

First Decade of the Rapporteurship on the Rights of Persons of African Descent and against Racial Discrimination

Inter-American Commission on Human Rights

Challenges and Opportunities



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Commissioner Margarette May Macaulay
Rapporteur on the Rights of Persons of African
Descent and against Racial Discrimination

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The International Institute on Race, Equality and Human Rights wishes to thank Tatiana Gos, the consultant in charge of producing this report, for the excellent work which reflects our organization's thoughts.

In addition, the Institute would like to thank the former Rapporteurs for the information they have provided, especially former Commissioner and Rapporteur for Persons of African Descent and against Racial Discrimination, Rose-Marie Belle Antoine (2012-2015). At the same time, we would like to recognize the staff of the Executive Secretariat of the Inter-American Commission on Human Rights for the valuable information provided for this report.

Finally, we would like to thank our counterparts, Afro-descendant individuals and organizations who have worked with us through the many years, from Global Rights to the present as the Institute on Race, Equality and Human Rights, conducting advocacy before the Organization of American States, and especially before the Inter-American Commission on Human Rights. The information you have provided further convinces us of the importance of having a more active and dynamic Rapporteurship to better confront the problems of racism, poverty and exclusion that affect more than 200 million persons in the hemisphere.

Carlos Quesada
Executive Director
International Institute on Race, Equality and Human Rights



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EXECUTIVE SUMMARY

T

he International Institute on Race, Equality and Human Rights (hereinafter “the Institute” or “IIREHR”) has closely followed the work of the Inter-American Commission on Human Rights (hereinafter “IACHR,” “Inter-American Commission” or “Commission”) of the Organization of American States (hereinafter “OAS”), and has actively contributed to the creation and activities of the Rapporteurship on the Rights of Persons of African Descent and against Racial Discrimination (hereinafter “the Rapporteurship”). Essentially, the Institute has organized and participated in the activities of promotion, expert meetings, seminars and visits conducted by the Rapporteurship, and has contributed to the dissemination of its work in the region. This document is one more of the contributions and inputs of the Institute to the work of the Rapporteurship, the IACHR strategic plan and the work plan of the current Rapporteur on the Rights of Persons of African Descent and against Racial Discrimination (hereinafter “the Rapporteur”).

The Rapporteurship celebrated its first decade on February 25, 2015. On December 23, 2013, through Resolution 68/237, the United Nations General Assembly proclaimed the years 2015-2024 as the “International Decade for People of African Descent.” Consequently, the Institute considers that this is the right moment to assess the performance of the Rapporteurship in its first decade of work and to reflect on its achievements and challenges. The Institute highlights that the IACHR and the Rapporteurship are essential for the promotion and protection of the rights of persons of African descent in the Americas. The aim of this study is to make visible, promote and disseminate the success of the mechanisms and initiatives of the Rapporteurship and, at the same time, to formulate suggestions and recommendations to overcome the identified deficiencies and obstacles.

In order to prepare this report, the Institute carried out exhaustive research on the available information in the different sections of the IACHR webpage and validated such information with the staff of the Executive Secretariat. Additionally, the Institute considered relevant publications in the area and conducted interviews with civil society, Permanent Mission representatives before the OAS, staff of the Executive Secretariat and the former Rapporteur on the Rights of Persons of African Descent and against Racial Discrimination, Rose-Marie Belle Antoine.

The report is organized in five chapters. Chapter I briefly explains the functions and characteristics of the IACHR and the Rapporteurship, and offers a quantitative outline of its ten years. Chapter II presents a qualitative vision of the work of the Rapporteurship. Chapter III carries out a detailed analysis of the Rapporteurship's mechanisms and considerations for their optimum utilization. Chapter IV identifies the main themes of human rights of persons of African descent that should be included in the work agenda of the Rapporteurship. The last chapter includes the conclusions of the research and formulates relevant recommendations.



Rose-Marie
Belle Antoine

The persons interviewed have strongly pointed out that the Rapporteurship is necessary to promote and guarantee the rights of persons of African descent, and to combat situations of racism and structural discrimination in the region. An efficient and successful Rapporteurship may provide a unique opportunity to give continuous and permanent visibility to the human rights violations of persons of African descent in the IACHR and the OAS, and to promote the adoption of appropriate measures. Thus, the Rapporteurship might work as a key international legal and political mechanism for the fulfillment of the States' international obligations regarding racial discrimination, and as a multiplier that promotes the contribution and impact of the Inter-American Human Rights System.

However, the persons interviewed have agreed on the fact that the creation of the Rapporteurship in 2005 and its existence is probably the greatest, or perhaps, the only achievement. They also highlighted that the Rapporteurship has not met the expectations generated at the time of its creation, and has not made substantial progress with the implementation of the mandates assigned.

The Rapporteurship's limitations and failure to function effectively are related to various factors. First, those interviewed pointed out that the IACHR has not shown the political will to address the race issue. Second, they noted that the small political importance of the Rapporteurship must be analyzed in a wider context of decreasing relevance of the Afro-descendant topic within national agendas. Third, the interviewees indicated that civil society organizations themselves have not managed to keep the topic of Afro-descendants on the OAS or IACHR agenda, to become advocacy groups at the domestic and international levels, to participate actively in the mechanisms or to make use of the resources and spaces to "make demands" on the Rapporteurship and the IACHR.

The persons interviewed share the perception that, despite its ten years of existence, the Rapporteurship lacks the necessary institutional or organizational structure to be able to give continuity to its job. Unlike other IACHR Rapporteurships and regardless of the specialized staff and the shortage of resources, the Rapporteurship has not promoted or developed specialized technical knowledge on race issues. It has lacked a sound work plan. It has not appointed a permanent staff member of the Executive Secretariat that guarantees stable and continuous relationships with civil society and the States, and it has not developed a work structure. The strategic reconsideration of the role and functions of the Rapporteurship to fulfill its mandate, together with the appointment of a permanent expert staff member with sufficient authority, would reflect an institutional decision of the IACHR regarding the importance and value of the Rapporteurship. Furthermore, strengthening the Rapporteurship is vital so that the IACHR can fulfill the specific roles of protection and follow-up granted by the Inter-American Convention against All Forms of Discrimination and Intolerance (A-69) and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (A-68) (hereinafter “Conventions against Discrimination”).

Consequently, the Rapporteurship should not postpone the design and development of a strategic plan that guarantees a satisfactory positioning in its next working years. That strategic plan should identify and promote the added value of the Rapporteurship and maximize the specific role that it can perform. In addition, the plan should include clear and measurable objectives, as well as a vision and strategic coordination of the existing mechanisms so that they complement and strengthen one another in order to meet the set objectives.

All those interviewed have agreed that the Rapporteurship is not yet known in the region by grassroots organizations or many state officials, including judicial officers; therefore, it is essential to develop a comprehensive and intensive dissemination and training plan. Training should not be limited to the formal aspects of the Rules of Procedures of the IACHR regarding the Rapporteurship’s functions and mechanisms, but should also cover its practical use.

In this regard, the Rapporteurship could make use of different scenarios to design and implement a dissemination and training program. First, the Rapporteurship should increase the number of promotional visits. Second, the Rapporteurship should create cooperation ties with civil society organizations and academic institutions to work jointly on dissemination, awareness-raising and training projects. Third, the use of new technologies should be the focal point of the dissemination and training plan of the Rapporteurship; there cannot be further delay in updating and improving the IACHR webpage, including a virtual dimension on training and participating virtually – via videoconferences or Skype – in seminars, conferences and other dissemination and training activities organized by civil society or the State authorities.





However, a dissemination and training plan can only be successful if the users can then effectively have access to and use the proposed tools. Thus, the dissemination and training plan should also take into account barriers to access justice at the domestic level identified by the Rapporteurship, as well as its institutional deficiencies.

The information available shows that, within the general context of the IACHR's lack of resources, the Rapporteurship on the Rights of Persons of African Descent and against Racial Discrimination is the Rapporteurship that has received the least amount of funding. The lack of funds has been chronic since its creation and sends the message that

the issue is not important or a priority. That is why it is vital that the Rapporteurship change this situation in the IACHR, demand equitable funding, build a strategic plan attractive to potential donors and contribute with such strategic plan to a fundraising initiative for all the thematic approaches.

As regards the Rapporteurship's tools, it can be inferred from the interviews that these are the appropriate ones to fulfill its mandate, but they should be used in a more active, efficient and strategic way. Thus, the perspective of the persons interviewed is that there is no instrument more important than another, but the more frequent, simultaneous and coordinated use of all the mechanisms available in the Rapporteurship would strengthen their potential and would generate positive impacts to protect and guarantee the rights of persons of African descent in the region.

In fact, public hearings are mostly used by the organizations interviewed and they are a vital resource for those organizations that have no capacity, conditions or opportunity to file petitions and cases before the IACHR. However, those interviewed pointed out that one of the limitations of the hearings is the lack of follow-up mechanisms through the Rapporteurship regarding the situation presented and the fulfillment of the commitments undertaken by the State. The periodic follow-up by the Rapporteurship and the creation of a more direct and frequent space for contact between the parties would be essential to get a greater impact and effect in practice, especially in cases of structural and systematic violations that do not end in a concrete case. This could be carried out, for example, through information exchange in writing between the parties after the hearing – every three or six months – or through follow-up hearings being convened *ex officio*.

On the other hand, the number of contentious cases involving racial discrimination and the rights of persons of African descent continues to be low. Civil society organizations do not file cases and petitions before the IACHR. At the same time, in the Rapporteurship there is a duty in terms of the analysis of racial topics or issues, and therefore, it should contribute to improving the identification of racial issues in all IACHR's mechanisms. The right categorization of the racial aspects in cases and petitions constitutes a form of recognition and visibility.

Regarding thematic reports, in its first decade, the Rapporteurship has drawn up a few and has not designed a dissemination and follow-up plan for the recommendations formulated. The persons interviewed have highlighted the need that the reports become functional and usable at the domestic level. The Rapporteurship could

be a pioneer in this sense and, as part of the thematic reports planning, include a dissemination and follow-up plan, and technical training regarding the established standards. For example, it is important to highlight that some persons interviewed pointed out that the 2011 Regional Report was one of the achievements of the Rapporteurship. However, despite having been approved five years ago, the report is not widely known by civil society or the States, and there has been no progress in the implementation of its recommendations.

Regarding press releases, even if it is true that the lack of connection between civil society and the Rapporteurship is a barrier to the reception of immediate and continuous information on situations that deserve the attention of the Rapporteurship, it is also true that the Rapporteurship has not been able to keep the issue active in the communication mechanisms of the IACHR. The Rapporteurship must adopt a reasonable criterion and a domestic mechanism for reception of and response to the information that enables it to issue more press releases appropriately and to act according to the different situations reported.

Those interviewed agreed that the *in loco* or working visits represent an incomparable opportunity for the Rapporteur to identify problems and critical issues, as well as to “see the reality” of persons of African descent and speak with them personally. The Rapporteurship has only conducted four visits in the first decade of work, thus, not visiting most of the countries in the region. It should change this situation over the next years.

In addition, according to those interviewed, the political potential of the Rapporteurship before the OAS organs and directly with the States has not been totally explored or exploited. From the perspectives of some States, the Rapporteurship is not involved in the political logic of the OAS and there is only a short-term relationship with the political organs of the organization.



The International Decade for the People of African Descent represents a new opportunity for the Rapporteurship to have a closer relationship and more direct contact with the States, favoring the creation of means of communication at the bilateral level as well as within the framework of the OAS Action Plan. Likewise, the Rapporteurship should continue promoting the ratification of the Conventions against Discrimination.

Additionally, the cooperation with other international human rights organizations is one of the mandates assigned to the Rapporteurship. Strengthening the ties between the Rapporteurship and other international organizations would be useful to continue making the Durban agenda functional in the region.

Even if all the mechanisms of the Rapporteurship are useful to promote and protect the rights of persons of African descent, the persons interviewed identified a deficiency regarding the continuous monitoring, follow-up and assessment carried out by the Rapporteurship, and the implementation of standards and recommendations by the States.

Combating racism and racial discrimination involves specific challenges. At the political and legal levels, no State in the region questions that the racial issue is important or that “race” is a prohibited and suspect

class of discrimination, among other international standards regarding racial discrimination. However, it is a “taboo” issue. The States “obfuscate” and are reluctant to address the issue; they deny the situation of racism and structural discrimination that exists in the region under the pretext that these are “countries of mixed race”; therefore, they do not take effective measures. The prohibition of racial discrimination is recognized in the legislation of almost all States, but the question continues to be: are persons of African descent experiencing and/or exercising their rights effectively?

The Inter-American System has developed case law and significant standards on racial discrimination and the situation of persons of African descent in the region. According to the interviews carried out, the Rapporteurship’s work plan should include an in-depth technical and conceptual study of racism that takes into consideration the tension between race and ethnicity and considers the following thematic axes: (i) women of African descent and trans women, with emphasis on the differentiated impact of the racial factor on violence based on gender and/or sexual orientation; (ii) Afro-descendant children, with emphasis on situations of violence and limitations on access to education; (iii) racist hate speech and permissible limitations to the right to freedom of expression; (iv) economic, social and cultural rights (hereinafter “ESCR”), poverty and racism: the differentiated impact of the racial factor on access to public services and discrimination in educational, work and health areas; (v) police violence and racial discrimination; (vi) self-identification and statistics; (vii) anti-discrimination laws, positive action and affirmative action measures; (viii) real impacts of the administration of justice for persons of African descent: access to justice and response of the judicial system; (ix) land rights of Afro-descendant communities; and (x) the situation of Afro-Colombian communities within the framework of conflict and post-conflict in Colombia.

The Institute considers that the Rapporteurship is highly important for the promotion and protection of the human rights of persons of African descent in the Americas, and that its existence must be supported and strengthened. However, from the information collected in this study it can be concluded that the Rapporteurship has been neglected in its first decade; therefore, it is necessary to take measures immediately – positive action measures and measures of high impact – in order to overcome these historical deficiencies and to start effectively implementing the mandates for which it was created.

For this purpose, the Institute formulates a series of recommendations to the Rapporteurship, the States and civil society, and commits itself to continuing to support the work of the Rapporteurship through different activities.



Clare K. Roberts

INTRODUCTION



The International Institute on Race, Equality and Human Rights (hereinafter “the Institute” or the “IIREHR”)¹ is a non-governmental organization that has been working for several years on the visibility of the situation of the Afro-descendant population in the Americas, and the promotion and protection of its fundamental rights. For this purpose, the Institute carries out research, promotion, awareness-raising, training, consultancy and advocacy activities, together with other civil society organizations, before national, regional and international human rights institutions.

In this context, the Institute has closely followed the work of the Inter-American Commission on Human Rights (hereinafter “IACHR”, “Inter-American Commission” or “Commission”) of the Organization of American States (hereinafter “OAS”) and has contributed actively to the creation and activities of the Rapporteurship on the Rights of Persons of African Descent and against Racial Discrimination (hereinafter “the Rapporteurship”). The Institute has organized and participated in promotional activities, expert meetings, seminars and visits carried out by the Rapporteurship, and has assisted in the dissemination of its work in the region. This document is one of the inputs and contributions of the Institute to the work of the Rapporteurship, to the strategic plan of the IACHR, and to the work plan of the current Rapporteur on the Rights of Persons of African Descent and against Racial Discrimination (hereinafter “the Rapporteur”).

The Rapporteurship celebrated its first decade on February 25, 2015. On December 23, 2013, through Resolution 68/237, the United Nations General Assembly proclaimed the years 2015-2024 as the “International Decade for People of African Descent,” mentioning the need to

1. Current IIREHR staff members were previously linked to the organization Global Rights – Partners for Justice.

strengthen national, regional and international cooperation to guarantee the full enjoyment of the economic, social, cultural, civil and political rights of persons of African descent, and their full and equal participation in all aspects of society, focusing on four axes: acknowledgement, justice, development, and multiple or aggravated forms of discrimination. When proclaiming this Decade, the international community acknowledged that persons of African descent represent a specific group whose rights must be promoted and protected. Around 200 million persons who identify as Afro-descendants live in the Americas.²

Consequently, the Institute considers that this is the right time to assess the performance of the Rapporteurship in its first decade of work and to reflect on its achievements and challenges. The Institute regards the work of the IACHR and the Rapporteurship as essential for the promotion and protection of the rights of persons of African descent in the Americas. The objective of this report is to make visible, promote and disseminate the success of the mechanisms and initiatives of the Rapporteurship, and at the same time, formulate suggestions and recommendations to overcome the identified deficiencies and obstacles.

To prepare this report, the Institute carried out exhaustive research on the information available in the different sections of the IACHR webpage and validated such information with the staff of the Executive Secretariat. Additionally, the Institute took into consideration relevant related publications and conducted interviews with members of civil society,³ Permanent Mission representatives before the OAS, staff of the Executive Secretariat and the former Rapporteur on the Rights of Persons of African Descent and against Racial Discrimination, Rose-Marie Belle Antoine. The objective of the Institute was to include a tripartite approach that covered the self-analysis of the former Rapporteur and the Executive Secretariat of the IACHR, as well as the perspectives of the System users, i.e. States and civil society. The interviews have been a vital input to carry out this study. The Institute thanks all the participants, especially the former Rapporteur, for the time, dedication and support given to this project.⁴

The report is organized in five chapters. Chapter I briefly explains the characteristics and functions of the IACHR and the Rapporteurship, and offers a quantitative outline of its ten years. Chapter II presents a qualitative vision of the work of the Rapporteurship. Chapter III carries out a detailed analysis of the mechanisms of the Rapporteurship and considerations for its optimum use. Chapter IV identifies the main themes of human rights of persons of African descent that should be included on the Rapporteurship's agenda. The last chapter includes the conclusions of the research and formulates relevant recommendations.

2. Information available at: <http://www.un.org/es/events/africandescentdecade/>.

3. María Martínez and Joseph Cherubin (MOSCTHA, Dominican Republic), Jurema Werneck (Criola, Brazil), Mirtha Colón (ONECA, United States of America), Simone Cruz (Associação Cultural de Mulheres Negras, Brazil [Black Brazilian Women's Association]), Charo Mina Rojas (Black Communities Process – PCN, Colombia), Rodnei Jericó (The Geledés Black Woman Institute, Brazil), Cecilia Ramírez (Center for the Development of Black Peruvian Women, Peru), Rosalba Castillo (Afro-America XXI, Colombia), Catherine McKinley (Afro-Costa Rican Women's Center, Costa Rica), Alicia Saura (lawyer, Uruguay), Naiara Leite (Odara, Brazil), Christian Baez Lascano (Afro-Chileans, Chile), Erlendy Cuero Bravo (AFRODES, Colombia), Luz Marina Becerra (AFRODES, Colombia), Carlos Quesada (IIREHR), Pedro Cortés (IIREHR), Elvia Duque (IIREHR), Christina Fetterhoff (IIREHR).

4. The Institute respects the fact that some persons interviewed do not want their names to be mentioned in this report.

Chapter

The IACHR and the Rapporteurship



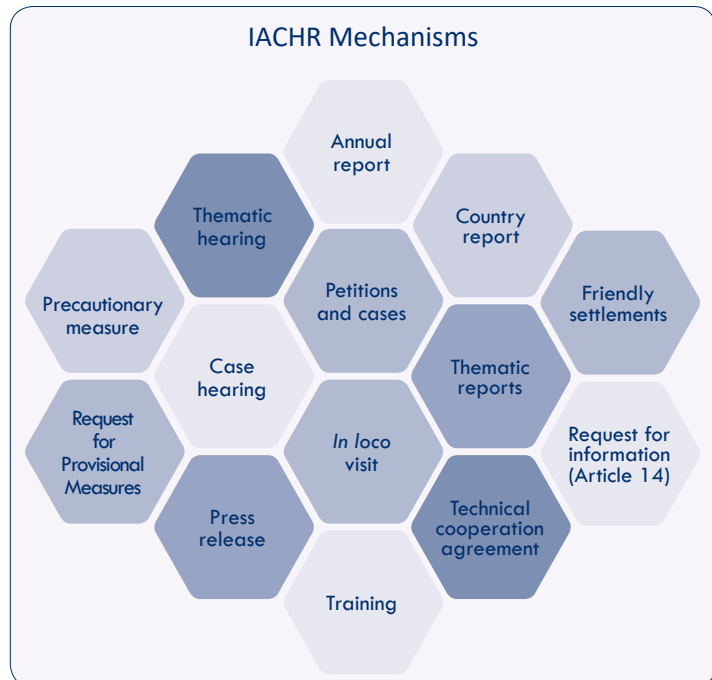
María Silvia Guillén

The IACHR is one of the organs – together with the Inter-American Court of Human Rights (hereinafter “Inter-American Court”) – that makes up the Inter-American Human Rights System of the OAS. The Inter-American Commission, based in Washington, DC, was created in 1959 as a principal OAS organ. Its mandate and powers arise from the Charter of the Organization of American States and the American Declaration of the Rights and Duties of Man (hereinafter “American Declaration”), its Statute (1979) and Rules of Procedures (2013), as well as other international human rights treaties such as the American Convention on Human Rights (hereinafter “ACHR” or “American Convention”), the Inter-American Convention to Prevent and Punish Torture, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador), the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the Inter-American Convention on Forced Disappearance of Persons and the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.

The main mission of the Inter-American Commission is to monitor, promote and protect the human rights of all the inhabitants in the Americas. Even if it is true that there are significant differences between the States that have ratified the ACHR and accepted the jurisdiction of the Inter-American Court and those that have not, it is also true that all the States in the Americas must respect – at a minimum – the rights and duties deriving from the American Declaration and be subject to the mechanisms of the IACHR. Therefore, the IACHR has indicated that the American Declaration is part of the framework of human rights established by the OAS Member States; they are required to refrain from committing, supporting, tolerating or consenting to acts or omissions that contravene their commitments to human rights, and are compelled to adopt measures to guarantee the rights mentioned in this instrument.⁵

Initially created as an OAS political organ, the IACHR has evolved as a quasi-judicial organ with multiple functions. Thus, the IACHR is obligated to intervene and, in some cases, decide – in those cases not sent to the Inter-American Court or cases against States that have not ratified its jurisdiction – in the processing of petitions and cases of human rights violations. In addition, the IACHR has the general function of monitoring and assisting the States in the identification of human rights violations, the establishment of standards and the formulation of recommendations to overcome the identified issues.

Currently, the IACHR has the following mechanisms to fulfill its mandates; see the following graphic.



5. IACHR, Report No 80/11 (Merits), Case 12.626, Jessica Lenahan (Gonzales) et al. (United States), July 21, 2011, para. 113; Report No 40/04 (Merits), Case 12.053, Maya Indigenous Community (Belize), October 12, 2004, para. 162; Report No 67/06 (Merits), Case 12.476, Oscar Elías Biscet et al. (Cuba), October 21, 2006, para. 227-231.



The Commission is made up of seven independent experts that do not represent the States that nominate them. In accordance with the international tendency,⁶ its work as a collective, professional organ is complemented with an individualized geographical and thematic approach, through the thematic or country rapporteurs. According to article 15.3 of the IACHR Rules of Procedures, “The Commission may create rapporteurships with mandates that are linked to the fulfillment of its functions of promotion and protection of human rights, and in accordance with the thematic areas deemed of special interest for achieving this purpose.” The purpose of the IACHR regarding its thematic approaches is to develop case law and legal standards; to issue recommendations to the States; to increase the knowledge of the System and access to the persons linked to the thematic approach; and to strengthen the capacity of the IACHR to address and protect rights.⁷

According to the IACHR, the creation of thematic rapporteurships aims “to devote attention to certain groups, communities, and peoples that are particularly at risk of human rights violations due to their condition of vulnerability and the discrimination they have faced historically.”⁸ Thus, the Rapporteurs are the point of contact for the users of the Inter-American System and, at the same time, have specialized knowledge of the situations of human rights and conduct permanent supervision through existing mechanisms.⁹

The Inter-American Commission created the Rapporteurship on the Rights of Afro-Descendants and against Racial Discrimination on February 25, 2005, during its 122nd period of sessions, as a result of the advocacy work of civil society and the economic contribution of the Federative Republic of Brazil that funded the first year of its activities.¹⁰ In fact, the creation of the Rapporteurship responded to civil society’s initiative and mobilization, especially the organizations Proceso Afro-América XXI (Afro-American Process XXI) – Colombia Chapter, Association of Displaced Afro-Colombians – AFRODES, the Geledes Black Women Institute of Brazil, Organizations Mundo Afro of Uruguay, the Network of Afro-Latin and Caribbean Lawyers, and Global Rights. On October 22, 2004, these organizations participated in a thematic hearing, presented information on human rights violations of Afro-descendants in Brazil, Colombia, Uruguay, Peru and Ecuador, requested the creation

6. Katya Salazar and Daniel Cerqueira, *The Functions of the Inter-American Commission on Human Rights Before, During, and After the Strengthening Process: Striking a Balance between the Desirable and the Possible*, in *The Inter-American Human Rights System: Changing Times, Ongoing Challenges*, (Dejusticia, 2015), p. 158.

7. IACHR, Strategic Plan 2011 – 2015. The Commission adopts the reports and work plans of each Rapporteurship and supervises the daily fulfillment of their mandates. Because of their nature as specialized thematic offices established by the IACHR itself, the IACHR Rules of Procedure precisely define the procedures for their establishment and for the election of the Thematic Rapporteurs. IACHR, 2015 Annual Report, Chapter III.A, para. 2.

8. IACHR, 2015 Annual Report, Chapter III.A, para. 1.

9. IACHR, Strategic Plan 2011 – 2015.

10. Speech by Commissioner Clare K. Roberts, President of the Inter-American Commission on Human Rights, on the Government of Brazil’s donation to finance the Special Rapporteurship on Afro-descendants and against racial discrimination, available at: <http://www.cidh.org/Discursos/02.28.05sp.htm>

of a Special Rapporteurship on the Rights of Afro-descendants as a necessary mechanism to address these violations and committed themselves to seeking the necessary funds for its functioning.¹¹

According to the IACHR, the establishment of the Rapporteurship had as objectives: “to generate awareness regarding the State’s duty to respect the human rights of Afro-descendants and the elimination of all forms of racial discrimination, to analyze the current challenges that the countries of the region face in this matter, to formulate recommendations designed to overcome obstacles, to identify and share best practices in the region regarding this matter, and to provide technical assistance requested by Member States in the implementation of the recommendations at the domestic level, in law and practice.”¹² For this purpose, different lines of action were established, namely: (i) specific support to systematize, strengthen and consolidate the action of the IACHR in this matter, and the promotion of joint work with other rapporteurships (processing of petitions and cases, thematic reports, etc.); (ii) work with civil society on the dissemination of guarantees and mechanisms that the Inter-American System offers for the protection of rights of Afro-descendants; (iii) creation and updating of a database with information on the rights of Afro-descendants and racial discrimination; and (iv) cooperation with the appropriate United Nations organs.¹³

Since its creation in 2005, the Rapporteurship has had four Rapporteurs, mostly Afro-descendant women from English-speaking Caribbean countries:

2005 – 2009: Sir Clare Roberts (Antigua and Barbuda)

2010 – 2011: María Silvia Guillén (El Salvador)

2012 – 2015: Rose-Marie Belle Antoine (Saint Lucia / Trinidad and Tobago)

2016 – 2019: Margarette May Macaulay (Jamaica)

In Appendices I, II and III, there is a quantitative analysis of the work of the Rapporteurship separated by year and by mechanism, as well as information on financial and human resources that the Rapporteurship has counted on in its first decade. The cases for which it was impossible to obtain and/or validate information have been noted.

Notwithstanding the qualitative analysis that will be carried out in the next chapters and the relative weight of each mechanism as regards impact, it is possible to note a reduced use of all mechanisms, shortage of funds and lack of human resources with exclusive and permanent assignment. This raises multiple challenges for the IACHR, the Rapporteurship, the States and civil society that will be addressed in this document.

11. Global Rights Partners for Justice/Carlos Quesada, *Uso del Sistema Interamericano de los Derechos Humanos: Guía práctica para organizaciones no gubernamentales (Use of the Inter-American Human Rights System: Practical Guide for Non-Governmental Organizations)*, ALTA VOZ EDITORES, 2014, pp. 48-49; IACHR, Thematic Hearing on the, Human Rights Situation of Afro-Descendants in the Americas, October 22, 2004, available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=22>. Interview with Rodnei Jericó. Interview with Rosalba Castillo.

12. IACHR, Press Release 03/05, IACHR05, *IACHR Creates special rapporteurship on the rights of persons of african descent and racial discrimination*, February 23, 2005, available at: <http://www.cidh.org/Comunicados/Spanish/2005/3.05.htm>.

13. *Ibid.*

Chapter



Achievements and challenges in the first decade





The Institute acknowledges and values the efforts of the IACHR and the Rapporteurship since its creation and its potential to promote the agenda of Afro-descendants in the region, protect their rights and guarantee access to justice and reparations for human rights violations. Based on the interviews conducted with different actors and users of the System, as well as its own experience with the Rapporteurship over the years, the Institute considers it necessary to reflect on the following questions that exemplify positive advances as well as deficiencies that should be overcome to improve the Rapporteurship's performance in the future.

GENERAL OVERVIEW

The individuals interviewed have strongly pointed out that the Rapporteurship is necessary to promote and guarantee the rights of Afro-descendants and to combat situations of racism and structural discrimination taking place in the region. An efficient and successful Rapporteurship can be a unique opportunity to give continuous and permanent visibility to the human rights violations of Afro-descendants in the IACHR and the OAS, and to promote the adoption of appropriate measures.¹⁴ Thus, the Rapporteurship could work as a key international legal and political mechanism for the fulfillment of the States' international obligations regarding racial discrimination, and a multiplier that promotes the contribution and impact of the Inter-American Human Rights System.¹⁵

Apart from providing specialized technical knowledge to obtain formal justice at the international level within the framework of processing cases and petitions, the Rapporteurship could work as a "sounding board" for the claims of civil society¹⁶ by opening additional fora and channels of communication with the States,¹⁷ legitimizing issues raised at the domestic level¹⁸ and developing standards to aid the advancement of national agendas and public policies.

However, the interviewees agreed that the creation of the Rapporteurship in 2005 and its existence is probably its greatest or, perhaps, only achievement.¹⁹ They highlighted that the Rapporteurship has not been able to meet the expectations generated at the moment of its creation and has not been able to make substantial progress on the implementation of the mandates it has been assigned.²⁰ The Rapporteurship's limitations and failure to function effectively are related to multiple factors.

14. Interview with Elvia Duque. Interview with Luz Marina Becerra.

15. Interview with Pedro Cortés. Interview with Rosalba Castillo.

16. Interview with Pedro Cortés.

17. Interview with Cecilia Ramírez.

18. Interview with Pedro Cortés. Interview with Rosalba Castillo. Interview with Luz Marina Becerra.

19. Interview with Pedro Cortés. Interview with Carlos Quesada. Interview with Rosalba Castillo. Interview with Catherine McKinley.

20. Interview with Carlos Quesada. Interview with Alicia Saura.

First, the individuals interviewed pointed out that the IACHR has not shown political will to address the racial issue,²¹ and there has been a “type of blockade” on the matter.²² According to former Rapporteur Rose-Marie Antoine, within the IACHR the Rapporteurship is “under-represented, under-funded and ignored, which reflects part of the same pattern that affects the Afro-descendant population in the Americas.”²³ The lack of political will has been reflected in the Rapporteurship’s lack of proper institutional structure and its lack of funds, elements that will be analyzed in detail in the subsequent sections of this report. In practice, the Rapporteurship has not acted pro-

actively to carry out its mandate. Rather, the few activities and products generated have, to a great extent, depended on the initiative and support of civil society.²⁴ Former Rapporteur Rose-Marie Antoine has been very self-critical and has acknowledged these deficiencies publicly on many occasions.²⁵

Second, the interviewees noted that the lack of political importance of the Rapporteurship must be analyzed in a wider context of the decreasing relevance of the Afro-descendant issue within national agendas.²⁶ Even if the

creation of the Rapporteurship was not initially supported by the IACHR – mainly due to lack of funds²⁷ – in 2005, in the IACHR and in the region, there existed a favorable scenario and environment for its creation.²⁸ In fact, the issue of Afro-descendants was important on the national agendas of the States in the region, and at the domestic level there was a proper institutional structure to address these issues.²⁹ Over these ten years, despite the continued existence of structural racism in the region and intersectionality with other factors of discrimination and/or vulnerable groups, the importance of the Afro-descendant issue has gradually lessened at the national level, and funding and attention have been drawn to other emerging problems, for example LGBTI persons.³⁰ In fact, even though almost two years have passed since the International Decade for People of African Descent, there has been no sign that the States have prioritized this issue in their national policies,³¹ and only recently an Action Plan has been approved within the OAS.³² The functioning and strengthening of the Rapporteurship depends on the support and importance that the States in the region give to this issue.



21. Interview with Carlos Quesada.

22. Interview with Rodnei Jericó.

23. Interview with Rose-Marie Belle Antoine.

24. Interview with Carlos Quesada.

25. *Ibid.*

26. Interview with Alicia Saura.

27. Interview with Rodnei Jericó.

28. *Ibid.*

29. *Ibid.* See, *inter alia*, Secretariat for Policies to Promote Racial Equality (Brazil).

30. Interview with Alicia Saura.

31. Interview with Catherine McKinley.

32. OAS, General Assembly, AG/RES. 2891 (XLVI-O/16), Plan of Action for The Decade for Persons of African Descent in The Americas (2016-2025), June 14, 2016.

Third, the individuals interviewed indicated that civil society organizations have not been able to keep the issue of Afro-descendants on the agenda of the OAS or the IACHR,³³ to become advocacy groups at the domestic³⁴ and international³⁵ level, to participate actively in the mechanisms or to use the resources and spaces to “make demands” on the Rapporteurship and the IACHR³⁶. The Afro-descendant networks empowered at the moment of the creation of the Rapporteurship progressively disappeared as economic support became more limited.³⁷ In this regard, the lack of awareness of the existence and mechanisms of the Rapporteurship – which will be dealt with in detail later – is compounded by the fact that the grassroots organizations representing persons of African descent do not generally have the resources or experience to use international human rights mechanisms, and therefore, international advocacy has not yet become a frequent working strategy of these groups.³⁸

As a result, a negative dynamic has been consolidated since there exists “passivity among civil society with regard to the passivity of the Rapporteurship.”³⁹ Daily, “new social situations and emergencies arise that force organizations to redirect their work and do not allow them to meet their established agendas, let alone follow and process what happens at the Rapporteurship.”⁴⁰ In the dilemma between urgent and important questions, time and resource allocation is directly related to the expectation regarding the impact and usefulness of the mechanism: “if presenting information and/or completing the Rapporteurship’s questionnaire will not generate any specific impact, then it doesn’t make any strategic sense to allocate time and resources.”⁴¹ That is why, “the Rapporteurship must become interesting, not only known,”⁴² and must be part of the strategic work and agenda of civil society organizations.⁴³ The Rapporteurship could work as a proper forum to rebuild the network of Afro-descendants in the region, and as a link between the specific issues of Latin America, the United States and Canada, and the English-speaking Caribbean.



33. Interview with Alicia Saura. Interview with Elvia Duque.

34. Interview with Cecilia Ramírez.

35. Interview with Elvia Duque.

36. Interview with Alicia Saura. Interview with Cecilia Ramírez.

37. Interview with Alicia Saura. Interview with Elvia Duque.

38. Interview with Pedro Cortés. Interview with Erlendy Cuero Bravo.

39. Interview with Carlos Quesada.

40. Interview with Luz Marina Becerra.

41. *Ibid.*

42. *Ibid.*

43. *Ibid.* Interview with Pedro Cortés. Interview with Luz Marina Becerra.

INSTITUTIONAL DEFICIENCIES AND THE NEED TO ADOPT A STRATEGIC PLAN

The individuals interviewed share the perception that, despite its ten years of existence, the Rapporteurship lacks the institutional or organizational structure to be able to give continuity to its work.⁴⁴ Unlike other IACHR rapporteurships, and regardless of the specialized staff and the shortage of resources, the Rapporteurship has not promoted or developed specialized technical knowledge on racial issues,⁴⁵ has not had a sound work plan or assigned a permanent staff member of the Executive Secretariat to guarantee a stable and continuous relationship with civil society and the States, and has not provided a structure to the work of the Rapporteurship.⁴⁶

Currently, the few organizations that present information to the Rapporteurship do not receive confirmation regarding its reception or follow-up. Instead, communication is occasional and generally limited to the organization of an in-country visit or activity.⁴⁷ On the other hand, the States do not take the Rapporteurship into consideration as a specialized forum to devise their national public policies regarding racial discrimination. Additionally, neither the Rapporteurship nor the IACHR has specialized expertise in discrimination and racial issues, which results in the lack of a sufficient detection of, and approach to, these issues in their different mechanisms.⁴⁸

The Institute notes that the current structure of the Executive Secretariat of the IACHR is based on specialized functional units, in this case, the Thematic Monitoring Unit. The creation of this Unit can help to guarantee equity among the different thematic approaches, identify common and cross-cutting elements, and promote joint and coordinated action. However, the grouping of staff of the Rapporteurships in this Unit should not be an obstacle to designating a permanent staff member exclusively dedicated to the fulfillment of the Rapporteurship's mandate.

According to those interviewed, an exclusively dedicated staff member that can communicate in the languages of the region would guarantee that all users have access to the Rapporteurship and its mechanisms, overcoming the feeling of "remoteness" that most civil society organizations have.⁴⁹ In addition, a permanent staff member could work as an open channel of communication that allows the delivery and reception of immediate and updated communication to/from the Rapporteurship.⁵⁰



44. Interview with Rodnei Jericó. Interview with Carlos Quesada. Interview with Rose-Marie Belle Antoine.

45. Interview with Carlos Quesada. Interview with Rose-Marie Belle Antoine.

46. *Ibid.* Interview with Catherine McKinley.

47. Interview with Catherine McKinley. Interview with Elvia Duque. Interview with Luz Marina Becerra.

48. Interview with Carlos Quesada. Interview with Rose-Marie Belle Antoine.

49. Interview with Jurema Werneck. Interview with Catherine McKinley. Interview with Erlendy Cuero Bravo.

50. Interview with Rose-Marie Belle Antoine.



Finally, the designation of a specialized staff member would consolidate the necessary expertise so that the Rapporteurship can have the capacity to address, in an in-depth and autonomous way, the scope, nature and impacts of racial discrimination.⁵¹

The Rapporteur's sensitivity, interest, knowledge, availability, accessibility, initiative and will are essential for the Rapporteurship's success. However, the Rapporteur's personal characteristics must be accompanied by an Executive Secretariat that, at the same time, makes it possible to put his/her vision into practice, gives those initiatives a framework and places them in a wider context of continuous, strategic advocacy.

The Rapporteurship should not postpone the design and development of a strategic plan that guarantees a satisfactory positioning in its next working years. That strategic plan should identify and promote the added value of the Rapporteurship and maximize the specific role that it can perform. In addition, the plan should include clear and measurable objectives, as well as a vision and a strategic coordination of the existing mechanisms so that they complement and strengthen one another in order to meet the objectives: why and for what purpose a report is prepared; what the next steps are; how to combat structural racism through the joint implementation of different mechanisms.

Likewise, the strategic plan of the Rapporteurship, within the framework of the strategic plan of the IACHR, would facilitate fundraising when clearly and precisely describing the vision, purposes, objectives and strategic actions of the Rapporteurship to efficiently fulfill its mandate. The identification of measurable and specific objectives, as well as specific outputs, would attract potential donors, improve the process of accountability and prevent funders from imposing a work agenda not related to the priorities set by the Rapporteurship.

The strategic reconsideration of the role and functions of the Rapporteurship to fulfill its mandate, together with the designation of a permanent expert staff member with sufficient authority, would reflect an institutional decision of the IACHR regarding the importance and value of the Rapporteurship. Moreover, strengthening the Rapporteurship is essential so that the IACHR can fulfill its specific roles of protection and follow-up assigned by the Inter-American Convention against All Forms of Discrimination and Intolerance (A-69) and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (A-68) (hereinafter the "Conventions against Discrimination")⁵². Article 15 in common of the Conventions against Discrimination estab-

51. Interview with Carlos Quesada.

52. Text of the Conventions available at: http://www.oas.org/es/sla/ddi/tratados_multilaterales_interamericanos_texto_cronologico_lista.asp#2013. The Conventions shall enter into force on the thirtieth day following the deposit of the second instrument of ratification or accession. On August 5, 2016, Costa Rica became the first country to ratify the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance. IACHR, Press Release 117/16, *The IACHR Hails Costa Rica's Ratification of the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance*, August 18, 2016, available at: <http://www.oas.org/es/cidh/prensa/comunicados/2016/117.asp>.

lishes that the IACHR is the body in charge of dealing with the complaints of violations of the Conventions and providing the States with technical advice and cooperation. The IACHR will only fulfill its functions as long as it counts on a specialized and consolidated Rapporteurship.

THE NEED TO IMPLEMENT PROPER DISSEMINATION, TRAINING AND ACCESS MECHANISMS

All the interviewees have agreed that the Rapporteurship is not well known amongst grassroots organizations or many State officials – even judicial officers. For this reason, it is essential to develop a wide and intensive dissemination and training plan. Training should not be limited to the formal aspects of the Rules of Procedure of the IACHR on the functions and mechanisms of the Rapporteurship, but should also cover its practical use.⁵³

As an example, it would be necessary for civil society to understand the following issues: what a thematic report is and how it is used; what are the functions, characteristics and expected effects of a thematic hearing; how a petition may be filed if the domestic justice system does not process complaints of racial discrimination; and how to present the information to request that a press release be issued,⁵⁴ among others. On the other hand, for State officials, and especially for judicial officers, it will be necessary to include information on the reception of international standards by the national authorities,⁵⁵ the implications of the racial factor as “suspect class” of discrimination, the litigation of indirect discrimination cases, racial discrimination in the judicial system and the racially-biased use of force by security agents, among others.

In addition, the Rapporteurship should take into consideration and design its dissemination and training material with a differentiated approach according to the characteristics and terms of the different hearings it will be based on.⁵⁶ As the Rapporteurship itself has pointed out, the Afro-descendant population in the Americas suffers from structural and historical discrimination and has the lowest income rates, lowest levels of education and holds the lowest job positions.⁵⁷ These circumstances should be taken into consideration in the communication language used in training: even if a lot of information is available on the IACHR webpage, not all the System’s users are lawyers; therefore, they need to receive information in plain language.⁵⁸ Consequently, even if the IACHR and the Rapporteurship must



53. Interview with Charo Mina Rojas. Interview with Catherine McKinley. Interview with Elvia Duque.

54. Interview with Elvia Duque.

55. Interview with Catherine McKinley.

56. Interview with Carlos Quesada. Interview with Erlendy Cuero Bravo.

57. IACHR, *The Situation of Persons of African Descent in the Americas*, OAS/Ser.L/V/II. Doc. 62, December 5, 2011.

58. Interview with Elvia Duque. Interview with Jurema Werneck.



use formal and legal language, it is important to highlight that, unlike the proceedings before the Inter-American Court, the Commission does not require legal representation to have access to its mechanisms, and it has always promoted broad, pluralistic and direct participation of the victims of human rights violations or third parties that file the complaint in their favor, without requiring legal representation.

The Rapporteurship could take advantage of the different scenarios to design and implement its dissemination and training program. First, unlike research or *in loco* visits, which are funded by the IACHR itself so as not to affect the principles of independence and impartiality, promotional visits can be and have been funded by the States. Within a context of a shortage of resources, the organization of promotional visits has three advantages: (i) it contributes to addressing the funding issue; (ii) it allows greater cooperation with the States, which could help advance the implementation of the recommendations from the IACHR; and (iii) it becomes another opportunity to promote knowledge of and access to the Rapporteurship by civil society organizations.

Second, the Rapporteurship could generate cooperative ties with civil society organizations and work jointly on dissemination, awareness-raising, and training projects. Civil society organizations have an obligation to better disseminate information about the Rapporteurship.⁵⁹ Teamwork with civil society organizations and the training of leaders would stimulate a multiplier effect as well as the replication of knowledge and experience, thus strengthening the capacities of such organizations.⁶⁰ In this regard, it would be advisable to repeat the current “Course on the Inter-American and International Systems for the Protection of Human Rights” for State agents⁶¹ and civil society⁶², and the “Annual Training Program on the Inter-American Human Rights System for CARICOM,”⁶³ but with a specific approach based on Afro-descendants.⁶⁴ In addition,

59. Interview with Charo Mina Rojas.

60. Interview with Rosalba Castillo. Interview with Erlendy Cuero Bravo. Interview with Luz Marina Becerra.

61. Annual course organized by the IACHR, American University Washington College of Law (AUWCL), Robert F. Kennedy Human Rights and the Inter-American Institute of Human Rights (IHR). Information available at: <http://www.oas.org/es/cidh/actividades/promocion.asp>.

62. Annual course organized by the IACHR, American University Washington College of Law (AUWCL), the Bernard and Audre Rapoport Center for Human Rights and Justice at the University of Texas, Robert F. Kennedy Human Rights and the Inter-American Institute of Human Rights (IHR). Information available at: <http://www.oas.org/es/cidh/actividades/promocion.asp>.

63. Program organized by the IACHR and the George Washington University Law School. Information available at: <http://www.oas.org/es/cidh/actividades/promocion.asp>.

64. Interview with Christina Fetterhoff.

within the framework of the period of sessions, the Rapporteurship could replicate the IACHR practices of meeting with civil society organizations, communicating the activities it has carried out and its work plan, and exchanging comments and opinions.⁶⁵

In this regard, strengthening cooperation with academic institutions to organize lectures, seminars and forums⁶⁶ could be useful to improve the legal debate on racial issues, and contribute to the training and professionalization of lawyers in charge of litigating these types of cases at the domestic and international levels.

Third, using new technologies should be the focal point of the dissemination and training plan of the Rapporteurship. The Rapporteurship should update and improve the webpage without delay. At the IACHR level, the improvement of communication instruments in the last years has been notable: the creation of multimedia spaces, the possibility to have access to plenty of on-line material, to check press releases, hearings and even consult the status of a case or petition. However, the section of the Rapporteurship is outdated. For this reason, it would be convenient to have all the sections completed with information that already exists on the IACHR webpage, but that is currently found in different sections, making it inaccessible to non-expert users. In addition, the Rapporteurship should update its webpage to include a more interactive format, a multimedia section and to present information in a friendlier way in all official OAS languages.⁶⁷

The Rapporteurship could also create a distribution list to improve and expand its direct communication channels, and add a section of national news where it can collect and share best practices in the region, thus contributing to the construction of shared knowledge.⁶⁸ For example, in the region there exists significant case law regarding racial discrimination at the national level, such as the area of discrimination in employment in Brazil, which is not currently collected or disseminated by the Rapporteurship.⁶⁹



65. Information available at: www.oas.org/es/cidh/actividades/promocion.asp.

66. See, *inter alia*, Forum on the Experience of African Descendants in Canada, organized by the IACHR Rapporteurship on the Rights of Persons of African Descent and against Racial Discrimination, the African Canadian Legal Clinic, and the Osgoode Hall Law School. Information available at: <http://www.oas.org/es/cidh/actividades/promocion.asp>; Series of Lectures “Transforming the Invisible into the Visible”, IACHR. Press Release 51/14, IACHR holds third Lecture in the Lecture Series “Transforming the Invisible into the Visible” on May 9, 2014. Information available at: <http://www.oas.org/es/cidh/prensa/comunicados/2014/051.asp>.

67. Interview with Carlos Quesada.

68. *Ibid.*

69. *Ibid.*

In this regard, it would be important and positive for the Rapporteurship to include a virtual dimension in its training and a means to participate virtually – via videoconferences or Skype – in seminars, lectures and other dissemination and training activities organized by civil society and the States.⁷⁰ Likewise, the Rapporteurship could consider developing virtual training modules (webinars) that make communication more dynamic and efficient, and that would be available permanently and in all OAS official languages on the Rapporteurship webpage. The virtual components significantly reduce the costs of trips and translations, and allow the generation of accessible and interactive material for a wider and more diverse audience.⁷¹

This dissemination and training plan will only be successful if the users can effectively have access to and use the proposed tools. Thus, the dissemination and training plan should also take into consideration the barriers to access justice at the domestic level that the Rapporteurship has identified,⁷² as well as its own institutional deficiencies mentioned in the previous section.

One of the challenges of the Rapporteurship continues to be its capacity to “be near” the civil society organizations that currently regard the Rapporteurship and the IACHR as a “distant organization of political elites.”⁷³ The Rapporteurship has no mobility and depends permanently on the IACHR, a situation worsened by its chronic budget deficiencies.⁷⁴ In addition, the organizations representing persons of African descent are small and lack human and financial resources; therefore, in many cases, they do not have bilingual technical staff or the material conditions to travel and participate in the formal activities at the Rapporteurship in Washington, DC.⁷⁵ It is necessary that the Rapporteurship bridge the gap to shorten such distance.⁷⁶



70. Interview with Simone Cruz.

71. *Ibid.* Interview with Jurema Werneck. Interview with Rodney Jericó.

72. IACHR, *The Situation of People of African Descent in the Americas*, *supra* note 57, Chapter. III.B. Access to Justice, Judicial Guarantees.

73. Interview with Elvia Duque.

74. Interview with Jurema Werneck.

75. *Ibid.* Interview with Simone Cruz. Interview with Rodney Jericó. Interview with Cecilia Ramírez. Interview with Rosalba Castillo. Interview with Erlendy Cuero Bravo.

76. Interview with Erlendy Cuero Bravo.

FUNDING

In 2013, the “process for strengthening” the Inter-American Human Rights System came to an end with several reforms of the IACHR Rules of Procedure.⁷⁷ Unfortunately, civil society has noted that the speeches about strengthening the Commission have not been consistent with the resources that the States allocate in the region for the functioning of the System.⁷⁸ The Working Group resolution that marked the end of the reform process formalized the commitment that the Inter-American System should operate wholly through the Regular Fund in the long term.⁷⁹ In the short term, the System would be strengthened by increasing voluntary contributions, preferably ones that are not designated for a specific purpose.⁸⁰ However, in 2013, allocations to the IACHR and the Inter-American Court represented 9% of the OAS budget.⁸¹

In May 2016, the IACHR declared a financial crisis, suspended basic activities such as the ordinary period of sessions, and prepared a 40% staff lay-off due to the lack of funds.⁸² In October 2016, the IACHR stated that the “severe financial crisis” had been overcome, but that “did not mean that it had solved the severe structural issues of deficient funding.”⁸³

The persons interviewed pointed out that the shortage of economic resources is still one of the main challenges of the Rapporteurship⁸⁴ that must “pinch” the budget⁸⁵ and that, over this decade, the situation “has been worsening.”⁸⁶ The lack of funds negatively affects the possibility of having human resources and materials to fulfill its functions,⁸⁷ and it could affect the independence and impartiality of the IACHR.⁸⁸



77. See, *inter alia*, IACHR, *Resolution 1/13, on the Reform of the Rules of Procedure, Policies and Practices*, March 18, 2013. Information of the process for strengthening is available at: <http://www.oas.org/es/cidh/mandato/fortalecimiento.asp>.

78. Raísa Cetra and Jefferson Nascimento / Conectas Direitos Humanos, *Counting Coins: Funding the Inter-American Human Rights System*, *The Inter-American Human Rights System: Changing Times, Ongoing Challenges*, (Dejusticia, 2015), p. 71.

79. *Ibid.*

80. *Ibid.*

81. *Ibid.*, p. 75.

82. See, IACHR, 2016 Financial Crisis, information available at: <http://www.oas.org/es/cidh/prensa/crisis-cidh.asp>.

83. IACHR, Press Release 145/16, *IACHR Overcomes its Severe Financial Crisis of 2016 and Thanks Countries and Donors that Made It Possible*, September 30, 2016, available at: <http://www.oas.org/es/cidh/prensa/comunicados/2016/145.asp>.

84. Interview with Rose-Marie Belle Antoine. Interview with Elvia Duque.

85. Interview with Charo Mina Rojas.

86. Interview with María Martínez and Joseph Cherubin.

87. *Ibid.*

88. Interview with Charo Mina Rojas.



And while it is true that the IACHR must be transparent and efficient regarding the management of financial resources, it is also true that, without them, it would be impossible to fulfill the basic functions, let alone strengthen its role and monitor the fulfillment of its recommendations. The States in the region must adequately finance the supranational system that they themselves have created to promote and protect the human rights of their inhabitants.⁸⁹

Within this context of lack of resources, Appendix III shows that the Rapporteurship is the IACHR rapporteurship that has received the least amount of funding. The lack of funds has been chronic since its creation, and sends the message that the issue is not important or a priority.⁹⁰ That is why it is essential that the Rapporteurship change this situation in the IACHR, demand equitable funding, develop a strategic plan attractive to potential donors, and contribute with that plan to an initiative for funds which is equitable for all thematic approaches.⁹¹

89. Interview with María Martínez and Joseph Cherubin.

90. Interview with Carlos Quesada.

91. *Ibid.* Interview with Pedro Cortés.

Chapter



Utilization of the Rapporteurship's mechanisms pursuant to its mandate





From the interviews conducted, it is understood that the Rapporteurship has the adequate tools to fulfill its mandate; however, it is necessary to start using them in a more active, efficient and strategic way. The perspective of the persons interviewed is that there is no instrument more important than another, but the frequent, simultaneous and coordinated use of all mechanisms available in the Rapporteurship would reinforce their potential and would generate a positive impact on protecting and guaranteeing the rights of persons of African descent.⁹²

THEMATIC HEARINGS

The mechanism of public hearings is the one mostly used by the civil society organizations which were interviewed for this study,⁹³ and an essential resource for those organizations that do not have the technical capacity, conditions or opportunities to file petitions and cases before the IACHR.⁹⁴

The hearings are an important mechanism because they help to: (i) give visibility to a situation or issue and place it on the agenda;⁹⁵ (ii) shed light on a situation before both the IACHR and the State;⁹⁶ (iii) generate interest at the national and international level;⁹⁷ (iv) provide opportunities for dialogue and public debate with different States' representatives, non-existent at the national level;⁹⁸ (v) make the information collection processes by the State more dynamic;⁹⁹ (vi) verify the State's data;¹⁰⁰ (vii) develop specific themes;¹⁰¹ (viii) mobilize other sectors of civil society;¹⁰² and (ix) strengthen the international coordination and joint work with other organizations of the region with common purposes.¹⁰³

In addition, the formality of the hearing helps to put pressure on the States,¹⁰⁴ and to expose and "question" them.¹⁰⁵ The hearings may be a powerful mechanism and can generate great impact, immediate responses and

92. Interview with María Martínez and Joseph Cherubin. Interview with Carlos Quesada.

93. Interview with Jurema Werneck. Interview with Simone Cruz. Interview with Charo Mina Rojas. Interview with Catherine McKinley.

94. Interview with Elvia Duque. Interview with Jurema Werneck. Interview with Catherine McKinley.

95. Interview with Simone Cruz.

96. Interview with Charo Mina Rojas.

97. Interview with Catherine McKinley.

98. Interview with Jurema Werneck.

99. Interview with Catherine McKinley. Interview with Cecilia Ramírez.

100. Interview with Naiara Leite.

101. *Ibid.*

102. *Ibid.*

103. Interview with Simone Cruz.

104. Interview with Jurema Werneck.

105. Interview with Charo Mina Rojas.

commitments, if the States consider that their international reputation and image are being affected.¹⁰⁶ In this way, the hearings may become a more effective, practical and proactive mechanism than cases and petitions, especially when it is difficult to get a favorable response from the domestic justice system.¹⁰⁷

In light of what has been expressed thus far, the Rapporteurship and the IACHR should adopt affirmative action measures and carry out more hearings on the theme of Afro-descendants in order to compensate for the deficiencies in access to other mechanisms.¹⁰⁸ In this regard, former Rapporteur Antoine highlighted, as one of the main achievements in her mandate, the improvement in the process of granting hearings and the increase in thematic hearings on racial discrimination and the rights of persons of African descent.¹⁰⁹ It is necessary that the current Rapporteur continue to have access to all the requests for hearings presented for each period of sessions and be able to identify and grant hearings related to themes of racial discrimination and the rights of persons of African descent.¹¹⁰

As regards the development of the hearings, it has been noted that the success of the mechanisms depends, to a great extent, on correct preparation by civil society.¹¹¹ Hearings are short and concrete experiences; therefore, the organizations must understand how the mechanism works, what its purpose is, and what type of information they must prepare to be able to refute the data, statistics and statements provided by the States.¹¹² The organizations must maximize the use of this space, present information in a clear and concise way, and communicate expressly and directly the response they expect from the Rapporteurship and the State.

On the other hand, it has been noted that the Rapporteur's role and participation in the hearings are essential: the Rapporteur must be determined and assertive, and show his or her interest in the issue.¹¹³ To do so, the Rapporteur must be duly informed of the circumstances and complexity of the situation that will be discussed in the hearing in order to take the opportunity to ask relevant questions, request clarifications and make comments.¹¹⁴



106. *Ibid.*

107. Interview with Catherine McKinley. Interview with Simone Cruz. Interview with Jurema Werneck.

108. Interview with Elvia Duque. Interview with Christina Fetterhoff.

109. Interview with Rose-Marie Belle Antoine.

110. *Ibid.*

111. Interview with Charo Mina Rojas.

112. *Ibid.*

113. *Ibid.*

114. Interview with Christina Fetterhoff.

The individuals interviewed pointed out that one of the limitations of the hearings is the lack of follow-up mechanisms by the Rapporteurship regarding the situation presented and the fulfillment of the commitments undertaken by the State.¹¹⁵ The hearings are an efficient instance to expose human rights violations, but their mere exposition is not enough. The Rapporteurship must take adequate actions regarding the information and/or situations that are reported in the hearings.¹¹⁶

Those interviewed suggested that there should be a way to exchange information in writing between the parties after the hearing, every three or six months, and that the IACHR should convene follow-up hearings *ex officio*.¹¹⁷ The periodic follow-up by the Rapporteurship and the creation of spaces for more direct and constant contact between the parties would be fundamental to achieve greater impact and advocacy in practice,¹¹⁸ especially in cases of systematic and structural violations that do not end in a concrete case.

PETITIONS AND CASES



According to the IACHR, the Rapporteurships participate and have influence on the processing of individual petitions on human rights violations.¹¹⁹ For example, the judgment in the *Case of Expelled Dominicans and Haitians* in the Dominican Republic – submitted to the Inter-American Court by the IACHR¹²⁰ – was very important to make visible and “official” a situation that had been continuously denied by the State and the society. Thus, the “judgment was useful for the people to realize what was going on.”¹²¹

However, the quantitative analysis conducted in Chapter I shows that the number of contentious cases involving racial discrimination and the rights of persons of African descent developed by the Inter-American System continues to be low. Regarding this, deficiencies have been found in civil society and the Rapporteurship.

On the one hand, few organizations file petitions and cases before the IACHR. The lack of complaints is related to different elements. First, one must consider the situations of endo-racism and the victims’ lack of awareness of their rights.¹²² Victims of

115. Interview with Catherine McKinley. Interview with Simone Cruz.

116. Interview with Jurema Werneck. Interview with Luz Marina Becerra.

117. *Ibid.* Interview with Charo Mina Rojas.

118. Interview with Simone Cruz. Interview with Erlendy Cuero Bravo.

119. IACHR, 2015 Annual Report, Chap. III.A, para. 5.

120. Inter-American Court of Human Rights, *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2014. Series C No 282.

121. Interview with María Martínez and Joseph Cherubin.

122. *Ibid.* Interview with Jurema Werneck. Interview with Elvia Duque.

racial discrimination do not know that these situations can be addressed by the courts, therefore, they do not file complaints before the justice systems.¹²³ Second, as the Rapporteurship has acknowledged, there are many obstacles to accessing justice at the domestic level, such as distrust of the police and/or judicial authorities, lack of attention or sensitivity by the judicial authorities regarding discrimination, fear of suffering from retaliation or social censure, or the lack of resources to afford the cost and the complexity of judicial proceedings.¹²⁴

Apart from these obstacles, there exists a lack of knowledge of the Rapporteurship and its mechanisms by civil society organizations, evidentiary difficulties in the domestic justice system,¹²⁵ problems exhausting domestic resources,¹²⁶ lack of strategic litigation approaches with an international component, and lack of qualified resources to conduct this type of litigation by grassroots organizations.¹²⁷ Moreover, Afro-descendant organizations are usually small and address mainly every day and “urgent” cases.¹²⁸ On the other hand, the international human rights organizations that work actively with the IACHR and have more resources and experience in litigation at the international level do not focus on, work on or represent this type of cases.¹²⁹

On the other hand, the Rapporteurship has an obligation to improve its analysis of racial issues. The Rapporteurship should contribute to improving the identification of racial issues in all IACHR mechanisms.¹³⁰ Despite having dealt with important cases regarding these issues, the IACHR has not been able to analyze or address racial issues deeply and thoroughly.¹³¹ Thus, for example, the racial pattern has not been explored enough in cases regarding the death penalty,¹³² and the report of the *in loco* visit to the Dominican Republic focused on migration and not on racial discrimination.¹³³



123. Interview with Catherine McKinley.

124. IACHR, *The Situation of People of African Descent in the Americas*, supra nota 57, para. 121. Interview with Rosalba Castillo.

125. Interview with María Martínez and Joseph Cherubin.

126. Interview with Charo Mina Rojas.

127. *Ibid.* Interview with Jurema Werneck. Interview with Erlendy Cuero Bravo.

128. Interview with Pedro Cortés. Interview with Cecilia Ramírez. Interview with Luz Marina Becerra.

129. Interview with Rose-Marie Belle Antoine. Interview with Elvia Duque.

130. Interview with Rose-Marie Belle Antoine.

131. *Ibid.*

132. *Ibid.*

133. *Ibid.*



The proper categorization of the racial components in cases and petitions is a way of giving greater acknowledgment and visibility to the issue.¹³⁴ That is why the Rapporteurship should work actively to help the IACHR improve case classification by systematizing all pending cases that involve racial discrimination, establishing objective criteria regarding categorization, and contributing with specialized technical knowledge for the adequate analysis and management of issues related to racial discrimination.¹³⁵ In addition, the need to speed up the processing of cases, petitions and precautionary measures has been pointed out as a means to help create a more fluent and immediate exchange of information between the parties.¹³⁶

The Rapporteurship should continue promoting the filing of complaints at the national level in order to aid in the filing of petitions before the IACHR.¹³⁷ To this effect, keeping in mind that the Rapporteurship has acknowledged the multiple barriers to access to justice and the lack of efficient legal remedies in cases of racial discrimination at the domestic level,¹³⁸ it is necessary that it redouble its efforts to monitor and assist the States, and implement specialized training mechanisms for lawyers that allow civil society to file more cases and petitions regarding this issue. The Rapporteurship should also promote cooperative agreements with legal clinics¹³⁹ or programs of free legal services (e.g. Inter-American Association of Public Defenders)¹⁴⁰ to increase the filing of cases and petitions.

134. *Ibid.*

135. Interview with Rodnei Jericó. Interview with Carlos Quesada.

136. Interview with María Martínez and Joseph Cherubin.

137. Interview with Pedro Cortés.

138. IACHR, *The Situation of Persons of African Descent in the Americas*, supra note 57, Cap. III.B. Access to Justice, Judicial Guarantees.

139. Interview with Rose-Marie Belle Antoine.

140. See, *inter alia*, Memorandum of Understanding between the Inter-American Court of Human Rights and the Inter-American Association of Public Defenders, September 24, 2009, available at: http://www.mpd.gov.ar/users/uploads/Acuerdo_de_Entendimiento_entre_la_CIDH-AIDEF.pdf; Memorandum of Understanding between the General Secretariat of the Organization of American States through the Executive Secretariat of the Inter-American Commission on Human Rights and the AIDEF (Inter-American Association of Public Defenders) March 8, 2013, available at: <http://www.mpd.gov.ar/index.php/component/content/article/126-internacional/aidef/471-acuerdo-de-entendimiento-entre-la-cidh-y-la-aidef-firmado-el-8-de-marzo-de-2013-en-la-ciudad-de-washington-dc-estados-unidos-de-america.html?Itemid=101>.

THEMATIC REPORTS

Thematic reports are institutional reports that have a different status and legitimacy from that of the reports produced by civil society.¹⁴¹ Due to their nature, these reports are a key instrument to be used by all stakeholders in the Inter-American System.¹⁴² Likewise, thematic reports can reach a wider public and be disseminated without such high costs.¹⁴³ Besides, the process of preparing a report in itself is valuable: the circulation of questionnaires, the call for thematic hearings, working meetings and expert meetings are positive actions for the promotion of rights.¹⁴⁴

As regards the circulation of questionnaires, many grassroots organizations have had difficulties – in terms of time and resources – in presenting a solid and consolidated response to the IACHR.¹⁴⁵ It is necessary that the Rapporteurship count on the civil society organizations working in the Inter-American System to resend the questionnaires to their counterparts and thus ensure their dissemination to smaller organizations.¹⁴⁶

In its first decade, the Rapporteurship has prepared few thematic reports and has not designed a dissemination and follow-up plan for the recommendations it has made. The persons interviewed have highlighted the need that the reports become functional and usable at the domestic level.¹⁴⁷ The Rapporteurship should get States to commit to the development and implementation of its thematic reports and thereby outline an advocacy roadmap.¹⁴⁸ Even though the IACHR does not have a specific follow-up mechanism for the thematic reports, the Rapporteurship, when planning thematic reports, could be a pioneer and include a dissemination and follow-up plan, as well as a training component in accordance with the established standards. After the approval of the report, it is essential to disseminate it and to create spaces for technical discussion with the States in charge of implementing those recommendations. Likewise, it is essential to train civil society regarding the implications of the reports, the nature and scope of the recommendations as well as their practical application.¹⁴⁹

As an example, it is important to highlight that some persons interviewed have mentioned the 2011 Regional Report¹⁵⁰ as one of



141. Interview with Elvia Duque.

142. *Ibid.*

143. Interview with Rosalba Castillo.

144. Interview with Carlos Quesada.

145. *Ibid.*

146. *Ibid.*

147. Interview with Jurema Werneck.

148. Gabriela Kletzel, Pétalla Timo, Edurne Cárdenas, Gastón Chillier, CELS – The Center for Legal and Social Studies, *Democracy and Subsidiarity*, in *The Inter-American Human Rights System: Changing Times, Ongoing Challenges*, (Dejusticia, 2015), p. 216.

149. Interview with Charo Mina Rojas.

150. IACHR, *The Situation of People of African Descent in the Americas*, *supra* note 57; Press Release 05/12, IACHR Presents Report on the Situation of People of African Descent in the Americas, January 18, 2012, available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/005.asp>.

the Rapporteurship's achievements.¹⁵¹ However, since its approval five years ago, the report has not become widely known by civil society or the States, and progress has not been made regarding its recommendations. The Rapporteurship conducted a formal launch of that report at the 33rd meeting of the Heads of Government of the Caribbean Community (CARICOM) in July 2012,¹⁵² and a presentation during its *in loco* visit to Colombia in December 2012;¹⁵³ however, it has not adopted measures for the follow-up on violations or the status of the fulfillment of the report's recommendations. The Institute considers that all the recommendations from reports are relevant to promote and protect the human rights of Afro-descendants. Therefore, it would be important for the Rapporteurship to include in its working plan a follow-up on the 2011 Regional Report, to convene a thematic hearing *ex officio* with the States and civil society,¹⁵⁴ and to undertake the circulation of questionnaires or any other appropriate measure.¹⁵⁵



PRESS RELEASES

Press releases may be efficient to provide attention, opportunities, publicity, continuity and follow-up on racial discrimination issues,¹⁵⁶ as well as a tool to respond immediately in case of issues or specific problems,¹⁵⁷ without the need of having to wait for a hearing or petition. The correct use of press releases, together with precautionary measures, is perhaps the best tool to prevent human rights violations rather than rely on a reparations approach in case of violations already committed. Press releases are a quick and dynamic mechanism that provides the Rapporteur with greater freedom to put his or her own vision into practice within the IACHR institutional framework.

However, such dynamism has not been used efficiently by the Rapporteurship. Over its ten years, the IACHR has not issued enough pronouncements regarding the racial discrimination that millions of Afro-descendants living in the region suffer from daily, and it is not possible to see a strategic criterion regarding what issues are addressed with this tool.¹⁵⁸ For example, former Rapporteur Antoine highlighted that, during her mandate, she paid special attention to the extrajudicial executions of Afro-descendants by the United States security forces, beginning with the Trayvon Martin case in 2012. According to the former Rapporteur, the IACHR built upon the initiative, convening an *ex officio* hearing on racism in the justice system of the United States in 2014,¹⁵⁹ and granting a hearing on the excessive use of force by the police against persons of African descent in the United States in

151. Interview with Carlos Quesada. Interview with Catherine McKinley.

152. IACHR, Press Release 90/12, *IACHR Launches Report on The Situation of People of African Descent at meeting of CARICOM*, July 17, 2012, available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/090.asp>.

153. IACHR, Press Release 144/12, *IACHR Concludes Onsite Visit to Colombia*, December 7, 2012, available at: http://www.oas.org/es/cidh/prensa/comunicados/2012/comunicados_2012.asp.

154. Interview with María Martínez and Joseph Cherubin.

155. Interview with Cecilia Ramírez.

156. Interview with Rose-Marie Belle Antoine. Interview with Mirtha Colón. Interview with Erlendy Cuero Bravo.

157. Interview with Pedro Cortés.

158. Interview with Rose-Marie Belle Antoine.

159. Information available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=18>.

2015.¹⁶⁰ But, according to the former Rapporteur, it later “fell behind, and the Black Lives Matter movement completely outdid it.”¹⁶¹

Even if it is true that the lack of connection between civil society and the Rapporteurship is a barrier to the reception of immediate and continuous information on situations that deserve the attention of the Rapporteurship,¹⁶² it is also true that the Rapporteurship has not been able to maintain the issue of communications within the IACHR.¹⁶³ The Rapporteurship must adopt reasonable criteria and an internal mechanism to collect and respond to information that enables it to issue more press releases in a timely way and act based on the reported situations.¹⁶⁴ Issuing press releases together with other international human rights organizations could also be a useful tool to strengthen the response of the Rapporteurship in the case of specific situations.



Finally, the persons interviewed noted with concern that, apart from the fact that the Rapporteurship has issued few press releases, the national press does not disseminate them, but tends to hide the information.¹⁶⁵ In many countries the media has perpetuated racial discrimination and it ridicules the complaints that may be filed regarding this issue.¹⁶⁶

VISITS

In loco or working visits represent a unique opportunity for the Rapporteur to identify critical issues,¹⁶⁷ for example, “to see the reality” of Afro-descendants¹⁶⁸ and to speak with them personally.¹⁶⁹ In addition, the visits that cover different regions in a country, regions with different realities and their own dynamics,¹⁷⁰ allow the participation of many people that otherwise would have no access to presenting information to and filing complaints before the Rapporteur.¹⁷¹ The visits are also a sort of “international magnifying glass” for the State’s performance. They

160. Information available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=18>.

161. Interview with Rose-Marie Belle Antoine.

162. Interview with Pedro Cortés.

163. Interview with Rosalba Castillo.

164. Interview with Naiara Leite. Interview with Carlos Quesada.

165. Interview with Catherine McKinley. Interview with Rosalba Castillo. Interview with María Martínez and Joseph Cherubin.

166. Interview with Catherine McKinley.

167. Interview with Rodnei Jericó.

168. Interview with Catherine McKinley.

169. Interview with Elvia Duque.

170. Interview with Jurema Werneck. Interview with Simone Cruz.

171. Interview with Rodnei Jericó. Interview with Jurema Werneck.

contribute to exerting pressure on States,¹⁷² and may pave the way for a non-confrontational space for dialogue and the construction of an agenda and joint cooperation among the Rapporteur, civil society and the State.¹⁷³ The Rapporteurship should inform publicly and in advance of its intention to visit a country so as to guarantee greater dissemination of its visit and better access for small organizations and victims of human rights violations.

The Rapporteurship has only conducted four visits during its first decade; consequently, it has not visited most of the countries in the region. Additionally, interviewees noted that the Rapporteurship has not issued reports immediately after the visits or adopted any follow-up measures.¹⁷⁴ This has reduced the impact that could have been generated by more timely reports and of the maintenance of initiatives or spaces that could have been created as a result of the visit.¹⁷⁵ All the persons interviewed have mentioned the importance of this mechanism and have requested that, in the coming years, the Rapporteurship carry out a visit to their countries to be able to work based on a more concrete reality and not only on the information filed in Washington, DC.



ANNUAL REPORT

Over the last years, the IACHR has strengthened its role of promotion and, especially, improved the format of the latest annual reports, which now include more information, are more comprehensive and systematize all the information available regarding the state of human rights in the region. Thus, the Annual Report presents relevant information for the System's users, contributes to transparency regarding the results obtained with the available and allocated resources, and provides information on the work plan, ongoing projects and the ones to be implemented in the coming year. As previously mentioned, the information available in the annual reports should be updated on the webpage of the Rapporteurship in order to collect and disseminate new information in a timely manner.

UTILIZATION AND DEVELOPMENT OF THE POLITICAL ROLE OF THE RAPPORTEURSHIP

According to the persons interviewed, the political potential of the Rapporteurship both before the OAS organs and directly with the States has not been fully explored or utilized. From the perspectives of some States, the Rapporteurship is not involved in the OAS political logic and there is only a short-term relationship with the political organs of the organization.

172. Interview with Jurema Werneck.

173. Interview with Cecilia Ramírez.

174. Interview with Pedro Cortés.

175. *Ibid.*

The International Decade for People of African Descent represents a new opportunity for the Rapporteurship to have a closer relationship and more direct contact with the States, helping to foster the creation of better communication at the bilateral level as well as within the framework of the OAS Action Plan. In this regard, it is important that the Rapporteurship support the Working Group and the implementation of an OAS Plan of Action for the Decade for People of African Descent, provide technical support, and use that space to identify funding and cooperation opportunities that enable it to fulfill its mandate and capitalize on the political priority that the International Decade for People of African Descent should represent for the OAS Member States.¹⁷⁶ As an example, it has been suggested that when the Rapporteur is in Washington, DC or during the periods of sessions, the Rapporteurship should convene an informal meeting of less than 30 minutes, open to all the Missions that want to participate, to discuss the priority issues on the agenda, share the work plans and identify other cooperative actions to take.

Moreover, the Rapporteurship should continue promoting the ratification of the Conventions against Discrimination adopted in 2013. The Conventions against Discrimination are important tools that promote the acknowledgement of the continuity of racism in the region and require the States that ratify them to adopt effective measures and contribute to the work of civil society.¹⁷⁷ For this reason, the Rapporteurship should coordinate to work with the Secretariat for Legal Affairs and the recently created Secretariat for Access to Rights and Equity in order to ensure their efforts are effectively coordinated and not redundant.

COOPERATION WITH OTHER INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTITUTIONS

Cooperation with other international human rights institutions is one of the mandates assigned to the Rapporteurship. For many years, the IACHR and other Rapporteurs have adopted the practice of jointly issuing press releases with United Nations Special Procedures representatives.¹⁷⁸ However, except for some recent meetings at the Executive Secretariat level with the United Nations Working Group of Experts on People of African Descent, in the case of the Rapporteurship this cooperation has not taken place. There has been no cooperation with other specialized institutions such as the Committee on the Elimination of Racial Discrimination (“CERD”), or press releases regarding areas of common interest.



176. Interview with Charo Mina Rojas.

177. Interview with Rodnei Jericó.

178. See, *inter alia*, IACHR, Press Release 148/2012, *For the UN International Migrants Day. Joint Statement by UN Experts, the IACHR Rapporteur on the Rights of Migrants and the ACHPR Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants. “Migrants deserve full recognition as rights holder”*. December 18, 2012, available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/148.asp>.

Strengthening ties between the Rapporteurship and other international institutions would be useful to keep the Durban agenda functional in the region.¹⁷⁹ Likewise, coordination with other regional or international human rights entities to carry out promotion and monitoring activities could contribute to identifying agendas in common and to collecting and maximizing common resources.

ADVOCACY, FOLLOW-UP AND COMPLIANCE: SPECIFIC CHALLENGES OF STRUCTURAL RACISM



Even if all of the Rapporteurship's mechanisms are useful for the promotion and protection of the human rights of persons of African descent, the persons interviewed identified a deficit in the monitoring, follow-up and continuous assessment carried out by the Rapporteurship, as well as a lack of implementation by the States of the Rapporteurship's proposed standards and recommendations.¹⁸⁰ This deficiency is mainly and directly related to the States' lack of will to comply with international obligations¹⁸¹ and the relegation of the Afro-descendant issue to a lower position on national agendas. This "hypocrisy" by the States, who created the Inter-American System but later did not accept or acknowledge the decisions of its organs, undermines the credibility and the effects of the System¹⁸² and generates disappointment, lack of motivation and loss of trust on the part of the victims and organizations.¹⁸³

Combating racism and racial discrimination involves specific challenges. The "race" issue is highly complex and sensitive. The Rapporteurship has already acknowledged that racial discrimination and racism are deeply rooted in the Americas and, consequently, that Afro-descendants – whether a small or large percentage of the population – suffer from structural discrimination in all aspects and at all levels that deprives them of the enjoyment and exercise of their human rights.¹⁸⁴ At the political and legal level, no State in the region questions that the racial issue is important or that "race" is a prohibited and suspect category of discrimination, among other international standards regarding racial discrimination.¹⁸⁵ However, it is a "taboo" issue. The States "obfuscate" and are reluctant to address the issue; they deny the situation of racism and structural discrimination that exists in the region under the pretext that these are "countries of mixed race"¹⁸⁶ and as a consequence they do not take the necessary effective measures.¹⁸⁷ The prohibition of racial discrimination is recognized in the legislation

179. Interview with Jurema Werneck.

180. *Ibid.* Interview with Mirtha Colón. Interview with Rosalba Castillo. Interview with Catherine McKinley. Interview with Erlendy Cuero Bravo. Interview with Luz Marina Becerra.

181. Interview with María Martínez y Joseph Cherubin.

182. *Ibid.*

183. Interview with Charo Mina Rojas. Interview with Catherine McKinley.

184. IACHR, *The Situation of People of African descent in the Americas*, *supra* note 57, para. 58.

185. Interview with Rose-Marie Belle Antoine.

186. Interview with María Martínez and Joseph Cherubin.

187. Interview with Rose-Marie Belle Antoine.

of almost all States, but the question continues to be: are persons of African descent experiencing and/or exercising their rights effectively?¹⁸⁸

Though much denied and made invisible, this historical, widespread, serious, systematic, deep-rooted and cross-cutting issue related to the human rights of millions of persons – both in the public and private sphere – cannot be overcome only with press releases, thematic hearings, a concrete case, or a thematic report. The joint coordination of all these mechanisms, the adoption of continuous and effective monitoring and assessments measures, joint work on the implementation of public policies that reflect the adoption of positive and affirmative action measures, and the generation of spaces with public visibility for monitoring and the capacity to generate reproach at the international level,¹⁸⁹ can make significant and sustained progress to improve this situation.

It is important to highlight that with the use of formal or informal follow-up mechanisms, the Rapporteurship may contribute to overcoming the lack of a connection between the Foreign Offices and the national officials in charge of implementing the policies at the domestic level.¹⁹⁰ In this regard, what has been pointed out has been the division between the Permanent Mission members before the OAS, in charge of daily dealing with the IACHR, and the national, provincial or municipal government officials responsible for adopting and implementing human rights policies at the domestic level.¹⁹¹ Because of this, all the specialized knowledge and updated information arising from the daily contact with the OAS organs and the staff of the IACHR Executive Secretariat become diluted along the communication chain with the national capitals and the provincial or municipal institutions.¹⁹² It is important that the national officials know the mechanisms of the IACHR and the Rapporteurship in detail, and can use the standards and recommendations as guides and parameters within the framework of their activities.¹⁹³



188. *Ibid.*

189. Interview with Pedro Cortés.

190. Interview with Jurema Werneck.

191. *Ibid.* Interview with Rosalba Castillo.

192. Interview with Jurema Werneck.

193. *Ibid.*

Chapter

IV

**Priority subjects –
standards and case law
development**



The Inter-American System has developed significant case law and standards regarding racial discrimination and the situation of persons of African descent, deepening our understanding of the principles of equality and non-discrimination;¹⁹⁴ race as a “suspect category” of discrimination and the reversal of the burden of proof in cases when the distinction is based on such category;¹⁹⁵ indirect discrimination;¹⁹⁶ intersectionality with different factors of discrimination;¹⁹⁷ structural discrimination;¹⁹⁸ the States’ obligation to adopt positive action and affirmative action measures to combat discrimination;¹⁹⁹ discrimination and access to justice;²⁰⁰ self-identification;²⁰¹ Afro-descendant communities;²⁰² police violence and the establishment of racial profil-

194. See, *inter alia*, IACHR, *The Situation of People of African Descent in the Americas*, *supra* note 57 para. 89, 94, 95; Report No 51/01 (Merits), Case 9.903, Ferrer-Mazorra et al. (United States), April 16, 2001, para. 238.

195. See, *inter alia*, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OAS/Ser.L/V/II, Doc. 68, January 20, 2007, para. 58; *The Situation of People of African Descent in the Americas*, *supra* note 57, para. 91; Inter-American Court of Human Rights, *Case of Atala Riffo and Daughters v. Chile*. Merits, *Reparations and Costs*. Judgment of February 24, 2012. Series C No. 239, para. 85, 88, 89; *Case of Expelled Dominicans and Haitians*, *supra* note 120, para. 401; *Case of González Medina and family v. Dominican Republic*. Preliminary Objections, Merits, *Reparations and Costs*. Judgment of February 27, de 2012. Series C No. 240, para. 132; *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, *Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251, para. 229.

196. See, *inter alia*, IACHR, *The Situation of People of African Descent in the Americas*, *supra* note 57, para. 92; Inter-American Court of Human Rights, *Case of Expelled Dominicans and Haitians*, *supra* note 120, para. 234, 263, 404; *Case of Nadege Dorzema et al.*, *supra* note 195, para. 235; *Case of the Girls Yean and Bosico v. Dominican Republic*. Merits, *Reparations and Costs*. Judgment of September 8, 2005. Series C No. 130, para. 141.

197. See, *inter alia*, IACHR, *The Situation of People of African Descent in the Americas*, *supra* note 57, para. 59, 61, 64, 75; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, *supra* note 195, para. 211; United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), *General Recommendation 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, October 19, 2010, para. 18.

198. See, *inter alia*, IACHR, *The Situation of People of African Descent in the Americas*, *supra* note 57, para. 45, 46, 47, 100, 254; *Durban Declaration and Programme of Action*, para. 33; IACHR, Report No 57/96 (Merits), Case 11.139, William Andrews (United States), December 6th, 1996, para. 148; *Indigenous People, Afro-Descendant Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OAS/Ser.L/V/II. Doc. 47/15, December 31, 2015, para. 29; *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, OAS/Ser.L/V/II. Doc. 49/13, December 31, 2013, para. 610, 630.

199. See, *inter alia*, IACHR, *The Situation of People of African Descent in the Americas*, *supra* note 57, para. 74, 75, 193, 194, 202, 204, 224, 225, 231, 237, 238, 239, 240; *Access to Justice for Women Victims of Violence in the Americas*, *supra* note 195, para. 100 – 101; *Considerations Regarding the Compatibility of Affirmative Action Measures to Promote the Political participation of Women with the Principles of Equality and Non-Discrimination*, *Annual Report of the Inter-American Commission on Human Rights*, 1999, OAS/Ser.L/V/II.106. Doc. 3. April 13, I 2000, Chapter VI.

200. See, *inter alia*, IACHR *The Situation of People of African Descent in the Americas*, *supra* note 57, para. 106, 120, 122, 133, 138, 139, 142, 189; Inter-American Court of Human Rights, *Case of Rosendo-Cantú et al. vs. Mexico*. Preliminary Objections, Merits, *Reparations and Costs*, August 31, 2010. Series C No. 216, para. 184; *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objections, Merits, *Reparations and Costs*. Judgment of August 30, 2010. Series C No. 215, para. 200; *Case of Atala Riffo and Daughters*, *supra* note 195, para. 146; IACHR, Report No 5/14 (Merits), Case 12.841, Ángel Alberto Duque (Colombia), April 2, 2014, para. 89.

201. See, *inter alia*, IACHR, *The Situation of People of African Descent in the Americas*, *supra* note 57, para. 38, 39, 40, 41; *Durban Programme of Action*, para. 92.

202. See, *inter alia*, IACHR, *Indigenous People, Afro-Descendant Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, *supra* note 198, para. 28, 29; *Situation of Human Rights in Honduras*, OAS/Ser.L/V/II. Doc. 42/15, December 31, 2015, para. 420; *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, *supra* note 198, para. 662.



ing;²⁰³ nationality and non-discrimination;²⁰⁴ migration and non-discrimination;²⁰⁵ Afro-descendants and armed conflict;²⁰⁶ and the death penalty and non-discrimination.²⁰⁷

According to the interviews conducted, the Rapporteurship's work plan should include an in-depth technical and conceptual study of racism, which takes into account the underlying tension between race and ethnicity, and considers the axes detailed below.

INTERSECTIONALITY BETWEEN RACE AND OTHER FACTORS OF DISCRIMINATION AND VULNERABILITY – AREAS OF JOINT WORK WITH OTHER IACHR RAPPOREURSHIPS

The IACHR has received the concept of intersectionality developed by the Committee on the Elimination of All forms of Discrimination against Women (“CEDAW”) to understand the scope of the States' obligations, and has acknowledged the inextricable link between different discrimination factors such as sex, gender identity, race, ethnicity, religion or beliefs, health, status, age, class, caste, sexual orientation and gender identity.²⁰⁸

The concept of intersectionality is a useful tool to deepen the analysis and impact of discrimination cases because it allows for the consideration of different variables converging in a case or specific situation that may require a detailed study. However, former Rapporteur Antoine considered that the intersectional approach of the IACHR has not helped to go deeply into Afro-descendant issues, and highlighted that it is important that racial issues do not become diluted or that the consideration of other identities serves to cover-up or impose

203. See, *inter alia*, IACHR, Report No 26/09 (Admissibility and Merits), Case No. 12.440, Wallace de Almeida (Brazil), March 20, 2009, para. 139, 143, 148; *The Situation of People of African Descent in the Americas*, *supra* note 57, para. 161, 162, 172; *Report on Citizen Security and Human Rights*, OAS/Ser.L/V/II, Doc. 57, December 31, 2009, para. 115, 116.

204. See, *inter alia*, IACHR, Report No 64/12 (Merits), Case 12.271, Benito Tide Mendez et al. (Dominican Republic), March 29, 2012, para. 248, 249; Inter-American Court of Human Rights, *Case of the Girls Yean and Bosico*, *supra* note 196, para. 155 y 156.

205. See *Inter alia*, IACHR, Complaints before the Inter-American Court of Human Rights, Case No. 12.688, Nadege Dorzema et al.: Guayubín Massacre (Dominican Republic), February 11, 2011, para. 205; Report No 64/12 (Merits), Benito Tide Mendez et al., *supra* note 204, para. 268, 269, 270.

206. See, *inter alia*, IACHR, *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, *supra* note 198, para. 643, 644, 651.

207. IACHR, *The Death Penalty in the Inter-American Human Rights System from Restrictions to Abolition*, OAS/Ser.L/V/II. Doc. 68, December 31, 2011, p. 172, 183, 186; Report No 57/96 (Merits), Case 11.139, William Andrews, *supra* note 198; Report No 78/15 (Merits), Case 12.831, Kevin Cooper (United States), OEA/Ser.L/V/II.156 Doc. 31. October 28, 2015, para. 140, 145, 146; *Ex officio hearing, Reports of Racism in the justice system of the United States*, October, 27, 2014. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=136>.

208. IACHR, *The Situation of People of African Descent in the Americas*, *supra* note 57, para. 60, citation from the United Nations, Committee on the Elimination of Racial Discrimination against Women (CEDAW), *General Recommendation 28 on the Core Obligations of State Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, October 19, 2010, para. 18.

themselves upon the racial issue.²⁰⁹ In practice, according to former Rapporteur Antoine, civil society organizations approach other IACHR Rapporteurships that are “stronger or are better equipped, and do not address racial issues, despite being a key factor in the case or situation.”²¹⁰

The Institute considers that it is fundamental for the IACHR to keep applying the concept of intersectionality, and that civil society organizations and the Rapporteurship should highlight and address adequately the specific racial issues that are an autonomous element or aggravating form of human rights violations.²¹¹ As mentioned previously, the consolidation of the Thematic Monitoring Unit could contribute to the identification of joint working areas with other IACHR rapporteurships.

Women of African descent and trans women, with emphasis on the differentiated impact of the racial factor on violence based on gender and/or on sexual orientation

Even if the Rapporteurship has highlighted the situation of triple discrimination that Afro-descendant women suffer from, this issue has been mainly addressed by white feminism.²¹² Afro-descendant women organizations have underlined the need for an in-depth analysis of the situation of women and trans women from the perspective of Afro-descendant feminism.²¹³ For example, the results of the implementation of the Maria Da Penha Law in Brazil show a decrease in violence against white women and an increase in violence against women of African descent over the last ten years,²¹⁴ which reflects the structural racism in the region, as well as the fact that the authorities do not deal with complaints of violence the same way when reported by women of African descent.²¹⁵ The fact that the current Rapporteur is also the IACHR Rapporteur on the Rights of Women is favorable for the development of this issue.



209. Interview with Rose-Marie Belle Antoine.

210. *Ibid.*

211. Interview with Carlos Quesada.

212. Interview with Jurema Werneck.

213. *Ibid.* Interview with Luz Marina Becerra.

214. See, *inter alia*, IACHR, Hearing, *Human Rights Situation of Afro-Descendant Women in Brazil*, April 7, 2016, available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=18>. Interview with Simone Cruz.

215. Interview with Carlos Quesada.

Children of African descent, with emphasis on situations of violence and limitations to access education

The serious situation of children of African descent and the impact of violence on this population has not been promoted by civil society organizations or studied by the IACHR Rapporteurship on the Rights of the Child.²¹⁶ The Rapporteurship could become a pioneer in the detailed analysis of the human rights violations that affect children of African descent.



Racist hate speech and permissible limitations to the right to freedom of expression

Even if the Special Rapporteurship for Freedom of Expression has established standards regarding hate speech and permissible limitations to the right to freedom of expression,²¹⁷ it would be convenient and timely to carry out an in-depth analysis of that tension, taking into consideration the content of the Conventions against Discrimination, the role of social networks and the current context where “it is politically correct to be racist.”²¹⁸

ESCR, poverty and racism: the differentiated impact of the racial factor on access to public services, and discrimination in educational, work and health areas

The Rapporteurship has pointed out that the Afro-descendant population is affected by multiple levels of discrimination, that there is a close relationship between poverty and race and between race and class, and that such categories intertwine, exacerbating the situation of risk faced by the Afro-descendant population.²¹⁹ In this way, in the Americas “poverty has color and race.”²²⁰ It is important that, as a follow-up on the general situation stated in the 2011 Regional Report, the Rapporteurship strengthen the analysis of the racial factor regarding economic, social and cultural rights (ESCR). It is especially important that it promote a differentiated technical perspective in the Report on Human Rights and Poverty on which the IACHR Unit on Economic, Social and Cultural Rights is working.²²¹

216. Interview with María Martínez and Joseph Cherubin. Interview with Carlos Quesada. Interview with Erlendy Cuero Bravo.

217. IACHR, Special Rapporteurship for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, OAS/Ser.L/V/II, CIDH/RELE/INF. 2/09, December 30, 2009; *Hate Speech and the American Convention on Human Rights* (2004).

218. Interview with Carlos Quesada.

219. IACHR, *The Situation of People of African Descent in the Americas*, *supra* note 57, para. 59.

220. Interview with Carlos Quesada.

221. IACHR, Press Release 52/15, *IACHR Announces Visit to Paraguay and Preparation of a Report on Human Rights and Poverty*. May 19, 2015, available at: <http://www.oas.org/es/cidh/prensa/comunicados/2015/052.asp>.

POLICE VIOLENCE AND RACIAL DISCRIMINATION

In the 2015 Annual Report, the IACHR indicated that the Rapporteurship is working on a report on the excessive use of force by the police against persons of African descent in the United States.²²² The issue of police violence and the excessive use of force based on racial profiling does not only take place in the United States, but it is a cross-cutting issue of concern in the region. For this reason, the Rapporteurship should continue analyzing this problem in the rest of the countries.²²³



SELF-IDENTIFICATION AND STATISTICS

The Rapporteurship took important steps regarding standards on self-identification and statistics in its 2011 Regional Report.²²⁴ However, the States in the region have not adopted effective measures to implement those recommendations, and there are still deficiencies regarding statistical data and information.²²⁵ For example, in September 2016, the Association of Afro-Chileans filed a complaint against the State of Chile on behalf of the Association of the Afro-descendants from Azapa Ancestral Territory, “by virtue of the authorities’ refusal to include in the Demographic Census that will be conducted in Chile in 2017 the category ‘Afro-descendant/Black’ in the question regarding indigenous people for the Chilean individuals who identify as Afro-descendants or blacks.” Given that the census will soon take place, and the long period before another census will occur, it is important that the Rapporteurship follow up on this issue and give priority attention to this case in order to avoid making any IACHR pronouncement or measure obsolete²²⁶.

ANTI-DISCRIMINATION LAWS, POSITIVE ACTION AND AFFIRMATIVE ACTION MEASURES, AND REAL IMPACT

The Rapporteurship has reaffirmed the States’ obligation to adopt positive action and affirmative action measures to guarantee the full enjoyment of the human rights of Afro-descendant persons.²²⁷ The Rapporteurship should study the real impact and practical implementation of the existing legal framework and public policies regarding racial discrimination (i.e. development plans, national human rights action plans,

222. IACHR, *2015 Annual Report*, Chapter III.A, para. 41. Interview with Rose-Marie Belle Antoine.

223. Interview with Carlos Quesada. Interview with Rodnei Jericó.

224. IACHR, *The Situation of People of African Descent in the Americas*, *supra* note 57, Chapter. II.A. Identifying the Afro-descendant Population in the Americas.

225. Interview with Catherine McKinley. Interview with Elvia Duque.

226. Interview with Christian Baez Lazcano.

227. IACHR, *The Situation of People of African Descent in the Americas*, *supra* note 57, Chapter. IV. Positive action measures adopted by the States to combat racial discrimination.

anti-discrimination laws), identify the main obstacles to them and contribute to overcoming them through the dissemination of best practices, technical advice and constant monitoring.²²⁸

ADMINISTRATION OF JUSTICE FOR PERSONS OF AFRICAN DESCENT: ACCESS TO JUSTICE AND RESPONSE OF THE JUDICIAL SYSTEM

The Rapporteurship has established that persons of African descent face serious obstacles to accessing justice at the domestic level when seeking protection of their rights.²²⁹ In addition, the Rapporteurship has also referred to racial bias in the justice system – especially in criminal justice – and has reaffirmed that the Afro-descendant population is more likely to be accused, prosecuted, processed and sentenced compared to the rest of the population.²³⁰ It is important that the Rapporteurship conduct a detailed study of this situation.²³¹

LAND RIGHTS OF AFRO-DESCENDANT COMMUNITIES

The IACHR has developed vast case law regarding the land rights of indigenous peoples, and has recently included an explicit mention of land rights of the Afro-descendant communities – as tribal peoples according to ILO Convention 169 – in its report on extractive industries.²³² The Rapporteurship should specifically assess the situation of the human rights of Afro-descendant communities regarding their territories, and the States' obligations in this area, especially the obligation to obtain Afro-descendants' free, prior and informed consent.²³³



228. Interview with Carlos Quesada.

229. IACHR, *The Situation of People of African Descent in the Americas*, supra note 57, Chapter. III.B. Access to Justice, Judicial Guarantees.

230. See, *inter alia*, IACHR, Report No 36/09 (merits), Wallace de Almeida, supra note 203, para. 61.

231. Interview with Carlos Quesada.

232. IACHR, *Indigenous People, Afro-Descendant Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, supra note 198.

233. Interview with Pedro Cortés. Interview with Catherine McKinley.

SITUATION OF AFRO-COLOMBIAN COMMUNITIES WITHIN THE FRAMEWORK OF CONFLICT AND POST-CONFLICT IN COLOMBIA

The IACHR and the Rapporteurship have monitored the excessive impact of the domestic armed conflict on Afro-Colombian communities. However, the Institute has pointed out that the “terms” that would form the post-accord context – according to what was agreed upon between the Government and the FARC – are not fully favorable for the process of restitution, protection and promotion of the rights of Afro-Colombian communities.²³⁴ In this regard, even if the last-minute inclusion of the “Ethnic Chapter” in the accords has been a significant contribution, this has not been enough to guarantee an adequate differential ethnic approach.²³⁵

The armed conflict has deeply undermined the communities’ abilities to maintain their collective history that has benefitted both Afro-descendants and the country as a whole in terms of consolidating a diverse nation.²³⁶ The Institute has highlighted that the text of the accords ignores not only the collective dimension of the impacts of conflict, but also the legal and institutional frameworks that have established the acknowledgement of specific rights, forms of self-government, and the conceptions and models of ethno-development of Afro-Colombian communities. It is necessary that the Rapporteurship closely monitor the characteristics of the coming peace process and its impact on Afro-descendant communities.²³⁷



234. Interview with Luz Marina Becerra.

235. Institute on Race, Equality and Human Rights, Colombia Office, *First Policy Paper on Afro-Colombians and the Post-Accords: “Análisis de condiciones para la adopción de un enfoque diferencial étnico-afrocolombiano”* (Analysis of the Conditions to Adopt a Differential Afro-Colombian Ethnic Approach), September, 2016.

236. *Ibid.*

237. *Ibid.* Interview with Erlendy Cuero Bravo.

CONCLUSIONS AND RECOMMENDATIONS

The Institute considers the Rapporteurship highly important for the promotion and protection of the human rights of persons of African descent in the Americas, and it insists that its existence must be supported and strengthened. However, from the information collected in this study, it can be concluded that the Rapporteurship has been neglected in its first decade. To address this situation, immediate positive action and high impact measures must be taken to overcome the historical deficiencies and to start effectively implementing the mandates for which it was created.

Strengthening the Rapporteurship requires the sustained and strong will of the Rapporteur, the IACHR, the Executive Secretariat and all other stakeholders in the Inter-American System. All the parties involved have a joint responsibility and must contribute substantially to improving the Rapporteurship's performance. The International Decade for People of African Descent may become a favorable political opportunity to boost the transformation of the Rapporteurship and to obtain a greater commitment and funding by the States in the region. In addition, civil society organizations must try to take advantage of the Rapporteurship and benefit from the tools and spaces it provides. Finally, the Rapporteurship must start acting *ex officio*; it must begin to be "supply-driven and not demand-driven," and be proactive in fulfilling its mandate²³⁸ as a space for dialogue, assessment and qualified international advocacy as a means to guarantee the compliance with States' international human rights obligations.

In addition to its commitment to continue to support the work of the Rapporteurship in its different activities, the Institute formulates the following recommendations to contribute to the strengthening of the Rapporteurship.

238. Interview with Pedro Cortés. Interview with Carlos Quesada.

RECOMMENDATIONS TO THE RAPPOREURSHIP

1. Design a strategic plan that defines the main objectives, priorities, indicators and outputs of the Rapporteurship, including the improved strategic use of the mechanisms currently available.
2. Demand equitable funding from the IACHR. Lead fundraising activities or contribute actively to obtaining financial resources.
3. Appoint a permanent, exclusively dedicated staff member, with experience and the necessary technical knowledge to give greater structure to, and ensure the continuity of, the Rapporteurship's work.
4. Guarantee the continuity of the Fellowship Program.
5. Promote the implementation of paid internships within the framework of cooperative agreements with the States, civil society organizations and universities.
6. Call for the broad participation of civil society organizations that address the Afro-descendant issue to provide the Rapporteurship with up-to-date contact information, and build an updated database in order to systematize and expand the connection between the Rapporteurship and civil society.
7. Create spaces for rapprochement and continuous cooperation with civil society and the States.
8. Design and implement a dissemination and training strategy regarding the existence of the Rapporteurship and its mechanisms, and include virtual components.
9. Update, improve and make more dynamic the webpage of the Rapporteurship.
10. Respond immediately in case of specific problems or situations via press releases.
11. Follow up on the recommendations of the 2011 Regional Report.
12. Monitor human rights violations and the fulfillment of recommendations via reports and spaces of permanent consultation with civil society and the States.
13. Implement affirmative action measures and grant proportionally more hearings to give visibility to Afro-descendant issues.
14. Conduct frequent promotional, *in loco* and working visits.
15. Establish objective criteria for the classification and categorization of cases and petitions.
16. Conduct studies of pending cases and petitions on racial issues before the IACHR.
17. Develop standards regarding the regional agenda's high-priority human rights issues within the framework of the International Decade for People of African Descent.



18. Analyze the situation of Afro-descendants in each country, through the use of at least one tool throughout the year (press release, case, thematic hearing, visit, etc.).
19. Promote the ratification of the Conventions against Discrimination.
20. Strengthen the cooperative ties with other international human rights institutions, as well as national human rights institutions, legal clinics and universities.

RECOMMENDATIONS TO THE STATES

1. Contribute to the Rapporteurship's funding via unrestricted or specific purpose funds.
2. Increase and strengthen the relationship with the Rapporteurship in order to incorporate established standards regarding Afro-descendants' rights into legislation, plans and programs at the domestic level.
3. Contribute to the dissemination of the Rapporteurship's activities among civil society organizations as well as government officials at the national, regional or local level.
4. Train and raise awareness among state officials, especially judicial officers, regarding the Inter-American System's standards on racial discrimination.

RECOMMENDATIONS TO CIVIL SOCIETY

1. Include the international arena as a key element in strategic and advocacy plans.
2. Contribute to the dissemination of the existence of the Rapporteurship and its mechanisms.
3. Utilize the Rapporteurship's tools and participate actively in responding to questionnaires, requests for hearings, the delivery of relevant information to the Rapporteurship in a timely manner and the presentation of petitions and cases.
4. Recover the capacity to "make demands" upon the Rapporteurship. Create coalitions with other grassroots and international organizations to help build capacity.



APPENDIX I. PROMOTION AND MONITORING ACTIVITIES

	Press releases*	Hearings*	Promotion and training*	Country visits*	Annual report*	Country reports*	Thematic reports*
2015	6	7	4	2	Chapter – Rapporteurship's activities	–	–
2014	4	4	3	–	Chapter – Rapporteurship's activities	–	–
2013	7	5	4	–	Chapter – Rapporteurship's activities	–	–
2012	2	2	6	–	Chapter – Rapporteurship's activities	–	–
2011	1	6	4	–	Chapter – Rapporteurship's activities	–	1
2010	–	2	2	–	Chapter – Rapporteurship's activities	–	–
2009	2	2	2	–	Chapter – Rapporteurship's activities	2	–
2008	–	7	1	–	Chapter – Rapporteurship's activities	–	–
2007	2	6	–	1	Chapter – Rapporteurship's activities	–	2
2006	1	3	–	–	Chapter – Rapporteurship's activities	1	2
2005	3	3	2	1	Chapter – Rapporteurship's activities	–	–

* Information obtained from the IACHR webpage. (Last visit 16/10/2016.)

APPENDIX II. PETITIONS AND CASES

	Petitions – Admissibility*	Cases – Merits*	Cases – IA Court HR*	Precautionary Measures*	Provisional Measures* ¹
2015	–	–	2	–	
2014	–	–	–	–	1 PM requested but not granted
2013	–	–	2	–	2 PM requested but not granted
2012	–	–	1	–	2 PM lifted
2011	–	–	2	–	–
2010	1	–	–	–	–
2009	2	1	–	–	–
2008	–	–	–	1	–
2007	–	–	–	1	–
2006	4	1	1	–	–
2005	–	–	–	–	–

* Information obtained from the IACHR webpage. (Last visit 16/10/2016.)

¹ To date, there is only one current MP regarding Afro-descendant communities.

APPENDIX III. HUMAN AND FINANCIAL RESOURCES

	Financial Resources*	Staff
2015	107.200	1 full-time staff member
2014	151.600	1 full-time staff member
2013	151.500	1 full-time staff member
2012	66.088	1 part-time staff member
2011	44.921	2 part-time staff members and 1 intern
2010	N/A	1 part-time staff member
2009	N/A	1 part-time staff member
2008	N/A	1 part-time staff member
2007	N/A	1 part-time staff member
2006	N/A	1 part-time staff member
2005	N/A	1 full-time staff member

* Information obtained from the IACHR webpage. (Last visit 16/10/2016.)

