

International Human Rights Law Group

Workshop on the Use of the Inter-American System in the Fight Against Racial Discrimination in Brazil

**Salvador, Bahia, Brazil
October 28–November 1, 2001**

The International Human Rights Law Group is a nonprofit organization of human rights and legal professionals engaged in advocacy, litigation and training around the world. Our mission is to empower local advocates to expand the scope of human rights protections for men and women and to promote broad participation in building human rights standards and procedures at the national, regional and international levels.

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I. Background Information

Brazil has one of the world's most advanced legal frameworks for protecting human rights and combating racial discrimination. Brazil's Constitution contains provisions prohibiting racial discrimination and establishes constitutional status for several international and regional human rights treaties, including the International Convention on the Elimination of all Forms of Racial Discrimination, both the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights, the American Convention, and the Inter-American Convention on the Prevention, Punishment and Eradication of violence against Women. Brazil also has implemented national and local laws that specifically focus on racial discrimination. Nevertheless, racial discrimination remains one of the most engrained and widespread human rights violations in Brazil.

Many factors contribute to this situation. The myth of "racial democracy" in Brazil has permeated state institutions and civil society, and, until recently, has allowed Brazilians to deny the existence of racial discrimination. Thus, invisibility was the main obstacle to overcome in addressing widespread racism, both at the public and private level.

The process of the Third World Conference Against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance was a powerful tool in raising this issue, giving it momentum, and moving it to the center of public discourse. The discussion involved not only government actors and NGOs, but also members of the Brazilian public. The World Conference Against Racism contributed to the Brazilian government's official recognition that racial discrimination exists in Brazil. In addition, the World Conference Against Racism created opportunities for dialogue between civil society and government. The mobilization around the event also emphasized the importance of collaboration among NGOs. The Law Group's project viewed the situation as a special opportunity to promote the use of international human rights law in combating racial discrimination.

II. Workshop Description

The UN workshop demonstrated that racial discrimination was indeed a human rights violation and that it was included in the international system for the protection of human rights. Discussions about the UN Charter and human rights treaties, particularly the International Convention on the Elimination of all Forms of Racial Discrimination, constituted the first step in incorporating international human rights law into the legal strategies for combating racial discrimination.

After being trained on the universal system, the regional system was the logical next step. The second workshop focused on the Inter-American System for the Protection of Human Rights. The goal was to demonstrate the system's capabilities and outline different approaches for using the system to combat racial discrimination. This is particularly appropriate, since Brazil has ratified the American Convention and accepted the jurisdiction of the Inter-American Court of Human Rights.

A. Political Bodies of the OAS

The first part of the workshop was dedicated to the political bodies of the OAS. The session started with a panel on the history of the OAS, the roles of its political bodies, among them the General Assembly and Permanent Council, and the evolution of human rights within the System. The central issue in the debate at the workshop was the increasing role of civil society in

influencing the work of these institutions. The discussion with participants after the panel revolved around the following topics:

- The relationship between these political bodies and the Inter-American Commission and Court;
- The participation of civil society before these bodies, the different circumstances in which NGOs can participate and the types of activities that NGOs can undertake; and
- The current status of the discussion in the General Assembly and the Permanent Council regarding the need for an Inter-American Convention to Prevent, Punish and Eradicate Racism and all other forms of Discrimination and Intolerance.

B. Inter-American Commission and Inter-American Court of Human Rights

The second part of the workshop dealt with the Inter-American Human Rights Commission and Court. This section was used to discuss the roles of the Inter-American Commission and Court, and began with an overview of general principles of international human rights law and the historical development of the Inter-American Commission. This discussion highlighted the Commission's flexibility and ability to continuously integrate new issues, as well as civil society's role in raising and promoting those issues. This was helpful in promoting awareness among the participants of their responsibility to make racial discrimination a prominent issue on the Commission's agenda.

(1) Functions Not Related to Individual Cases

The next part of the workshop dealt with the different functions of the Commission. Initially, the workshop addressed functions not related to individual cases. The workshop focused on the publication of general reports about the human rights situation in specific countries. An important part of this work was a critical analysis of the 1997 Brazil Report and its 2000 follow-up. Given that this report includes a section on racial discrimination, the participants discussed how to get involved in the preparation of such reports. Among other activities, the workshop analyzed the special role that civil society can play in on-site visits. In many cases, as in Brazil, these visits precede the publication of the country report.

Second, we addressed the activities undertaken by Special Rapporteurs, who deal with the human rights situations of special vulnerable groups in the region. This section was particularly interesting to the participants, as many of them had submitted (along with the Law Group) a letter to the Commission in October 2001, asking for an evaluation of the human rights situation of Afro-Latinos. Among the suggestions outlined in this letter was the creation of a new Rapporteur to deal with the situation. A copy of the letter is attached.

(2) Individual Cases

(a) Basic Procedural Information

The first part of this session was dedicated to discussing the procedures for bringing cases before both the Commission and the Court when a state violates a human right protected by an Inter-American norm. Considering that only one participant had experience using the system for an individual case, this introductory session was very helpful in getting lawyers oriented with the procedural aspects of the system. Following the presentations, the session involved step-by-step discussions of specific requirements and procedures, at the domestic and international level. Finally, the session analyzed cases submitted by the participants. The most important aspect of the session was highlighting the need for extreme caution in the domestic aspects of the litigation process. In particular, the work session was very useful in explaining the principle of "exhaustion of internal remedies," as well as its exceptions.

(b) Strategies in Racial Discrimination Cases

The second part of the session was designed to discuss the system's approach to racial discrimination cases, taking into consideration the absence of a special treaty like CERD. The segment began by carefully discussing the standards on equality and non-discrimination developed by the Commission and the Court through Consultative Opinions, cases, resolutions and specific regional instruments containing non-discrimination clauses. In addition, this session discussed the relationship between the universal and regional systems and how both regional bodies apply standards from universal human rights norms. This session was particularly important in fostering discussion about how to integrate the systems of protection against racial discrimination established in international and regional norms.

This segment also used cases brought by the participants with the objective of applying the workshop's lessons to complaints to be submitted before the Commission. This segment also involved the evaluation of three decisions issued by local judges applying constitutional non-discrimination norms. Participants discussed whether such cases might be brought before the Commission and what steps would need to be taken to pursue that result. Since participants' cases were those that they were dealing with in their respective organizations, this work session had two main goals. First, the session was intended to engage the participants in the exercise of incorporating the international standards on racial discrimination into their domestic litigation activities. Accordingly, participants could begin their cases at the local level, with an eye toward how they might approach subsequent litigation in the Inter-American System. Second, the session gave the Law Group's staff an opportunity to identify the obstacles to pursuing racial discrimination cases before local tribunals. This process complemented the diagnosis made by the participants in the first workshop, where they identified the main aspects of the racial discrimination problem in Brazil as limited access to education and labor markets and police violence. Among the obstacles in race discrimination cases before local tribunals, participants highlighted the following:

- Lack of will on the part of the Public Ministry for advancing civil and criminal cases involving racial discrimination;
- The failure of judges to apply the local legal framework (Constitution, national, state and local laws) on racial discrimination; and
- Ignorance of international human rights standards and the jurisprudence of the International Human Rights organisms.

C. Strategic Planning

Finally, the third part of the workshop was to discuss and draft a strategic plan outlining tactics for using the Inter-American System to combat racial discrimination. In keeping with the slogan, "**think politically, act juridically**," participants developed strategies for legal action. These included:

- Using advocacy and litigation as the primary tools in eliminating racial discrimination;
- Prioritizing goals and issues to address, and selecting leading cases that address patterns of systematic racial discrimination;
- Promoting the incorporation and use of international human rights law by domestic courts;
- Using the Inter-American Commission to promote changes of policies, practices and norms that prevent Brazilian institutions from guaranteeing equal rights for all;
- Promoting collective action among Afro-Brazilian NGOs so that individual actions have increased impact;
- Forging alliances between Afro-Brazilian NGOs and other sectors of civil society, i.e. the human rights movement; and
- Establishing a constructive relationship between Afro-Brazilian NGOs and state institutions.

D. Follow-Up

Follow-up is crucial because the Law Group's workshops constitute virtually the only setting for bringing together representatives of Afro-Brazilian NGOs so that they can share experiences and discuss collective actions. Accordingly, the Law Group proposed two very concrete activities applying the knowledge gained from the workshop.

The first activity involved the collection of information and the elaboration of a document about racial discrimination in Brazil for submission to the OAS' Committee of Juridical and Political Affairs. This body is part of the Permanent Council of the OAS and during its March 2002 meeting, it will analyze the implications of the World Conference Against Racism for the region. Specifically, this meeting will address the Commission's report to the Permanent Council, and analyze the possibility of adopting an Inter-American Convention Against Racism. Whether such a Convention is feasible or would be effective will be a major focus of discussion. The activity planned in this session will be coordinated by representatives of three organizations: Fala Preta, SOS Racism and NEN.

The second activity is the follow-up to the letter submitted to the Commission in October. This involves drafting a document regarding the human rights situation of Afro-Brazilians at a hearing before the Commission during its March 2002 sessions. In addition, the activity would involve asking the Commission to institute special measures focusing on Afro-Latinos. This activity will be coordinated by the representatives of Geledes, Escritorio Zumbi Palmares and Unegro.

The discussion surrounding these activities also generated constructive dialogue about political differences among the Afro-Brazilian NGOs and the need to overcome these long-standing differences in order to act collectively.

III. Participants

A central aspect of the training project was to work alongside a particular group of Afro-Brazilian lawyers who were carefully selected according to predetermined criteria. In reviewing applications, the Law Group considered the following factors: affiliation with Afro-Brazilian NGOs or lawyers offering pro-bono services to victims of racial discrimination; experience in litigation of racial discrimination cases; and regional and gender balance. The Law Group selected eighteen representatives of Afro-Brazilian human rights and civil society organizations from throughout the country and included representatives from prominent organizations of the "black movement" as well as representatives from less well-known organizations. All major areas of Brazil were represented, with a significant number of women human rights activists attending. The majority of the participants belong to a nationwide network against racism. A list of participants and participant profiles is attached.

IV. Methodology and Participant Response

The Law Group used the same methodology that was applied in the first workshop. The beginning of the first session was used to supplement the agenda previously sent to the participants, in order to better reflect the participants' opinions and needs.

One of the objectives of the workshop was to demystify the Inter-American Commission of Human Rights, which is often perceived as inaccessible. Professor Juan Méndez, the Vice President of the Commission and Rapporteur on Brazil, served as a panelist during the first two days of the workshop. His participation was very valuable and gave participants an opportunity to

establish a relationship with a prominent representative of the body. Some participants gave Professor Méndez information related to particular issues linked with racial discrimination in Brazil and also discussed with him the needs of the Afro-Brazilian NGOs.

Participants responded prior to the workshop by submitting cases, but feedback throughout the workshop was also very active. As in the first workshop, the Law Group also sought to measure the usefulness of this workshop through a final evaluation. From the final evaluations, it was clear that participants most appreciated the methodology and teaching style of the workshop, particularly for those sessions involving the discussion of cases. Participants also complemented the Law Group's selection of materials and the Law Group's ability to gather together a diverse and qualified group of activists. There was broad consensus among the participants that the workshop on the Inter-American System was a great success. Participants appreciated having practical access to the system and learning about its willingness to address racial discrimination. Many participants expressed that they would use international human rights law in their day-to-day work.

V. Outcomes

Although it is premature to talk about outcomes of the last workshop, it is important to highlight a number of activities undertaken by the participants and the Law Group in relation to this project.

Five workshop participants attended the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, between August 31 and September 8, 2001. Creuza Maria de Oliveira, an Afro-Brazilian woman who serves as the President of the National Domestic Workers Union, participated in a special event called *Voices, A Special Forum on Comparative Experience of Racism*. (See attached booklet.) Rodney Da Silva, of Geledes, was accepted to participate in the four-month Human Rights Advocates Training Program at Columbia University. The Law Group encouraged Mr. Da Silva to apply for this program and Gay MacDougall provided him with a recommendation. Edinaldo Cesar Santos Junior was accepted for a three-month internship with the Inter-American Court of Human Rights, based in San José, Costa Rica. Flavia Helena de Lima participated in the hearings during the sessions of the Inter-American Commission held last November. Finally, as we mentioned before, many NGOs were involved in the letter submitted to the Inter-American Commission, which became one of the follow up activities for the workshop.

VI. Related Activities

Mobilization of the Afro-Brazilian movement in the advocacy efforts to combat racial discrimination was a important component of the project undertaken by the Law Group. The workshop's opening session reflected this vision and was useful in bringing together different members of the community in the state of Bahia to discuss common strategies to implement in the future. Panelists in the opening conference, "Racial discrimination and the Inter-American System," included: Livaldo Brito, Special Prosecutor Against Racial Discrimination in the State of Bahia; Paulo da Anunciação, Congressman of the State of Bahia and President of the Special Commission for Afro-Descendent Issues; and Professor Juan Méndez, Vice President of the Inter-American Commission and Rapporteur of Brazil.

The Law Group facilitated individual meetings among participants and other persons who work on racial discrimination issues, and Professor Méndez offered his perspectives on future work with the Inter-American Commission.

The Law Group staff took advantage of extra time during workshops to talk with participants about the vision and needs of their NGOs in combating racial discrimination. The Law Group also solicited their opinions concerning what they consider to be the most appropriate work of the Law Group in Brazil. Also, the Law Group had the opportunity to discuss future areas of work with representative of the Ford Foundation.

VII. Conclusion

The second workshop fulfilled the Law Group's expectations. In addition to introducing participants to the Inter-American System, the workshop strengthened the Law Group's relationships with the individual participants and their organizations. The workshop also allowed the Law Group to identify possible partners for the next stage of the Law Group's work in Brazil. Specifically, the Law Group has identified two organizations that are very interested in bringing cases before the Inter-American Commission.

In its three years of work in Brazil, the Law Group has helped to incorporate the international human rights approach into the Afro-Brazilian organizations' agendas. The Law Group played an important role in integrating Afro-Brazilian NGOs into the process of the World Conference Against Racism. Those efforts, in addition to the two training workshops held for Afro-Brazilian lawyers from various organizations, have made the Law Group well situated to continue working with Afro-Brazilian organizations. Partnerships with particular organizations have prompted them to incorporate international human rights law into their activities to combat racial discrimination. These partnerships will facilitate the institutionalization of the legal advocacy approach into the work of the organizations and will make them more effective advocates at the domestic and international levels. At the same time, these partnerships will allow the Law Group's presence in Brazil to remain constant and have greater impact on other NGOs working to combat racial discrimination in Brazil.

ANNEX 1

List of Participants

International Human Rights Law Group
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ANNEX 2

Profile of Participants

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Edson Robson Alves dos Santos has been an activist in the black movement since 1981, when he began to participate in a black student movement, and later became more involved in union and political organizations of the movement. He left a job with the Brazilian Bar Association to work with CEERT, a multidisciplinary NGO addressing racial discrimination in Brazil. Edson is a strong proponent of adding action and advocacy to the theoretical discussion of racial discrimination.



Sidney de Paula Oliveira has been a legal consultant for CEERT since 1998 and is involved with the organization's public education efforts, offering trainings and workshops on gender, race and human rights. Sidney is also involved with the organization's "Law and Racial Relations" program, which seeks to prepare private law firms to effectively work with issues of racial discrimination.

Deise Benedito has been an activist in the black women's movement since the age of fifteen. Deise currently works for Fala Preta, a black women's organization that aims to protect and promote the human rights of young people, especially through combating racial and gender discrimination, and focuses on health issues. She is actively involved with the organization's work on public policies, self-help groups for black women, and trainings for black youth. Additionally, Deise has participated in several international meetings, seminars and conferences, including the World Conference on Human Rights in Vienna in 1993. Deise's particular expertise is on discrimination in the prison system and has been a consultant to the Human Rights Committee of the Municipal and State Assembly in São Paulo in their preparation of public policies related to this issue.



Rodney Jericó da Silva has been a lawyer for Geledes, a women's organization focusing on race issues, since 1997, when he interned there as a law student. Rodney is most heavily involved in the organization's SOS Racism project, which gives legal assistance and representation to victims of racial discrimination. He is also involved with a program that offers professional training for youth. Rodney would like to incorporate international law into the work that he and Geledes are doing.

Walmir dos Santos is the Legal Program Coordinator of CEAP, where he has worked since starting as a law student in 1996. CEAP is an NGO that arose out of another institution working with orphaned children and has morphed into one that focuses on minorities and racial discrimination. Walmir first worked as CEAP's representative in the Human Rights National Movement and devoted most of his work to a program which helped poor black youth to attend universities. Currently, Walmir works with CEAP's Insurgent Legal Action of Combating Racism project.



Gustavo Proença works for ENZP, a legal-political organization that acts using various legal instruments for social transformation and specifically for combating racism and racial discrimination. ENZP works closely with the Federal Congress on racial themes and gives trainings to lawyers, law students, and other professionals that want to increase their knowledge of racial issues and the law. Gustavo was very politically active in the student movement in Rio de Janeiro in both high school and the university, and has experience working with unions and with youth. Gustavo worked for a number of years at CEAP, and currently is ENZP's Project Coordinator, where he has started to implement international legal instruments in his work.

Lelha Canedo gives legal assistance to Criola's clients on issues of violence, family and child welfare. She also teaches a class on "Legal Prosecutors in the Community." Lelha represents Criola in a variety of seminars and conferences on human rights and racial discrimination. She has previous experiences working on gender issues, particularly with women that are victims of domestic violence, and teaching classes in poor communities.



Alda Cristina Alves de Oliveira is a lawyer for the SOS Racism project developed by the Nazareth Cerqueira Reference Center Against Racism, which implements public policies in Afro-descendent communities to promote the improvement in the quality of life of Afro-descendants, indigenous peoples, and other ethnic minorities. The SOS Racism project focuses specifically on racial discrimination and prosecutes related offenders.

Sérgio Luiz da Silva de Abreu has been active in the black movement since joining the Brazilian Committee of Solidarity with the people of South Africa and Namibia in 1979 to fight against South African apartheid and the release of Nelson Mandela. Today Sérgio works for the IPCN, which conducts researches black culture and publishes papers about their findings. Sérgio also gives trainings to youth and lawyers, and is working on a book about racial issues. A key focus of their work is on racism and racial discrimination in the education system and the workplace.





Celi Santos is a lawyer, writer, member of the Criminal Council, and Executive Secretary of the Network against Racism in Brazil. The Network Against Racism has the goal of effectively combating racial discrimination in Brazil through legal and political mechanisms. Information sharing is the centerpiece of their work. It also strives to correct negative concepts about blacks, including in the judiciary, executive and legislative powers.

André Luiz Nunes da Silva is both a private attorney and a member of ENZP. André uses legal mechanisms to address racial discrimination in his community and defends victims in both criminal and civil cases. He is in the process of helping to create an SOS Racism program in Curitiba that he believes will be fundamental to combating racism in Paraná.



José Roberto Camargo de Souza works for ICCAB, which works with both urban and rural Afro-Brazilian communities on projects related to education, culture, social assistance, Afro-Brazilian history, and the SOS Racism project. José has been involved in the black movement since 1986 when he began to study Afro-Brazilian history and racism. Currently, he is the coordinator of ICCAB's SOS Racism project and member of the Network Against Racism in Brazil.

João Cândido de Melo Sobrinho is the coordinator of a legal SOS Racism program for Djumbay. He has also developed a project dedicated to education and public policy that incorporates racial themes from a political perspective. This project has resulted in a lawsuit against the publisher of a popular schoolbook that is racially discriminatory.



Edinaldo César Santos Júnior is a lawyer that has defended many victims of racial discrimination. He currently works with both UNEGRO and the Public Ministry in bring these cases to court. Edinaldo is in the process of trying to implement an SOS Racism Program within UNEGRO to address both public and private cases of discrimination and would like to eventually bring cases to the international sphere as well. He is a member of the Network Against Racism in Brazil.

Olivete de Oliveira Marques became involved with combating racism after her many years of experience working with gender issues, and particularly domestic violence, showed that the majority of victims of domestic violence are black. Olivete works with the Racial Public Prosecutor in Bahia and helps to litigate cases of racial discrimination. She hopes to begin working with international cases in the near future.



Abrão Soares dos Santos is the president of the Human Rights Commission of Santa Luzia, which works with CONEN to address issues of racial discrimination, particularly police violence, against individuals and in prisons. He has worked as a consultant to the black movement and is currently finishing and MA in Human Rights.

Flávia Helena de Lima has worked on issues of racism and human rights since 1995 as a law student. She has worked with Geledes' SOS Racism project, and currently works for NEN in their Combating Racism in Education, SOS Racism, and Training of Community Leaders programs.



Valdenice de Oliveira Santos works with issues of race, gender and citizenship from a human rights perspective. Her work with SACI has involved mobilization and capacity-building of the Afro-descendent community in Sergipe. Valdenice is a lawyer that works in their legal program against racial discrimination and teaches courses on human rights and laws against racism to community leaders.

ANNEX 3

Profile of Facilitators

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Juan Méndez is Vice President of the Inter-American Commission on Human Rights of the Organization of American States (OAS) and Director of the Center for Civil and Human Rights of Notre Dame School of Law in Notre Dame, Indiana, USA. As a human rights activist in Argentina, he was tortured and imprisoned for one year during the military dictatorship in his country until Amnesty International included him in their “Prisoners of Conscience” campaign. In 1978 he joined the Lawyers’ Committee for Civil Rights Under the Law, in Washington, D.C. In 1982 the then young Human Rights Watch invited him to initiate their program in the Americas and open an office in Washington, D.C. Professor Méndez worked with Human Rights Watch for fifteen years, concentrating his efforts on cases of human rights and helping to build one of the most respected human rights organizations in the world. In 1994 he became General Counsel of Human Rights Watch. Since 1996, Professor Méndez has been the Executive Director of the Inter-American Institute of Human Rights, in Costa Rica.

Liliana Tojo is currently the Director of the Brazil office of the Center for Justice and International Law (CEJIL/Brazil), located in Rio de Janeiro. She was previously a consultant of UNIFEM and the Inter-American Institute of Human Rights in the discussions around the drafting of the UN Optional Protocol for the Convention for the Elimination of All Forms of Discrimination Against Women, and was a member of the Latin America and the Caribbean Committee for the Defense of Women’s Rights in the preparatory processes of the Fourth World Conference on Women (Beijing, 1995). She has published works on gender and human rights and on the perspective of gender in the drafting of public policies. She is a lawyer with a postgraduate degree specializing in Gender Studies (University of Buenos Aires).

Felipe González has been a consultant to the Law Group’s program in Latin America since 1991. He is a professor of International Human Rights Law and Philosophy of Law at the University Diego Portales Law School in Chile. Professor Gonzalez has written more than thirty articles on human rights and a number of books on the protection of rights and the promotion of civil society including “Equality, freedom of expression and public interest” (2000). Professor Gonzalez is fluent in Spanish, English and Portuguese.

Mr. Gonzalez has worked extensively for the Law Group in Guatemala, Nicaragua and Paraguay, and has argued cases before the Inter-American Commission and Court of Human Rights. He has been involved in lobbying efforts at the Organization of American States (OAS) political organs, playing a significant role in the recent adoption of a consultative status for NGOs at the OAS. He also had an active participation at the preparation of the Inter-American Convention on the Forced Disappearances of Persons. In addition, Mr. Gonzalez was a Tinker Visiting Professor at the University of Wisconsin Law School in 2000.

Gastón Chillier joined the International Human Rights Law Group as Latin America Program Coordinator in May 2001. Prior to joining the Law Group, Mr. Chillier worked with the Center of Social and Legal Studies (CELS) in Argentina where he litigated cases related to institutional violence, discrimination against the foreign-born, and the rights of freedom of expression and access to information. Through his work at CELS, Mr. Chillier was involved in advocacy and litigation for the promotion of human rights at the local, regional and international levels. He has

also been a strong advocate for promoting progressive change in the relationship between the state and civil society in order to further the protection of individual and collective rights. Most recently, Mr. Chiller received his LL.M in International Human Rights Law from the University of Notre Dame, where he conducted research for Professor Juan Mendez, director of the Center of Civil and Human Rights. Mr. Chiller also received a J.D. in Criminal Law from the University of Buenos Aires.

Maria do Carmo Reboucas da Cruz joined the International Human Rights Law Group as Program Associate for our Brazil project in February 2001. Recently, Ms. Cruz worked as Legal Program Director for Escritório Nacional Zumbi Palmares, an organization in Bahia, Brazil committed to combating racial discrimination, where she organized human rights and legal training workshops for community leaders and provided legal defense for victims of racial discrimination. Ms. Cruz has acted as Legal Counsel for several Brazilian human rights organizations and helped to introduce a human rights framework to the advocacy efforts of OYA, an educational organization that works with community leaders in Bahia. Ms. Cruz received her Law Degree from Universidade Católica do Salvador in 1993 and completed her graduate work in legal studies and human rights at UNEB. She is Secretary of the Brazilian Association of Women Legal Professionals and a member of the Racial Discrimination Network in Brazil.

Marisa Ferri joined the International Human Rights Law Group as Program Assistant for the Americas in October 2000. Since joining the Law Group, Ms. Ferri has been responsible for helping to implement our new program in Brazil addressing racial discrimination. She is also involved with preparations for the upcoming World Conference Against Racism and helped to plan our Roundtable on Race and Poverty in the Americas that took place during the Regional Preparatory Conference for the Americas in Santiago, Chile. Prior to joining the Law Group, Ms. Ferri taught English as a volunteer with Capuchin Franciscan Volunteer Corps in Bluefields, Nicaragua. She was also a volunteer with Capuchin Franciscan Volunteer Corps during 1998-1999, where she worked within the Latino community in Washington, DC as an Immigration Assistant at the Spanish Catholic Center. Ms. Ferri is co-author of an article, "Regionalism, Cooperation and Economic Prosperity: Effective Autonomy in Emilia-Romagna," which was published in 1999 in *Mediterranean Quarterly*. Ms. Ferri received an honors Bachelor of Arts Degree in Political Science from Xavier University in 1998.

ANNEX 4

Workshop Agenda

International Human Rights Law Group
Workshop on the Use of the Inter-American System in the
Fight Against Racial Discrimination in Brazil
October 28 – November 1, 2001
Salvador, Bahia, Brazil

Sunday, October 28

7:00 pm CONFERENCE:
Racial Discrimination and the Inter-American System. Perspectives
Speakers: Juan Méndez
 Lidivaldo Brito
 Paulo Anunciação

 Discussion
 Reception

Monday, October 29

9:00 am PANEL:
OAS – Political Bodies, States and Human Rights
Organization and structure. General Assembly. Permanent Council.
Civil Society: Participation, consultative status.
Discussion and discussion themes

1:00 pm LUNCH

2:30 pm Inter-American Commission on Human Rights and Inter-American Court of
Human Rights
Brief history; Composition and mandate; American Convention; San Salvador
Protocol

 Inter-American Commission on Human Rights
 Function; On-site visits; Rapporteurs and Reports

Tuesday, October 30

9:00 am Inter-American Commission on Human Rights
Function; Individual cases:
Requirements and procedure; Criteria of admissibility, and proof. Preventative
measures.
Art. 50 and 51
Criteria for bring cases to the Court. Participation of victims.

1:00 pm LUNCH

2:30 pm Inter-American Court of Human Rights
Function: Litigation of individual cases
Consultative Opinion

Wednesday, October 31

- 9:00 am Inter-American System and Racial Discrimination
Overview of the issue of discrimination in the sphere of the OAS
Example of groups that are treated with particular attention:
Women: Belém do Para Convention. Disabled persons: Inter-American
Convention for the Elimination of all Forms of Discrimination Against Persons
with Disabilities. Project of the American Declaration on Indigenous Peoples;
Special Rapporteurs on Indigenous peoples, women, children and migrants.
- 1:00 pm LUNCH
- 2:30 pm Overview of the issue of racial discrimination in the sphere of the OAS
Jurisprudence: Analysis of cases of other countries; how to use existing
jurisprudence; Individual cases: Padrão, William Andrews. Use of the reports on
Brazil.

Thursday, November 1

- 9:00 am STRATEGIES – Follow-up
Inter-American Commission on Human Rights: Accusations in individual cases.
Strategies for obtaining the inclusion of Afro-descendants in the agenda of the
ICHR.

General Assembly and Permanent Council:
Inter-American Convention Against Racial Discrimination;
Follow-up and strategies.

Speakers and Facilitators: Juan Méndez
Felipe Gonzalez
Liliana Tojo
Gastón Chillier

Organization: Maria do Carmo Cruz
Marisa Ferri

ANNEX 5

List of Materials Used

International Human Rights Law Group
Workshop on the Use of the Inter-American System in the
Fight Against Racial Discrimination in Brazil
October 28 – November 1, 2001
Salvador, Bahia, Brazil

Basic Documents Pertaining to Human Rights in the Inter-American System

American Declaration of the Rights and Duties of Man

American Convention on Human Rights

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belém do Pará”

Draft Declaration on the Rights of Indigenous Peoples

Rules of Procedure of the Inter-American Commission on Human Rights

Statute of the Inter-American Commission on Human Rights

Rules of Procedure of the Inter-American Court of Human Rights

Statute of the Inter-American Court of Human Rights

Flowchart of the Inter-American Commission on Human Rights

Reports and Jurisprudence Pertaining to Human Rights in the Inter-American System

The OAS and Human Rights after the Advent of Civil Governments: Expectations

The Inter-American Court of Human Rights: Procedural and Structural Aspects of its Functioning

Case of Gustavo Carranza – Nº 30/97

Case of Santiago Marzioni – Nº 39/96

Case of Maria da Penha – Nº 54/01

Case of Maria Eugênia – Nº 04/01

Case of William Andrews – Nº 57/96

Brazil Follow-up Report – 2000

Colombia Follow-up Report – 1999
Ecuador Follow-up Report – 1999

Considerations Regarding the Compatibility of Affirmative Action measures designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination

Consultant Opinion N° 04 of the Inter-American Court of Human Rights

Law N° 288/96 of Colombia – Regarding International Decisions on Human Rights Implementation in Terms of Reparation

Racial Discrimination Decisions by Brazilian Courts

Case N° 98.0018334-5

Case N° 96.00002030-2

Case N° 141.820-3

ANNEX 6

Letter to the Inter-American Commission on Human Rights

International Human Rights Law Group
Workshop on the Use of the Inter-American System in the
Fight Against Racial Discrimination in Brazil
October 28 – November 1, 2001
Salvador, Bahia, Brazil

2 de Octubre del 2001

Sr. Presidente de la Comisión Interamericana de
Derechos Humanos
Decano Claudio Grosman
Washington, D.C. 20006

Nos dirigimos respetuosamente a usted debido a que hemos tomado conocimiento que en la próxima sesión de la Comisión Interamericana de Derechos Humanos (en adelante, Comisión), a celebrarse entre el 8 y el 19 de Octubre, la Secretaría Ejecutiva ha incluido en la agenda la problemática de la discriminación racial. Consideramos que esta es una buena oportunidad para que la Comisión profundice su labor en relación con las personas afrodescendientes. Con este objetivo, las organizaciones no gubernamentales abajo firmantes sometemos a su consideración información acerca de la situación de uno de los grupos de la región mas afectado por prácticas racistas. Al mismo tiempo, nos permitiremos sugerir algunas alternativas que podrían ser discutidas por la Comisión con el fin de garantizar el respeto y la protección de los derechos humanos de este grupo. Creemos que esta es una gran ocasión para iniciar un canal de dialogo mediante el cual podamos cooperar con esta tarea desarrollada por la Comisión. Por último, queremos expresar nuestra confianza en la Comisión en tanto organismo clave del sistema para la protección de los derechos humanos de todos los habitantes de la región.

A pesar de que existen escasos informes sobre la diáspora de las comunidades africanas hacia América Latina como consecuencia del tráfico de esclavos, sus números son elocuentes. Un informe del Banco Interamericano de Desarrollo concluye que de una población total aproximada de 400 millones de personas en América Latina, entre 100 y 150 millones pueden rastrear su genealogía en dicha diáspora. Esta cifra no incluye las poblaciones negras más visibles en América del Norte y la parte del Caribe que no hablan español. No obstante estas cifras significantes, las comunidades negras de las Américas son frecuentemente olvidadas e ignoradas, y pocas han logrado emerger en los sectores políticos y económicos de la región. Durante los 400 años de historia de la esclavitud en las Américas, entre diez y cincuenta millones de africanos fueron transportados a este continente, produciendo la migración forzada más numerosa de los tiempos modernos. Este dato es reconocido, sin discusión, en la actualidad. Hoy, casi 500 años después del comienzo del tráfico de esclavos en el continente y a pesar de la vigencia de estados democráticos de derecho en casi todos los países que lo componen, la mayoría de los afro latinos todavía padecen el legado jurídico, político y económico de aquella práctica aberrante. Debido a los prejuicios preexistentes, las prácticas discriminatorias por raza se manifiestan en una variedad de interacciones sociales sutiles que, a menudo, son consolidadas por un comportamiento social ampliamente aceptado.

Los gobiernos del mundo han reconocido esta realidad en la reciente Conferencia Mundial Contra el Racismo, la Discriminación Racial, Xenofobia y Formas Conexas de Intolerancia. Efectivamente, la Conferencia Mundial ha declarado que la esclavitud y la trata de esclavos constituyen una de las mayores fuentes y manifestaciones de racismo, indicando que

las personas afrodescendientes continúan siendo víctimas de sus consecuencias.¹ La Conferencia Mundial sostuvo que los afrodescendientes deben ser tratados con justicia y respeto por su dignidad reconociéndoles su derecho a participar libremente y en iguales condiciones en la vida política, social, económica y cultural.

La actual situación de los derechos humanos para la gente de descendencia africana en las Américas es grave y requiere atención particular. En Colombia, más de 1.8 millones de Afrocolombianos han sido desplazados de sus casas, fincas, y medios de subsistencia a causa de la ejecución de programas de erradicación de cultivos de drogas. El caso de Brasil es particularmente grave según se desprende del informe elaborado por la Comisión en el año 1997. A pesar de que más de la mitad de la población brasileña es negra, solamente hubo 11 congresistas afrobrasileros, de un total de 513 en el año 1995.² Esta disparidad se refleja también en el acceso a la educación y la distribución de riqueza en el país. En 1995 el analfabetismo entre los afrobrasileros alcanzó el 30%. Esto puede atribuirse directamente, tanto a la falta de acceso a la educación formal como al ausentismo frecuente debido a que, a menudo, los afrobrasileros se ven forzados a abandonar la escuela para trabajar y apoyar económicamente a sus familias.

En los EEUU, prácticas corrientes de la justicia criminal continúan impactando desproporcionadamente en la comunidad Afroamericana. A pesar de que este grupo constituye solo el 12% de la población nacional de los adultos, las personas negras integran el 49.4% de la población carcelaria, e igualmente, un número desproporcionado -en relación con las personas blancas- se encuentra en el “corredor de muerte”. La desigualdad en el acceso a la salud y las oportunidades de empleo también confirman la relación existente entre racismo y pobreza que afecta a la mayoría de los negros que viven en las Américas. Con el objetivo de superar los desafíos económicos, políticos y sociales en sus países, son muchos los negros en las Américas -particularmente las mujeres- que se ven obligados a emigrar a otros países en la búsqueda de empleo, seguridad y un mejor bienestar. En estos casos, su condición de trabajadores migrantes -muchas veces ilegales- los hace más vulnerables a los abusos y violaciones de sus derechos fundamentales. Estos datos son solo un ejemplo demostrativo de la realidad de la situación de los derechos humanos de los afrodescendientes que habitan el continente.

En el mismo sentido que la Conferencia Mundial, la Conferencia Preparatoria de las Américas contra el Racismo, la Discriminación Racial, la Xenofobia y las Formas Conexas de Intolerancia (en adelante, Prep Com Regional), declaró que los Afrodescendientes, junto a las mujeres, los indígenas y los migrantes son las víctimas principales de las prácticas discriminatorias por raza y discriminación múltiple en la región.³ También acordaron que deben promoverse programas, políticas y estrategias específicos para asegurar efectivamente los derechos culturales, económicos, y sociales de las personas afrodescendientes, mujeres, pueblos indígenas y migrantes.⁴ En particular, los gobiernos recomendaron a la Comisión que ponga atención especial en el problema del racismo y la discriminación racial y solicitaron a este órgano la elaboración de reglas internacionales complementarias para fortalecer la legislación internacional contra el racismo.⁵

La Asamblea General de la OEA, celebrada en Costa Rica en el mes de junio, también ha declarado la necesidad de profundizar el trabajo de todos los organismos que la componen con el fin de eliminar la discriminación racial de la región. Esta Asamblea recomendó a la

¹ Conferencia Mundial Contra el Racismo, la Discriminación Racial, Xenofobia y Formas Conexas de Intolerancia, Durban, 31 de Agosto-8 de Setiembre.

² Comisión Interamericana de los Derechos Humanos – Informe sobre Brasil, 1997, Capítulo IX, párra. 4.

³ WCR/RCONF/SANT/2000/Rev.4, párrafos 11 y 54.

⁴ Idem, párrafo 17.

⁵ Idem, párrafos 221 y 222.

Comisión que dentro del ámbito de los instrumentos jurídicos interamericanos vigentes, continúe prestando especial atención al tema de la discriminación racial.⁶

El Sistema Interamericano ha reconocido la gravedad de la presente situación y, durante de los últimos cinco años, ha desarrollado un papel pionero en la comunidad internacional para reclamar más atención a la situación de los afrodescendientes en las Américas.⁷ La Comisión constituye el primer órgano del sistema encargado de la promoción y protección de los derechos humanos en la región. Para cumplir con su mandato y en respuesta a las violaciones sistemáticas de los derechos humanos padecidos por ciertos sectores vulnerables la Comisión ha establecido medidas como la creación de Relatorías Especiales para los pueblos indígenas, los migrantes, los niños y mujeres.

Teniendo en cuenta lo declarado por la Conferencia Mundial, la Prep Com Regional respecto a las personas afrodescendientes, consideramos que la Comisión está en condiciones de profundizar el trabajo actualmente desarrollado para promover y proteger los derechos humanos de este grupo. Con objetivo, nos permitimos sugerir algunas alternativas para ser evaluadas por la Comisión a la hora de tomar una determinación:

1. Elaboración de un diagnóstico sobre la situación de los derechos humanos de los afrodescendientes de la región.
2. Creación de una relatoria general sobre discriminación racial que incorpore el tema afrodescendiente.
3. Creación de una Relatoria Especial sobre afrodescendientes.
4. Incorporación del corte racial, particularmente relacionado con los afrodescendientes, en algunas de las relatorias especiales ya existentes como la de Mujeres, Niños, Migrantes, Libertad de Expresión.
5. Incorporación del componente étnico afrodescendiente en algunas actividades de la Comisión como los informes sobre la situación de los derechos humanos en los países o las visitas *in loco*.

Somos concientes que la decisión de una medida en particular puede demandar un diagnóstico más profundo acerca de las ventajas y desventajas de cada una de las medidas propuestas para la protección de los derechos humanos de los afrodescendientes de la región. Sin embargo, en tanto no existen dudas sobre la necesidad de adoptar alguna medida especial, estas propuestas son realizadas con el espíritu de continuar el dialogo con la Honorable Comisión para contribuir la elección y ejecución de la alternativa más eficaz.

Para mayor información contactar: Gastón Chillier, Programa de América Latina, International Human Rights Law Group, Tel. (202) 822-4600, Fax. (202) 822-4606, correo electrónico, Gastonc@hrlawgroup.org.

Aprovechamos la oportunidad para saludarlo muy respetuosamente,

⁶ OEA/Ser.P, AG/Res. 1774 (XXXI-0/01). Esta resolución encargó al Consejo Permanente la consideración de la necesidad de una convención Interamericana para prevenir, sancionar y erradicar el racismo y toda forma de discriminación e intolerancia.

⁷ En 1997 la Comisión publicó informes sobre la situación de los Derechos Humanos en Brasil y Ecuador, e incluyó capítulos específicos sobre el tratamiento de Afrodescendientes. En 1999 la Comisión publicó informes sobre la situación de los Derechos Humanos en Colombia y la Republica Dominicana e incluyó capítulos sobre el tratamiento de los Afrocolombianos y Afrohaitianos en la Republica Dominicana respectivamente. Simultaneamente, en el reciente caso Williams Andrews sobre pena de muerte en los EEUU, la Comisión encontró que hubo una violación del derecho de la vida y debido proceso en la administración de la justicia basada en discriminación racial.

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