



Perú

**SHADOW REPORT TO THE UNITED NATIONS COMMITTEE ON THE  
ELIMINATION OF RACIAL DISCRIMINATION (CERD) - PERU**

## SHADOW REPORT TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD) - PERU<sup>1</sup>

The report on the implementation of the Convention for the Elimination of All Forms of Racial Discrimination, CERD, ratified by Peru on 29 September 1971, is presented by the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM-PERU).

This report will address the main elements of concern on the situation in terms of expressions of racism and racial discrimination in Peru, especially highlighting the situation of indigenous and Afro-Peruvian women.

### **Article 1: RIGHT TO NON-DISCRIMINATION**

The 1993 Constitution of Peru recognizes the right to equality before the law, in the context of fundamental rights, and that no person shall be discriminated against on the grounds of origin, race, sex, language, religion, opinion, economic status or other grounds. Thus, the Peruvian legal system recognizes race as a condition that can lead to discrimination, and that it is particularly contrary to the system.

Other regulations, such as the Supreme Decree N° 027-2007-PCM that defines and establishes the mandatory National Policies for Government entities, include relevant aspects of equality between men and women<sup>2</sup> that should be attained through the Ministry of Women and Social Development (MIMDES)<sup>3</sup>. These objectives are designed to contribute to equality between women and men in various aspects. The S.D. does not specify what actions will be undertaken to achieve these objectives and it does not assign specific responsibilities to the various sectors of the state for the design and implementation of such policies.

The recognition of non-discrimination based on race is also stated in the National Plan for Gender Equality -PLANIG<sup>4</sup>. It assumes the intercultural approach that enables respectful dialogue between different cultures and appropriate treatment of diversity and relationships between different cultural groups living in the same space, seeking societies that are increasingly pluralistic, so as to recover from different cultural contexts, all those expressions that are based on respect and

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<sup>2</sup> Among them, 2.1 Promote equality of opportunity between men and women in public policies, national plans and practices of the State and in the recruitment of civil servants and access to public office. 2.2. Promote in society, in their actions and communications, the adoption of equitable values, practices, attitudes, and behaviors between men and women, to ensure the right to non-discrimination of women and the elimination of family and sexual violence. 2.3. Ensure full implementation of women's civil, political, economic, social, and cultural rights. 2.4 Promote women's access to positions of power and decision-making in society and in public administration, and 2.5 Address, with priority, families in extreme poverty, poverty, or social risk, and families headed by women. See: [http://www.peru.gob.pe/docs/PLANES/13764/PLAN\\_13764\\_2013\\_DS027\\_2007PCM.pdf](http://www.peru.gob.pe/docs/PLANES/13764/PLAN_13764_2013_DS027_2007PCM.pdf)

<sup>3</sup> Currently Ministry of Women and Vulnerable Populations - MIMP.

<sup>4</sup> PLANIG 2012 – 2017, Ministry of Women and Vulnerable Populations – MIMP.

tolerance for diversity. It assumes the respect for multicultural, multilingual, and multiethnic reality, promoting social inclusion, dialogue, and exchange based on equity, equality, democracy, and mutual benefit.

### **AMAZON INDIGENOUS POPULATION**

1. Indigenous, especially Amazonian, peoples have the highest poverty rates and the lowest levels of state services. Likewise, in the context of cultural pluralism, international and national laws recognize a number of collective rights for indigenous peoples, and individual rights for their members, which the states should promote and guarantee<sup>5</sup>.
2. In addition, through the ratification of ILO Convention 169 "*Convention 169 on Indigenous and Tribal Peoples in Independent Countries*", the Peruvian State is committed to the formulation and implementation of public policies for the respect and recognition of the rights of indigenous population. However, different reports from civil society and the Ombudsman's reports identify that there are no national policies that guarantee these rights. Although the Ministry of Culture<sup>6</sup> was created, and through its Vice Ministry of Intercultural Affairs, has been developing actions to improve their situation, these are still insufficient insofar as the gaps of inequality and exclusion persist.
3. The Peruvian Amazon region covers 62% of the country and is home to around 42 ethnic groups belonging to 12 linguistic families (930 indigenous communities). However, the Atlas "*Amazonía Peruana: Comunidades Indígenas, Conocimientos y Tierras Tituladas*" (Peruvian Amazon: Indigenous Communities, Knowledge and Land Titled)<sup>7</sup> indicates that for 1997 eleven ethnic groups had become, physically or culturally, extinguished, while eighteen were endangered by having less than 225 members. These figures show the current reality of Amazonian native communities in the country as well as the inconsistency of the results with the objectives established by the conception of an economically sustainable development.
4. Amazon Indigenous communities have been historically excluded from the formulation of government policies, which are often designed without considering an intercultural perspective. The rare and vulnerable initiatives aimed at this population have had as their main focus the protection of their collective rights, obscuring the recognition and exercise of individual rights. This affects with greater intensity indigenous women, who have few and weak mechanisms to exercise and claim compensation for their rights that are violated<sup>8</sup>.

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<sup>5</sup> The Constitution of Peru (1993) recognizes the cultural identity (Art. 89), customary law and special jurisdiction (Art. 149), among other rights of peasant and indigenous communities, thus incorporating inputs from two framework laws: Act 22175 "Law on Native Communities and Agrarian Development in the Jungle and High Jungle", approved by Decree (1978) and Act 24656 "General Law on Rural Communities" (1987). Also in 1994, Congress ratified "Convention 169 on Indigenous and Tribal Peoples in Independent Countries" (ILO) which entered into force the following year.

<sup>6</sup> Act 29565, Law establishing the Ministry of Culture. Enacted in July 2010.

<sup>7</sup> Brack Egg, Antonio. Global Environment Fund-GEF – United Nations Development Program-UNDP– UNOPS. Lima 1997. 349 pp. il. Maps

<sup>8</sup> Informe Alternativo al Séptimo y Octavo Informe Combinado del Estado Peruano al Comité de la CEDAW. December 2011. Centro de la Mujer Peruana Flora Tristán, 2012.

## INDIGENOUS WOMEN

5. The situation of Amazon Indigenous women is, for most Peruvian male and female citizens, as well as for those who develop and implement policies and programs, little known. This invisibility has led public policies to promote the exercise of the rights of women to fail in providing for the particularities of those living in indigenous communities. There are many disadvantages for women in Amazonian contexts, beginning with the differentiation in access to education, health and work, up to the implementation of the administration of indigenous or state justice, which in most cases produces undesirable results for women, and encourages impunity. For example, a woman from the community of Betania (Río Tambo District, Province of Satipo, Junín Region) with a problem of acknowledgement of paternity for her son/daughter must go to the Court of Peace in the city of Satipo. To go to there, she needs to invest 60 Nuevos Soles (approx. \$ 22 Dollars) and not less than 10 hours of river and land travel, without considering the costs of per diem (food and lodging) and legal defense. 40.9% of the country's indigenous communities have to travel more than 24 hours to reach the capital district, where state justice services are usually located.
6. Indigenous women routinely experience different forms of discrimination and exclusion, and less than half (40.9%) of indigenous communities have medicine cabinets, contributing to maintaining the high prevalence of maternal mortality (out of 3,516 deaths recorded, 98 are caused by complicated deliveries)<sup>9</sup>. According to the Ministry of Health (2007), "being an indigenous person increases the odds of being poor from 13% to 30%. The health indicators are worse among indigenous people (maternal mortality, infant mortality, malnutrition, coverage of hospital births, vaccines, etc.). Half of the deaths occur before age 42, twenty years less of life than the national average"<sup>10</sup>.
7. Violence against women has very high rates among the rural population. According to the Demographic and Health Survey (ENDES.2013), 74% of women ever in a union suffered some form of violence from their husband or partner. Of the total, 69.3% reported psychological abuse, 38% physical violence, and 8.5% sexual violence. This information leads us to analyze the latent debate on the viability or not of articulating Indigenous Justice and State Justice, recognizing that there is an absence of state services, especially in remote rural areas located far from the capital of the province or district. It also highlights the need for intercultural protocols of care services that address cases of violence against women.
8. Amazonian societies are currently in an accelerated process of change, as their contact with other sectors of society is increasingly common, with the effects this generates in the customs and needs of their peoples. On this basis, it is important to generate intercultural inclusive policies, and also to involve male and female members of these peoples, as is the case of Amazon Indigenous women, to promote the enjoyment and exercise of their fundamental rights. In

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<sup>9</sup> National Institute of Statics and Computing. National Census 2007: 11<sup>th</sup> of Population and 6<sup>th</sup> of Housing; and 2<sup>nd</sup> Census of Indigenous Communities of the Peruvian Amazon. 2007.

<sup>10</sup> Ministry of Health (MINSa). Office of Epidemiology and Environmental Health. "Análisis situacional de salud – ASIS 2007". 2007.

this sector, illiteracy, the level of education and health are even lower than that of their male counterparts, and also with respect to other women and men in the country. In addition, due to the lack of state presence, they are easily exposed to physical, sexual, and psychological violence in their communities, often being placed in disadvantage by the community justice, which may be permissive with their abusers. The double violence they are exposed to either by the state or within communities requires special attention for their demands and needs<sup>11</sup>.

9. While it was possible to develop and implement the 2009-2012 General Plan of the National Sanitary Strategy of Indigenous Peoples' Health, it has not been sufficient to reduce the adverse health gaps in a context of inequality, poverty, and exclusion of indigenous peoples. The State fails to respond to the demands and needs of the indigenous population, especially women and youth. It is not enough to invest in infrastructure and implementation of health facilities, it is also necessary to implement strategies that contribute to capacity building and skill development of professionals and technical health workers in remote areas (VRAEM, Amazonas, among others) and ensure labor measures (or incentives) for them.
10. According to the ENDES (2013), 94.5% of women reported some problems in accessing services. Among the reasons, they mentioned: The need to "have to take transportation" to access health services, linked with money and distance, is a serious problem in Apurímac (69.9%), Amazonas (66.5%), Puno (62.5%), and Cajamarca (61.6%). 82.4% of women said there "would not be qualified personnel to care for them" and 56.5% of women said, "there would be no female personnel" to provide consultation (national figures); these percentages are exacerbated in the jungle and mountains.
11. Rural women, especially women from indigenous communities fail to exercise their right to a safe and healthy motherhood, which is why no significant changes are observed in maternal mortality indicators, registering 7.9 children per woman (total fertility rate in Amazonia), representing 220% of the national average (3.4). Factors that affect these figures are linked to cultural, geographic, and economic barriers that limit their access to health services. In terms of sexual health, there is evidence of great ignorance among indigenous youth, between 15 to 19 years old, about sexually transmitted infections; 61% report having heard about HIV-AIDS and only 17% have heard of other sexually transmitted diseases. These percentages are far below those of non-indigenous young people in this age group: 96% and 56%, respectively<sup>12</sup>. This situation highlights the need to implement differentiated services in specialized health care for women and youth.
12. While the Peruvian State has shown interest in producing data regarding the situation of women in general, introducing questions of racial ethnic identity, carrying out the second census of Indigenous Communities of the Peruvian Amazon and developing the database of Indigenous or Native Peoples, there is

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<sup>11</sup> Olea Mauleón, Cecilia. Informe sobre derechos humanos de las mujeres indígenas en el marco de la CEDAW. April 2012.

<sup>12</sup> Ibid.

no updated information to allow public policy decision-makers to implement actions to guarantee their rights.

### **AFRO-PERUVIAN POPULATION**

13. In Peru, Lima is the region with the greatest Afro-Peruvian presence, however they are scattered. A significant presence is recognized in the districts of La Victoria, San Juan de Miraflores, San Martín de Porres, Rimac, Villa María del Triunfo, Brena, Cercado de Lima, in addition to the Callao Region, among other districts and provinces<sup>13</sup>. Nationally, other locations where they are located are: Chincha, Ica; in the Ático district in Arequipa, and the Yatapera and Morropón districts in Piura<sup>14</sup>.
14. Afro-Peruvian women live social, political and economic exclusion because of the intergenerational transmission of poverty due to the limitations for social integration, derived from slavery.
15. As noted in several reports by civil society, the Afro-Peruvian People are not recognized specifically in the Constitution of Peru, therefore, they hold no legal category to allow them to exercise collective rights. Similarly, the governing bodies of public policy have not included in their conceptual framework and approaches, the recognition of aggravated discrimination against Afro-Peruvian women and the need to face the consequences of such discrimination by elaborating specific policies. The absence of effective gender policies that guarantee the exercise of the rights of Afro-Peruvian women is mentioned in various fields such as health, education, economics, politics, inter alia, that aggravate the discrimination, exclusion and poverty of this sector of the population<sup>15</sup>.
16. According to information gathered by the ENAHO 2004, 4% of Afro-Peruvian women and men live in extreme poverty and 35.7% in poverty. The recorded per capita income was S/. 220 Nuevos Soles (equivalent to \$ 79 Dollars), less than the national average of S/. 290.72 Nuevos Soles (equivalent to \$ 104 Dollars), this is reflected in the health and housing conditions, where they show higher rates of exclusion compared to other populations on the coast. The differences in per capita income show the lower purchasing power of the Afro-Peruvian people compared to other coastal residents<sup>16</sup>. There is other information in ENAHO 2009 and ENAHO 2012, but they are not equally complete as that of 2004.

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<sup>13</sup> ENCO 2006.

<sup>14</sup> The information on the Afro-Peruvian population comes from the Diagnosis of the gender problematic and the situation of afro-descendant women in Peru. Monica Carrillo Zegarra and Sofia Giovanna Zegarra. DIAGNOSTICO SOBRE LA PROBLEMÁTICA DE GÉNERO Y LA SITUACIÓN DE LAS MUJERES AFRO DESCENDIENTES EN EL PERÚ. Análisis y propuestas de políticas públicas. Draft paper under review. MIMDES. Lima, no date.

<sup>15</sup> Ibid. Lima, with no date.

<sup>16</sup> According to ENAHO 2004. However no sex-disaggregated data is provided. While other surveys have managed to produce information about the Afro-Peruvian population, other criteria have been applied. Therefore, the results differ, because the ENAHO 2000 states that there is a 1.0% black/mulatto/sambo, while ENAHO 2009 suggests that there are 2.2% who define themselves as such. The ENAHO 2004, Afro-Peruvian Population Survey 2004 applied to Afro-Peruvian communities of the Urban and Rural Coast, is most relevant and its result indicate that 37.2% define themselves as Afro-Peruvian. See: <http://alertacontraelracismo.pe/wp-content/uploads/2013/01/Censosencuestaspoblaciona.pdf>

17. Public policies on sexual and reproductive health lack an intercultural and racial ethnic perspective that takes into account the cultural needs and characteristics of Afro-Peruvian women, which prevent the recognition of the situations of individual vulnerability they face.
18. According to ENAHO 2004<sup>17</sup>, 34.93% of Afro-Peruvian heads of household present chronic illness in contrast to the 29.7% average of the Peruvian coast. 59.71% of Afro-Peruvian family members have a chronic illness, 53.56% in the Peruvian coast. On the other hand, the ENCO 2006 shows that approximately 50% of the Afro-Peruvian population has experienced disease, relapse, symptoms, distress, or accidents. In this universe, 70% did not receive medical attention. It established that women have a higher rate for receiving medical attention (33.5%) as compared with men (26.5%).
19. In the regions of Lima, Ica and Piura there are no intercultural health policies that respond to the needs of the Afro-Peruvian Peoples and, particularly, those of women. The Regional Health Councils are the bodies in charge of establishing policies in this regard, based on the main causes of morbidity and mortality in the respective regions.
20. As regards education, Afro-Peruvian women, in comparison to white and mestizo women, have limited opportunities to access and remain in Regular Basic Education, Higher Education and to decent employment, as a consequence of exclusion based on racism, sexism and the deficiencies in the implementation of plans and laws that establish non-discrimination on the grounds of gender, ethnicity, race and socio-economic condition. ENCO 2006 reveals that illiterate Afro-Peruvian women constitute: 29.8% in the above 50 years old group and 17.2% in the 36 to 50 years old group. According to ENCO 2006, 10.3% of Afro-Peruvian women do not attain any educational level, in comparison to 4.2% of Afro-Peruvian men. 22% of women finish high school and 2.6% completes university education. Although racism is a form of bullying, it is usually not identified and recognized as violence by education personnel.
21. The contribution of Afro-Peruvian women is not recognized in official history and it is not included in educational curricula of regular basic education and higher education, even though the mandate includes highlighting the contribution of cultural diversity in the country. There is a lack of an Afro-Peruvian Studies perspective in universities and higher institutes, being included as a chapter of courses in the Social and Human Sciences areas. Pursuant to the free availability of 15% of the curriculum in the districts and population centers with Afro-Peruvian presence, such as El Carmen (Ica), Morropón and the population center Yapatera (Piura), classes on the Afro-Peruvian culture of the region are taught. Teachers that are motivated in rescuing the cultural, ethnic and racial identity mainly take the initiatives. Nevertheless, we have not identified specific actions that highlight outstanding Afro-Peruvian women.
22. Afro-Peruvian women and men have access to employment that reproduce racist and sexist stereotypes, associated with colonial images, and to the jobs held as an enslaved population. Afro-Peruvian men are associated with physical strength, sexual vigor, while Afro-Peruvian women are associated with being hypersexual, good cooks and “nursing mothers”. These stereotypes are

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<sup>17</sup> ENAHO 2014 provides further information on these aspects.

maintained to this date, which is made evident in the advertisements disseminated through the press for certain jobs.

23. Another relevant aspect is the use of racist and sexist images in the media. The self-regulatory policies of communication media are not effective in the protection of Afro-Peruvian girls, adolescents, and women from racist and sexist representations in the treatment of information, publicity and advertisement. The absence of a cultural policy that rescues Afro-Peruvian contribution in various spheres of economic, political and cultural development results in the absence of positive paradigms of Afro-Peruvian women and limited systems of protection from racist and sexist representations in the public sphere.
24. Racist and sexist publicity is one of the main areas of complaint by human rights organizations and anti-racist movements. Even celebrities from the fashion and entertainment worlds have protested in this regard and have established claims.
25. The legislative framework is weak as regards the protection of Afro-Peruvian women from racist and sexist representations described above. The Act on Radio and Television, the Self-Regulatory Agreement of the National Society of Radio and Television mention respect for diversity, but do not establish the concrete sanctions against discriminatory representations.
26. Moreover, regarding education, according to the Ombudsman, there are numerous complaints of racial discrimination related to race condition and/or ethnic identity of the people in educational institutions. Various social sectors restrict the rights of certain persons who are considered "different and inferior", due to their physical appearance or for belonging to a different ethnic group according to the Western paradigm. According to press reports, there are 30 cases of bullying each day in the country for various reasons, including ethnic discrimination. The regions with the highest incidence of this problem are Lima, Ayacucho, Puno, and Huancavelica<sup>18</sup>. One reason is the racial and ethnic discrimination. While there is a system of case reports on school violence (SISEVE.com) of the Ministry of Education, to address this problem requires a more comprehensive and efficient approach.

#### **RECOMMENDATIONS:**

1. The State should recognize the specific realities and demands of Amazon Indigenous peoples in the National Public Policies, as well as the specificity of the Afro-Peruvian population in national legislation, especially that of women due to the discrimination they experience.
2. The State should develop specific public policies on non-discrimination for the various ethnic groups, such as the Andean, Amazonian, and Afro-Peruvian populations, as well as the internally migrant population, especially women.
3. The State should mainstream the gender and intercultural perspectives in local public policies.
4. The State should implement an updated (quantitative and qualitative) database incorporating the gender variable, which will allow knowing the progress and obstacles for the exercise of indigenous women's human rights.
5. The State should incorporate the racial ethnic variable in the various protocols of care for gender physical, psychological, and sexual violence.

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<sup>18</sup> <http://elcomercio.pe/peru/pais/al-menos-30-ninos-al-dia-son-victimas-bullying-peru-noticia-1726649>



6. The State should promote strengthening of the application and enforcement of Amazon Indigenous peoples' rights with a gender and intercultural approach.
7. The State should contribute to strengthening the legal pluralism existing in Peru, with emphasis on Andean and Amazon Indigenous women.
8. Provide the necessary infrastructure to health facilities so they may care for indigenous, Afro-Peruvian women and women that constitute the internally migrant population, as their sexual and reproductive rights are experienced in precarious and discriminatory conditions.
9. The State should design a health policy with an intercultural approach in care offered to users.
10. The State should formulate educational policies with a gender-based and intercultural approach to shorten the existing gaps among indigenous, Afro-Peruvian and migrant girls, boys and female adolescents.
11. The State should incorporate the intercultural approach in the National Program against Violence towards Women.

## **Article 2: STATE RESPONSIBILITY IN LEGISLATING TO CONDEMN DISCRIMINATION**

1. In Peru, there has been regulatory progress towards guaranteeing the exercise of equal rights among men and women and the promotion of the right to a life free of violence; among them: the National Plan on Equal Opportunities for Women and Men (PIO), prepared for the 2006-2010 period; the Law on Equal Opportunities among Women and Men (LIO) promulgated in 2007; the 2012-2017 National Plan on Gender Equality; the Law for the Protection from Family Violence (Act 26260) and the National Plan against Violence towards Women for the 2009-2015 period, which are instruments contributing to the prevention, sanction and eradication of family violence. Added to these is the ratification by the Peruvian State of ILO Convention 169 and the development of internal regulations for its application (Law on the right to prior consultation of indigenous peoples acknowledged in such convention).
2. The situation of the Afro-Peruvian population is covered by two public organisms: i) the Ministry of Women and Vulnerable Populations–MIMP, where the Board on Afro-Peruvian women has been established; and ii) the Ministry of Culture, through its Vice-Ministry of Intercultural Affairs<sup>19</sup>.
3. Treatment of discrimination has achieved little progress, besides Article 2 of the Constitution, which establishes the legal equality and the express prohibition of non-discrimination, Article 323 of the Penal Code<sup>20</sup> has been incorporated,

<sup>19</sup> The Vice Ministry of Intercultural Affairs is responsible for formulating policies, programs, and projects that promote an intercultural approach, as a guiding principle, to promote and guarantee the rights and the integral development of the culturally diverse groups of the country, and to construct a citizenship that recognizes, respects and is enriched by the interaction with cultural diversity. Among its functions and objectives are included the capacity and responsibility to generate mechanisms to disseminate the intercultural practice, and to prevent any type of exclusion and discrimination.

<sup>20</sup> See Penal Code, Chapter IV "Article 323. Discrimination and incitement to discrimination. The person who, by himself or through others, discriminates against one or more persons or group of persons, or incites or promotes discriminatory acts publicly, by reason of racial, religious, sexual, genetic factor, affiliation, age, disability, language, ethnic and cultural identity, clothing, political opinion or other, or economic status, with the aim of nullifying or impairing the recognition, enjoyment or exercise of the rights of the person, shall be punished by imprisonment of not less than two years, nor more than three years or with provision of services to the community from sixty to a hundred and twenty days. If the agent is an official or public servant shall be not less than two nor more than four years and disqualification under paragraph 2 of Article 36. The same

which includes penalties for such conduct. At the level of local governments some municipal ordinances aimed at instituting correctives to discriminatory behavior have been passing, and in some cases to promote the right to equality<sup>21</sup>.

4. The main challenge for the authorities and policy makers is to shorten the gap between the regulations and their application. For this purpose, it is essential to consider the realities and specificities of each people.

#### **INDIGENOUS AND AMAZONIAN POPULATION**

5. In the case of indigenous peoples, especially indigenous women, geographical, cultural, linguistic, economic barriers, as well as lack of identity documents converge, hampering their access to State services or institutions.
6. So far, the Peruvian State has not achieved the pending task to develop Article 149 of the Political Constitution of Peru which recognizes the existing legal pluralism, establishing the need for a standard of infra constitutional range that develops the mandate of coordination between the various legal systems.
7. There is the need to resolve conflicts and to compensate the damage caused by the violation of the rights of indigenous peoples, especially women and children of these villages. Indigenous peoples have continued to deliver justice, perhaps differently than how they did for centuries, incorporating offenses and penalties of hegemonic Western culture. Some Indigenous authorities have been wrongly prosecuted for exercising their judicial functions. The Plenary Agreement N° 1-2009/CJ-116<sup>22</sup> gives an account of this.
8. Indigenous societies have kept changing and some situations that primarily affect the rights of women and girls have been visible. Situations such as domestic violence, non-recognition of sons and daughters by fathers, teenage pregnancies and sexual violence, among others, require appropriate and fair responses<sup>23</sup>. A response or intersectional strategy to respond specifically to this population, guaranteeing due process within the legal and international policy framework is claimed to the State.
9. Currently there is an initial articulation between national and customary law. Proof of this are the different existing interpretations about the meaning of Article 149 of the Constitution<sup>24</sup> as reflected in conflicting judgments of the national courts regarding the application of justice by *rondas campesinas*, urban and indigenous<sup>25</sup>. Some studies have reported the need for a law on constitutional development<sup>26</sup> and this has resulted in different bills that have not received adequate attention<sup>27</sup>.

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imprisonment specified in the preceding paragraph shall be imposed if the discrimination, incitement or promotion of discriminatory acts has materialized through acts of physical or mental violence or through Internet or other analog means".

<sup>21</sup> As the Municipal Ordinance of the Municipality of Jesús María. Ordinance N° 285-MDJM-Jesús María, October 29, 2008.

<sup>22</sup> <http://spij.minjus.gob.pe/Graficos/jurisp/2010/enero/08/AP-1-2009-CJ-116>.

<sup>23</sup> Guerra Romero, Clea. Propuesta de lineamientos para una ley de coordinación entre las justicias indígenas y la justicia ordinaria. 2012.

<sup>24</sup> Ombudsman Office. El reconocimiento estatal de las rondas campesinas. Lima: Defensoría del Pueblo, September, 2006.

<sup>25</sup> Ibid.

<sup>26</sup> RUIZ MOLLEDA, Juan Carlos. "El desarrollo normativo del artículo 149º de la Constitución Política sobre la jurisdicción comunal". In: AA.VV. *Acceso a la justicia en el mundo rural*. Lima: IDL, 2007, pp. 137-168; and

## **AFRO-PERUVIAN POPULATION**

10. The Peruvian State does not have an intercultural policy. Although the formal definition of interculturality is that which corresponds to the regional conceptual framework and criteria and of the international governing instances on the subject, definitions are scattered and in some cases with huge gaps between the sectors which define it according to their interests and peculiarities. This dispersion has not contributed to the inclusion of Afro-Peruvian People, which is invisible or reduced to dimensions that do not recognize their contribution, characteristics, and needs.
11. The Peruvian State lacks a racial ethnic perspective in public policy required to identify and recognize the differences in peoples who conform the Peruvian nation and the opportunities and needs arising from this difference.
12. Racism and sexism are also expressed on a daily basis, mainly in the treatment, harassment, racist and sexist insult in different social spaces. What is recognized as aggravated discrimination in the documents and State policies, it is not yet deeply considered when it is required to outline the approaches of public policies aimed at Afro-Peruvian People, and the Plan for Gender Equality, the National Human Rights Plan, among others.
13. Moreover, there is no official information and interdisciplinary studies on Afro-Peruvian women and gender issues<sup>28</sup>. State agencies have not carried out diagnoses of Afro-Peruvian women. Currently, the creation of the Ministry of Culture and the Direction of Interculturality is beginning to define their program to address each ethnic group.
14. INEI as the responsible organ for the generation of indicators has not established as a mainstreaming policy the introduction of a variable on racial ethnic on Afro-descendants in their surveys and tools. The statistical information is still limited, which makes the Afro-Peruvian People in major development indicators invisible. However, the information provided by the ENAHO surveys 2004, 2009 and 2012, as well as ENCO 2006 show the conditions of poverty and exclusion of Afro-Peruvian men and women and it has not been released by the State or used by government agencies as a baseline for the design of public policies.
15. The generation of information, indicators and knowledge of Afro-Peruvian People and especially Afro-Peruvian women has not been a priority for the State.
16. Racist ideology continues to be expressed through acts of racial discrimination exercised by various sectors of society, affecting mainly peoples and groups who

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Verdict of the Tribunal for Economic, Social and Cultural Rights of Rural Women, event of the civil society held in the city of Lima in October 2007.

<sup>27</sup> See Bills Nº 0420/2006-CR and Nº 0478/2006-CR. In addition, Bills Nº 0483/2006-CR, Nº 0430/2006-CR, Nº 0419/2006-CR and Nº 0425/2006-CR, are referred to the rights of indigenous peoples and address the consuetudinary justice in a general way.

<sup>28</sup> The Ombudsman's Report on the Rights of the Afro Peruvian People notes that the National Census of Population and Employment, 1940 was the last Census that collects information on Afro descendants in Peru. Subsequently two surveys conducted by the National Statistics Institute (INEI) including Afro Peruvian People are identified. The National Household Survey (ENAHO 2004) included a specific module on Afro Peruvian households. The Continuous National Survey (ENCO 2006) included a question of ethnic self-identification with the variable "Afro-Peruvian".

were colonized and enslaved, within which peoples of African descent and women of these peoples are included as one of the most vulnerable groups. Race continues to be a category of political and cultural analysis because it is the foundation of structured power relations and though race has no scientific validity in itself, has a space in the collective imagination and symbolic representations of society<sup>29</sup>.

17. Discrimination against Afro-Peruvian women is expressed through two dimensions that are intersected: from racism as a prejudice inherited from the colonial era that built the idea of black people as animals and with lack of aesthetics; from sexism as a prejudice that views black men and women as hypersexuals (sexually incontinent) using women's body as a sexual object, or for reproduction and workforce. This has violated the proper exercise of the human rights of Afro-Peruvian women and therefore has limited the generation of appropriate conditions for their full development.
18. Though discrimination is a crime stated in the Penal Code (Act 28867), Afro-Peruvian women do not report racist and sexist insults and harassment due to ignorance that such conduct may constitute a crime. There is resistance, ignorance, and prejudice from judicial officers, both men and women, to accept the testimony and unviable evidence mechanisms are required in a situation of harassment and insult. Although the National and Regional Plans mention the existence of an intercultural perspective in their guidelines, this does not meet the necessary intercultural criteria to ensure the design and implementation of public policies for Afro-Peruvian women.

#### **RECOMMENDATIONS:**

1. Conduct studies from the public sector with a gender approach taking into account the intersectional perspective that articulates gender with categories of ethnicity, race and class, as this perspective is proposed by the feminist movement but also is being included in public policies targeted to African descent women having the Durban Declaration as a framework that recognizes *"the need to integrate a gender perspective into relevant policies, strategies and programs of action against racism, racial discrimination, xenophobia and related intolerance forms in order to address multiple forms of discrimination"*<sup>30</sup>.
2. The State ensures the allocation of budget for the design and implementation of public policies for Afro-descendent women pursuant to Supreme Decree N° 027-2007-PCM, which proposes the development of policies aimed at Afro-Peruvian Peoples within local and regional governments; and the Supreme Resolution N° 010-2009-MIMDES that in its third article refers that MIMDES in coordination with relevant sectors will dictate specific public policies for the development of Afro-Peruvian people.
3. Adopt measures to eradicate poverty and inequality conditions in which indigenous, Amazonian, and Afro-Peruvian populations as well as migrants are embedded, ensuring quality life for them.
4. Generate opportunities in education, employment, political, and health fields, which are equitable to ensure their development.

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<sup>29</sup> Mónica Carrillo Zegarra and Giovanna Sofía Carrillo Zegarra. Page 7.

<sup>30</sup> Durban Declaration, number 69. *Ibíd.* Mónica Carrillo Zegarra and Giovanna Sofía Carrillo Zegarra.

5. Promote communication and outreach campaigns that allow the eradication of stereotypes about Indigenous, Amazonian, and Afro-Peruvian population, especially women in the country.
6. Inform and disseminate the contributions of Indigenous, Amazonian, Afro-Peruvian peoples in general and of women in particular to the development of the country.
7. Develop policies that promote programs and campaigns on issues of non-sexist messages that improve informative treatment and portray of the diversity of women in the media. Policies on literacy for rural women and the education of Quechua, Aymara and Amazonian students in their native language; and health care protocols with gender and intercultural approach and respect for sexual orientation implemented in health facilities<sup>31</sup>.
8. Finally, to incorporate the approaches in public policies, which allow the identification of the characteristics and conditions of Indigenous, Amazonian, and Afro-Peruvian peoples; and of the effects of discrimination based on race and gender in this population.

#### **Article 5: RESPECT OF CIVIL AND POLITICAL RIGHTS**

1. According to reports by the National Jury of Elections (JNE), the participation of Amazon Indigenous candidates, both male and female, in elections has not been representative. While among 1992 to 2011, 19 applicants run for a seat in Congress, just in the last national elections, Nayap Kinin was elected as the first Amazon Indigenous Congressman through preferential voting. Of the total, no female candidate has participated.
2. The regional and municipal electoral quota of Indigenous communities in Peru have been implemented in 2002, 2006 and 2010 with two major challenges: a) there is no a national register of localities in which they must enforce Indigenous quota; b) the legal design of the electoral quota does not indicate the location where the members of Indigenous communities should be consigned.

#### **RECOMMENDATIONS:**

1. Ensure alternation in implementing Indigenous quota.
2. Engaging electoral bodies such as the National Jury of Elections (JNE) and the National Office of Electoral Processes (ONPE) to design training to strengthen the skills of Indigenous women for the exercise of public functions.
3. The National Registration Identity and Civil Status (RENIEC) carries out documentation campaigns in areas of indigenous communities.
4. The Act of the right to prior consultation with Indigenous or native peoples recognized in the Convention 169 of the International Labor Organization and its regulations must explicitly ensure the participation of Indigenous peoples' women.

Lima, July 4, 2014

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<sup>31</sup> National Plan for Gender Equality-PLANIG- 2012-2017.