PERU 27

3.1 Introduction.....	28
3.2 Peru's Frequent Submission of Reports Has Led to Better Quality Reports	30

3.3 Regarding the Committee's Recommendations in Critical Areas, Peru's Response Has Been Inconsistent.....	32
3.4 The Committee and Civil Society Have Not Sufficiently Used the CERD Process to Ensure Productive Dialogue Between Civil Society and State.....	34
3.5 Despite Increased Engagement with CERD, Peruvian Institutions Tackling Racism Remain Weak.....	35
3.6 Conclusions	38
3.7 Recommendations.....	38
Section 4. CERD IN COLOMBIA	41
4.1 Introduction.....	42
4.2 Colombian Civil Society's Participation in the CERD Process Has Grown, but it Must Continue to be Strengthened.....	43
4.3 The Colombian State's Reporting to the Committee Has Improved Over Time, but it Remains Deeply Flawed and Fundamentally Inadequate	45
4.4 Alternative Reports are not Enough—Civil Society's Attendance at the Review Sessions is Crucial for Delivering its Message	46
4.5 Follow-Up to the Sessions by both Civil Society and the State is Weak.....	48
4.6 Conclusions	51
4.7 Recommendations.....	51
Section 5. CERD IN BRAZIL.....	53
5.1 Introduction.....	54
5.2 The Committee's Work in Brazil is Not Only Insufficient, it is Practically Non-Existential.....	55
5.3 Other Human Rights Institutions Have Supplanted CERD as Loci for Advocacy on Racial Discrimination Issues in Brazil	56
5.4 When Brazil Has Reported, the Results Have Been Mixed, But Overall Fairly Positive.....	58
5.5 Consequences of Non-Reporting: Grave Situations the Committee Has Not Considered for Over a Decade.....	59
5.6 Conclusions	61
5.7 Recommendations.....	61

Section 6. CERD IN THE DOMINICAN REPUBLIC	63
6.1 Introduction.....	64
6.2 Despite More Engagement with CERD, the Official Position of the Dominican State Continue to Deny the Existence of Racism and Racial Discrimination in the Country	66
6.3 The Dominican Republic Views the CERD Process as Antagonistic and Accusatory Rather than Cooperative	68
6.4 Predictably, the Dominican Republic's Response to CERD's Recommendations Has Been Inadequate	69
6.5 Conclusions	71
6.6 Recommendations.....	71
Section 7. CERD IN CUBA	73
7.1 Introduction.....	74
7.2 The Cuban State's Understanding of the Prevalence of Racism and Racial Discrimination is Distorted Through the Lens of the Glorification of the Revolution	75
7.3 Restrictions on Civil Society by the Cuban Government Severely Limit the Information the Committee Receives	77
7.4 Cuba's Response to the Committee's Recommendations Has Been Largely Insufficient.....	78
7.5 Conclusions	79
7.6 Recommendations.....	80
Section 8. CONCLUSIONS AND RECOMMENDATIONS.....	83
Peru	84
Colombia.....	85
Brazil.....	86
The Dominican Republic.....	86
Cuba	87
Final Remarks.....	87
General Recommendations.....	89
BIBLIOGRAPHY.....	91

Section

1

INTRODUCTION





The research for the report that follows was inspired by two milestones in the global fight to end racial discrimination. The first is the 50th anniversary of the approval of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which occurred on December 21, 2015. The second is the creation of the International Decade for People of African Descent, which began in 2015—the year of the 50th anniversary of the Convention—and will continue through 2024. The first milestone marks an opportunity to look into the past—to remember the advances made in the fight against discrimination and to learn from mistakes made along the way. The second is an opportunity to consider the future—to think about what we hope to accomplish in the coming years and how to best achieve those objectives.

In this way, the anniversary of the Convention and the establishment of the Decade have also helped to structure the research design of this study. Research was conducted to examine the recent past in the fight against discrimination; specifically, the aim has been to analyze the Committee on the Elimination of Racial Discrimination (CERD) and its work over the last two decades in five Latin American countries. This analysis has sought to understand how to better carry out the work that lies ahead—work that will be performed over the course of the International Decade and beyond—in order to help the Committee achieve the ambitious but vital goals expressed in the Convention. It is hoped that the analysis, suggestions and recommendations found throughout the report can be of use for the multiple stakeholders involved in the Committee's work as they continue to perform the daily labor of giving effect to the Convention in the Americas and throughout the rest of the world.



1.1 The Establishment of the Convention

Just over fifty years ago, on December 21, 1965, the United Nations General Assembly approved a resolution authorizing the establishment of the International Convention on the Elimination of All Forms of Racial Discrimination, affirming through this document that “all human beings are equal before the law and are entitled to equal protection of the law against any discrimination,” and that “the existence of racial barriers is repugnant to the ideals of any human society.”¹ The Convention came into force upon its signing by Poland on January 4, 1969. And while other international instruments had included the issue of discrimination,² the Convention signified a major achievement of both scope and specificity regarding measures to be taken to eliminate discrimination based on race, color, or national or ethnic origin.

The Convention was established in a historical context much different from the present day, one where the fight for racial equality focused on the struggle against colonialism and legalized racial segregation. In the nearly half-century since the Convention has taken force, the global community has made significant strides in the fight against racism and racial discrimination. It is without doubt that the Convention has played a positive role in these advances. Nevertheless, over this same time our understanding of racial discrimination has deepened and we have become more cognizant of its subtler manifestations. This greater understanding of the many forms racial discrimination takes has posed new challenges for people and institutions dedicated to fighting racism, but it is clear that the Convention has a continuing role to play in meeting these challenges.

Since its establishment by the UN General Assembly, the Convention has reached almost universal adoption; today there are 177 States that have ratified the Convention, and there are six more that have signed but have yet to ratify it. Only fourteen countries have yet to sign or ratify the Convention. In the Americas, every country has ratified the treaty.

The Convention is made up of twenty-five articles. These articles enumerate the right to non-discrimination in the enjoyment of specific rights, list States’ obligations to eliminate racial discrimination, and define the procedural aspects of the Convention.

In the Convention, the right to non-discrimination is applied to wide range of specific human rights. This includes the exercise of political rights without discrimination, including access to justice and freedom to participate in the political process through voting or conducting public affairs. It includes freedom of movement and of thought, and the freedom to own property, as well as freedom of expression and the freedom to assemble, amongst others. It also includes the exercise of economic, social and cultural rights free from any form of racial or ethnic discrimination, including the right to work with equal pay and the right to favorable working conditions. These economic, cultural and social rights also include the right to unionize, the right to housing, public health, medical care and social security, as well as the right to education and to participate in cultural activities without discrimination.

In addition to the rights enumerated above, the Convention establishes explicit obligations of States to enact measures to combat racial discrimination. These obligations can be narrow and necessitate specific action by the State, such as found in Article 2, Section C, which calls for State parties to amend or nullify laws that create or perpetuate racial discrimination. Or they can be broader in scope and leave room for different strategies

1 The International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1969, United Nations Treaty Series, Vol. 660 No. 9464.

2 See for example the UNESCO Convention against Discrimination in Education or the International Labor Organization’s Discrimination (Employment and Occupation) Convention.

to achieve their goal, such as Article 7, which calls for States to adopt measures in teaching, education, culture and information to combat prejudices and promote tolerance. In combination with the enumerated rights to non-discrimination, these obligations represent the proscriptive content of the Convention and act as a roadmap of sorts for States to follow in their efforts to combat racial discrimination.

The final component of the Convention are the procedural aspects of the treaty that delineate how the Convention shall be made operational. In the case of ICERD, many of these procedural articles entail the functions the institution, or *treaty body*, created to assist and promote the fulfillment of the Convention. This institution is the Committee on the Elimination of Racial Discrimination (CERD). Before introducing the Committee in more detail—its members, mandate and primary functions—it is important to first define the objectives and parameters of this report, to say a few words about the research methods employed and to explain the report's structure.

1.2 Objectives of the Report

This report seeks to analyze the Committee's actions in fulfilling its mandate to assist in the effective implementation of the Convention and to study the impact of the Committee in the countries researched. In doing so, it seeks to gauge the usefulness of the Committee's work and to provide recommendations to help all actors involved in the CERD process in their struggle to eradicate racism and racial discrimination.

1.3 Geographic Parameters of the Report

Although CERD carries out its functions at a worldwide level, the geographic locus of this study is contained to the Americas, for both practical and political reasons. The Institute on Race, Equality and Human Rights has focused its programmatic activities in Latin America and has established a considerable network of individual activists and organizations that have served to facilitate research in their respective countries. Moreover, it is hoped that the research and analysis in this study serve in the ongoing advocacy activities of the Institute and its partners, as well as be of use to other actors and institutions involved in the fight against racial discrimination in the Americas.

The countries chosen for inclusion in the study are Brazil, Colombia, Cuba, the Dominican Republic and Peru. The countries selected give the study a diverse set of Latin American societies to examine. This sample includes geographical diversity, with countries from South America and the Caribbean. It includes diversity in both the geographic and population size of the sample countries, with two smaller nations (Cuba and the Dominican Republic), two medium-sized nations (Colombia and Peru) and one large nation (Brazil). The countries chosen have a diverse set of economic indicators, including GDP and income distribution, as well as a diverse set of economic and political models with varying degrees of economic aperture and strength of democratic institutions. Perhaps most relevant to the study, the countries chosen have diversity in their ethnic composition and demonstrate a diversity in the historical and contemporary manifestations of racial and ethnic discrimination in their societies.

1.4 Temporal Parameters of the Report

In addition to narrowing the geographical locus, we have also narrowed the study's temporal locus to concentrate approximately on the years since the World Conference against Racism, Racial Discrimination,

Xenophobia and Related Intolerance held in Durban, South Africa in 2001. The Durban Declaration has had a major influence on the worldwide agenda to combat racial discrimination, including the work of the Committee for the Elimination of Racial Discrimination. In the fifteen years since Durban, the Committee has used the spirit and content of the Declaration to inform its work in many of its activities, not least of which include its periodic reviews, concluding observations and general recommendations. Prior to the Durban Conference, much—though not to say all—of the Committee’s work focused on helping States to recognize, accept and account for the existence of racial discrimination in their societies. After the Durban Conference, the Committee’s work in the Americas has, to a much greater extent, shifted to helping States implement specific, concrete and effective measures to combat racial discrimination. The Durban Conference served to fundamentally shift the debate on how to combat racial discrimination, and it is this post-Durban environment that we have chosen to study.

1.5 Analytical Parameters

Within the geographical and temporal considerations of our study, our research has centered on the actions and interactions of the three distinct group of actors that are central to the effective implementation of the Convention: the Committee, the State and civil society.

While our central research objective has been to gauge the effectiveness and impact of CERD on combating racial discrimination, it would be unwise if not impossible to do so without taking into consideration the role of the State and civil society in the process.

The State constitutes the primary, fundamental actor in the process of fulfilling the obligations of the Convention which, once signed, holds the force of law. It fulfills these obligations in a variety of ways, including legislative reform (through constitutional amendments or creating, abrogating or modifying national and local laws), executive decrees, judicial decisions and the development of public policy (such as national action plans), amongst other means. Implementing human rights treaties like the Convention requires a collective effort from many State institutions. While a State may designate a certain institution or institutions to help in the implementation of the content of the Convention—indeed, this is a specific recommendation the Committee has made—in order to effectively apply the full content of the Convention, action by many different areas of government is needed. Furthermore, the Convention (like many other international treaties) does not include an external enforcement mechanism, meaning the State itself holds sole responsibility for the enforcement of compliance with the terms of the Convention, a role most often played by the judiciary.

While the States’ role may be paramount in meeting the obligations of the Convention, in democratic contexts organized civil society plays a crucial role in fulfilling the objectives of the Convention. Civil society as a whole and CSOs in particular, depending on the political context of the country, provide support and sometimes even proposals for constitutional and legislative reform, use their influence to shape policy decisions and their expertise to monitor policy, and utilize the judiciary system to hold the State accountable for its obligations. It is through these actions that, in the absence of an external enforcement mechanism, civil society exerts pressure on States to meet their commitments under the Convention.

While the State and civil society remain the crucial actors in the implementation of the Convention, the Committee directly exercises its influence on the process in its interactions with both the State and civil society, and indirectly by acting to influence the interactions independent of the Committee between the State and civil

society. Thus, in seeking to measure the influence of the Committee we have sought to analyze three types of interactions in the process of implementing the Convention. They are:

1. CERD and State interactions.
2. CERD and civil society interactions.
3. State and civil society interactions.

By analyzing the role of each of the three main actors in the CERD process and their relationship to each other, the report seeks to draw conclusions about the challenges that remain to implementing the Convention in the Americas.

1.6 Research Methodology

Research for this report was conducted through a thorough analysis of the documents produced as a result of the CERD process. All types of documents were considered, but a particular focus was given to States' reports to the Committee and their follow-up reports, the alternative reports of civil society organizations, and the concluding observations of the Committee. For each country studied, source material was collected from at least the two most current review periods, and in some cases sources from earlier reviews were consulted in order to gain a more thorough historical perspective of the evolution of a country's participation in the CERD process. In addition to documents produced as a direct result of the Committee's work, sources related to States' work to implement the Convention were also consulted, including national development plans, action plans against racism or in support of groups facing discrimination, as well as other policy documents.

The textual analysis was complemented by interviews with key actors in the Committee's work. Interviews were conducted with members of civil society with experience producing alternative reports or attending review sessions, government officials who have worked on the report drafting process or who work on issues related to racism and racial discrimination, members of States' missions to the United Nations, as well as members and ex-members of the Committee itself. The objective of these interviews was to learn from the experience of those involved in the Committee's work, not only to better understand its functions but to gain insight into challenges faced by these key actors as they use the CERD process as a tool to combat discrimination. In some instances throughout the report, interviewees' views are directly cited. In other instances, they have served as contextual guides for the report's analysis. Every interview conducted helped better comprehend a complicated and multi-dimensional process.

1.7 Structure of the Report

An introductory section explains the composition of the Committee, its mandate and primary functions. Following this descriptive section on the Committee's work is a short analytical section based on the observations and fieldwork (including interviews of key Geneva-based actors) of the Institute's Geneva consultant, who has participated and observed the CERD process over the course of the past year, gaining more up-close insight on the operations of the Committee. Subsequently, the report examines each of the five countries individually, and each country is given its own section of analysis in the report. Each country section begins with a very brief introduction to some of the most salient issues related to racism, racial discrimination and populations who face

discrimination within that country. The bulk of each country section is made up of three to six subsections, each representing a “lesson learned” or particular finding uncovered in the analysis of the Committee’s work in that particular country. These subsections are denoted by descriptive titles that summarize the “lesson learned,” and the content of each one presents a facet of the CERD process in that particular country that helps to illustrate a particular challenge, or, in some cases, one or more examples of best practices. In some cases, these lessons apply to a specific national context. In others they can apply to situations confronted in multiple countries. The subsections do not pretend to be an exhaustive look at the work of the Committee in the particular country, but taken as a whole, they do represent a mosaic of important issues identified and analyzed as part of a thorough investigation of CERD’s work there. Each country section includes a short conclusion that follows these subsections and ends with several recommendations to the Committee, the State and civil society based on the “lessons learned” presented throughout the report and specific to the national context analyzed within the section. Following the presentation of the five country sections, a final concluding section reiterates some of the most important findings of the report and offers several broader recommendations that take into account the results of the research as a whole.

Section

2

THE COMMITTEE, ITS COMPOSITION, MANDATE AND FUNCTIONS





The Committee for the Elimination of Racial Discrimination was the first United Nations human rights treaty body to be created; since its creation, eight other human rights treaties have established their own bodies with similar functions to those of CERD. The Convention specifies that the Committee shall be comprised of eighteen persons with high moral standing and acknowledged impartiality who, upon election by the State parties, serve in their personal capacity—that is to say independently and not in representation of any one State or group of States.

Candidates for the Committee are nominated by the State parties and are elected by them through secret ballot to four-year terms, with consideration given to ensuring equitable geographic representation and representation of different legal traditions.³ Currently, there are five Committee members from the Americas: Gay McDougall of the United States, José Augusto Lindgren Alves of Brazil, Pastor Elias Murillo Martínez of Colombia, and Jose Francisco Cali Tzay of Guatemala, and Verene Albertha Shepherd of Jamaica⁴.

The Committee's mandate is broadly defined: it exists to monitor the implementation of the Convention by State parties. Articles 8–16 of the Convention specify several competencies and functions of the Committee. These include:

³ See Article 8 of the Convention for the full rules governing the election of Committee members.

⁴ At the time of the publication of this report, the other thirteen members are: Noureddine Amir of Algeria, Alexei S. Avnotomov of Russia, Marc Bossuyt of Belgium, Anastasia Crickley of Ireland, Fatimata-Binta Victoire Dah of Burkina Faso, Afiwa-Kindena Hohoueto of Togo, Anwar Kemal of Pakistan, Melhem Khalaf of Lebanon, Gun Kut of Turkey, Nicolás Marugán of Spain, Yemhelhe Mint Mohamed of Mauritania, Yanduan Li of China and Yeung Kam John Yeaun Sik Yuen of Mauritius.

- To receive and examine reports from State parties on legislative, judicial, administrative and other measures taken to give effect to the Convention.
- To receive complaints from State parties regarding the failure of another State party to give effect to the Convention.
- To receive individual complaints regarding violations of the Convention from citizens in State parties that have ratified the optional Article 14.
- To report yearly on its activities, including examinations of States' reports, to the UN Secretary General.

The Convention also stipulates that the Committee shall adopt its own rules and procedures. The Committee's procedures have been updated periodically since its creation to expand and refine the scope of its work. What follows is a brief summary of the major functions of the Committee and how they are carried out in the fulfilment of its mandate.

Periodic Sessions and State Reviews

As established in Article 9 of the Convention, States must submit a report every two years on the progress toward fulfilling the provisions set forth in the Convention.⁵ The States' reports are to indicate the measures taken to combat racial discrimination and offer a frank, fact-based assessment of the situation of racial discrimination in the country, including obstacles toward making effective the content of Convention. These reports form the basis of the examinations the Committee performs during the periodic sessions it holds in Geneva three times throughout the year. During the Committee's sessions, it reviews the report submitted by the State and creates a "list of themes" that form the general outline of the oral examinations held during the sessions, where representatives of the State present information on progress toward meeting the obligations under the Convention and Committee members ask questions of the State's representatives. During the sessions, the Committee may also consider alternative reports—often called shadow reports—submitted by civil society organizations or national human rights institutions, as well as other relevant source material produced by the United Nations or other institutions. Additional information is often provided by the Office of the High Commission for Human Rights and other specialized organs of the United Nations such as the International Labor Organization. Members of the Committee may also meet with these groups informally, and the information they provide—in meetings or in their reports—may be used by the Committee during the sessions. The periodic sessions represent the principle method by which the Committee receives information on the efforts to combat racial discrimination in each country.

Concluding Observations

Directly related to the periodic examination of the reports by State parties, the concluding observations of the Committee represent the primary method by which the Committee communicates with States on the substance of the Convention and the States progress on implementing it. They are directed to the State parties and written following the periodic examinations. The Committee publishes these observations on the CERD

⁵ In current practice, States are encouraged to submit a report every four years, which puts CERD's reporting requirements on par with most other treaty bodies.

website and encourages their wide dissemination by the State parties. The concluding observations can vary in length and content based on the information the Committee receives, but in general they respond to the information presented in the report submitted by the State, and in some cases to information presented in the alternative reports submitted by CSOs and national human rights institutions. The concluding observations often begin with a few comments on positive steps the State has made in its work against racism. The majority of the observations concentrates on the concerns of the Committee regarding the information that it has received and makes recommendations to the State on actions it should take or information the Committee would like to receive in the following report.

General Recommendations

Since shortly after its inception, the Committee has periodically issued statements known collectively as general recommendations. To date, the Committee has issued thirty-five general recommendations. In the period shortly after the Committee was created, these recommendations often covered procedural topics related the Committee's work; increasingly they have taken on a more interpretive function whereby the Committee uses the general recommendations to clarify certain aspects of the Convention, to explore topics related to racial discrimination not made explicit in the text of Convention, or to guide State parties to take more concrete actions to address certain aspects of the Convention.

Early Warning Measures and Urgent Action Procedures

In 1993 the Committee developed general protocols to respond to special circumstances that may require more immediate action in order to prevent serious violations of the Convention. Early warning measures seek to prevent potentially volatile situations from escalating into more serious conflicts and urgent action procedures seek to address problems that necessitate immediate actions to prevent serious violations of the Convention. The Committee's actions may take three forms: it may issue a decision, whereby it makes a formal declaration regarding specific instances of violations of the Convention; it may issue a statement, whereby it makes a public pronouncement that addresses a concerning situation in more general terms; or it may issue a letter to the State expressing its concern over the situation. In each case the Committee expresses its concern regarding a particular situation and requests the cooperation of the particular State to remedy it. The Committee may request additional information on the situation, including information on actions taken by the State to uphold the Convention in regards to the case. The Committee may remind the State of certain obligations in the Convention it has failed to meet regarding the situation, and may request certain action be taken by the State to meet those obligations.

Thematic Discussions

The Committee periodically holds public events in order to explore and examine particular themes or areas that are of interest to the body in its work against racial discrimination. It has held eight thematic discussions since it began holding them in 2000. The discussions are held in Geneva and the Committee invites States, civil society and inter-governmental institutions to participate in the proceedings. The Committee holds informal meetings with State and non-governmental participants, and CSOs may make short oral presentations on the subject

during the plenary meeting. The thematic discussions have covered a variety of subjects, including discussions on racist hate speech as well as the situations of discrimination against Roma, against Afro-descendants, and against non-citizens, amongst others. The thematic discussions often serve as the basis for the general recommendations made by the Committee.

Individual Complaints

Article 14 of the Convention establishes the competency of the Committee to hear individual complaints of racial discrimination and to make suggestions and recommendations to the State regarding the case. However, not all States have made the necessary declaration recognizing Article 14 and the competency of the Committee to hear individual complaints; currently 54 States recognize Article 14, while 120 do not.

In Latin America, ten of twenty States have accepted the Committee's competency under Article 14; amongst the five countries included in the present study, only Brazil and Peru have accepted the optional article.⁶ Nevertheless, while the Committee has accepted dozens of individual complaints and made recommendations based on their findings in many instances, this procedure has not been used to hear any individual complaints originating in the Americas.

Having described some of the basic procedural functions of the Committee, we would like to present a few comments based on the field observations of the Institute's Geneva-based consultant. The consultant has participated in the CERD proceedings over the past year in which research for this report has been carried out and has had the opportunity to speak with, both formally and informally, many actors in the CERD process. What follows is a synopsis of some observations made during the past year of participation with CERD.

On the Importance of Quality Committee Members

It is apparent that the quality and preparation of the Committee's members truly helps the CERD process. The level of interest and preparedness of the Committee members has a tremendous impact on the oral proceedings during the review sessions. When Committee members take interest in a country, they tend to engage more actively in the process, and the questions and topics raised during the session are often more penetrating and incisive. While it is understandable that the work of Committee members can often be time-consuming and labor-intensive, and that the work is without remuneration, it is of vital importance that Committee members are fully prepared for each period of session, having read the State's report and alternative reports from civil society, as well as other pertinent material. At present, the Committee's preparedness is enforced by the Committee members themselves. And while on the whole Committee members are prepared for and knowledgeable of the countries they will review, it has not always been the case that this is true, at times to the detriment of those looking to maximize the CERD process in the fight against racism and racial discrimination.

Furthermore, because of the demands of the work done by Committee members, sufficient vitality to exercise one's position is of upmost importance. It is important to balance the wisdom that comes from experience with the eagerness of those in earlier stages of their careers. Membership on the Committee tends to lean towards

⁶ Argentina, Bolivia, Brazil, Chile, Costa Rica, Ecuador, Mexico, Peru, Uruguay and Venezuela have ratified Article 14. Colombia, Cuba, the Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama and Paraguay have not.

experience, at times to the detriment of opening membership to experts with perhaps less experience, but who have a stronger willingness to think creatively about the Committee's work and seek new avenues to strengthen and expand it.

The membership of the Committee is further complicated by the election process, which at times can appear to be motivated more by the political considerations of the State parties rather than the desire to nominate and elect candidates of the highest possible order. Ideally, candidacy would draw the interest of the persons most qualified and most dedicated to fulfilling the Committee's mandate, and they would be strongly supported by officials from member States.

On the Critical Role of Rapporteurs

As mentioned in the analysis of CERD and Colombia, the rapporteur assigned to a particular country during CERD sessions can have a significant impact on the usefulness of the sessions, for both civil society and the State. It is the goal of the Committee to assign rapporteurs to countries from regions with which they are familiar. This is important particularly for language reasons, but also to ensure that the rapporteur has a basic understanding of the social, cultural and legal context of the country under review. Unfortunately, this cannot always be accomplished. In these instances, a rapporteur must expend extra time and energy in coming to a better understanding of the nuances of a particular country. This can and does happen, but not always. Much depends of the capacity and, often times, the personal resources of the rapporteur. These resources can include staff members they have in other positions, students, in the case of those that teach, or other resources they possess outside of their position on the Committee.

On the Role of the Secretariat

According to the Convention, the Committee's Secretariat—its operational component—is provided by the United Nations Secretary General. In the case of CERD, the Secretariat consists of one full-time professional staff person, one full-time administrative person and three other professional staff members that can be assigned to service other committees when CERD is not in session. The Secretariat also benefits from the assistance of one intern. The Secretariat can keep current on the work of the Committee, but its limited capacity often does not allow it to pursue as many other activities as it might like to, such as communications outreach, independent research, outreach to civil society, or coordinated work with different agencies of the United Nations. Thus, while the Secretariat does not hinder CERD's work, it is sometimes limited in how it can support and promote the Committee's efforts beyond coordinating its basic functions.

On the Committee's Limited Budget

Those working with the Committee understand that the budgetary constraints of the United Nations, particularly those areas of the UN that work on human rights, significantly curtail the work that can be accomplished. It is a common refrain from those working in the UN system that a lack of resources is the biggest factor in limiting its work. The Office of the High Commissioner for Human Rights is understaffed due to budget constraints, slowing its response to human rights situations and reducing its efficiency and effectiveness. This has a direct impact

on CERD in that the Committee may continue carry out its functions, but personnel at the OHCHR may lack the permanent staff to leverage the Committee's work and create a greater impact. It may be commonplace to cite budget problems contributing to lower output, but in the case of the Committee, the task it is given to carry out exponentially exceeds the resources at its disposal.

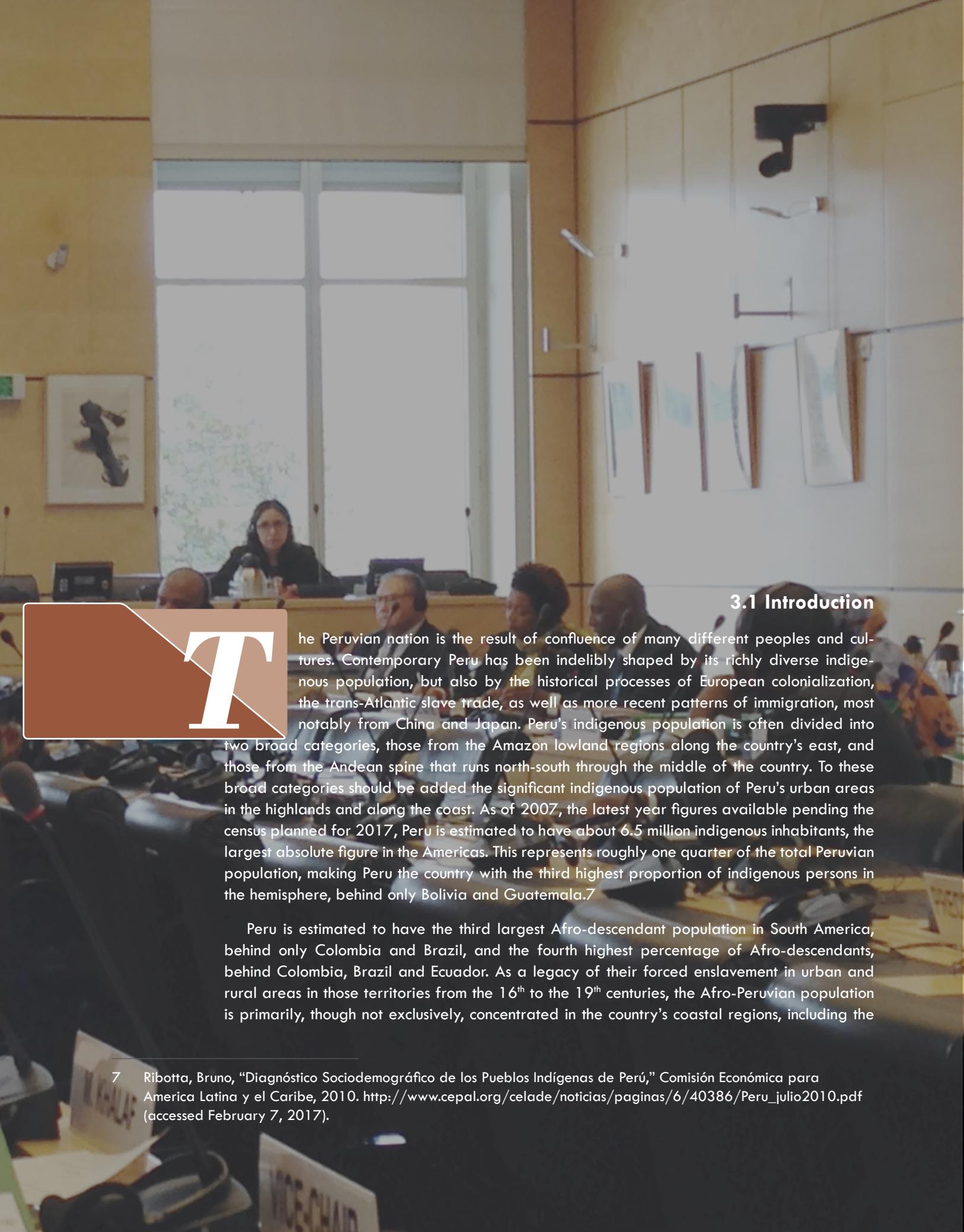
With these considerations in mind, what follows is an analysis of the interaction of the major actors in the CERD process: the Committee, the State and civil society. Through an examination of the primary documents produced as a result of the CERD process, and through interviews with persons who have participated in CERD's work, the Committee's actions to assist in the implementation of the Convention in the five selected countries is analyzed and conclusions are drawn about its contributions to the fight against racial discrimination and where the work of all three actors can be strengthened.

Section

3

CERD IN PERU





3.1 Introduction

The Peruvian nation is the result of confluence of many different peoples and cultures. Contemporary Peru has been indelibly shaped by its richly diverse indigenous population, but also by the historical processes of European colonialization, the trans-Atlantic slave trade, as well as more recent patterns of immigration, most notably from China and Japan. Peru's indigenous population is often divided into two broad categories, those from the Amazon lowland regions along the country's east, and those from the Andean spine that runs north-south through the middle of the country. To these broad categories should be added the significant indigenous population of Peru's urban areas in the highlands and along the coast. As of 2007, the latest year figures available pending the census planned for 2017, Peru is estimated to have about 6.5 million indigenous inhabitants, the largest absolute figure in the Americas. This represents roughly one quarter of the total Peruvian population, making Peru the country with the third highest proportion of indigenous persons in the hemisphere, behind only Bolivia and Guatemala.⁷

Peru is estimated to have the third largest Afro-descendant population in South America, behind only Colombia and Brazil, and the fourth highest percentage of Afro-descendants, behind Colombia, Brazil and Ecuador. As a legacy of their forced enslavement in urban and rural areas in those territories from the 16th to the 19th centuries, the Afro-Peruvian population is primarily, though not exclusively, concentrated in the country's coastal regions, including the

⁷ Ribotta, Bruno, "Diagnóstico Sociodemográfico de los Pueblos Indígenas de Perú," Comisión Económica para América Latina y el Caribe, 2010. http://www.cepal.org/celade/noticias/paginas/6/40386/Peru_julio2010.pdf (accessed February 7, 2017).

regions of Arequipa, Ancash, Ica, Lambayeque, Lima, Callao, Piura, Tacna y Tumbes.⁸ The Peruvian government estimates that the Afro-descendant population of Peru is between two and three percent of the country's population, or roughly between 600,000 and 900,000 persons.⁹ However, by the government's own admission, this is an estimate with very little hard evidence to support it, and many Afro-Peruvian activists believe these figures significantly underestimate the actual population.

Although Peru's armed conflict may have received less international attention than other conflicts in the region—those in Colombia or in Central America for example—the long-lasting internal war against Maoist guerrillas devastated much of the country, particularly in the Andean highlands where the Shining Path guerrillas primarily operated. The geography of the conflict, in combination with the historically-rooted racism of Peruvian society, resulted in the overwhelming majority of victims being indigenous Peruvians—as many as three-quarters were native Quechua speakers. As the Commission for Truth and Reconciliation cited in its final report on the conflict, such a disparity reflected “veiled racism and scornful attitudes that persist in Peruvian society, almost two centuries after its birth as a Republic.”¹⁰ Over a decade after the end to the conflict, Peruvian society continues to grapple with providing reparations for the victims of the war and reconstructing communities and cultures torn asunder by violence.

The end of the Shining Path insurgency has not brought social peace to the Peruvian highlands or the Amazon. Transnational corporations working in extractive industries have incited serious social conflict, as mining companies in the Andes and oil companies in the Amazon—encouraged by a Peruvian State eager to seek economic growth and deeper ties to the world economy—have voraciously pursued profit from the country's natural resources, often times with little regard for the desires of the communities in which they operate. Cultural and racial discrimination have fueled arguments in favor of extractive industries at the expense of indigenous communities seeking different forms of development, typified in the comments made by former President Alan García, who accused indigenous Peruvians opposing extractive industry of seeking refuge in the “most backwards and least rational” arguments, blocking progress due to “their elemental ignorance,” and forcing “Peruvian democracy to coexist with signs of primitive barbarism.”¹¹

President García’s condemnable characterizations of Peru’s indigenous peoples is contrasted by the unprecedented action he undertook with regard to Peru’s Afro-descendant population. In 2009, President García officially apologized for Peru’s treatment of Afro-Peruvians from colonial times to the present, a symbolic gesture of goodwill that was planned as a way to begin to address through more focused public policy the

8 Díaz, Ramón and Oscar Madalenoitia, “Análisis de la situación socioeconómica de las población afroperuana y la población afrocostarricense y su comparación con la situación de las poblaciones afrocolombiana y afroecuatoriana,” Proyecto regional Población Afrodescendiente de América Latina del Programa de las Naciones Unidas para el Desarrollo, 2012, https://www.academia.edu/2341892/Situaci%C3%B3n_socioecon%C3%B3mica_de_la_poblaci%C3%B3n_afroperuana_y_de_la_poblaci%C3%B3n_afrocostarricense (accessed February 17 2017).

9 Ministerio de Cultura de Perú, “Derechos de la Población de Afroperuana,” Materiales de Capacitación No. 5, 2015. http://poblacionafroperuana.cultura.pe/sites/default/files/derecho_de_la_poblacion_afroperuana.pdf (accessed February 7, 2017).

10 Comisión de la Verdad y Reconciliación de Perú. *Final Report Vol. VIII.* (2003), cited in Pedersen, Duncan et al, “The sequelae of political violence: Assessing trauma, suffering and dislocation in the Peruvian highlands,” *Social Science and Medicine* 67 (2005): 205-217.

11 García Pérez, Alan, “Receta para acabar con el Perro del Hortelano,” *El Comercio*, November 27, 2007.

disparities suffered by Afro-Peruvians. Unfortunately, this symbolic gesture has not been sufficiently followed-up with concrete actions.¹²

Peru faces a number of challenges in addressing these and other issues related to racism and racial discrimination. These challenges are compounded by a severe lack of information regarding the country's ethnic and racial composition. Apart from national censuses, data collection methods have improved in recent years, but many still utilize sub-optimal methodologies for tracking race and ethnicity—for example, using questions about language to identify indigenous persons rather than the better practice of using self-identification. Efforts to gather better information on Peru's ethnic groups represent a fundamental first step toward creating policies that promote inclusion and equality.

It is in this context that Peru seeks to fulfill its obligations under the Convention and undertake the necessary measures to ensure its effective implementation. After a prolonged absence of engagement with the Committee, Peru has begun to more actively participate in the CERD process. Following eleven years without reporting, Peru submitted a report to CERD in January 2009 and was reviewed in September of the same year during the Committee's 75th period of sessions. Its most recent report was submitted in April 2013, with the subsequent review occurring during the 85th period of sessions in September 2014. What follows are several lessons learned as a result of examining the documents related to those two sessions and interviewing actors involved in their production.

3.2 Peru's Frequent Submission of Reports Has Led to Better Quality Reports

After going nearly eleven years without reporting to CERD, Peru submitted its 14th to 17th combined reports in 2009, and followed that report with its 18th to 21st reports roughly four years later, in 2013. During this time the quality of its reports has significantly improved, and its submission of follow-up reports following its reviews in 2009 and 2014 has allowed for a more constant interaction with the Committee.¹³

Peru's 14th-17th combined reports, submitted in 2009 after over a decade of non-reporting, failed to meet most of the basic criteria established by the Committee in its reporting guidelines. The State's poor reporting was criticized in more than one alternative report submitted by Peruvian civil society, who made note of several of the report's shortcomings in content and structure. The Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos (CAPAJ) was direct in its assessment, noting correctly that "the report has not followed the co-ordinated guidelines for reporting on international human rights bodies, nor the guidelines approved by CERD in its 71st period of sessions," and that "the information is particularly vague with regards to Articles 1-7."¹⁴ Likewise, the report submitted by the Coordinadora Andina de Organizaciones Indígenas (CAOI) and the Confederación Nacional de Comunidades Afectadas por la Minería (CONACAMI) criticized the State's report as having "an extensive

12 El Centro de Desarrollo de la Mujer Negra Peruana, *Informe sobre la situación de los derechos del pueblo afroperuano: más allá del perdón histórico*, (Lima: May 2011).

13 A comparative analysis of the State's reports was done according to a close-reading guide designed based on the Committee's reporting guidelines, where the reports' treatment of each point of information requested by the Committee was given a score based on its completeness.

14 Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos, *Algunas Consideraciones Relativas al Informe Presentado por el Gobierno de Perú al CERD*, June 2009, para 51-52. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPER%2f75%2f9889&Lang=en (accessed February 17, 2017).

normative explanation but practically no description of policies or results.”¹⁵ The criticisms made by civil society in their alternative reports were well-deserved: the report submitted by Peru in 2009 was inadequate and showed a lack of will on the part of the State to meet its obligations under the Convention. The report’s shortcomings were so apparent that the Committee was obligated to make note of them in its concluding observations, remarking that the report “does not address adequately or in sufficient detail all the provisions of the Convention.” Despite the broad nature of the Committee’s reprobation, such criticism of the report itself within the concluding observations is not commonplace, and points to the particularly acute shortcomings of Peru’s report.

Peru next submitted a report in 2013, roughly adhering to the *de facto* four-year interval for reporting to the Committee. And while the report is not without its shortcomings, it generally meets the criteria put forth in the Committee’s guidelines. The report adopts a franker tone, and admits certain shortcomings—for example, a lack of sufficient data on indigenous and Afro-Peruvians. It also contains more specific information (though still more could and should be included), particularly with regard to Afro-Peruvians, who, rather surprisingly and unfortunately, were mentioned only in passing in the State’s 2009 report.

Evidence suggests that the reporting process within the State has been strengthened over the last seven years, and that the shorter lapse in reporting—as well as the submission of follow-up reports after each review—has served to keep active the institutional mechanisms that can atrophy when States postpone reporting. According to Rocio Muñoz, an Afro-Peruvian woman and former staff member of the Directorate of Intercultural Citizenship of the Ministry of Culture with direct experience in the reporting process, the preparation of CERD reports was “intense work, with many multi-sector meetings.” Ms. Muñoz confirmed that, within the Ministry of Culture, the reports “were an important endeavor that was taken very seriously.”¹⁶

Aside from Ms. Muñoz’s affirmation that reporting to CERD is taken seriously, her comments point to an important reality. Producing reports with the scope and detail necessary to be of use to the Committee and to be of use as a tool to help better implement the Convention requires an ongoing, coordinated effort from multiple sectors of national and (ideally) local government. The nature of government operations means the continuity of such work can be jeopardized in a number of ways: for example, when elections bring new parties to power, when ministers are replaced or when the organization of the bureaucracy is shuffled. Maintaining institutional memory up to date and keeping active inter-agency cooperation for reporting purposes contributes to the institutional strengthening necessary to produce better, more detailed, and ultimately more useful reports. Allowing too much time between reports risks weakening these efforts, leading to a regression in the quality of reports produced. We have seen Peru strengthen the content of its reports after complying with the Committee’s timelines and continuing to engage in the follow-up process and evidence suggests that, much like regular exercise has clear health benefits, regular reporting leads to stronger reports.

15 La Coordinadora Andina de Organizaciones Indígenas and La Confederación Nacional de Comunidades del Perú Afectadas por la Minería, *Observaciones de las Organizaciones Indígenas al Informe del Estado Peruano ante el Comité para la Eliminación de Todas Formas de Discriminación Racial*, July 2009, pg. 2. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPER%2f75%2f9889&Lang=en (accessed February 17 2017)

16 Rocio Muñoz, interviewed by Dominic Procopio via video conference call, Washington, DC and Lima, October 11, 2016.

3.3 Regarding the Committee's Recommendations in Critical Areas, Peru's Response Has Been Inconsistent

Despite submitting reports in a timelier manner and despite the improving quality of the reports, Peru has not sufficiently addressed the recommendations made to it by the Committee in its concluding observations, though it has made some progress in this area. This has been compounded by a lack of follow-up on the part of Peruvian civil society regarding the recommendations made by the Committee. An examination of the State's response and civil society's follow-up to three of the Committee's recommendations on fundamental issues of discrimination in the country shows a mixed record, but one that could certainly be improved.

In its concluding observations to the 75th period of sessions the Committee's very first recommendation was that the State should combat racial discrimination by "drawing up a comprehensive national policy against racism and racial discrimination."¹⁷ Though the Committee does not prioritize its recommendations, the placement of this particular one at the beginning of its concluding observations suggests its importance. This importance is underscored by the fact that it represents a fundamental first step in systematically and effectively coordinating the State's efforts to combat discrimination: it would be the starting point for addressing the other recommendations by the Committee.

Despite the importance lent to the recommendation and its usefulness in addressing the other recommendations of the Committee, the State's subsequent report to CERD contained no evidence that any credence had been given to the suggestion. The State's report made mention of other policy documents that obliquely addressed issues of discrimination or those affecting Afro-Peruvian or indigenous populations, but a national plan against discrimination was not included in its report to CERD. The lack of action on this recommendation was underscored by the Committee's reiteration of the suggestion in its concluding observations for Peru's most recent review, again as the first recommendation it made, where it again asked the State to consider creating "a comprehensive national policy against racism and racial discrimination that will promote social inclusion and reduce the high levels of inequality and poverty affecting members of indigenous peoples and Afro-Peruvians."¹⁸

A second major recommendation of the Committee in its concluding observations to the 75th period of sessions came in regard to improving guarantees of the right to free and informed prior consent of ethnic groups regarding laws and policies that will affect them, especially in the area of extractive industries. The Committee urged the State to "adopt the bill on the consultation and participation of indigenous peoples in environmental matters [and] consult the communities of the indigenous peoples concerned at each step of the process and to obtain their consent before plans to extract natural resources are implemented."¹⁹

In this instance, the State did not wholly ignore the recommendations of the Committee. In fact, it reported to the Committee in its subsequent report for the 85th period of sessions that it had approved a new law (No. 29785 of 2011) that regulated the right of indigenous groups to prior consultation. The State also underscored

17 United Nations Committee on the Elimination of Racial Discrimination, *Consideration of the Reports Submitted by States Parties under Article 9 of the Convention: Fourteenth through Seventeenth Reports of Peru*, CERD/C/PER/CO/14-17 (3 September 2009), par. 10.

18 United Nations Committee on the Elimination of Racial Discrimination, *Consideration of the Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth to Twenty-First Periodic Reports of Peru*, CERD/C/PER/CO/18-21 (25 September 2014), par. 8.

19 UN CERD Consideration of Peru's 14th through 17th reports, par. 14.

in its report that the passage of the law was the result itself of a long process of consultation with indigenous groups and civil society more broadly.²⁰

While the passage of a law that regulates the right to prior consent represents an instance where the Peruvian government appears to have heeded the recommendations of the Committee, the application of the law was not met by universal approval by indigenous groups. In fact, every CSO that submitted an alternative report to the Committee for the 85th period of sessions cited the incomplete or ineffective application of the law as a major obstacle toward the full exercise of the rights of indigenous groups. The *Comisión Jurídica de los Pueblos Originarios Andinos* (CAPAJ) criticized the poor implementation of the law,²¹ while the *Chirapaq Centro de Culturas Indígenas de Perú* said the law had been a “setback for the country” that sought to leave coastal and highland groups “excluded from prior consultation.”²² The *Coordinadora Andina de Organizaciones Indígenas* noted that many indigenous groups erroneously labeled as peasants would be left out,²³ while the *Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer* (CLADEM) noted the absence of specific language recognizing indigenous women’s right to prior consultation.²⁴

These concerns were echoed by the Committee in its concluding observations for this period of sessions. The Committee noted the positive step taken in the adoption of the prior consultation law, but continued to express its concerns regarding its effective application and made three specific recommendations on how the State could give effect to the law.

In contrast to the two examples cited above, the State has heeded the Committee’s recommendation and has made positive, though halting, steps to heed the Committee’s insistence on better data collection on Afro-Peruvian and indigenous groups. In its concluding observations for the 75th period of sessions, CERD recommended that Peru “continue to improve its census methodology to reflect the ethnic complexity of Peruvian society [and] include in its next periodic report disaggregated statistics on the composition of the population.”²⁵

In advance of its subsequent report for the 85th period of session, the State had not collected nationwide demographic information on indigenous and Afro-descendant population, noting in its report that it “did not have a census or national survey that collects information on a national level on its inhabitants’ race, color, ancestry or national or ethnic origin.”²⁶ Nevertheless, it affirmed that the *Instituto Nacional de Estadística e Informática*

20 UN CERD Consideration of Peru’s 18th through 21th reports, par. 64-66.

21 Comisión Jurídica de los Pueblos Originarios Andinos, *Informe Alternativo “CAPAJ,”* June 2014. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPER%2f75%2f9890&Lang=en (accessed on February 17, 2017).

22 Chirapaq Centro de Culturas Indígenas de Perú, *Discriminación racial en los medios de comunicación peruanos: El caso del programa humorístico “La Paisana Jacinta,”* August 2014. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPER%2f75%2f9885&Lang=en (accessed on February 17, 2017).

23 The Coordinadora Andina de Organizaciones Indígenas, *Observaciones de CAOI al informe del Estado peruano ante el Comité para la Eliminación de todas las formas de Discriminación Racial,* June 2014. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPER%2f17550&Lang=en (accessed February 17, 2017).

24 El Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer, *Informe alterno al Comité para la Eliminación de la Discriminación Racial (CERD) de las Naciones Unidas – Perú,* Julio 2013. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPER%2f17782&Lang=en (accessed February 17, 2017).

25 UN CERD Consideration of Peru’s 14th through 17th reports, par. 12.

26 UN CERD Consideration of Peru’s 18th through 21th reports, par. 25.

(INEI), the national statistics agency, and the Ministry of Culture were in the process of establishing criteria to best identify and count Afro-Peruvian and indigenous persons in the next census.²⁷

The work done by the State on improving census methods was confirmed in an alternative report written by the *Centro de Desarrollo de la Mujer Negra Peruana* (CEDEMUNEP).²⁸ The report confirmed that, due to the recommendations of the Committee, the Ministry of Culture was at the time planning a specialized survey for Afro-Peruvians and that INEI had created the Inter-Institutional Technical Committee on Statistics and Ethnicity to prepare for the census planned for 2017.²⁹ These actions by the Peruvian government have been part of an ongoing collaboration between the State and Afro-Peruvian civil society in preparation for the 2017 census. As noted by Cecilia Ramírez, Executive Director of the *Centro de Desarrollo de la Mujer Negra Peruana* (CEDEMUNEP), a Peruvian grassroots organization promoting the rights of black Peruvian women, her organization continues to carry out a number of activities in conjunction with different governmental actors—both at the national and local levels—in order to promote a well-executed census that serves to create better policies for the Afro-Peruvian population.³⁰

It is this type of continued action between civil society and the State that demonstrates how the Committee's concluding observations and recommendations can be of value in making concrete progress in combating racial discrimination. Nevertheless, it too often proves to be the exception rather than the rule, as States many times do not sufficiently consider the Committee's recommendations. In the case of Peru, the government has shown some willingness to do so, but could significantly improve its work in this area.

3.4 The Committee and Civil Society Have Not Sufficiently Used the CERD Process to Ensure Productive Dialogue Between Civil Society and State

The CERD sessions have increasingly become a locus for stakeholders to engage in a constructive dialogue about how best to combat racism and racial discrimination, especially over the last decade, since civil society has begun its more active role through the production of alternative reports and attendance at the sessions. In Peru, much like in other countries, this dialogue and collaboration is, at least rhetorically, a primary aim of all parties: civil society, the Committee and the State.

According to activist Cecilia Ramírez of CEDEMUNEP, her organization's goal in utilizing the CERD process has been "not to sharply criticize the government, but rather to look for spaces for dialogue where [CEDEMUNEP] can work in partnership."³¹ Likewise, activist Newton Mori from the Chirapaq Centro de Culturas Indígenas de Perú, an indigenous rights organization operating in Lima and Ayacucho, also confirmed that a major goal of his organization in participating in the CERD process was to seek greater dialogue with the State. He explained Chirapaq's strategy:

27 Ibid., par. 41.

28 Due to technical difficulties, the report was not uploaded to the Committee's website. Despite this, it was shared with Committee members and its contents were considered by the Committee during the sessions.

29 El Centro de Desarrollo de la Mujer Negra Peruana, *Informe Sombra Presentado al CERD*, November 2013.

30 Cecilia Ramírez, interviewed by Dominic Procopio via video conference call, Washington, DC and Lima, September 8, 2016.

31 Cecilia Ramírez, interview.

First we thought of directly asking for the Committee to request that the program [Paisana Jacinta, a television show that promoted racist stereotypes of indigenous women] be removed from the air. In the end we decided to ask for a dialogue to be opened between the State and civil society, so that indigenous representatives could express their opinions regarding the program.³²

The Committee repeatedly requests that States engage in greater dialogue with civil society. In interviews, Committee members have emphasized the need for States to more actively engage civil society.³³ This is also a nearly universal recommendation by the Committee in its concluding observations, as exemplified in CERD's recommendation following Peru's review during the 75th period of sessions that, "in conjunction with the preparation of its next report, the State party continue to consult and expand its dialogue with civil society organizations engaged in the defense of human rights."³⁴

Just as CSOs and the Committee have emphasized the need for greater dialogue, the Peruvian government has echoed these calls by highlighting its work with civil society organizations. In its most recent report to the Committee it has emphasized its work with the Afro-Peruvian Women's Working Group as a space for dialogue with civil society.³⁵ In the same report, the Peruvian government also noted its inclusion of civil society in policy-making, with specific reference to the Development Plan for the Afro-Peruvian Population.³⁶

Despite the agreement that dialogue is crucial, in the case of Peru it does not appear that during review sessions the State and civil society take advantage of their proximity and shared goals to meet and discuss ways to work together. Peruvian activists have cited international fora as unique opportunities to engage with State actors with direct experience with and decision-making power over issues important to their advocacy, noting that members of the government may be more open and available to meet when protocol at these venues dictates they act more responsive to civil society.³⁷ Nevertheless, activists who attended the last review of Peru by the Committee were unable to hold any meetings with the Peruvian delegation or its mission in Geneva. Members of Chirapaq, for example, attempted to make contact with delegation through the Ministry of Foreign affairs with the hope of engaging in dialogue at some point during the sessions. Despite their efforts, they were not put in touch with representatives of the State.³⁸

The Committee has worked hard to ensure that its members are available to civil society during the sessions, and Peruvian civil society members who attended the 2014 review sessions praised the usefulness of these meetings. According to Newton Mori, several of the Committee members present at these meetings demonstrated a commendable understanding of the Peruvian national context, including the rapporteur for Peru, Alexei Avtomonov, who Mori characterized as informed and supportive.³⁹ Despite these meetings being nearly universally regarded as contributing to a richer and more fruitful review, the Committee itself has not made an effort to foster the same type of exchange between the State and civil society. Indeed, as one Committee member noted, this sort of specific encouragement or mediation is not seen as falling within the bounds of the Committee's man-

32 Newton Mori, interviewed by Dominic Procopio via video conference call, Washington, DC and Lima, September 8, 2016.

33 Pastor Murillo, interviewed by Dominic Procopio, Bogota, February 11, 2016.

34 UN CERD Consideration of Peru's 14th through 17th reports, par. 27.

35 UN CERD Consideration of Peru's 18th through 21st reports, par. 56.

36 Ibid, para 59.

37 Cecilia Ramírez, interview. Ms. Ramírez specifically referenced her experience at the thematic hearings of the Inter-American Commission on Human Rights, echoing other activists that their mere presence at these fora both raise their organizations profile and help them be seen by the state as worthy interlocutors.

38 Newton Mori, interview.

39 Ibid.

date. And while that may be true in a strict sense, given the successful example of the Committee's engagement with activists during the sessions and the rhetorical support by all parties for more dialogue, support from the Committee for a formal space for dialogue between the State and civil society may open up another avenue for collaboration in fighting racial discrimination.

Establishing a space for face-to-face contact may also serve to bolster communication between the government and civil society before and after the sessions, which in the case of Peru has been sporadic at best. Improvement in this area can be made by all three actors. The Committee calls for civil society participation in the reporting process, but does not offer guidelines about the role civil society should play, nor does it point to best practices that States may use as references.⁴⁰ Moreover, the Committee does not request in its reporting guidelines any specific information on civil society's participation in work against racial discrimination; consequently, States tend to provide little information in this area. Peru follows the patterns of other State reports: it highlights the inclusion of civil society with broad statements, but provides very little concrete evidence about the extent or outcome of this participation. For their part, Peruvian organizations have not sufficiently prioritized utilizing the Committee to gain leverage in accessing greater spaces for dialogue. In the alternative reports submitted to the Committee, no organization has made specific recommendations to the Committee to help promote mechanisms for dialogue. In fact, only one organization –Chirapaq– made recommendations that called for any type of civil society consultation.

3.5 Despite Increased Engagement with CERD, Peruvian Institutions Tackling Racism Remain Weak

Activists have repeatedly voiced their concern over the weakness of Peruvian institutions responsible for addressing racism and promoting the interests of indigenous and Afro-Peruvians. According to Cecilia Ramírez of CEDEMUNEP, the government's actions regarding the Afro-Peruvian population "is conditioned by a lack of institutional strength." This institutional weakness has meant that "any action or advancement depends on the commitment of individuals within the government, who may or may not be sympathetic to the Afro-Peruvian agenda." According to Ramírez, "Afro-Peruvians remain invisible, without programs, activities and institutions" dedicated to their needs. Indigenous activists have also been critical of institutional responses to discrimination. According to Newton Mori of Chiripaq, his organization sought to work with the *Alerta Contra Racismo*, a program to receive and process complaints of racist and discriminatory acts. Despite their efforts, they made little progress and the *Alerta* "has had very little effectiveness" in registering or helping to sanction acts of racism.

Organizations have also expressed their concern regarding the ineffective institutional response to racism and discrimination in their alternative reports. During the 75th period of sessions in 2009, CSOs noted the lack of an effective mechanism for prior informed consent on measures directly affecting indigenous peoples.⁴¹

40 The Committee has included a civil society-produced guide to CSOs' participation in the CERD process, an excellent handbook produced by the International Movement Against all forms of Discrimination and Racism (IMADR). The guidebook however, is aimed at civil society and not at the States, and it does not mention how or in what capacity States should incorporate CSOs in their reporting process. The guidebook can be found at: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_INF_7827_E.pdf

41 Taller Permanente de Mujeres Indígenas, Andinas y Amazónicas del Perú, Resumen ejecutivo sobre las acciones del Estado peruano en relación a la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial, July 2009, pg 2. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPER%2f75%2f9885&Lang=en (accessed February 17, 2017).

Other reports criticized the effectiveness of the National Institute for the Development of Andean, Amazon and Afro-Peruvian Peoples (INDEPA), the primary national institution (at the time)⁴² responsible for programs and policies serving Peru's indigenous and Afro-descendant population.⁴³ Similar concerns were manifested in alternative reports for the 85th period of sessions in 2013. One report noted that over 1500 cases of socio-environmental conflict had been submitted to the National Ombudsman, a clear indication of an ineffective system for prior consultation and consent.⁴⁴ Another pointed to the lack of sufficient institutional response to the needs of especially vulnerable populations, such as Afro-Peruvian and indigenous women, who face high rates of violence and social, economic and political exclusion.⁴⁵

The weakness of State institutions is further demonstrated in the State's reports themselves. The State essentially opens its report for the 75th period of sessions admitting that "no public institution exists that centralizes the fight against discrimination," a fact which has not changed since that time.⁴⁶ Following that statement, in both the reports for the 75th and 85th periods of sessions, the State provides further evidence of significant need for institutional strengthening. This includes strengthening data collection and analysis; according to the State's own report, "the Peruvian State does not have a census or specialized survey that collects, at the national level, information on inhabitants that takes into account factors such as race, color, ancestry or national or ethnic origin."⁴⁷ When the State does mention institutions responsible for policies affecting indigenous and Afro-Peruvians, such as the Vice-Ministry for Intercultural Affairs, the General Directorate for Intercultural Citizenship, the Directorate for Afro-Peruvian Policy and the Ministry of Energy, the reports offer no information about these institutions' financial or human resources and give very little specific information about the programs and activities they carry out on behalf of indigenous and Afro-Peruvians, including essentially no information on concrete results of their work.

In its concluding observations, the Committee has noted some of these institutional weaknesses, but overall its response has lacked force and specificity. For instance, in its concluding observations for the 75th period of sessions, the Committee dedicates two full paragraphs to praising the creation of INDEPA and expressing its satisfaction at the institution's work. This praise comes despite the fact that almost no specific information on INDEPA's work was provided in the report. For instance, the report gave no information on a specific instance of prior consultations, one of INDEPA's responsibilities. It also seems to ignore the serious and well-documented concerns about the institution's ineffectiveness raised in multiple alternative reports produced by CSOs. The Committee did make a general recommendation to provide the institution with sufficient financial and human resources, but no other specific concerns are raised.

In its concluding observations for the 85th period of session, the Committee does make more explicit recommendations regarding prior informed consent, a continued and major institutional weakness. However, these recommendations make no mention of the institutions responsible for implementing them—the Ministry of Energy, in coordination with the various Directorates of the Vice-Ministry for Intercultural affairs, for example. In fact,

42 INDEPA was dissolved in 2010 a bureaucratic reorganization, its competencies largely reassigned to the Vice-Ministry of Interculturality (*Interculturalidad*).

43 Coordinadora Andina, *Observaciones CERD 2009*, pg. 2.

44 Comisión Jurídica de los Pueblos Originarios Andinos and the Organización de Pueblos Aymaras, Quechuas y Amazónicas, *Informe Alternativo Ante el Comité para la Eliminación de la Discriminación Racial de las Naciones Unidas*, August 2014, pg. 2. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fC-ERD%2fNGO%2fPER%2f17605&Lang=en (accessed February 17, 2017).

45 Comité para la Defensa de Mujeres, *Informe Alterno 2013*, pg 13-14.

46 UN CERD Consideration of Peru's 14th through 17th reports, par. 2.

47 UN CERD Consideration of Peru's 18th through 21st reports, par. 9.

the Committee makes no mention of these important institutions anywhere in its concluding observations. This is particularly concerning given how little the State's report mentions their work.

3.6 Conclusions

After a decade of non-reporting, Peru took a major positive step in reengaging with the Committee by submitting its report in 2009, and following that report with another in 2013, adhering to the accepted time frame. This commitment to timely reporting has corresponded with improved structure and content of its reports, a necessary requisite to effectively implement the Convention. Despite the positive effects of this reengagement, Peru's participation in the CERD process has demonstrated that areas for improvement remain. It can improve on implementation of the Committee's recommendations. Likewise, dialogue with civil society should be strengthened, and the review sessions represent an optimal time to work toward that goal. Finally, strengthening the institutions responsible for implementing the Convention should be a priority. Achieving these outcomes will require efforts by all actors engaged in the CERD process.

3.7 Recommendations

With the above in mind, the following recommendations are made to the Peruvian government, the Committee and Peruvian civil society:

To the Peruvian government:

1. The Peruvian government must make every effort to seriously consider and effectively implement the Committee's recommendations, as these represent the primary mechanism through which improvement can be made in meeting its obligations under the Convention.
2. The Peruvian government should continue its more active engagement with CERD and continue to strengthen the reporting process, including strengthening inter-ministerial coordination. It should follow the guidelines set forth by the Committee and include detailed information on the reporting process, including the responsibilities of the different agencies and institutions involved.
3. The Peruvian government should prioritize seeking meaningful dialogue with civil society organizations during the review sessions.
4. The Peruvian government should place a greater emphasis on reporting on the key institutions tackling racism and racial discrimination in a way that goes beyond stating these institutions' mandates and provides concrete information on their resources and activities, while describing the challenges they face in implementing the Convention.

To the Committee:

1. The Committee should work with CSOs and States (including missions in Geneva and delegations to sessions) to encourage face-to-face dialogue during the sessions. It should consider options for providing spaces for civil society and States to meet, and inquire in each oral examination about the status of dialogue between CSOs and government officials during the sessions.

2. The Committee should make specific recommendations about key institutions tackling racism and discrimination in its concluding observations, and it should insist that States provide in their reports specific and detailed information on these institutions, including information on resources, activities and outcomes.

To Peruvian civil society:

1. Peruvian civil society must improve its follow-up activities regarding the Committee's recommendations and include these activities as important components in their strategic advocacy activities at the national, regional and universal levels.
2. Peruvian civil society organizations should always include recommendations in their alternative reports, which they have not always done. These recommendations should include specific proposals, especially ones that seek to increase their participation in policymaking.
3. Peruvian civil society should continually remain engaged in the CERD process and maintain awareness regarding the State's progress on reporting to CERD. CSOs should communicate with contacts in the State regarding their views on the priorities for reporting and should actively pursue participation in the reporting process.
4. Peruvian civil society organization should prioritize providing the Committee with information and observations on the work of key institutions. In the cases where improvements in their performance are necessary, CSOs should recommend solutions to the problems faced.

Section

4

CERD IN COLOMBIA



4.1 Introduction



richly diverse, multiethnic and pluricultural society, according to its 2005 census Colombia is home to at least 87 different indigenous groups and 710 collectively-held indigenous territories that together account for almost 30 percent of the national territory.⁴⁸ The total estimated indigenous population in Colombia is about 1.4 million people. Colombia is also home to one of the largest Afro-descendant populations in the hemisphere, nearly 11 percent of its total population, or about 4.3 million persons, according to the 2005 census.⁴⁹ As in the case of Peru, these numbers are thought to undercount the number of Afro-Colombians, which some analyses place at between 18-20 percent.⁵⁰

Colombia as a nation faces a number of issues related to racial discrimination—some of which are confronted by many other countries in the region, and some that are particular to Colombia's unique social patterns and historical trajectory. Just as it has impacted nearly all aspects of Colombian society, the country's decades-long armed conflict—which recently began

48 Presidencia de la República de Colombia, Departamento Administrativo Nacional de Estadística (DANE), *Colombia una nación multicultural: Su diversidad étnica*, mayo 2007. https://www.dane.gov.co/files/censo2005/etnia/sys/colombia_nacion.pdf. (Accessed February 7, 2017).

49 Presidencia de la República de Colombia, Departamento Administrativo Nacional de Estadística (DANE), *La visibilización estadística de los grupos étnicos colombianos*, Documento DANE: Bogota. https://www.dane.gov.co/files/censo2005/etnia/sys/visibilidad_estadistica_etnicos.pdf. (accessed Februar 7, 2017)

50 Castro Heredia, Javier Andrés, Fernando Urrea Giraldo and, Carlos Augusto Viáfara López, "Un breve acercamiento a las políticas de Acción Afirmativa: orígenes, aplicación y experiencia para grupos étnico-raciales en Colombia y Cali," *Revista Sociedad y Economía*, No 16 (Enero, 2009) 160.

a new chapter with the approval of the final peace accords and the first steps toward their implementation—has conditioned and exacerbated the situations of inequality and discrimination confronted by Afro-Colombian and indigenous individuals and communities. Amongst the most vulnerable of population groups, Afro-Colombians and indigenous peoples have disproportionately suffered from the effects of the conflict.⁵¹ Conflict zones have often overlapped with Afro-Colombian and indigenous territories, including collectively held lands.⁵² During the course of the conflict, thousands of Afro-Colombians and indigenous have been victims of killings and disappearances, often as reprisal for defending territorial and other rights. Both groups are disproportionately represented amongst Colombia's massive internally displaced population. The armed conflict and racial discrimination are inextricably linked. Eliminating racial discrimination in Colombia cannot be achieved without accounting for the devastation wrought by the country's civil war, just as a comprehensive and sustainable peace cannot be attained without confronting Colombia's racial inequalities.

In addition to suffering the consequences of years of civil war, Colombia's ethnic groups face a host of other challenges. Mechanisms for ethnic groups' democratic participation remain weak, making it hard for Afro-Colombians and indigenous people to engage meaningfully with civic processes. This includes an ineffective process for prior consultation, barriers to participation in elected and appointed government positions, and weak access to justice. Afro-Colombians and indigenous are also less likely to enjoy the benefits of economic development. Resource exploitation in their territories has brought environmental degradation while providing little economic or social benefits to the populations. Ethnic groups enjoy lower levels of access to education, health and other social services, and have higher rates of poverty and unemployment than national averages.

It is in this context that the Colombian government is tasked with fulfilling its obligations under the Convention; under these circumstances civil society organizations must work to make their voices heard and to defend the rights of the nation's ethnic communities. Colombia signed the Convention in March 1967, becoming one of the first Latin American countries to sign the treaty. Despite this, the country was one of the last in the region to ratify the Convention, doing so in September 1981. Since that time, Colombia has been reviewed under CERD on eight occasions, most recently during the Committee's 87th period of sessions held in August 2015. Prior to that, its last review came in 2009 during the 75th period of sessions.

During the period surrounding its two most recent reviews under CERD, important gains have been made in the struggle against racial discrimination in Colombia, though progress has often been halting. An examination of the interaction between the State, civil society and the Committee during this period reveals several noteworthy findings that shed light on the efforts made to implement the Convention in Colombia; amongst them are the following.

4.2 Colombian Civil Society's Participation in the CERD Process Has Grown, but it Must Continue to be Strengthened

Mirroring its counterparts in many other countries, in recent years Colombian civil society has increasingly taken on a more active role in the CERD process. In preparation for the Committee's most recent review of Colombia during its 87th period of sessions, at least seventeen different organizations participated in the drafting of seven

51 Organization of the American States, Inter-American Commission on Human Rights, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, paras 636, 641.

52 Jaime Arocha, "Territorio y daño cultural en el afro-Pacífico," DesDIBUJANDO el PAISaje: Territorio, Autonomía y Buen Vivir, Sheila Gruner et al, eds. (Ediciones Poder Negro: Medellín, 2012).

alternative reports. This represents a significant increase compared to Colombia's previous review in 2009, when seven organizations worked to produce the first two alternative reports ever submitted to the Committee by Colombian civil society. This increased participation also helped a greater diversity of voices to be represented in the alternative reports. For the most recent review, two women's organizations, seven Afro-descendant organizations, six indigenous organizations and three international organizations drafted or supported reports.

The greater diversity of voices resulted in a broader range of topics covered in the alternative reports. Some reports included a regional specificity—for example, two focused on the north Cauca region. Two reports focused on issues affecting Afro-Colombian women, while several other reports included sections that specifically addressed issues relating to gender and/or multiple forms of discrimination. Two reports focused on a specific indigenous community, the Wayuu. Other reports provided detailed information on crucial topics affecting the country's ethnic communities, including internal displacement, the continued absence of an effective prior consultation mechanism, illegal mining as well as other environmental and economic development issues.

Given the multiplicity of challenges facing the country's ethnic communities, the trend toward the participation of more organizations representing a greater spectrum of perspectives will better assist the Committee in comprehending the social complexity in which the content of Convention will continue to be applied in Colombia. Despite this positive trend, a still greater number of voices could be included civil society's shadow reports. This could include greater geographical diversity; for example, the situation of Afro-descendant communities on the Atlantic coast has received very little attention to date. It could also include a greater diversity in the populations reporting and being reported on; for example, specific information on the vast majority of indigenous communities have not been included in alternative reports—likewise, Raizal and Palenquero communities have not been particularly well-represented. Moreover, and especially given its general absence in the State's reports, a focus on intersectionality or multiple discrimination faced by LGBTI persons, youth, senior citizens and other population groups in Colombia's ethnic communities will support a more holistic implementation of the Convention.

Along with a greater diversity of civil society actors participating the reporting process, evidence can be seen of significant coordination between civil society actors, even amongst those working on different reports. Charo Mina-Rojas, a member of the *Proceso de Comunidades Negras* (PCN) who participated in the 87th period of sessions as a member of a coalition of Afro-Colombian and international organizations,⁵³ told of her coordination efforts with another civil society organization, the *Familia Franciscana de Colombia*, in preparation for the most recent review of Colombia. Hearing that the *Familia Franciscana*, an ecumenical organization, sought to partner with an Afro-Colombian organization to produce an alternative report, Ms. Minas Rojas helped to facilitate contact between *Familia Franciscana* and the *Asociación de Consejos Comunitarios del Norte del Cauca* (ACONC), an organization grouping leaders from the Afro-Colombian territorial councils in the north Cauca region. Ms. Mina-Rojas also helped to coordinate interaction between another organization to which she belongs, the *Movilización de Mujeres Afrodescendientes del Norte del Cauca por el Cuidado de la Vida y los Territorios Ancestrales*, and a Leitner Center for Law and Justice at Fordham University School of Law in the United States. In both cases these partnerships resulted in the production of an alternative report submitted to the Committee.⁵⁴

53 In addition to representing her organization, PCN, Ms. Mina-Rojas participated in the sessions on behalf of several Afro-Colombian organizations that had drafted a joint report for the Committee. These organizations were the Conferencia Nacional de Organizaciones Afrocolombianas (CNOA), the Movimiento Nacional Cimarrón and the Asociación Casa Cultural el Chontaduro

54 Charo Mina-Rojas, interviewed by Dominic Procopio via video conference call, Washington DC and Cali, March 22, 2016.

One other aspect of civil society's participation in the CERD process is worth noting. Evidence strongly indicates that international organizations play a crucial role in supporting national organizations' involvement with CERD. International organizations such as Global Rights: Partners for Justice and the International Institute for Race, Equality and Human Rights have helped raise awareness of the Committee and its work in Colombia, and have worked to convince national organizations of the importance of their participation in CERD's activities. For example, a former member of the Asociación Nacional de Afrocolombianos Desplazados (AFRODES), an organization that produced an alternative report for the 75th period of sessions held 2009, indicated that AFRODES and its members had essentially no knowledge of CERD until being introduced to the Committee's work by partners from Global Rights.

In addition to introducing Colombian organizations to the Committee's work, international organizations are often responsible for proposing projects related to CERD. Not only in the case of AFRODES, but also in the case of the report produced by the Fordham University School of Law and the *Mobilización de Mujeres*, where the project was proposed by a law professor at the school. Likewise, Harold Sánchez of *Familia Franciscana de Colombia*, who worked on the organization's CERD project, related that directives for *Familia Franciscana* to incorporate CERD and other UN institutions in their work comes from Franciscans International, a partner organization based in Geneva with a specific mandate to work in the UN system.⁵⁵

International organizations also offered experience and expertise to Colombian partners during the Committee's session in Geneva. Ms. Mina-Rojas of PCN affirmed the importance of partners from the Institute for Race, Equality and Human Rights in coordinating and carrying out meetings and other advocacy activities during the sessions, and Mr. Sánchez from the *Familia Franciscana* highlighted the work of colleagues in Geneva in ensuring that his group's visit achieved its objectives.

Finally, all of the Colombian activists spoken to agreed that financial support from international organizations was absolutely crucial in their organizations' ability to participate in CERD activities. This includes support for the research and production of the alternative reports, but also—even more crucially according to activists—for support to attend review sessions in Geneva. On this subject, opinions were unanimous—without this financial support, Colombian civil society's participation in the CERD process would be severely if not totally curtailed.

4.3 The Colombian State's Reporting to the Committee Has Improved Over Time, but it Remains Deeply Flawed and Fundamentally Inadequate

Without question, the Colombian government's reporting to CERD has improved since its earliest reviews under the Committee; the reports of the most recent two review periods represent the State's most complete reports. Much of the improvement in Colombia's reports can be attributed to the increasingly specific reporting recommendations made by the Committee to all States parties, and also to reporting recommendations made by CERD to Colombia in the Committee's concluding observations and recommendations. These recommendations have brought about an overall improvement in the structure of the reports, so that they now generally follow the structure of the content of the Convention itself. In response to the repeated and ongoing requests of the Committee, the State's reports now include more detailed and more accurate quantitative information on ethnic

⁵⁵ Harold Sánchez, interviewed by Dominic Procopio via video-conference call, Washington DC and Buenaventura, February 11, 2016.

groups. This is most certainly the case since the 2005 census, which—though an imperfect undertaking—signified a step in the right direction in terms of collecting the necessary information on ethnic communities. As shown in its reporting, the State’s engagement with the Committee has coincided with a greater acceptance of the existence of racial discrimination in Colombian society; generally speaking, the State has demonstrated an improved acknowledgement of the complexities of racial discrimination in the country and has improved the rhetoric it employs when reporting on discrimination.⁵⁶

Despite these noted improvements, based on the Committee’s reporting guidelines, the State’s last two reports have both been seriously flawed documents. The State’s consolidated 10th-14th report, submitted in advance of the 75th period of sessions, was four times the recommended length and contained significant amounts of extraneous and repetitive information.⁵⁷ The State’s most recent report did shrink to a more reasonable length—90 pages—but was still twice as long as the Committee’s guidelines specify. Despite the size of these reports, they contain very little of the information requested by CERD in its guidelines; the report for the 75th period of sessions addressed twelve of the Committee’s forty-six specific requests for information, while the report for the 87th period of sessions responded to thirty-one of ninety-six specific guidelines for reporting.⁵⁸

Colombia’s reporting demonstrates the State’s insufficient commitment to fighting racial discrimination. The State’s reports overwhelmingly rely on a static description of the legal framework in place for protecting rights, while generally failing to report how this framework is put into practice and what results have been achieved. Despite the continued recommendations made by both the Committee and civil society, the reports contain very little disaggregated data, a requisite for constructing sound and effective policies for the country’s ethnic communities. In fact, the reports show that, in most cases, the State takes little or no action to implement the Committee’s recommendations, be they recommendations on data collection, affirmative actions, follow-up reporting or cooperation with civil society. Overall, the State’s reports leave significant room for improvement in order to accurately capture the social realities confronted by Colombia’s ethnic communities.

4.4 Alternative Reports are not Enough—Civil Society’s Attendance at the Review Sessions is Crucial for Delivering its Message

Civil society’s participation in the CERD process begins with the preparation of thorough, detailed, fact-based alternative reports with clear recommendations for the Committee and the State. In interviews for this study, both current and former CERD members have stressed that alternative reports by civil society represent a

56 United Nations Committee on the Elimination of Racial Discrimination, Reports Submitted by the States Parties Under Article 9 of the Convention: Fifteenth and Sixteenth Reports of Colombia due in 2012. CERD/C/COL/15-16 (April 7, 2014).

57 United Nations Committee on the Elimination of Racial Discrimination, Reports Submitted by the States Parties Under Article 9 of the Convention: Fourteenth Periodic Report of Colombia Due in 2008. CERD/C/COL/14 (May 5, 2008).

58 Based on CERD’s explicit guidelines that request specific information from States in their reports, a close-reading guide was developed to evaluate the content of each report examined during the course of research for this report. A scale of 0-5 was given based on the content the report provided for each specific point of information requested in the Committee’s guidelines. A score of 0 meant the information was not provided, while a score of 5 meant detailed, fact-based information was provided and the information gave a clear picture as to how the State addressed the issue, including a frank assessment of challenges and shortcomings.

vital source of information for the Committee.⁵⁹ Former CERD member Carlos Vazquez related that he sometimes read civil society's reports before reading the State's reports, because they often paint a more accurate picture of the circumstances in a given country. But Committee members can often be overwhelmed with information from a variety of sources—from State's reports and other alternative reports by civil society, but also from reports by different UN agencies that routinely provide information to the Committee, such as the International Labor Organization and the country offices of the UN Office of the High Commissioner for Human Rights. In a short period of time before the sessions begin, Committee members must read and absorb this large amount of information, in addition to any other research members may carry out in their preparation. Given this reality, civil society's attendance at the review sessions—their participation in meetings with CERD members and their statements made during the oral examinations—can help reinforce their message.

In-person participation at the review sessions allows civil society to not only meet with CERD members, including the country rapporteur (the Committee member primarily responsible for questioning the State during oral examinations and preparing the concluding observations), but (ideally) to also meet with UN staff members in Geneva, members of the State's delegation to the sessions and, importantly, to present during the oral examinations. Colombian civil society members who have traveled to Geneva for CERD sessions have stressed the importance of working with partners with experience advocating before the UN treaty bodies, citing several ways these partnerships contributed to a more productive time spent at the sessions. Ms. Mina-Rojas noted that having an experienced partner or partners helped them to be better prepared during the sessions. This included knowing in advance the Committee's procedures during the reviews, the role of civil society during the examinations, as well as what information was most pertinent to share with members and staff and how that information might be used. Colombian activists also indicated that partnerships granted them greater access during the sessions. This point was most emphatically made by Harold Sánchez of the *Familia Franciscana*, who underscored the crucial role played by the Franciscans' permanent office Geneva in terms of developing an effective agenda and facilitating advocacy meetings.

Given the important role of the country rapporteur in the review process, the individual agency of the rapporteur can also greatly condition the effectiveness of civil society's advocacy trips to the sessions. Chosen in advance of each period of sessions by the Committee itself, the country rapporteur is the Committee member responsible for the bulk of the Committee's work on a particular country during that review period. In the opinion of former CERD member Carlos Vazquez, the level of preparedness, interest and commitment of the country rapporteur greatly influences the productivity of the review period—in meetings, during the oral examinations and in the drafting of the concluding observations.

In the case of Colombia's most recent review period in August 2015, civil society members attributed a good part of the success of their advocacy trip to the excellent working relationship they established with the country rapporteur, Carlos Vazquez. Activists who attended the sessions confirmed that the Mr. Vazquez approached civil society members to ask for a meeting, and that a delegation from civil society met with the rapporteur for over two hours prior to the oral examinations. Civil society members present at the meeting spoke highly of the rapporteur's preparedness, relating that the rapporteur had clearly made a close reading of the shadow reports submitted to the Committee and that he displayed a high level of knowledge about the particulars of racial discrimination in Colombia. One activist credited this meeting in particular with ensuring that information

⁵⁹ Carlos Vasquez, interviewed by Dominic Procopio, Washington DC, June 1, 2016, and Pastor Murillo, Interviewed by Dominic Procopio, Bogota, February 11, 2016.

provided in shadow reports was included in both the oral examinations and the concluding observations.⁶⁰ Interviewed about his participation as Colombia rapporteur, Mr. Vazquez confirmed that he had in fact lobbied for the Colombia rapporteurship because he considered the country to both interesting and challenging. Mr. Vazquez also confirmed that he took several independent initiatives to prepare for the sessions, including making use of a research assistant as well as designing a law school seminar he taught in a way that would help him prepare for the countries under review. In his opinion, these measures greatly helped in his preparation. Civil society's presence at the review sessions allowed the delegation to take advantage of a particularly interested and well-informed country rapporteur in order to ensure that their perspective was taken into account throughout the review.

When asked to consider their participation in the CERD review proceedings, activists reported that their attendance at the sessions benefited them personally and helped to strengthen their organizations. On a personal level, interacting with the Committee helped increase both their professional confidence and gave them firsthand knowledge as CERD's operations, while strengthening their advocacy skills. On an organizational level, not only did the trip serve to raise the profile of the organization before the Committee, the State and other organizations, it also helped to establish international contacts and to open up other avenues for strategic action.⁶¹ Given the recent conclusion to the latest review of Colombia, it remains to be seen how much of this new knowledge and increased institutional capacity will be harnessed to work toward a more complete implementation of the Convention. As the following section describes, these benefits may not be utilized as effectively as they could be.

4.5 Follow-Up to the Sessions by both Civil Society and the State is Weak

Though they play an important role in the international struggle against racial discrimination, CERD's review sessions are not an end to the process but rather a means to help States implement the Convention. The Committee's concluding observations provide recommendations and guidelines for how States can better meet their obligations, but ultimately States, with participation by civil society, must shoulder the responsibility for taking the concrete actions necessary to give substance to the Convention. In this regard, the period following the review sessions represents an opportune time for both civil society and the State to build upon the momentum of the work done in preparation for the review. Civil society can use the opportunity to utilize the Committee's review as a means to raise the visibility of issues related racial discrimination and garner public support for action to address them. Likewise, States can take advantage of the internal institutional work carried out by the various governmental agencies during the reporting process to disseminate the Committee's recommendations and incorporate them in the plans, policies and procedures of different government sectors.

In the case of Colombia, the period directly following its most recent review has not seen significant actions on the part of civil society, the State or the Committee to increase public awareness about the review itself or the issues covered during the review. None of the activists from the organizations that participated in the sessions or wrote alternative reports mentioned any activities carried out to publicize the content of the sessions or to highlight their organization's participation in them. Jader Gómez, from the Proceso de Comunidades Negras reported making preliminary plans to hold an event in conjunction with UN representatives based in Bogota,

60 Charo Mina-Rojas, interview.

61 Ibid.

but that plan never came to fruition.⁶² The PCN and Franciscans International both posted short notes on the sessions on their websites, though it is unclear what the reach of those actions might be. In the case of Franciscans International, the note was published in only English, limiting its potential use for raising awareness in Colombia. No other indications of communications actions by civil society has been found.

The Colombian government does not appear to have taken any awareness-raising actions either; no press release mentioning the review could be found on any of the national government's ministerial websites, and neither the State's reports nor the Committee's concluding observations have been published or promoted in any way by the government. Regarding this lack of dissemination, Alexandra Córdoba, a long-time civil servant at the Directorate for Black, Afro-Colombian, Raizal and Palenquero Community Affairs—a division of the Ministry of Interior with a mandate to work on Afro-descendant issues—declared that the Directorate did not have the institutional authority to make such decision without approval from higher-level officials in the Ministry.⁶³

Compounding the communications shortcomings of the Colombian government and civil society, the Committee and the UN do very little to publicize CERD's work. CERD member Pastor Murillo affirmed that the Committee does not have a media strategy nor the staff to implement one. The Committee's website does contain valuable resources related to its work, including the official documents submitted for and produced during its sessions, as well as archival video of the oral examinations. But aside from maintaining the archive of its sessions, the Committee and the UN make almost no effort to actively promote the findings of Committee's reviews, especially to the media and audiences in the countries under review. In the case of Colombia's last review, the United Nations Office at Geneva published a general press release on the review session as a whole, as well as a summary of a public meeting between Colombian civil society and CERD members, though the summary was not made available in Spanish.

Aside from this lack of communications outreach, few other follow-up activities have been carried out since Colombia's review in August 2015. As far as civil society is concerned, the lack of follow-up actions stems directly from a near-total absence of prior planning by organizations to utilize the review session and the Committee's recommendations as advocacy tools. One PCN member stated that while a significant amount of planning, coordination, research and writing was done in drafting the reports, and preparatory work was carried out in advance of the trip to Geneva, very little if any planning took place with regard to strategic actions in the post-review period.⁶⁴ Lacking a specific plan of action, the organization has yet to incorporate the CERD review into its advocacy actions. Another member of the same organization stated that the organization's internal coordination regarding CERD and the post-review period had not been a strong as it could have been—to date the Committee's concluding observations have not been circulated throughout the organization's different offices.⁶⁵ Several activists, including Pedro Cortes, a former member of AFRODES, cited Colombian civil society's lack of technical capabilities with respect to monitoring the implementation of treaty body recommendations.⁶⁶ Others openly questioned the utility of CERD recommendations as advocacy tools, citing the Committee's lack of an enforcement mechanism and a recalcitrant State as obstacles to using CERD to achieve organizational goals.

62 Jader Gómez, Interviewed by Dominic Procopio, Bogota, February 12, 2016.

63 Alexandra Córdoba, interviewed by Dominic Procopio and Pedro Cortes-Ruiz, February 13, 2016.

64 Charo Mina-Rojas, interview.

65 Jader Gómez, interview.

66 Pedro Cortes, interviewed by Dominic Procopio, Bogota, February 10, 2016.

According to one activist, CERD has not been able to make the State a willing partner in the work against racial discrimination.⁶⁷

The Colombian State has demonstrated just as little effort to utilize the review sessions and the Committee's recommendations as a tool for legislation and policy. While Colombia's report to CERD provides some details on how the various government agencies participate in the drafting of the report, it does not explain a process for systematizing, disseminating, analyzing or implementing the Committee's recommendations. Interviews with different officials in the Ministry of the Interior indicated that no formal mechanism exists to circulate or otherwise process the recommendations.⁶⁸ There are also strong indications that communication between the State and CERD is highly sporadic, based almost exclusively on the periodic review session, and that virtually all interaction with the Committee ceases after these periodic reviews. For example, despite a specific request to do so, the State did not submit a follow-up report to its review at the 75th period of sessions. And no response from the State can be found to the Committee's multiple use of its Early Warning and Urgent Action procedures regarding threats to the Emberá Katío people. Other institutional impediments to implementing CERD recommendations exist, including a lack of sufficient status and autonomy for the State institutions with specific mandates to work on issues relating to the country's ethnic communities. The ineffectiveness of these institutions, particularly the Directorate for Black Affairs, has engendered a mistrust between civil society and the State bodies designated to work with them, exemplified in the absence of a formal mechanism for cooperation between civil society and the Directorate since 2011.

The absence of successful follow-up actions on the part of civil society and the State has coincided with less than full implementation of many of the Committee's key recommendations. This has included recommendations on data collection made by the Committee in its two most recent concluding observations. Although the Colombian government has taken steps to improve data collection to more accurately understand the situation of its ethnic communities, the process has been slow-moving and has produced limited results, as noted by the Committee.⁶⁹ Civil society groups have also reported on the difficulties in working with the State to implement better data-collection techniques in censuses and surveys, with negative results for ethnic communities.⁷⁰ Progress has also been halting on protecting human rights defenders, another priority underscored by the Committee in its last two concluding observations. Somos Defensores, a watchdog group that tracks threats and attacks against human rights defenders in the country, has reported that homicides against defenders rose in the first semester of 2016 compared to the prior year.⁷¹ Finally, the issue of prior consultation has also been a serious concern for the Committee in its concluding observations. It should be recognized that some progress has been made in this area. Nevertheless, nearly a generation has passed since the Colombian government has recognized the right of ethnic communities to informed prior consent and yet the mechanisms to guarantee this right have yet to be fully put in place. The incomplete attention to these examples of issues of fundamental and immediate

67 Jader Gomez, interview.

68 Carmen Vazquez, interviewed by Dominic Procopio and Pedro Cortes-Ruiz, Bogota, February 12, 2016, and Alexander Córdoba, interviewed by Dominic Procopio and Pedro Cortes-Ruiz, Bogota, February 13, 2016.

69 UN CERD, Consideration of Colombia's 15th and 16th Reports, par. 7.

70 Gómez, Jader Darío and Juan Pablo Estupiñán, El III Censo Nacional Agropecuario con Comunidades Negras, Afrocolombianas, Raizales y Palenqueras. Evaluación del proceso de concertación e implementación en territorios colectivos y de poblamiento ancestral, (Unpublished report by the Proceso de Comunidades Negras) Bogota: May 2016.

71 Programa Somos Defensores, ¿Este es el fin?: Informe enero-julio 2016 del Sistema de información sobre agresiones defensoras y defensoras de DD.HH en Colombia, <http://somosdefensores.org/attachments/article/140/este-es-el-fin-informe-semestral-2016.pdf> (accessed February 7, 2017).

importance—data collection, protection of human rights defenders and prior consultation—demonstrates that the Committee’s recommendations may have served to emphasize where action should be taken but have not had the effect of encouraging sufficient cooperation between the State and civil society to bring about the required change.

4.6 Conclusions

Colombia faces a major turning point in its history. Achieving inclusion, justice and equality for Colombia’s ethnic communities will not simply contribute to a sustainable and lasting peace, it is indispensable to the process. CERD can be an important tool for the Colombian government to utilize in protecting and promoting the rights of Afro-Colombians and indigenous peoples in the transition from conflict to peacetime. Nevertheless, both civil society and the State can improve their interaction with CERD. Civil society as a whole must become more engaged in the CERD process. While the number of organizations producing shadow reports and participating in the review session has increased, civil society must deepen its engagement with CERD, from sporadic participation based around the periodic reviews to a more fluid and constant dialogue. This is particularly important in the periods following country reviews, when civil society can help maintain the Committee informed about progress being made on implementing its recommendations. While Colombian civil society can improve its participation in the Committee’s work, ultimately the greater responsibility for implementing the Convention lies with the Colombian government. This begins with the reporting process itself. The government must improve its reporting to CERD: it must follow the Committee’s very specific guidelines for reporting and it must submit follow-up reports when requested to do so. Like civil society, the Colombian government should establish a more permanent and fluid communication with the Committee, keeping the Committee informed on its efforts to meet its obligations under the Convention. Finally, the implementation of the Committee’s recommendations must become a higher priority, and institutional mechanisms must be put in place to ensure that the Committee’s recommendations can be transformed into policy.

4.7 Recommendations

With the above in mind, the following recommendations are made to the Colombian government, the Committee and Colombian civil society:

To the Colombian government:

1. The Colombian government must make every effort to seriously consider and effectively implement the Committee’s recommendations, as these represent the primary mechanism through which improvement can be made in meeting its obligations under the Convention.
2. The Colombian government should create a permanent, formal mechanism to analyze CERD recommendations and to assist in their implementation. This should be a working group involving representatives from all pertinent government agencies, whose work should be carried out with transparency and the direct involvement of representatives from civil society.
3. The Colombian government should improve its efforts in disseminating the content of its reports and the concluding observations of the Committee. These documents should be made easily accessible, not only to the public at large but to all national and local government agencies.

4. The Colombian government should strengthen the institutions with specific mandates to work with ethnic communities, including the Directorate for Black, Afro-Colombian, Raizal and Palenquero Community Affairs and the Directorate for Indigenous, Roma and Minority Affairs, appropriating adequate resources and allowing sufficient autonomy to establish the necessary legitimacy for constructing an effective working relationship with civil society

To the Committee:

1. The Committee should consider coordinated efforts with civil society to achieve greater public awareness of the Committee's work. This is especially important immediately following review sessions, when heightened awareness of the Committee's recommendations can create momentum to apply public pressure on States to heed them.
2. The Committee should request specific information from States on civil society's participation in follow-up activities.

To Colombian civil society:

1. Civil society must improve its follow-up activities regarding the Committee's recommendations and include these activities as important components in their strategic advocacy activities at the national, regional and universal levels.
2. Civil society organizations with experience working with CERD should develop a coordinated strategy to reach out to other groups working on discrimination or otherwise representing the interests of Colombia's ethnic communities—grassroots organizations, regional or national networks, universities—in order to increase the breadth of civil society's engagement with the Committee. This outreach strategy should target organizations representing regions or population groups that have been underrepresented in reports to CERD.
3. Civil society organizations should consider forming a national network of CSOs that participate in the CERD processes, not only to coordinate report-writing and participation in the review sessions, but to help facilitate communication between the Committee and civil society as a whole.
4. As part of their preparation for review sessions, civil society organizations should conduct research on CERD members and reach out directly to them, in order to better understand their interests and areas of expertise. CSOs should use this information to lobby the Committee chair to nominate as country rapporteur the member they believe will best represent their interests.

Section

5

CERD IN BRAZIL





5.1 Introduction

ith 97 million Afro-descendants, 50.7 percent of its total population, Brazil has the largest Afro-descendant population outside of Africa, and Brazil's Afro-descendant population is larger than every African country except Nigeria.⁷² Nearly one million indigenous persons live in Brazil, and the country has significant populations of persons of Asian, Middle Eastern and European heritage.⁷³

Though in some ways Brazil stands apart from its Latin American neighbors, in other ways the country exercises considerable influence in the region. Both politically and economically, Brazil's role in the hemisphere has increased significantly, especially in the past two decades. This influence has also extended into the struggle against racial discrimination. For a variety of reasons—not least of which includes the strength of the Brazilian black movement relative to its equivalents in other Latin American countries—many of the most far-reaching and successful initiatives to combat racial discrimination in the region, especially discrimination against Afro-descendants, have been developed and put into practice in Brazil. These measures include a broad range of affirmative action laws, including quotas for historically excluded groups in higher education and public service. Brazil is also the only country to have created a cabinet-level institution with a mandate to work toward racial equality, the Secretariat for the Promotion of Policies for Racial Equality (SEPPIR). Brazil has a strong history of collecting official data disaggregated by race, and although data collection has been and remains imperfect in

72 Instituto Brasileiro de Geografia e Estadística, *Características de população e dos domicílios: resultados do universo*, Rio de Janeiro, 2015, 76.

73 Ibid.

Brazil, in many respects it surpasses the efforts made by other countries in the region. For these reasons and others, many in the region look toward Brazil as an example to follow in combating racial discrimination.

Despite being a leader in many ways in the fight against racial discrimination, the legacies of the trans-Atlantic slave trade and Brazilian slavery—not until 1888 did Brazil become the last country in the Americas to outlaw slavery—continue to manifest themselves in the structural discrimination faced by Afro-Brazilians, indigenous persons and other groups. This discrimination reveals itself in stereotypes repeated and amplified in the mass media, and in the lack of representation of non-white Brazilians in television and film. It shows itself in the unequal access to social services such as health care and social security, and in racial disparities in indices that measure quality of life. These circumstances are compounded by situations of extreme emergency, such as the alarming rates of violence suffered by black urban youth, often times at the hands of state agents, or the threats to the territory and societal survival of indigenous communities at the hands of developmental mega-projects and large-scale, monoculture-based agricultural practices. It is a paradoxical feature of racial discrimination in Brazil that for all the advances made to combat it there still exist situations of deprivation and death amongst the most serious in the hemisphere.

This paradox has shaped the context in which the Brazilian State finds itself working to implement the content of the Convention. On March 7, 1966 Brazil became one of the original nine signatories of the Convention—the only representative of the Western Hemisphere to sign that day. It ratified the treaty two years later, in March of 1968. Since ratifying the Convention, Brazil has been reviewed nine times by the Committee, most recently in 2004. Prior to that its last review was held in 1996. This means that only twice in the last twenty years has Brazil been reviewed under the Convention, which points to another paradox. The infrequent reporting by the State to CERD, and consequently the infrequent review of the State by the Committee, remains the most salient feature when discussing CERD's role in Brazil and the greatest challenges to implementing the Convention in the country.

5.2 The Committee's Work in Brazil is Not Only Insufficient, it is Practically Non-Existent

While it could be argued that the Committee should work harder to increase its presence throughout the region, nowhere is this more true than in Brazil. The Committee may not be universally known amongst civil society actors working on discrimination in the Americas, but in the case of Brazil, human rights defenders interviewed who were familiar with the Committee could not mention any work CERD had done in the country. According to Jurema Werneck, a member of Criola, an NGO that works on issues affecting black Brazilian women, the Committee has no role in the country; rather, in her estimation CERD is passive, waiting for Brazil to come to it rather than taking the initiative.⁷⁴ Likewise, Rodnei Jericó, an attorney for Geledés, another organization working on Afro-Brazilian women's issues, says that the Committee must work harder to raise its profile in Brazil, as many civil society actors do not even know that it exists.⁷⁵

Members of Brazilian civil society shared other perspectives on reasons for Brazil's lack of engagement with the Committee. According to these activists, the administrations of Fernando Henrique Cardoso, Luiz Ignacio da

74 Jurema Werneck, interviewed by Dominic Procopio via video conference call, Washington, DC and Rio de Janeiro, August 16, 2016.

75 Rodnei Jericó, interviewed by Dominic Procopio via email, Washington, DC and Rio de Janeiro, August 18-19, 2016.

Silva, and Dilma Rousseff have not shown the internal political will to fulfill Brazil's international human rights obligations, especially regarding engagement with the human rights treaty-bodies. Moreover, the activists expressed their opinions that Brazil, especially under Presidents Lula and Rousseff, has not prioritized tackling the racial discrimination issues facing the country.⁷⁶

An examination of the reporting record of Brazil during these administrations provides evidence for these claims. In general, Brazil's reporting to the UN treaty bodies during the last three presidential administrations has been infrequent, with reports submitted irregularly and nearly always past due. Despite this general pattern, it is Brazil's infrequency in reporting to CERD during this time period that stands out, both in comparison to the frequency of its reporting to the Committee in the past, and in comparison to the reporting frequency of its neighbors in the region. Although required to report every two years,⁷⁷ Brazil has submitted three reports since the country returned to democracy in 1985. By comparison, in half the number of years—from 1970 to 1985—the Brazilian military dictatorship submitted six reports, or twice as many as have been submitted under democratic governments. Brazil compares equally unfavorably when compared to its Latin American neighbors. It is the country with the longest-running failure to report to CERD, having gone twice as long without reporting as the next country, Panama, who last reported in 2010. All but three Latin American countries have submitted multiple reports to CERD since Brazil last reported in 2003, and four countries have submitted three reports since Brazil was last reviewed.⁷⁸

5.3 Other Human Rights Institutions Have Supplanted CERD as Loci for Advocacy on Racial Discrimination Issues in Brazil

Brazilian officials have expressed a preference for using other international mechanisms for addressing racial discrimination.⁷⁹ The Durban Declaration and Plan of Action offers a more explicit blueprint for tackling racism than the Convention, one official offered. The Durban document was characterized as more substantive than the Convention, and called the real victory for the Afro-Descendant movement. Also highlighted was the work Brazil had done with the UN Working Group of Experts on People of African Descent, the UN Special Rapporteur on minority issues, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

The argument in favor of the Durban Declaration and its follow-up procedures as a substitute for the Convention and the Committee ignores two important facts: firstly, it does not take into account the important work the Committee has done in providing more explicit guidance on and interpretation of the Convention's content in its General Recommendations; and secondly, it obscures the primary importance the Durban Declaration gives to the Convention and the Committee. The Durban Declaration explicitly refers to the Committee and the Convention on over a dozen occasions, and in its preamble it calls the Convention "the principal international instrument

76 Jurema Wernerck and Rodnei Jericó, interviews.

77 Strictly speaking and according to the Convention, countries must submit reports every two years. In practice, countries are requested to submit consolidated reports every four years.

78 Information retrieved and compiled from the United Nations Office of the High Commissioner for Human Rights' web database on submission to the treaty bodies, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx

79 In this instance the sources wished to remain anonymous.

to eliminate racism, racial discrimination, xenophobia and related intolerance.”⁸⁰ The views of Brazilian officials interviewed do provide a glimpse into the reasoning behind the Brazilian State’s greater involvement in the Durban Conference and follow-up procedures in comparison to its absence from CERD, and it is certainly true that Brazil has worked more closely with other UN institutions on issues of racism and racial discrimination than it has with the Committee. Nevertheless, Brazil’s lack of reporting to CERD has weakened the relevance of the Committee in the country, and as a consequence has resulted in civil society organizations intensifying their work with other institutions, including turning to other treaty bodies to advance their advocacy agenda.

In the case of Criola, the organization has remained more engaged with the UN Committee for the Elimination of Discrimination Against Women (CEDAW), under which Brazil has been examined three times in roughly the same period since its last review under CERD. For Criola, CEDAW’s recommendations have helped inform policy recommendations and advocacy work done by the organization.⁸¹ The choice to work with CEDAW has meant Criola has had to forgo other advocacy strategies, often for budgetary reasons. Criola’s choices reflect a scenario confronted by many CSOs pursuing international advocacy: organizations must make practical choices when deciding which institutions to work with. The considerable cost of advocacy work at the UN system means that organizations cannot work with every treaty body. Organizations that have developed advocacy campaigns targeting other treaty bodies in the absence of CERD examinations of Brazil may be hesitant to switch their focus to the Committee for future review sessions, having already allocated resources to other activities at the UN.

The Committee’s absence in Brazil is even more clearly demonstrated when compared to how the regional system has monitored issues of racial discrimination, Afro-descendants and indigenous peoples in Brazil. In comparing CERD’s periodic reviews to the most analogous regional procedure, the public hearings held by the Inter-American Commission on Human Rights (IACMR), it becomes clear that the regional system plays a vastly more influential role in Brazil than the Committee. In the period since Brazil’s last review under CERD, the Brazilian State has requested one hearing before the Commission; in 2005 it presented to the Commission advances the country had made in implementing affirmative action policies. But in contrast to the UN treaty body review procedure, in the Inter-American system hearings can be—and in most cases are—requested by non-State actors from domestic or international civil society. So while the State may show an equal disposition to infrequently utilize the reporting system at both the regional and universal levels, since 2004 civil society has been able to utilize the Inter-American system to petition for and receive fifteen hearings on racial discrimination, Afro-descendants and indigenous peoples.

The hearings before the Inter-American Commission are not the perfect equivalent to the Committee’s review sessions. They are much shorter, and the Commission does not make written recommendations to the States at their conclusion, as occurs at CERD reviews. Nevertheless, in the fifteen hearings at the IACMR since Brazil was reviewed under CERD, at least thirty-three different civil society organizations—some international, but the majority based in Brazil—have presented to the Commission on wide variety of topics related to the situation of racial discrimination in the country. Some of these hearings had broader topics, such as the situation of Afro-descendants or indigenous peoples, while others focused on more narrow segments of the population, such as Afro-Brazilian women or Afro-Brazilian transgender persons. Still others focused on timely situations such as the violence against Afro-Brazilian youth or the effects of mega-projects on indigenous communities.

80 United Nations, Durban Declaration and Plan of Action, Adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Violence.

81 Jurema Werneck, interview.

The fundamental difference between the periodic examinations of the Committee and the thematic hearings of the Inter-American Commission is that the Committee relies on the will of the State to submit a comprehensive report, while the Commission grants hearings based on petitions by both the State and civil society. The case of Brazil clearly demonstrates the outcomes of these two procedures in instances where a State chooses not to report on racial discrimination: the Committee becomes a passive bystander at best or irrelevant at worst, while the IAHRC can remain engaged with the struggle against racial discrimination through the efforts of an active civil society.⁸² The difference does not go unnoticed by activists. As Rodnei Jericó of Geledés said:

I still consider the IACtHR to have a more relevant role for the Americas, precisely because it better understands the reality faced by Afro-Latino and Afro-Caribbean populations. A lot of NGOs have gone to the OAS to report on rights violations and have had an impact by making concrete recommendations.⁸³

The thematic hearing procedure of the Inter-American Commission has played an important role in helping civil society transmit vital information to the Commission on urgent rights matters related to racial discrimination, and it has helped the human rights body remain engaged in Brazil independent of the actions of the State.

5.4 When Brazil Has Reported, the Results Have Been Mixed, But Overall Fairly Positive

Brazil's most recent report, submitted in 2003, has many positive aspects.⁸⁴ It has a much franker tone than the State's previous reports and the contemporaneous reports of other countries in the region. In the report, the State admits the fallacy of Brazilian society's long-held belief in a racial democracy, and declares that a link exists in Brazil between racism and economic and social inequality. The report offers a forthright assessment of the failure of the justice system to effectively address acts of racial discrimination, even if it does not include sufficient data to allow a fuller understanding of how this systemic failure has occurred. And although improvements can still be made, the Brazilian report contains a commendable amount of data disaggregated by race. The report incorporates some information presented by civil society, citing studies and reports by Afro-Brazilian NGOs on a few select issues such as the criminal justice system. This is in noted contrast to the reports of other countries in the region, though it certainly does not reflect an adequate participation of civil society in the reporting process, especially when considering the absence of members of civil society during the review session

82 According to the Committee's web page, its actions in instances of non-reporting States is explained as follows. "Since reporting by States parties is the fundamental mechanism by which the Committee discharges fully its obligation to monitor the observance of obligations under the Convention, the Committee has adopted special procedures for considering the situation of States parties that have not submitted even an initial report, or whose reports are considerably overdue. The Committee, through its observations and recommendations with respect to States parties in such a situation, draws the attention of the State party concerned to the consequences of such non-compliance and reminds it of its reporting obligations under article 9 of the Convention. It furthermore makes recommendations to the State party with a view to ensuring the implementation of the Convention. The Committee includes a special chapter on such cases in its annual report to the General Assembly for the Assembly to take what action it deems appropriate."

83 Rodnei Jericó, interview.

84 United Nations Committee on the Elimination of Racial Discrimination, Reports Submitted by the States Parties Under Article 9 of the Convention: Seventeenth Periodic Reports of Brazil due in 2002, CERD/C/431/Add.8 (October 16, 2003).

in Geneva. Overall, when compared to reports from other Latin American countries submitted around the same time, Brazil's report for the 64th session stands out as a high-quality document.

Nevertheless, the report suffers from several structural and content problems. As with many other reports from States in the region, the report does a poor job following the Committee's reporting guidelines; information in the report does not often presented in a clear way, and the report fails to address many of the specific points of information requested by the Committee in its guidelines. The Common Core document—the document submitted to all treaty bodies that explains the demography and general rights situation of the country—was considerably out of date upon submission, having last been updated in 1995.⁸⁵ The report demonstrated an overreliance on presenting the legal framework for protecting rights, with little discussion about how laws were made operative or what the outcome of the application of these laws has meant in terms of fulfilling the State's obligations under the Convention. Lastly, the report contained an abundance of information not directly related to racial discrimination or the situation of vulnerable groups. Too often when discussing rights protected under the Convention the report cited efforts made to protect that right in a general sense, rather than restrict its reporting to how the right was protected in an equal and non-discriminatory way. This too often served to distract from the central purpose of reporting to the Committee—to inform it on the efforts made to combat racial discrimination.

5.5 Consequences of Non-Reporting: Grave Situations the Committee Has Not Considered for Over a Decade

On a practical level, given the Committee's established procedures, the Brazilian State's refusal to report to CERD has meant that the Committee has not been informed for over a decade of serious rights violations related to racial discrimination in a country of growing regional and global importance with an Afro-descendant population approaching 100 million persons and significant populations of other historically-marginalized groups.

In the absence of a State report and examination, the Committee has not addressed the continued existence of major disparities in social indicators between Afro-Brazilians and white Brazilians. This includes unequal access to health care. One government study showed that 43.5% of black Brazilian men and 26.2% of black Brazilian women had not been seen by a doctor in over 12 months, while for their white counterparts the rates were 38.6% and 21.5%, respectively.⁸⁶ Racial inequality has also been shown to exist in access to social security. Amongst the economically active population, 42% of Afro-Brazilian men and 48.2% of Afro-Brazilian women did not have access to social security, while 32.3% of white men and 37.1% of white women lacked access.⁸⁷ Significant disparities in basic education persist. While illiteracy has decreased for both blacks and whites, a large gap still exists between the two groups. From 1988 to 2008 the illiteracy rate for whites dropped from 12.1% to 6.2%, and for blacks it dropped from 28.6% to 12.1%.⁸⁸ While the reduction in illiteracy in both groups deserves commendation, the reality remains that black illiteracy in 2008 was still higher than white illiteracy in 1988. In other words—at least as far as literacy is concerned—Afro-Brazilians remain two decades

⁸⁵ United Nations International Human Rights Instruments, Core Document Forming Part of Reports States Parties, HRI/1/CORE/Add. 53, (January 10 1995).

⁸⁶ Paixão, Marcelo, Ed., Relatório Annual das Desigualdades Raciais no Brasil; 2009-2010: Constituição Cidadã, segurança social e seus efeitos sobre as assimetrias de cor ou raça, (Rio de Janeiro: Editora Garamond, 2010) 77.

⁸⁷ Ibid, 200.

⁸⁸ Ibid, 207.

behind their white counterparts. Though far from a complete picture, these are just a few examples of the inequalities that persist to this day, about which the Committee has not heard a word for more than twelve years.

Distressing as some of these social indicators may be, an even more urgent situation in Brazil has continued to worsen since the Committee last reviewed the country. The violence against (primarily urban) Afro-Brazilian men, oftentimes perpetrated by State agents and rarely investigated, prosecuted or sanctioned, has reached the level of national emergency. In 2012, of the 30,000 murders of young people aged 15-29, 77% were Afro-Brazilian.⁸⁹ Black youth in urban areas are three times as likely to be murdered as urban white Brazilians.⁹⁰ These statistics are alarming; even more so are those regarding deaths at the hands of police and other State agents. In Rio de Janeiro the police have killed 8,000 people between 2010 and 2015, three-quarters of whom were black.⁹¹ The disturbing number of deaths at the hands of the State and the clear racial disparities amongst the victims are compounded by the high rates of impunity for those responsible for these deaths. The Rio Attorney General's office reported that only 0.1% of police killings resulted in prosecutions.⁹² Given the gravity of the situation, the clear part racial discrimination has played in it and the inadequate response by the Brazilian State, the international community—CERD notwithstanding—must work to ensure the most fundamental of rights—the right to life—is protected equally in Brazil. Despite this need for international support, the Committee remains essentially unaware of this situation and unable to act to help resolve it.

Aside from not receiving timely information on crucial human rights situations, Brazil's lack of reporting has also hindered the Committee's ability to support the institutional framework created to address racial discrimination in the country. Shortly before Brazil's last examination under CERD it created the Secretariat for the Promotion of Policies for Racial Equality (SEPPIR), a high-level national institution to coordinate efforts to address racial discrimination. Formed only months before Brazil's last submission to the Committee, SEPPIR was only barely mentioned in the State's report to CERD. Though praised by Brazilian civil society as a major achievement for activists working on discrimination and looked to as a positive example by neighbors in the region, SEPPIR has gradually had its power limited. The Secretariat, which once had ministerial status, was first subsumed by President Rousseff under the combined Ministry for Women, Racial Equality and Human Rights. Its rank was lowered again when the unelected government of Michel Temer eliminated the cabinet-level status for the Ministry for Women, Racial Equality and Human Rights and placed it under the Ministry of Justice.

The Committee has done important work in helping to strengthen national institutions working against racial discrimination. In the case of Brazil, SEPPIR represented perhaps the most important national institution to combat racial discrimination to be established in Latin America. It has subsequently seen its power gradually but steadily eroded through series of structural changes, while during this time the Committee has received almost no information about its work, nor has it had any meaningful opportunity to lend its support for its efforts in combating discrimination. The Committee has missed an opportunity to help push frontiers when it comes to

89 Amnesty International, You Killed My Son: Homicides by the Military Police in Rio de Janeiro, AMR 19/2068/2015 (Rio de Janeiro 2015), 11.

90 Secretaria de Direitos Humanos da Presidência da República, Observatório de Favelas, Índice de homicídios na adolescência, (Brasília, 2014), 42.

91 Human Rights Watch, "Good Cops Are Afraid": The Toll of Unchecked Police Violence in Rio de Janeiro, 2016, 1. <https://www.hrw.org/report/2016/07/07/good-cops-are-afraid/toll-unchecked-police-violence-rio-de-janeiro> (accessed on February 17, 2017)

92 Ibid, 5.

State institutions working on racial discrimination, and instead has remained unable to act as progress has been slowed or even reversed.

Nowhere has the Committee's passivity in the face of clear regression on matters of discrimination been more evident than during the removal of Dilma Rousseff from the Presidency in 2016. Putting aside political and procedural arguments for or against the process, actions taken by acting President Michel Temer—specifically the appointment of a Cabinet entirely comprised of white men—clearly indicated a deterioration in the fight for equality in Brazil. Confronted with the drastic actions of an unelected government making such an emblematic statement against a minimum of racial and gender inclusion, many international institutions, including the Inter-American Commission, made statements expressing their concern. CERD has made no public announcement about this situation in Brazil, or any others for that matter, since 2004. This has not gone unnoticed by activists in Brazil fighting for racial equality. As Jurema Werneck of Criola said, "Day after day, each day we are losing more rights. It is in these difficult moments that we need CERD, but it is absent."

5.6 Conclusions

The case of Brazil represents a frustrating paradox. On the one hand, in many ways Brazil has been a regional leader in creating and implementing public policies to address discrimination. On the other, its refusal to meet its reporting obligations and participate in the CERD process has closed off an important avenue for continuing to improve its efforts in this area. Brazil's abstention from CERD has had a ripple effect on how civil society organizations view the Committee, its work and its impact on matters of discrimination in the country, leading some activists to conclude that engagement with CERD is not an effective use of their time and resources. The practical result of this disengagement has resulted in other human rights institutions supplanting CERD as venues for combating racism, including the Committee for the Elimination of Discrimination Against Women and the Inter-American Commission on Human Rights. The Committee's lack of engagement in Brazil, an immense country with a large, majority Afro-descendant population, is truly lamentable. Its absence has meant that CERD has had essentially no impact on many urgent issues affecting millions of people. It will take the concerted efforts of all actors with a stake in implementing the Convention in Brazil to ensure that the Brazilian government reinitiates its engagement with the Committee and begins to take more seriously its international obligations.

5.7 Recommendations

With the considerations made above in mind, the following recommendations are made to the Brazilian government, the Committee and Brazilian civil society:

To the Brazil government:

1. The Brazilian government should immediately prepare and submit its overdue reports to the Committee, devote sufficient resources and personnel to the reporting process and ensure that all appropriate State institutions comply with providing the information necessary to produce a report of the highest quality. The report should strictly adhere to the Committee's clear reporting guidelines and contain all information requested by the Committee. The State should make every effort to ensure the constructive inclusion of civil society in all aspects of the reporting process.

2. The Brazilian government should make a public pronouncement affirming its commitment to international human rights obligations, specifically affirming its commitment to constructive engagement with the UN treaty bodies, including the timely submission of quality reports to these bodies.
3. The Brazilian government must make every effort to seriously consider and effectively implement the Committee's recommendations, as these represent the primary mechanism through which improvement can be made in meeting its obligations under the Convention

To the Committee:

1. The Committee should consider changing its rules of procedures to address non-reporting States. Changes could take many forms: the Committee could make public statements strongly urging States that fail to report meet their obligations under the Convention; the Committee could choose to review States even without a report after a certain period in lapsed reporting; the Committee could allow civil society to petition for hearings on States that fail to report. No one action will make a perfect solution to States' non-reporting, but the status quo, as illustrated in the case of Brazil, calls for actions to be taken to ensure the Committee remains involved in countries whose governments choose not to submit reports.
2. The Committee should develop new ways to react to critical, time-sensitive situations. CERD should use its well-respected reputation to speak out on important situations in countries. This can be through press releases or other public pronouncements. It can also be done through strengthening diplomatic communication, either increasing the use of the Early Warning and Urgent Procedures or through other less formal mechanisms that nonetheless convey the Committee's concern over unfolding events.

To Brazilian civil society:

1. While cognizant of the difficult political situation confronting the country and organizations working to promote human rights and combat racial discrimination, civil society organizations in Brazil should develop a coordinated effort to advocate at the national level for Brazil to reengage with the Committee, specifically to request that the State end the prolonged delay in reporting and produce a high-quality report for submission to CERD.
2. Brazilian civil society should advocate for institutional support of State bodies working on issues of racial discrimination in order to ensure these organizations have the resources and autonomy necessary to carry out their work. CSOs should also advocate for the stronger engagement of these institutions with the Committee.
3. Brazilian civil society organizations should develop a strategy to maintain the Committee informed of the situation of racial discrimination in the country, irrespective of the reporting actions of the State. CSOs should coordinate with the Committee's Secretariat in Geneva regarding the best way to maintain a continuous and productive communication flow between Brazilian CSOs and the Committee.
4. Brazilian civil society must improve its follow-up activities regarding the Committee's recommendations and include these activities as important components in their strategic advocacy activities at the national, regional and universal levels.

Section

6

CERD IN THE DOMINICAN REPUBLIC



T

The population of the Dominican Republic is largely that of descendants of Spanish colonists and enslaved Africans brought to the island during Spanish colonial rule. Official data that includes accurate and current information on race and ethnicity does not exist, as the last census to include a question on race or ethnicity took place in 1960.⁹³ The Dominican government has affirmed as recently as 2007 that 80 percent of the country's population is black, and 20 percent are of mixed race.⁹⁴ Another study estimated the population to be 13.6 percent white, 18.3 percent black and 67.6 percent mulato or "Indian," two terms that in the Dominican context represent some degree of mixed race or ethnicity.⁹⁵ Other contradictory figures have been put forth by Dominican authorities; nevertheless, a general agreement exists that most Dominicans have some degree of African ancestry.

In addition to these imprecise estimations of the racial and ethnic composition of the country, when examining racial discrimination in the Dominican Republic it is of vital importance to take into account the situation of Haitians and Dominicans of Haitian descent. Although precise

6.1 Introduction



93 Oficina Nacional de Estadísticas de la República Dominicana, *La Variable étnico racial en los censos de población en la República Dominicana*, Julio 2012. <http://www.one.gob.do/Multimedia/Download?ObjId=1938> (accessed February 17, 2017).

94 United Nations Committee on the Elimination of Racial Discrimination, *Reports Submitted by the States Parties Under Article 9 of the Convention: Twelfth Periodic Report of the Dominican Republic Due in 2006*. CERD/C/DOM/12 (June 8, 2007).

95 Figure from the 2006 Latin American Public Opinion Project, cited in Oficina Nacional de Estadísticas de la República Dominicana, *La Variable étnico racial*.

numbers do not exist, estimates put the number of Haitian migrants in the Dominican Republic as high as 800,000, and the number of Dominicans of Haitian descent at close to half a million more, although these numbers almost certainly represent an undercount of the two populations.⁹⁶

Despite the country's widespread African heritage, Dominican society has a complicated relationship with its African roots. Blackness and African culture and history are often obscured or negated, and national identity has been shaped by an evolving ideology that has alternated between and hybridized idealizations of (white) European culture and indigenous heritage while associating blackness and African culture with foreign others.

The association of blackness and African heritage as outside of the Dominican national identity manifests itself most clearly in the experiences of discrimination suffered by Dominicans of Haitian descent and Haitian immigrants residing in the country. As one scholar described it: "Dominican national discourses have imagined the geopolitical border between the countries as marking a racial border. Haiti is associated with blackness, Africanness and barbarism, while the Dominican Republic is represented as a whitened, Hispanicized, civilized space."⁹⁷ Many Haitians and Dominicans of Haitian descent experience discrimination based on this prevailing worldview in their daily lives.

The human rights situation of Haitian immigrants and Dominicans of Haitian descent has been a serious concern of the international community for some time. Human rights observers have documented grave violations of the rights of Haitians residing in the country, including violations of labor rights and freedom of movement, lack of access to justice and forced deportations, to name a few. Some of the most serious rights violations have been suffered by Dominican-born persons of Haitian descent who, as a result of the State's failure to issue basic documents such as birth certificates and identity cards, have been unable to access basic social services and enjoy their fundamental rights as citizens. It is estimated that over 200,000 Dominicans of Haitian descent find themselves in a situation of statelessness, having no recourse to establish their legal identity in the country.⁹⁸

Haitians and Dominicans of Haitian descent are not the only populations to face racism and racial discrimination in the country. Darker-skinned Dominicans face discrimination in their personal relationships, in employment and access to social services. They also face higher indices of poverty and social exclusion.⁹⁹

It is within this complicated national context that Dominican human rights activists continue their work to combat racism and racial discrimination. And it is with this context in mind that the Committee seeks to assist the Dominican government in implementing the Convention. The Dominican Republic was one of the last Latin American countries to ratify the Convention, having done so in 1983. It submitted its first report six years later, in 1989. Since that time, it has been reviewed four times by the Committee, the two most recent reviews having

⁹⁶ Canales, Alejandro I., Patricia N. Vargas Becerra Israel and Montiel Armas, "Migración y salud en zonas fronterizas: Haití y la República Dominicana, Comisión Económico para América Latina y el Caribe," Santiago, 2010, and Programa de las Naciones Unidas para el Desarrollo (PNUD), Informe Nacional de Desarrollo Humano. República Dominicana 2005: Hacia una inserción mundial incluyente y renovada, Oficina de Desarrollo Humano, PNUD, Santo Domingo.

⁹⁷ Irmary Reyes-Santos, "Capital neoliberal, raza, migración: análisis comparativa de relaciones dominico-haitianas y dominico puertorriqueñas," Revue Européenne des migrations internationales, Vol. 42 No. 1 (2008), 7.

⁹⁸ Organization of American States, Inter-American Commission on Human Rights, Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II. Doc 45/15, December 31, 2015, 115.

⁹⁹ United Nations Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Mission to the Dominican Republic, A/HRC/7/19/Add. 5 and A/HRC/7/23/Add. 3. March 18, 2008.

occurred in 2008, during the Committee's 72nd period of sessions, and in 2013, at its 82nd review period. What follows are some lessons learned from the Dominican Republic's participation in these two reviews.

6.2 Despite More Engagement with CERD, the Official Position of the Dominican State Continue to Deny the Existence of Racism and Racial Discrimination in the Country

In terms of the recognition of racism and racial discrimination, the Dominican Republic is an extreme outlier in the region. While most, if not all, of the hemisphere's governments have recognized the existence of racism and structural discrimination in their societies years, if not decades ago, the Dominican Republic continues to insist that racism simply does not exist in the country. Time and time again, during the CERD reporting and review processes as well as in other fora, Dominican officials demonstrate a fundamental inability to understand the historical roots of racism and the contemporary forms it takes in their society.

Members of Dominican civil society have expressed concern over the extent of Dominican citizens' and government officials' denial of racism and racial discrimination. María Martínez of the *Movimiento Socio Cultural para los Trabajadores Haitianos* (MOSCTHA), an organization that works on racial discrimination and promotes the rights of Haitians and Dominicans of Haitian descent, affirmed that "there is very little understanding in the country about what constitutes discrimination, and government workers have received very little training on the issue."¹⁰⁰

Civil society organizations have also manifested their concern regarding the government's position in the alternative reports they have submitted to the Committee. Three of the five reports submitted by civil society for the most recent review mentioned the government's denial of the existence of racism as an obstacle to the rights of persons of African descent. In its report to the Committee, the *Afro Alianza Dominicana* calls the negation of the existence of discrimination "the root of the problem," one that "constitutes a State policy to obscure the real existence of racial discrimination and its negative impact on Dominican society."¹⁰¹ The *Red de Encuentro Dominicano-Haitiano* Jacques Viau argued in its report that "public policy and public opinion have persisted in the error of the denial of racial discrimination, which has created a sort of discriminatory virus, invisible for some to see, but very evident for the many who have suffered from it."¹⁰² And in its report, the *Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer* (CLADEM), notes that the issues of racism and racial discrimination have been "hidden," and that in the Dominican Republic there exists "a negation of blackness as part of the identity of the island, and blackness is associated with Haitian identity."¹⁰³

100 María Martínez, interviewed by Dominic Procopio via video conference call, September 13, 2016

101 Afro Alianza Dominicana, Informe Alternativo en Relación a la Convención Sobre la Eliminación de Todas Formas de Discriminación, January 2013, 4. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fDOM%2f13705&Lang=en (accessed February 17, 2017).

102 Red de Encuentro Dominicano-Haitiano Jacques Viau, Informe de las Organizaciones de la Sociedad Civil Dominicana en Relación a la Convención Sobre la Eliminación de Todas Formas de Discriminación, January 2013, 19-20. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fDOM%2f13709&Lang=en (accessed February 17, 2017).

103 Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer, Informe Alternativo al Comité para la Eliminación de Discriminación Racial (CERD) de las Naciones Unidas, January 2013, 4. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fDOM%2f13706&Lang=en (accessed February 17, 2017.)

The Dominican government's position on racism and racial equality is confirmed in the State's reports to the Committee. In addition to other shortcomings, the Dominican report submitted in 2006 and reviewed in the spring of 2008 at the 72nd period of sessions not only demonstrates an alarming misunderstanding of the manifestations of racism in the country, it also puts forth a confusing and contradictory consideration of the country's racial and ethnic composition. The report begins with the assertion that "Dominicans regard themselves as a single people, in a sense that White, Black or mixed raced Dominicans do not consider their fellow citizens, whatever their skin color, to belong to a different culture or ethnicity."¹⁰⁴ Shortly thereafter it contradicts this statement, adding that, "In the development of the Dominican Republic's national policies...there are particular difficulties in connection with the multi-ethnic and multicultural diversity of Dominican society."¹⁰⁵ In another unfortunate assertion, the report declares that "racial purity does not exist in the Dominican Republic, since over 90 percent of the population is descended from Blacks."¹⁰⁶

This misguided understanding of race and ethnicity in Dominican society continues in the State's most recent report, submitted in November 2011 and reviewed in February 2012 by the Committee. In it, the State claims that "no State policy exists—in law or in practice—whereby economic, social and cultural rights are restricted or nullified" because of race.¹⁰⁷ Moreover, the State's report tends to associate problems of racial discrimination with the presence of Haitians and Haitian descendants in Dominican society. The report asserts that discrimination is exacerbated by "immigrants, mostly from the Republic of Haiti, who together exert even greater pressure on the precarious service base available to Dominicans."¹⁰⁸

The erroneous and contradictory assertions of the State's reports have been repeated and affirmed by representatives of the State during the Committee's oral examinations. During its last examination, several members of the delegation repeated claims that the issue of racial discrimination simply did not exist in the country, and that there have been no significant expressions of racism in the media or justice system. The head of the Dominican delegation, the Director of the Human Rights Section of the Ministry of Foreign Affairs, asserted that because no ethnic differences existed in the country, it was impossible to promote policies based on any form of racial distinction.¹⁰⁹ Together with the assertions made in the State's reports to the Committee, these statements only serve to bolster the claims made by civil society that discrimination in the country is misrepresented and denied by government officials.

To their credit, the members of the Committee have not only recognized the Dominican government's deficiencies in understanding and accepting the existence of racism and racial discrimination in their country, they have made a concerted and creative effort to help State representatives better recognize the reality that must be confronted. On multiple occasions during oral proceedings, members of the Committee challenged assertions by the Dominican delegation that ran contrary to the facts, often trying to help the delegation understand how racism has affected the history of the country. In this respect, the comments of the Rapporteur for the Dominican

104 Dominican Republic, 12th Report to UN CERD, par. 1.

105 Ibid, par. 11.

106 Ibid, par. 67.

107 United Nations Committee on the Elimination of Racial Discrimination, Reports Submitted by the States Parties Under Article 9 of the Convention: Thirteenth and Fourteenth Periodic Reports Due in 2010, CERD/C/DOM.13-14, March 7, 2012, par. 30.

108 Ibid, par. 15.

109 United Nations Committee on the Elimination of Racial Discrimination, Summary Record of the 2223rd Meeting: Consideration of the Reports, Comments and Information Submitted by States Parties Under Article 9 of the Convention, CERD/C/SR.2223, February 17, 2013, par. 6-7.

Republic, Pastor Murillo, sought to place the Dominican situation in a regional context, pointing to the example of Brazil as society where the color of one's skin is often determinant in the opportunities or obstacles one faces. Importantly, Mr. Murillo also reminded the delegation of the racist, anti-Haitian ideology of the Trujillo dictatorship and its effects on Dominican self-perception and identity.¹¹⁰ Other Committee members expressed their concern about the State's positions, including Francisco Cali Tzay, who reminded the delegation that no country in the world is free from all forms of racial discrimination.¹¹¹

In addition to its efforts in oral proceedings, the Committee has tried to prod the Dominican government toward a greater understanding and acceptance of the existence racism through its concluding observations. It made a sharp rebuke to the State's denial of the existence of racial discrimination and affirmed that this denial was an obstacle to combating racism. The concluding observations also make numerous references to obstacles faced by "dark-skinned persons of African descent" as means of refuting the State's assertions about the population's common African ancestry precluding the possibility of discrimination.

Most importantly, the Committee made several recommendations aimed toward helping Dominican society as a whole and the Dominican government specifically to better understand the role racism and racial discrimination has played in the country's history, and how this history manifests itself in racist and discriminatory attitudes and actions in contemporary Dominican society. In particular, the Committee's recommendations to establish a commission with civil society and state representatives to analyze the impact of the slave trade on national identity and its consequences for addressing racism and racial discrimination, together with its recommendation to conduct a national survey on cultural identity and discrimination, represent two specific proposals by the Committee to address the recalcitrance of the Dominican State.¹¹²

6.3 The Dominican Republic Views the CERD Process as Antagonistic and Accusatory Rather than Cooperative

Understandably, many States view the review process with a certain amount of apprehension, as it represents a public forum where sensitive issues are discussed and the State's actions on these issues are considered. But, as the Committee strives to make clear, the process should be considered a constructive consultation, with the Committee providing expertise and assistance to States so that they may better implement the Convention. In both word and deed, the Dominican Republic has shown a different understanding of the CERD process; it is apparent that the Dominican government views it as an opportunity for the Committee and civil society resort to misinformation to falsely accuse the State of misdeeds it has not committed.

During the oral examinations at the country's most recent review, comments by the State's delegation indicated their displeasure at what they considered unwarranted accusations made by CSOs in their alternative reports. One member of the delegation said he could not understand the charges of racial discrimination levelled against

110 Ibid, par. 10-11.

111 United Nations Committee on the Elimination of Racial Discrimination, Summary Record of the 2224th Meeting: Consideration of the Reports, Comments and Information Submitted by States Parties Under Article 9 of the Convention, CERD/C/SR.2224, April 11 2013, par. 19.

112 United Nations Committee on the Elimination of Racial Discrimination, Concluding Observations on the Thirteenth and Fourteenth Periodic Reports of the Dominican Republic, Adopted by the Committee at its Eighty-Second Session (11 February – 1 March 2012), April 19, 2013), par. 9.

his country, while another called reports of racial discrimination incomprehensible, and stated that Dominican CSOs were waging a campaign of lies in claiming the existence of segregation according to nationality.¹¹³ These comments by the Dominican delegation were met with a reminder from the Committee's Chairperson that CERD was not a court or a criminal investigative body. One Committee member reminded the delegation of the Committee's responsibility to gather information from a wide variety of sources, including CSOs, while another characterized the Committee's dialogue with the State as vibrant, but ultimately not leading to a reconciliation of differences between the Committee and the State regarding the implementation of the Convention.¹¹⁴ Throughout the examination, the statements made by the Dominican delegation appeared more often to be aimed at responding to a perceived hostility of the Committee rather than seeking transparency and forthrightness.

Another indication of the Dominican government's perception of the CERD process as antagonistic rather than cooperative has been the State's less than full participation in the Committee's primary functions. The Dominican State has failed to submit the requested follow-up reports to the concluding recommendations following sessions in 2008 and 2012, and has yet to submit its latest report, due in June 2016. But perhaps the most egregious example of its lack of full participation in the CERD process was its failure to attend the originally scheduled review during the 82nd period of sessions. The Dominican delegations did not make the trip to Geneva for the sessions, and tried unsuccessfully to postpone the review. Despite this, the review was held in the absence of the official delegation. Although civil society activists cited some benefits to attending the review without the State—they were given more time to present to the Committee, for example—the government's refusal to send a delegation to the sessions not only represented an affront to the Committee, it also allowed to the State to be reviewed at a later date without the presence of CSOs at the sessions. While the motivation for the State's absence at its last review can only be speculated upon, it certainly fits within a pattern of minimal cooperation with the Committee and civil society actors involved with CERD's work.

6.4 Predictably, the Dominican Republic's Response to CERD's Recommendations Has Been Inadequate

Given the Dominican government's continued denial of the existence of racism and racial discrimination, and given its treatment of the CERD process as an antagonistic rather than cooperative one, it comes as little surprise that the State appears to hold the Committee's recommendations in so low esteem. This outright disregard for the Committee's recommendations has been so egregious as to necessitate CERD's inclusion of an admonition to the State regarding the matter in its most recent concluding observations, where it remarked on "the need to explore with the State party new paths for dialogue to ensure that due attention is given to its recommendations."¹¹⁵ A look at some of the Committee's recommendations on a few of the most urgent matters regarding racism and discrimination in the country reveals that the Committee's urgings have had little effect on the State's actions.

In many regards, the fight against discrimination in the Dominican Republic has not advanced as far as in other countries of the region. This fact has not gone unrecognized by the Committee, and the Committee's awareness of the problem is reflected in the type of recommendations it has given the Dominican government. For example, in its concluding observations for the 72nd period of session, the Committee recommended to the State

113 UN CERD, 2223rd Meeting, par. 6, and UN CERD, 2224th Meeting, par. 18, 25.

114 Ibid.

115 UN CERD, Consideration of the Dominican Republic's 13th and 14th Reports, par. 9.

that it should take actions to raise awareness of racism and racial discrimination amongst government officials and the public at large, suggesting that it “provide awareness-raising training programmes for members of the judiciary, law enforcement officers, teachers, social workers and other public officials on the provisions of the Convention.”¹¹⁶ In the State’s subsequent report to the Committee for the 82nd period of sessions it made no mention of programs or activities of this nature. It did respond to the Committee’s recommendation by asserting that information regarding discrimination circulated freely in the private press and that training on discrimination occurs as a result of complaints of racism. Such complaints, according to assertions made elsewhere in the report, have yet to occur.¹¹⁷ The lack of effective action by the State led the Committee to reiterate its recommendation on awareness-raising in the concluding observations to the 82nd session. In this instance, the Committee specified concrete actions on areas to research and report upon, as well as investigative activities to undertake in order to better understand attitudes on race and discrimination.¹¹⁸

In addition to making and repeating recommendations on the fundamental first steps for combating discrimination, the Committee has also made more specific recommendations to the Dominican government on the extremely precarious situation of Haitians and Dominicans of Haitian descent in the country. In its concluding observations for the 72nd period of sessions, the Committee recommended action on several issues of discrimination against Haitians and Dominico-Haitians. This included recommendations to eliminate discrimination in deportation processes and to guarantee equal access to identity documents, including birth certificates and voting cards.¹¹⁹

The Dominican government devoted significant space in its subsequent report for the 82nd period of sessions on the situation of Haitians and Dominico-Haitians, and specifically to the question of deportations and identity documents. The report denies claims of abuses in the deportation process and offers a lengthy and sometimes difficult to follow explanation of the steps the State has taken to ensure that identity documents are properly furnished without discrimination. Despite these assertions, both before and since the State’s last report, various international organizations and multilateral institutions have criticized the Dominican Republic’s treatment of Haitians and Dominico-Haitians and have documented continued widespread discriminatory practices both in deportation and civil registry.¹²⁰ CSO organizations participating in the CERD process also portrayed a different reality of Haitians and Dominico-Haitians. Two of the five alternative reports to the Committee included information regarding rights violations associated with deportations and the civil registry.¹²¹

116 United Nations Committee on the Elimination of Racial Discrimination, Concluding Observations on the Ninth Through Twelfth Periodic Reports of the Dominican Republic, Adopted by the Committee at its Seventy-Second Session 18 February – 7 March 2008, (CERD/C/DOM/CO/12) 16 May 2008 par. 21.

117 United Nations Committee on the Elimination of Racial Discrimination, Reports Submitted by the States Parties Under Article 9 of the Convention: Thirteenth and Fourteenth Periodic Reports Due in 2010, CERD/C/DOM/13-14 (7 Mar. 2012) para 236-237.

118 UN CERD, Consideration of the Dominican Republic’s 13th and 14th Reports, par. 9.

119 UN CERD, Consideration of the Dominican Republic’s 9th through 12th Reports, par. 13-16.

120 For example, see: The Situation of Human Rights in the Dominican Republic, by the Inter-American Commission on Human Rights, ‘Where Are We Going to Live?: Migration and Statelessness in Haiti and the Dominican Republic, by Amnesty International, or Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education, by the Georgetown Law Human Rights Institute.

121 Red de Encuentro Dominicano-Haitiano Jacques Viau, Informe de la Organizaciones de la Sociedad Civil Dominicana en Relación a la Convención Sobre la Eliminación de Todas Formas de Discriminación, January 2013. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fDOM%2f13709&Lang=en (accessed February 17, 2017), and The Open Society Justice Initiative and the Center for Justice and

In weighing the evidence brought before it, the Committee concluded that the State had insufficiently addressed these issues and reiterated many of the same recommendations from the previous period of sessions. Specifically, it asked the State “to adopt a non-discriminatory policy with regard to identity documents” and “ensure Dominican citizens of Haitian origin are not deprived of their right to nationality.” Regarding deportations, the Committee noted this was a recurring preoccupation and reiterated its recommendation that the Dominican government ensure non-discriminatory deportation policies and practices.¹²²

It does not appear that Dominican civil society has had much success in utilizing the Committee’s recommendations in their advocacy work. A working group on international obligations with members from both civil society and the State was created in 2015—a full three years after the country’s last revision under CERD—but according to activists the group did not achieve any significant objective and has since been disbanded. Likewise, activists reported that talks with the government on the civil registry did not progress far. In the view of one activist, working relations with officials suffered after the change in government as a result of the 2016 elections. With little institutional stability, as a result of the changes in personnel, these activists found themselves forced to reestablish the personal relationships necessary in order to make progress on the issues advocate for.¹²³

6.5 Conclusions

Unfortunately for those working against racism and racial discrimination in the Dominican Republic, the struggle there has not advanced as far as it has in other parts of the region. Much work remains to be done to increase the awareness of the public and State authorities of the historical roots of racism and its manifestations in contemporary Dominican society. This effort is a fundamental first step toward tackling the specific issues related to discrimination in the country, and all those working to combat racism in the Dominican Republic should work together to educate and inform Dominicans about the reality they all must confront. As critical actors in the fight against discrimination, a priority should be given to raise Dominican authorities’ awareness of and acceptance of racial discrimination in the country. As the situation currently stands, the Dominican government too often assumes a defensive position on issues related to racism and discrimination. This need not be the case. It is important to remember that political institutions are never solely responsible for the racism and racial discrimination that exist in society. Nevertheless, governments that refuse to accept the existence racism and discrimination and work towards their elimination must be held accountable. The challenge for Dominican activists and CERD is to persuade the Dominican State of this reality.

International Law, Submission to the Committee for the Elimination of Racial Discrimination: Review of the Dominican Republic, January 2013. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fDOM%2f13708&Lang=en (accessed February 17, 2017).

122 UN CERD, Consideration of the Dominican Republic’s 13th and 14th Reports, par. 9.

123 María Martínez, interview.

6.6 Recommendations

With the above in mind, the following recommendations are made to the Dominican government, the Committee and Dominican civil society:

To the Dominican government:

1. The Dominican government must make every effort to seriously consider and effectively implement the Committee's recommendations, as these represent the primary mechanism through which improvement can be made in meeting its obligations under the Convention.
2. The Dominican government should prioritize educational and awareness-raising activities regarding the historical roots of racism and its contemporary manifestations. Training on discrimination should be mandatory for government staff providing services to persons and communities suffering from discrimination. In providing this training, the government should make every attempt to include the knowledge and expertise of Dominican civil society activists.
3. The Dominican government should participate fully in the functions of the Committee; it should attend all sessions where it will be reviewed, submit its reports in timely manner and respond to the Committee's concerns with follow-up reports when requested to do so. It should include information in its reports on the implementation of the Committee's recommendations as per the Committee's reporting guidelines.

To the Committee:

1. The Committee should continue to insist that the Dominican Republic accept the existence of racism and racial discrimination in Dominican society, and should insist that authorities deepen their understanding of the historical roots of racism and its contemporary manifestations, structural or otherwise.
2. The Committee should harness its considerable experience and look to other instances of States that have denied the existence of racism in their societies in order to uncover strategies that may be applied to the case of the Dominican Republic. The Committee should consider facilitating contact between Dominican authorities and their counterparts in a State or States that have recently come to a greater awareness of the existence of racism in their societies.

To Dominican civil society:

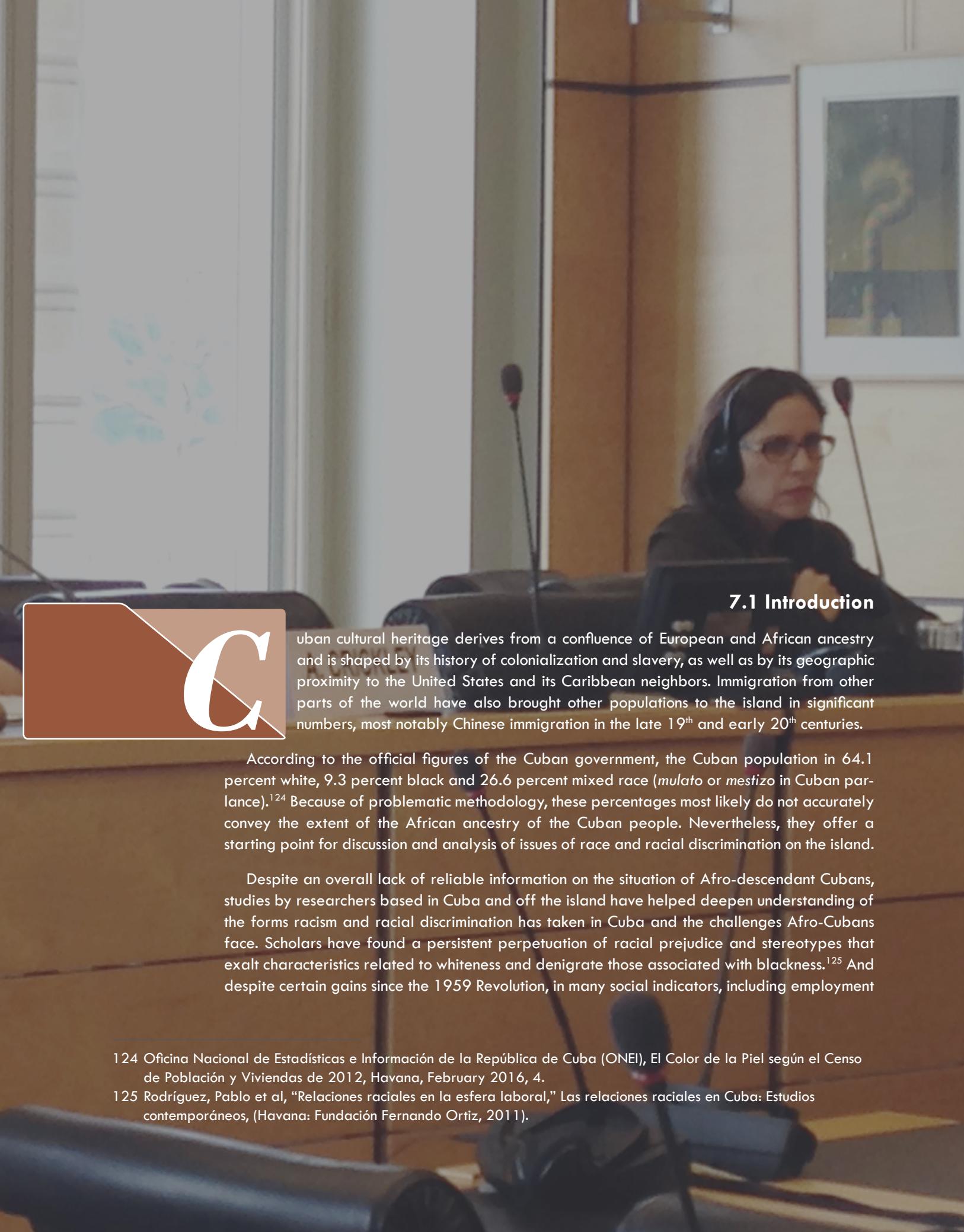
1. Dominican civil society must improve its follow-up activities regarding the Committee's recommendations and include these activities as important components in their strategic advocacy activities at the national, regional and universal levels.
2. Dominican civil society should consider incorporating educational and awareness-raising activities whenever feasible to do so, and it should advocate at every opportunity for the State to fulfill its educational obligations with respect to racial discrimination.
3. Dominican civil society should research and report to the Committee on the State's efforts on education and awareness-raising regarding racism and racial discrimination. Specifically, it should include information regarding the Committee's recommendation in paragraph 9a of its latest concluding observations that the State create a commission to analyze racism in the Dominican context, its historical roots, contemporary expressions and challenges to overcome them.
4. Dominican civil society should maintain awareness regarding the State's reporting obligations, including follow-up reports, and advocate for an adequate response by the Dominican government to the Committee's request.

Section

7

CERD IN CUBA





7.1 Introduction



Cuban cultural heritage derives from a confluence of European and African ancestry and is shaped by its history of colonialization and slavery, as well as by its geographic proximity to the United States and its Caribbean neighbors. Immigration from other parts of the world have also brought other populations to the island in significant numbers, most notably Chinese immigration in the late 19th and early 20th centuries.

According to the official figures of the Cuban government, the Cuban population is 64.1 percent white, 9.3 percent black and 26.6 percent mixed race (*mulato* or *mestizo* in Cuban parlance).¹²⁴ Because of problematic methodology, these percentages most likely do not accurately convey the extent of the African ancestry of the Cuban people. Nevertheless, they offer a starting point for discussion and analysis of issues of race and racial discrimination on the island.

Despite an overall lack of reliable information on the situation of Afro-descendant Cubans, studies by researchers based in Cuba and off the island have helped deepen understanding of the forms racism and racial discrimination has taken in Cuba and the challenges Afro-Cubans face. Scholars have found a persistent perpetuation of racial prejudice and stereotypes that exalt characteristics related to whiteness and denigrate those associated with blackness.¹²⁵ And despite certain gains since the 1959 Revolution, in many social indicators, including employment

124 Oficina Nacional de Estadísticas e Información de la República de Cuba (ONEI), *El Color de la Piel según el Censo de Población y Viviendas de 2012*, Havana, February 2016, 4.

125 Rodríguez, Pablo et al, “Relaciones raciales en la esfera laboral,” *Las relaciones raciales en Cuba: Estudios contemporáneos*, (Havana: Fundación Fernando Ortiz, 2011).

and education, Afro-Cubans lag behind their white counterparts, as the State's own data demonstrates.¹²⁶ Furthermore, evidence suggests that economic reforms since the fall of the Soviet Union that have opened the economy to more private enterprise may be increasing inequality along racial lines. With less access to remittances from abroad and continued prevalence of negative stereotypes, Afro-Cubans have not gained equal entry into the most dynamic sectors of the private economy, namely tourism, where access to foreign currency can propel dramatic economic ascendance.¹²⁷

The issue of racism and racial discrimination is of course impacted by the political regime in Cuba, which despite the death of its founder, does not appear on the brink of dramatic transformation. This does not mean that the future in Cuba is certain, however, as the ongoing evolution of US-Cuban relations—itself in a state of flux following the result of the US elections—may have a palpable impact on the island's political and economic reality.

It is within this context that those working within the CERD process in Cuba are tasked with the ongoing process of implementing the content of the Convention in the country. Although Cuba was a relatively early signatory to the Convention, having ratified it in 1972, and despite the fact that it had been reviewed by the Committee ten times from 1974 to 1998, its most recent review occurred in 2011 after an absence of over 12 years from participation in the Committee's activities. It most recently submitted a report in July 2016, although a date for the review of that report has not yet been set. What follows are a few lessons gleaned from a review of the documents produced as a result of the Committee's 2011 review of Cuba during its 78th period of sessions as well as the most recent report submitted in July 2016.

7.2 The Cuban State's Understanding of the Prevalence of Racism and Racial Discrimination is Distorted Through the Lens of the Glorification of the Revolution

As it does with many facets of Cuban life, the 1959 Cuban Revolution remains the primary point of reference when Cuban authorities discuss the issue of racism and racial discrimination. From the official perspective, the Revolution serves as a historical rupture from Cuba's colonial and capitalist past, and therefore with its history of racism and discrimination. The unwavering belief in the Revolution as a panacea for all of Cuba's social ills has necessarily lead to a misperception and misunderstanding of contemporary manifestations of racism and racial discrimination on the island.

In this fundamental lack of understanding of racial discrimination in their society, Cuban authorities are not unlike their Dominican counterparts. How the two governments arrived at their conclusions derives from historical specificities, some of which the two countries share and others they do not. Both countries share a complicated, somewhat convoluted and often contradictory conception of the racial and ethnic composition of their country's population. As in the Dominican reports to the Committee on this subject, at times the Cuban State claims a homogenous population, as when it claimed in its 2009 report to the Committee that "Cuba does not have ethnic minorities."¹²⁸ Similar to explanations given by Dominican authorities, this fact is due to an "intense processes

126 ONEI, El Color de la Piel.

127 Carrazana Fuentes, Lázara Y., "Movilidad social y filiación racial en la reestructuración económica en Cuba," Las relaciones raciales en Cuba: Estudios contemporáneos, (Havana: Fundación Fernando Ortiz, 2011).

128 United Nations Committee on the Elimination of Racial Discrimination, Reports Submitted by the States Parties Under Article 9 of the Convention: Fourteenth Through Eighteenth Reports of Cuba Due in 2007. CERD/C/PCUB/14-18, January 20, 2010, par. 2.

of hybridization.”¹²⁹ Despite these assertions, the report also divides the population into three broad racial categories, black, white and *mestizo* (mixed race). These categories notwithstanding, the report also asserts that, despite these racial categories, Cuban identity is largely mono-ethnic and associated with national culture, or Cubanness.¹³⁰ This confluence of *mestizaje* and nationalism represents a similar conception to that of the Dominican authorities. But where Dominican discourse conceals and denies African influence and a history of racism, official Cuban discourse freely admits to a history of racial discrimination, but exalts the Revolution as the redemptive project which rescued the nation from the scourge of racism.

The assertion by Cuban authorities that the Revolution represents a historical process that has eliminated racism is not merely a reflection of their belief in the mythology of the Revolution. Rather, it comes from a Marxian conception of social change that undergirds the policies of the Revolution. In this conception, changes to the economic system necessarily provoke change in cultural and societal relations. In this way, the achievement of greater economic equality—the primary objective of the Revolution—will necessarily result in greater racial equality. In associating capitalism with racism, the Cuban State has operated with the belief that the removal of capitalism from society dictates that racism will disappear along with it. This orthodox Marxian ideology greatly underestimates the power and pervasiveness of historical and contemporary racism, falsely associates it solely with the capitalist system and fails to understand how it is reproduced structurally outside of economic relations.

It is this misunderstanding of how racism operates and is reproduced in Cuban society that impedes Cuban authorities from taking the concrete steps necessary to sufficiently address the problem. It is for this reason that the reports submitted by the Cuban State admit to a society that was racist. The State’s reports’ exhaustive list of the Revolution’s social policies and programs—lists that, incidentally, contain no specific information on Cubans of African descent—are presented with the erroneous understanding that *ipso facto* these programs diminish discrimination. Cuban ideology also hinders progress on taking specific actions to address racism and racial discrimination, such as creating and strengthening institutions and implementing affirmative actions. From the Cuban authorities’ point of view, these actions are superfluous in an egalitarian, Revolutionary society.

Unfortunately, the Committee has not spoken as forcefully as it could with regard to Cuba’s recalcitrance on matters of racism and racial discrimination. Although during the oral proceeding of Cuba’s most recent review some members of the Committee challenged the Cuban government’s assertion of a Cuban “mono-ethnicity,” the Committee did not sufficiently question the State’s claims that, with the exception of isolated occurrences “in the family setting,” the Revolution had virtually eliminated racism and discrimination on the island.¹³¹ Not only did the Committee fail to include in its concluding observations any concern over the Cuban State’s officially held position, it failed to speak with one voice on the matter during the oral examinations. Particularly unhelpful in this regard were the comments of member José Lindgren. Lindgren supported the Cuban delegation’s affront at being questioned about mechanisms to assess progress achieved by Afro-Cubans and characterized such efforts as unnecessary given that the Revolution had prioritized equality since its inception. Comments such as these not only dilute the Committee’s efforts, they demonstrate a discouraging level of understanding of racism and racial discrimination by a person upheld as an expert in the area.

129 Ibid, par. 3.

130 Ibid, par. 4.

131 United Nations Committee on the Elimination of Racial Discrimination, Summary Record of the 2055th Meeting: Consideration of the Reports, Comments and Information Submitted by States Parties Under Article 9 of the Convention, CERD/C/SR.2055, February 25, 2011.

7.3 Restrictions on Civil Society by the Cuban Government Severely Limit the Information the Committee Receives

The participation of independent civil society in the CERD process has been a fundamental and transformative change in the functioning of the treaty body and it has helped to more fully implement the Convention in the region and throughout the rest of the world. In the case of Cuba, the participation of independent civil society in the work of the Committee has not yet occurred, to the detriment of the efforts of all those earnestly working to eliminate racism and racial discrimination on the island.

Independent civil society actors in Cuba face restrictions on their basic freedom of association that their counterparts throughout the Americas do not confront. Cuba's legal framework intentionally limits and controls its citizens' ability to form independent advocacy groups and other associations, organizations that are the cornerstone for the protection of human rights, including the right to live free from discrimination. Since the Revolution, the Cuban government has created and supported "non-governmental organizations" that purportedly bring together and represent civil society, but in practice are essentially extensions of the government itself.¹³² Some of these "governmental" non-governmental organizations have participated in the CERD process; however, their symbiotic relationship with the State makes them inadequate substitutes for a vigorous, independent, participatory civil society. Furthermore, Cuban legislation that prohibits the legal establishment of more than one organization to work on any given issue has resulted in the near-monopolization of civil society by these "governmental" CSOs. It has also meant that independent organizations who cannot register with the government remain illegal entities, further exposing them to harassment and intimidation by government authorities. These prohibitions have resulted in an independent civil society that has not progressed as far as others in the region in terms of organizational and advocacy capabilities.

The relative weakness of independent Cuban civil society is compounded by restrictions on access to information. Internet access for all Cubans is far below regional standards. It is extremely costly, limited to a very few public access points, and does not function at speeds that allow for its most effective use. Information restrictions are compounded by the opacity of the Cuban State, which does not publicly share critical information such as census data and other official information in ways that most governments in the region strive to do. In addition to these challenges, independent Cuban activists often face even more hurdles to access information relevant to their work: these activists are often barred from using State-run information sources such as universities and libraries.

With regard to independent civil society's work on issues of importance to the Committee, work on racial discrimination still remains a taboo in the eyes of Cuban authorities. To publicly insist on the persistent existence of racism and racial discrimination in the country continues to be seen as counterrevolutionary and antisocial. Generally speaking, the Cuban government does not accept criticism on the issue, especially from independent activists. Working independently on racism and racial discrimination places activists at considerable personal risk of retribution by authorities.

As has been observed in the cases of several of the countries included in this study, international civil society organizations play a key role in facilitating the participation of local CSOs in the CERD process. International CSOs have helped to raise awareness about the Committee's activities amongst independent local organizations, many of whom have had little knowledge of or experience with advocacy at the international level.

¹³² The Federation of Cuban Women, a group that submitted a shadow report to CERD for Cuba's most recent review, is just one example of such State-controlled NGOs.

International CSOs have also been instrumental in forging regional links between independent national CSOs, helping these organizations share their experiences and learn from one another. And international CSOs have been crucial in providing at least some of the critical and scarce funding to support national organizations to research and write reports and attend review sessions. This international cooperation is severely restricted in Cuba, especially with respect to international organizations based or working in the United States. Restrictions on cooperation between Cuban and US-based organizations, a legacy of antagonistic, Cold War, US-Cuba relations, greatly hinder the role US organizations can play in supporting independent Cuban grassroots CSOs. Furthermore, restrictions on travel for independent activists limit their ability to interact with counterparts outside of Cuba and participate in the activities of the Committee.

The Committee has not made a sufficient effort to condemn the Cuban government's restrictions on independent civil society, nor has it adequately attempted to prompt the Cuban government to change its actions with regard to independent CSOs. To their credit, several Committee members brought up the issue of independent CSOs' lack of participation at the review sessions. Patrick Thornberry expressed his regret at the absence of independent Cuban civil society, and Pastor Murillo noted civil society's lack of presence at the review as a cause for concern. But despite these proclamations of concern, no specific mention of the subject was made in the Committee's concluding observations. Even more surprising, the Committee did not include its nearly universal recommendation that civil society be consulted both in policy decisions and in drafting the State's report. It is difficult to determine whether this omission is a mere coincidence, a deflection to the specificities of the Cuban political system, or whether it simply reflects an ignorance on the part of the Committee regarding the realities faced by independent Cuban civil society. Regardless, it is an omission that works in detriment to the implementation of the Convention in Cuba.

7.4 Cuba's Response to the Committee's Recommendations Has Been Largely Insufficient

Although Cuba went over twelve years between reviews by CERD, the Committee has remained consistent in several of its recommendations to the government. Nevertheless, the government has failed to heed these repeated recommendations, ignoring several suggestions by the Committee on how to give fuller effect to the Convention in the country.

In some instances, the Cuban government has essentially chosen to disagree with CERD, even when Committee has recommended measures that have been nearly universally adopted by other governments. Such has been the case with the Committee's recommendation that Cuba establish national-level institutions to protect human rights and facilitate the implementation of the Convention, as it did in its concluding recommendations to its 53rd period of sessions.¹³³ To this recommendation, the Cuban government replied in its subsequent report that it had already established a "broad and effective inter-institutional system" to aid in the defense of all human rights, effectively stating that an institution to protect against discrimination was unnecessary.¹³⁴ Despite this assertion by the Cuban government, the Committee again raised the issue in its concluding observations following the 78th

133 United Nations Committee on the Elimination of Racial Discrimination, Concluding Observations on the Tenth Through Twelfth Periodic Reports of Cuba, Adopted by the Committee at its Fifty-Third Session (13 August – 20 August 1998), CERD/C/CUB/CO/10-12, February 10, 1998, par. 11.

134 United Nations Committee on the Elimination of Racial Discrimination, Reports Submitted by the States Parties Under Article 9 of the Convention: Fourteenth Through Eighteenth Reports of Cuba in 2007. CERD/C/PCUB/14-18 (20 Jan. 2010) par. 415.

period of sessions, urging the Cuban government to establish an independent national human rights institution according to the 1993 Paris Principles.¹³⁵ Cuba's response in its latest report, submitted in September 2016, has been nearly identical to its previous answer, stating that "Cuba has a national system for the promotion and protection of human rights that has shown palpable results."¹³⁶

The Committee sought such palpable results of the protection of human rights in its concluding observations to the 53rd period of sessions when it requested the State provide "information on the number of complaints of racial discrimination, the outcomes of the prosecution of cases of racial discrimination and the redress, if any, provided to persons affected by such discrimination."¹³⁷ With this request, the Committee sought information on how Cuba's institutions addressed instances of discrimination, and specifically requested information on the role of the Attorney General in these matters. The State replied in its subsequent report, again denying the existence of discrimination in the country, stating, "In Cuba, complaints of racial discrimination do not exist, therefore it is not possible to supply the Committee with this information." What is more, the State used this absence of information as proof that institutional discrimination did not occur in Cuba.¹³⁸

The Committee responded to these assertions in its concluding observations, noting that its concern over "the lack reported cases, prosecutions and convictions relating to acts of racial discrimination," and stating that the absence of cases does not necessarily equate to an absence of violations, but may be "due to the victims' lack of information about existing remedies."¹³⁹ It recommended to the State again to ensure that effective protection and remedies be available and that the public have access to them. The State's response to these recommendations in its subsequent report was more detailed, but no more satisfactory. It noted that legal institutions received nearly thirteen-thousand penal and administrative complaints in 2015, but that none related to discrimination. It did affirm that complaints of discrimination were made to other State institutions, such as the Cuban Union of Writers and Artists (UNEAC). According to the State's reports, these complaints were transferred to the proper administrative legal authorities and received their due attention. However, none of the complaints resulted in legal proceedings.¹⁴⁰ That not a single instance of discrimination received any judicial or administrative action gives a clear indication that improvements in access to effective remedies must be made; however, it is equally clear that—at least at the present time—the Cuban government does not appear willing to heed suggestions about how to achieve such a goal.

7.5 Conclusions

It is impossible to talk about social issues in contemporary Cuba without taking into account the 1959 Revolution. Unfortunately for those working against racial discrimination on the island, the ideology behind the Revolution—and this is true regardless of one's opinions of the merits of Cuban communism—has had a distorting effect on Cuban authorities' understanding of racism in the country and how best to combat it. The

135 Cuba, 14th - 18th Reports to UN CERD, par. 13.

136 United Nations Committee on the Elimination of Racial Discrimination, Reports Submitted by the States Parties Under Article 9 of the Convention: Nineteenth Through Twenty-First Reports of Cuba Due in 2012. CERD/C/PCUB/19-21, September 9 2016, par. 210.

137 UN CERD, Considerations on Cuba's 10th – 12th Reports, par. 10.

138 Cuba, 14th-18th Reports to UN CERD, par. 405.

139 CERD Considerations on Cuba's 14th – 18th Reports, par. 10.

140 Cuba, 19th-21st Reports to UN CERD, par. 54-55.

Cuban State has proven unable to significantly modify its rigid Marxian understanding of social change, and in the process it has proven unable to sufficiently address the problems posed by the persistence of racism and racial discrimination in the country. At the same time, its severe political restrictions have seriously stymied the growth of an experienced, independent civil society. This has in turn limited the information the Committee receives and consequently hindered the effectiveness of the Committee in providing guidance to the Cuban government. In order for Cuba to begin to seriously engage in the CERD process and begin to tackle racism and racial discrimination in the country, it must—at a minimum—begin to evolve its understanding of societal change while at the same time allowing and supporting a vibrant civil society. Until these basic preconditions are met, the Committee will have to continue its work with a less than willing State partner and its recommendations will not be adequately considered.

7.6 Recommendations

With the above in mind, the following recommendations are made to the Cuban government, the Committee and Cuban civil society:

To the Cuban Government:

1. The Cuban government must make every effort to seriously consider and effectively implement the Committee's recommendations, as these represent the primary mechanism through which improvement can be made in meeting its obligations under the Convention.
2. The Cuban government should immediately halt all harassment of human rights activists in general, and human rights activists working on issues of racial discrimination in particular.
3. The Cuban government should cease efforts to prevent activists from attending international human rights fora. In particular, it should allow a broad delegation from civil society to attend its next review under CERD, and it should refrain from making any reprisals against members of the delegation as a result of their work.

To the Committee:

1. The Committee should make every effort to insist upon the full and free participation of Cuban civil society in the review process. The Committee should stress that allowing civil society's participation is a fundamental aspect of the Committee's work, and it should make clear this position to the Cuban government.
2. The Committee should make a concerted effort to ensure that no reprisals are taken against Cuban human rights advocates in response to their work with the Committee. Cuban activists face a reality in their country that is unique to the region and requires a unique response from human rights bodies. The Committee should work closely with other UN and regional institutions to monitor the situation of rights defenders who participate in CERD activities, and should request information from the State on measures taken to protect activists from harassment. The information provided by the State should be corroborated by independent sources whenever possible.
3. The Committee should more strongly emphasize the importance that the Cuban government accept the pervasiveness of racism and racial discrimination in its society. The Committee should strive to understand how the Cuban Revolution and its concomitant ideology has shaped the State's response to racism and discrimination, and how this response has been insufficient.

To Cuban civil society.

1. Cuban civil society must improve its follow-up activities regarding the Committee's recommendations and include these activities as important components in their strategic advocacy activities at the national, regional and universal levels.
2. Cuban civil society should seek creative ways to remain engaged with the Committee in the absence of the possibility of participating directly in CERD activities, and it should work with the Committee to find ways to provide information outside of the review sessions.
3. Cuban civil society should keep the Committee informed not only on issues of racial discrimination in the country, but also on the situation of human rights defenders working on these issues, including detailed information on harassment by State authorities.
4. Cuban civil society should insist that the Committee work closely with other UN and regional human rights bodies to help ensure they have the freedom to continue their work.

Section

8

CONCLUSIONS AND RECOMMENDATIONS





In examination of the Committee's efforts in five countries in a particular region when its work involves over 170 countries worldwide is, without question, a limited look into its operations. Nevertheless, the research for this report has uncovered a number of findings, some mostly applicable to Latin America, while others may have relevance in different regions as well. And while some of the conclusions drawn point to areas where improvements can be made in CERD's work, it is without question that the Committee has played and continues to play a vital role in the global struggle to combat racism and racial discrimination. The lessons learned in the course of undertaking research on CERD in these five countries are by no means a criticism of the Committee's work, but instead represent an attempt to strengthen what we consider a crucial global institution. What follows are a few conclusions drawn from each country's specific context as well several more general conclusions drawn from a broader analysis of all five countries studied.

Peru

The case of Peru demonstrates that a sustained commitment to engage with the Committee can contribute to improving States' treatment of the issues of racism and racial discrimination. After a period of sporadic engagement with CERD, Peru has begun to fulfil its reporting obligations in a timelier manner. The result has been an improvement in the quality of its reports to the Committee: they now more closely follow CERD's reporting guidelines and contain more and better quality information. Although far from perfect, these improved reports are vital to help the Committee gain a more accurate understanding of the most salient issues regarding the

situation of discrimination in the country, and in doing so help CERD produce more concrete and effective recommendations to address those issues. In the case of Peru, it can be observed that these specific recommendations by the Committee—aided by reports that are both franker and more detailed—can translate into positive actions, such as the case with Peru’s continuing work on effectively incorporating the Afro-descendant variable in its upcoming census.

Nevertheless, Peru’s recent engagement with CERD has also demonstrated that the will to engage with the Committee must be met with an equal commitment to establish the institutional structure necessary to address discrimination in the country. Peru’s institutional instability regarding Afro-descendant and indigenous issues—as noted by civil society leaders and evidenced by the weakness and eventual elimination of INDEPA—seriously limits the State’s ability to tackle racism and discrimination with the force necessary to properly address the challenge. Peru’s increased engagement with CERD has shown that the State has a will to take the necessary first step; equally important will be a commitment to provide adequate resources and structure to the institutions responsible for meeting the State’s obligations under the Convention.

Colombia

Colombia’s recent engagement with the Committee has provided a number of lessons about the CERD process in the region. Through interviews with civil society actors, current and former CERD members and through an examination of the documents produced during the last two reviews of the Colombia by the Committee, it is evident that civil society’s contribution of alternative reports is of great importance, but that this participation must be complemented by robust participation in the review sessions themselves in order to underscore the most pressing issues facing ethnic groups and advocate for these issues to be included in the oral proceedings and concluding observations. A well prepared delegation from civil society that participates in the formal and informal spaces available to them during the reviews can better ensure that Committee members have the most pertinent and up-to-date information and that this information becomes part of the formal records of the proceedings so as to be available as an advocacy tool following the sessions. This multifaceted approach should be a priority for all CSOs who engage with CERD, and the Committee should do everything in its power to support and expand CSO participation during the sessions.

Colombia’s work with CERD has also shown that, despite a relatively robust engagement of civil society, States must improve their effort to implement the Committee’s recommendations. In Colombia’s case, the Committee has made well-thought, specific recommendations on actions the State can take to meet its obligations under the Convention. Nevertheless, most if not all of these recommendations have not been implemented. Evidence has suggested that there is a lack of a sufficient institutional process for circulating, analyzing and responding to the Committee’s recommendations within the government. This has led to a critical lack of awareness of these recommendations amongst those responsible for implementing policy related to ethnic groups and discrimination in the country, and predictably, to little progress on utilizing CERD’s recommendations as policy guides. The government’s lack of attention to following up on the outcome of the review session has been paralleled by an equal inattention by civil society, resulting in concluding observations and recommendations that have had little impact on the ground in a country with serious and urgent matters of discrimination, too often with life and death consequences.

Brazil

Brazil's recent history with CERD offers a less optimistic assessment about the potential of the Committee to play a relevant role in the fight against discrimination. The Brazilian State's disengagement with the Committee through a continued negation to meet its reporting obligations has effectively removed CERD as an actor in the country. Brazil's position has highlighted a fundamental weakness in the international human rights system in general, and in the UN treaty bodies and CERD processes more specifically; namely, it has shown that if a State wishes to excuse itself entirely from the process, even in a society with a relatively strong and well-organized civil society, it is a difficult task to force it into meaningful reengagement.

Brazil's disengagement with CERD has had multiple ripple effects on the fight against discrimination in the country. First, it has appeared to weaken activists' estimation of the Committee. Absent for over a decade, CERD is no longer seen as a relevant tool for civil society and, generally speaking, does not figure into their strategic planning and advocacy activities. This has created a self-defeating cycle, as it is precisely civil society that—in the absence of political will to engage with CERD—must take it upon themselves to pressure the State to assume its obligations. At the present moment, this does not seem to be something that is under any serious consideration by Brazilian activists, with the result being that there is no political pressure for the State to change course. A second repercussion of CERD's absence has been its replacement by other human rights institutions as a mechanism for participation by civil society. Both the Inter-American Commission on Human Rights and other UN treaty bodies have become more important to the strategic actions of Brazilian anti-discrimination activists. This situation, especially given Brazil's demographic and economic importance, as well as its history of leadership in anti-discrimination policy, calls for creative thought and action to help reestablish the Committee as an important actor in the fight against discrimination in the country.

The Dominican Republic

The Dominican Republic's recent actions with regard to CERD also point to several difficult challenges faced by the Committee in its work in Latin America. The reports submitted by the Dominican Republic as well as the statements given by its representatives during the oral review sessions demonstrate the unfortunate fact that the acceptance of structural racism and discrimination is not yet universal in the region. The Dominican government's denial of racism in the country poses unique challenges to the Committee, challenges that have largely been overcome in most other countries in the hemisphere. The Committee has made some creative efforts in this regard—recommending the State carry out research activities to explore the impact of the slave trade and other aspects of the historical origins of racism on Dominican society, for example. Nevertheless, the Dominican Republic's slow progress on implementing the Convention—indeed, in some areas it has actively regressed in terms of eliminating discrimination—demonstrates that more creative solutions will be necessary to prod the country into joining the majority of its counterparts in the region in accepting the existence of racism in its society.

This may prove difficult in the case of the Dominican Republic, as the government has consistently shown it has a fundamental misunderstanding of the CERD process. Dominican authorities continue to act as if CERD were an antagonistic institution, somehow opposed to the Dominican State. Both the Committee and civil society should work to combat this erroneous belief and emphasize that participation with CERD functions best as a cooperative enterprise. Finding common ground with such a recalcitrant State may prove difficult, and the Committee and civil society should not soften their insistence that fundamental issues related to discrimination

must be addressed in the country, but the alternative—the State’s withdrawal from the CERD process—will shut down one of the few avenues for tackling these problems in Dominican society.

Cuba

The implementation of the Convention in Cuba faces unique challenges posed by the country’s authoritarian political system and commitment to Marxist ideology. While the civil societies of other countries included in this study all face a certain amount of antagonism by their governments, Cuba’s legal restrictions on freedom of expression and association make independent Cuban activists’ participation in the CERD process difficult, if not nearly impossible. Independent Cuban activists face restrictions on acting collectively on the issue of discrimination, and their organizations remain unrecognized and often outlawed by the Cuban government. This necessarily limits activists’ ability to participate in the CERD process, either through drafting alternative reports or attending the review sessions. Likewise, using CERD recommendations to advocate at the domestic level is complicated by the opacity and imperviousness of the Cuban State, as well as the fact that many activists, as a result of their work on issues of discrimination, are considered antisocial dissidents and enemies of the socialist Revolution.

Because of these complications at the domestic level, it is evident that independent Cuban civil society must seek broad international support for their unfettered participation in the CERD process and in other human rights mechanisms at the UN and regional levels. International NGOs have been instrumental in facilitating contact between independent Cuban civil society and international human rights institutions, and these efforts have helped increase their presence at the UN. The creation of stronger regional alliances can help Cuban activists work with counterparts in Latin America to achieve even more participation in human rights fora. Meanwhile, both the Committee and other States in the region can strengthen the Convention’s application in Cuba by insisting that independent civil society be given the freedom to fully participate in the CERD process. It is without question that an active civil society improves the functioning of the Committee and the implementation of the Convention; assuring that independent CSOs get this chance remains a pressing challenge for CERD’s work in Cuba.

Final Remarks

In addition to the abovementioned conclusions drawn from the specific situations of the countries examined, the study has pointed to a number of more general lessons about the work of the Committee in the region. What follows are a few of those lessons.

A well-prepared, capable and empowered civil society is vital to the success of the CERD process. CSOs’ active participation at CERD is a relatively new phenomenon in the Committee’s work. For only little more than a decade have civil society organizations been able to submit alternative reports to the Committee, and it has been even more recently that CSOs have begun to participate in the review sessions in Geneva. Both developments, however, have had strong positive impacts on the fight against racism and racial discrimination. Civil society reports have become an important source of information for Committee members to better understand the full context of the countries they examine, often raising issues and exploring subjects that the State fails to report upon. Moreover, civil society’s participation at the review sessions has increased the impact their reporting has had on the Committee’s critical interactions with the States, both in the oral proceedings and in its concluding observations, helping the Committee apply stronger oversight to the States’ implementation of the Convention.

Nevertheless, while the research for this report has confirmed the vital role that civil society plays in the CERD process, it has also uncovered several barriers to CSOs' effective participation with CERD. First and foremost, the participation of civil society in the CERD process is hindered by a lack of awareness of the Committee's work. This fits within the overall situation of local organizations' and activists' general lack of awareness of international and regional human rights bodies, and represents the first hurdle to overcome to increase CSOs' participation with CERD. A second challenge for civil society's effective participation with the Committee is a lack of institutional capacity. In many cases, CSOs in the countries studied are small organizations dealing with large, complex issues, often with immediate life or death consequences. Advocacy at the international level can require valuable time and resources, and its results are often not readily apparent. It is not surprising then to observe that many organizations choose to direct their efforts at more immediate targets at the local and national level. But what activists have related in interviews, and what we have observed in our research and advocacy work, is that strengthening local CSOs' capacity to advocate before institutions such as CERD can have a positive multiplier effect on their domestic work. Helping CSOs increase institutional and human resource capacity will help them more effectively engage with international mechanisms such as CERD. A third challenge observed has been one of resources. Local CSOs simply do not have the required financial resources to participate as often as they would like in the work of human rights mechanisms such as CERD.

Some of the shortcomings of grassroots organizations could be addressed—at least in part—by the development of greater domestic and regional alliances for work related to the Committee. The research for this report has found that very little cooperation exists at the national level amongst organizations engaged in the CERD process. Communication between these organizations is sporadic if it exists at all. Furthermore, the research has detected very little effort by local CSOs to increase the number organizations participating in the process, leaving significant gaps in the geographical and thematic diversity of the issues that civil society brings to the Committee. Greater coordination amongst organizations would not only help increase the quality and quantity of information that reaches the Committee, it could help improve knowledge of the Committee's work, allow for the strategic pooling of resources, serve as a mechanism to share experiences and best practices and therefore increase organizational capacity, and, perhaps most importantly, help to increase the political pressure on the State to deepen engagement with the Committee and develop stronger and more effective policies against racism and racial discrimination.

The report has also shown the important role that international non-governmental organizations play in helping to overcome obstacles faced by local CSOs. In interviews with many of the activists who contributed their perspectives to this report, the role of international CSOs was cited as fundamental in raising awareness about the Committee's work, strengthening their capacity to advocate before the Committee and providing funds to ensure their participation in the Committee's functions. International CSOs have sought to help facilitate greater contact between local counterparts working on CERD, and it will be vitally important that they continue to work in this area, using their organizational strengths to help develop necessary regional and domestic alliances. International CSOs have played and should continue to play an important role, especially in seeking creative solutions to the obstacles faced by local organizations in order that their participation in the Committee's work be broader, more frequent, more effective and most importantly, self-sustaining.

While civil society's role in the process is vital, the report has also shown the importance of the agency of other actors in the CERD process. Quite logically, the actions of the Committee members themselves are absolutely fundamental to ensure a functioning process. Committee members commit to undertake a significant amount of work in order to comprehend complex and (literally) foreign situations through the analysis of often-times contradictory information provided from a multitude of sources, many of whom have agendas not wholly

compatible with the implementation of Convention. There efforts at processing this information and subsequently sharing their concerns and recommendations to the States are perhaps the single most important action in the CERD process. As activists as well as current and former CERD members have affirmed, an engaged, knowledgeable, critical and active country rapporteur is essential in assuring all critical issues are raised during the review sessions and in the concluding observations. Despite this vital role, it has been observed that there exists a noticeable variance in the commitment, expertise and will to act critically amongst Committee members. The election process for CERD must ensure a Committee composed of experts of the highest order; to the extent that it cannot, modifications in the process as well as in the criteria used to judge members' fitness for serving on the Committee should be considered.

The work of the Committee is sustained by the work of the CERD Secretariat, which plays a vital role in the functioning of the Committee. Unfortunately, the Secretariat has not been provided the resources necessary to adequately support the Committee in performing its functions. Additional staff and financial resources should be provided the Secretariat in order that it may expand its activities beyond merely the absolute minimum, and begin to contribute strategically to expanding CERD's influence and reach. The Committee urgently needs help in communications and outreach, as well as assistance in developing new ways to fulfill its mandate. These critical needs cannot be met without a well-staffed and well-funded Secretariat that supports these expansive measures.

Finally, as has been observed in the cases of all five countries analyzed in the study, more rigorous and effective follow-up procedures must be implemented by not only the States but by civil society as well. Too often the CERD process comes to a halt at the publication of the Committee's concluding observations. CSOs must account for follow-up and monitoring in their strategic planning and better utilize the Committee's recommendations as tools in their advocacy work. This includes prioritizing ways to increase their organizational capacity to carry out these monitoring activities, including building strategic alliances domestically and regionally. For their part, States must strengthen their own institutions and develop more systematized methods for disseminating, analyzing and incorporating the Committee's recommendations into their policy design. Failure to do so demonstrates a lack of will to comply with their obligations under the Convention, and nullifies they work States put into other aspects of the CERD process. Without adequate implementation, the process comes up short of its objectives.

This report has been an attempt to begin the conversation that will help find the creative solutions necessary to meet the objectives of the Convention. It is our sincere hope that it contributes to a more effective Committee, a more involved civil society, and more determined governments, so that the struggle against racism and racial discrimination in the Americas and elsewhere continues to build upon the important achievements that CERD has helped to attain.

General Recommendations

While the report has included several recommendations at the conclusion of each country section, what follows below are a few recommendations outside of a specific country context.

To the States:

1. States should increase transparency regarding their work with CERD. This should include greater transparency in the report-drafting process as well as in the process for considering the Committee's recommendations. Ideally, both of these processes would include the effective participation of a wide range of civil society groups.

1. States should commit to fully implementing CERD's recommendations with specific timeframes. The Committee's well-intentioned and well-conceived recommendations too often are simply ignored. Rather than the norm be inaction and obfuscations, it should be concerted action within a reasonable timeframe.
2. States must dramatically improve their efforts to publicize not only the Committee's recommendation but the other basic documents related to the CERD process, including State reports and follow-up reports as well as the shadow reports produced by CSOs. This is a basic demonstration of good faith in the CERD process and a necessary step to improve transparency and accountability.

To the Committee:

1. The Committee should seek opportunities to increase CERD's presence in the regions. To the best of their ability, and mindful of time and budget constraints, members should seek and accept opportunities to interact with civil society and the States, whether through conferences, workshops, public appearances, teleconferences or other means. The Committee should also strongly consider the possibility of holding review sessions in different regions rather than solely in Geneva.
2. The Committee should speak with greater force about the States' need to submit quality reports. State's reports too often lack even the most basic information and the most fundamental acceptance of the existence of racism and discrimination in their countries. The Committee should continuously insist that States improve their reporting.
3. The Committee should seek creative ways to increase the profile of its work, through new media and other avenues, with partnership from civil society.

To civil society:

1. Civil society organizations should develop opportunities to share information about their work with the Committee with each other, and find ways to work together both on the domestic as well as international levels. Work with CERD is too often done as solitary organizations rather than parts of an international anti-racist movement. CSOs must partner together to increase their strength and effectiveness.
2. Civil society must prioritize the follow-up process. This should include writing a follow-up report to the Committee after each reviews session. It should also include strategic planning to ensure that the Committee's recommendations are used as advocacy tools in CSOs domestic and international work.

BIBLIOGRAPHY

- Afro Alianza Dominicana. *Informe Alternativo en Relación a la Convención Sobre la Eliminación de Todas las Formas de Discriminación*. January 2013. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fDOM%2f13705&Lang=en (accessed February 17, 2017).
- Amnesty International, *You Killed My Son: Homicides by the Military Police in Rio de Janeiro*, AMR 19/2068/2015 (Rio de Janeiro 2015).
- Arocha, Jaime. "Territorio y daño cultural en el afro-Pacífico," *DesDIBUJANDO el PAISaje: Territorio, Autonomía y Buen Vivir*, Sheila Gruner et al, eds. Ediciones Poder Negro: Medellín, 2012.
- Canales, Alejandro I., Patricia N. Vargas Becerra Israel and Montiel Armas, "Migración y salud en zonas fronterizas: Haití y la República Dominicana." Report for the Comisión Económico para América Latina y el Caribe." Santiago, 2010. <http://www.cepal.org/es/publicaciones/7232-migracion-salud-zonas-fronterizas-haiti-la-republica-dominicana> (accessed February 17, 2017).
- Carrazana Fuentes, Lázara Y. "Movilidad social y filiación racial en la reestructuración económica en Cuba." *Las relaciones raciales en Cuba: Estudios contemporáneos*, Havana: Fundación Fernando Ortiz, 2011.
- Castro Heredia, Javier Andrés, Fernando Urrea Giraldo and, Carlos Augusto Viáfara López. "Un breve acercamiento a las políticas de Acción Afirmativa: orígenes, aplicación y experiencia para grupos étnico-raciales en Colombia y Cali." *Revista Sociedad y Economía* No 16. (Enero, 2009).
- Centro de Desarrollo de la Mujer Negra Peruana. *Informe Sombra Presentado al CERD*. Unpublished. November 2013.
- El Centro de Desarrollo de la Mujer Negra Peruana. *Informe sobre la situación de los derechos del pueblo afroperuano: más allá del perdón histórico*. Lima: May 2011.

- Chirapaq Centro de Culturas Indígenas de Perú. *Discriminación racial en los medios de comunicación peruanos: El caso del programa humorístico “La Paisana Jacinta.”* August 2014. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPER%2f75%2f9885&Lang=en (accessed on February 17, 2017).
- Comisión de la Verdad y Reconciliación de Perú. *Final Report Vol. VIII.* (2003). Cited in Pedersen, Duncan et al, “The sequelae of political violence: Assessing trauma, suffering and dislocation in the Peruvian highlands.” *Social Science and Medicine* 67 (2005): 205-217.
- Comisión Jurídica de los Pueblos Originarios Andinos. *Informe Alternativo “CAPAJ.”* June 2014. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPER%2f75%2f9890&Lang=en (accessed on February 17, 2017).
- Comisión Jurídica de los Pueblos Originarios Andinos and the Organización de Pueblos Aymaras, Quechuas y Amazónicas. *Informe Alternativo Ante el Comité para la Eliminación de la Discriminación Racial de las Naciones Unidas.* August 2014. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPER%2f17605&Lang=en (accessed February 17, 2017).
- Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos. *Algunas Consideraciones Relativas al Informe Presentado por el Gobierno de Perú al CERD,* June 2009. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPER%2f75%2f9889&Lang=en (accessed February 17, 2017).
- Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer. *Informe alterno al Comité para la Eliminación de la Discriminación Racial (CERD) de las Naciones Unidas – Perú.* Julio 2013. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPER%2f17782&Lang=en (accessed February 17, 2017).
- Coordinadora Andina de Organizaciones Indígenas and La Confederación Nacional de Comunidades del Perú Afectadas por la Minería. *Observaciones de las Organizaciones Indígenas al Informe del Estado Peruano ante el Comité para la Eliminación de Todas Formas de Discriminación Racial.* July 2009. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPER%2f75%2f9889&Lang=en (accessed February 17 2017).
- Díaz, Ramón and Oscar Madalengoitia. “Análisis de la situación socioeconómica de las población afroperuana y la población afrocostarricense y su comparación con la situación de las poblaciones afrocolombiana y afroecuatoriana.” Proyecto regional Población Afrodescendiente de América Latina del Programa de las Naciones Unidas para el Desarrollo. 2012. https://www.academia.edu/2341892/Situaci%C3%B3n_socioecon%C3%B3mica_de_la_poblaci%C3%B3n_afroperuana_y_de_la_poblaci%C3%B3n_afrocostarricense (accessed February 17 2017).
- García Pérez, Alan. “Receta para acabar con el Perro del Hortelano.” *El Comercio.* November 27, 2007.
- Gómez, Jader Darío and Juan Pablo Estupiñán. *El III Censo Nacional Agropecuario con Comunidades Negras, Afrocolombianas, Raizales y Palenqueras. Evaluación del proceso de concertación e implementación en territorios colectivos y de poblamiento ancestral.* (Unpublished report by the Proceso de Comunidades Negras). Bogota, May 2016.
- Human Rights Watch, “Good Cops Are Afraid”: The Toll of Unchecked Police Violence in Rio de Janeiro, 2016. <https://www.hrw.org/report/2016/07/07/good-cops-are-afraid/toll-unchecked-police-violence-rio-de-janeiro> (accessed on February 17, 2017).

Instituto Brasileiro de Geografia e Estadística. *Características de población e dos domicílios: resultados do universo*. Rio de Janeiro, 2015.

International Convention on the Elimination of All Forms Racial Discrimination The. 21 December 1969. United Nations Treaty Series, Vol. 660 No. 9464.

Irmary Reyes-Santos, "Capital neoliberal, raza, migración: análisis comparativa de relaciones dominico-haitianas y dominico puertorriqueñas," *Revue Européenne des migrations internationales*, Vol. 42 No. 1 (2008).

Ministerio de Cultura de Perú. "Derechos de la Población de Afroperuana." *Materiales de Capacitación* No. 5, 2015. http://poblacionafroperuana.cultura.pe/sites/default/files/derecho_de_la_poblacion_afroperuana.pdf (accessed February 7, 2017).

Oficina Nacional de Estadísticas e Información de la República de Cuba (ONEI). *El Color de la Piel según el Censo de Población y Viviendas de 2012*. Havana, February 2016.

Oficina Nacional de Estadísticas de la República Dominicana, *La Variable étnico racial en los censos de población en la República Dominicana*, Julio 2012. <http://www.one.gob.do/Multimedia/Download?ObjId=1938> (accessed February 17, 2017).

Open Society Justice Initiative and the Center for Justice and International Law. *Submission to the Committee for the Elimination of Racial Discrimination: Review of the Dominican Republic*. January 2013.

Organization of the American States, Inter-American Commission on Human Rights. *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*. OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013.

Organization of American States, Inter-American Commission on Human Rights. *Situation of Human Rights in the Dominican Republic*. OEA/Ser.L/V/II. Doc 45/15. December 31, 2015.

Paixão, Marcelo, Ed. *Relatório Annual das Desigualdades Raciais no Brasil; 2009-2010: Constituição Cidadã, segurança social e seus efeitos sobre as assimetrias de cor ou raça*. Rio de Janeiro: Editora Garamond, 2010.

Presidencia de la República de Colombia, Departamento Administrativo Nacional de Estadística (DANE). *La visibilización estadística de los grupos étnicos colombianos*. Documento DANE: Bogota. https://www.dane.gov.co/files/censo2005/etnia/sys/visibilidad_estadistica_etnicos.pdf. (accessed February 7, 2017)

Presidencia de la República de Colombia, Departamento Administrativo Nacional de Estadística (DANE). *Colombia una nación multicultural: Su diversidad étnica*. Mayo 2007. https://www.dane.gov.co/files/censo2005/etnia/sys/colombia_nacion.pdf. (Accessed February 7, 2017).

Programa de las Naciones Unidas para el Desarrollo, Oficina de Desarrollo Humano. "Informe Nacional de Desarrollo Humano, República Dominicana 2005: Hacia una inserción mundial incluyente y renovada."

Programa Somos Defensores, *¿Este es el fin?: Informe enero-julio 2016 del Sistema de información sobre agresiones defensores y defensoras de DD.HH en Colombia*. <http://somosdefensores.org/attachments/article/140/este-es-el-fin-informe-semestral-2016.pdf> (accessed February 7, 2017).

Red de Encuentro Dominicano-Haitiano Jacques Viau, *Informe de la Organizaciones de la Sociedad Civil Dominicana en Relación a la Convención Sobre la Eliminación de Todas Formas de Discriminación*, January 2013, pg 19-20. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fC-ERD%2fNGO%2fDOM%2f13709&Lang=en (accessed February 17, 2017).

Ribotta, Bruno. "Diagnóstico Sociodemográfico de los Pueblos Indígenas de Perú." Comisión Económica para America Latina y el Caribe, 2010. http://www.cepal.org/celade/noticias/paginas/6/40386/Peru_julio2010.pdf (accessed February 7, 2017).

Rodríguez, Pablo et al. "Relaciones raciales en la esfera laboral." *Las relaciones raciales en Cuba: Estudios contemporáneos*. Havana: Fundación Fernando Ortiz, 2011.

Secretaria de Direitos Humanos da Presidência da República, Observatório de Favelas, Índice de homicídios na adolescência. Brasília, 2014.

Taller Permanente de Mujeres Indígenas, Andinas y Amazónicas del Perú. Resumen ejecutivo sobre las acciones del Estado peruano en relación a la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial. July 2009. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fPER%2f75%2f9885&Lang=en (accessed February 17, 2017).

United Nations International Human Rights Instruments. Core Document Forming Part of Reports of States Parties, Brazil. HRI/1/CORE/Add. 53, (January 10 1995).

United Nations Committee on the Elimination of Racial Discrimination. Reports Submitted by the States Parties Under Article 9 of the Convention: Seventeenth Periodic Reports of Brazil due in 2002, CERD/C/431/Add.8 (October 16, 2003).

United Nations Committee on the Elimination of Racial Discrimination. Reports Submitted by the States Parties Under Article 9 of the Convention: Fourteenth Through Eighteenth Reports of Cuba Due in 2007. CERD/C/PCUB/14-18. January 20, 2010.

United Nations Committee on the Elimination of Racial Discrimination. Reports Submitted by the States Parties Under Article 9 of the Convention: Nineteenth Through Twenty-First Reports of Cuba Due in 2012. CERD/C/PCUB/19-21 (September 9, 2016)

United Nations Committee on the Elimination of Racial Discrimination. Summary Record of the 2055th Meeting: Consideration of the Reports, Comments and Information Submitted by States Parties Under Article 9 of the Convention. CERD/C/SR.2055. February 25, 2011.

United Nations Committee on the Elimination of Racial Discrimination. Concluding Observations on the Tenth Through Twelfth Periodic Reports of Cuba, Adopted by the Committee at its Fifty-Third Session (13 August – 20 August 1998). CERD/C/CUB/CO/10-12. February 10, 1998.

United Nations Committee on the Elimination of Racial Discrimination. Reports Submitted by the States Parties Under Article 9 of the Convention: Tenth Through Fourteenth Periodic Reports of Colombia Due in 2008. CERD/C/COL/14. May 5, 2008.

United Nations Committee on the Elimination of Racial Discrimination. Reports Submitted by the States Parties Under Article 9 of the Convention: Fifteenth and Sixteenth Reports of Colombia Due in 2012. CERD/C/COL/15-16. April 7, 2014

United Nations Committee on the Elimination of Racial Discrimination. Reports Submitted by the States Parties Under Article 9 of the Convention: Ninth Through Twelfth Periodic Reports of the Dominican Republic Due in 2006. CERD/C/DOM/12. June 8, 2007.

United Nations Committee on the Elimination of Racial Discrimination. Reports Submitted by the States Parties Under Article 9 of the Convention: Thirteenth and Fourteenth Periodic Reports of the Dominican Republic Due in 2010. CERD/C/DOM/13-14. March 7, 2012.

United Nations Committee on the Elimination of Racial Discrimination, *Summary Record of the 2223rd Meeting: Consideration of the Reports, Comments and Information Submitted by States Parties Under Article 9 of the Convention*, CERD/C/SR.2223. February 17, 2013.

United Nations Committee on the Elimination of Racial Discrimination. *Summary Record of the 2224th Meeting: Consideration of the Reports, Comments and Information Submitted by States Parties Under Article 9 of the Convention*. CERD/C/SR.2224. April 11, 2013.

United Nations Committee on the Elimination of Racial Discrimination. *Concluding Observations on the Thirteenth and Fourteenth Periodic Reports of the Dominican Republic, Adopted by the Committee at its Eighty-Second Session (11 February – 1 March 2012)*. April, 19, 2013.

United Nations Committee on the Elimination of Racial Discrimination. *Consideration of the Reports Submitted by States Parties under Article 9 of the Convention: Fourteenth through Seventeenth Reports of Peru*. CERD/C/PER/CO/14-17 (3 September 2009).

United Nations Committee on the Elimination of Racial Discrimination. *Consideration of the Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth to Twenty-First Periodic Reports of Peru*. CERD/C/PER/CO/18-21 (25 September 2014).

United Nations Human Rights Council. *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Mission to the Dominican Republic*. A/HRC/7/19/Add. 5 and A/HRC/7/23/Add. 3. March 18, 2008.

