



# Asamblea General

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## Consejo de Derechos Humanos

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Tema 9 de la agenda

**Racismo, discriminación racial, xenofobia y formas conexas  
de intolerancia, seguimiento y aplicación de la Declaración  
y el Programa de Acción de Durban**

## Informe del Grupo de Trabajo de Expertos sobre los Afrodescendientes acerca de su 14º período de sesiones

Adición

**Misión al Brasil\* \*\***

### *Resumen*

El presente informe contiene las conclusiones de la visita realizada por el Grupo de Trabajo de Expertos sobre los Afrodescendientes al Brasil del 4 al 14 de diciembre de 2013. En él se expone el marco jurídico y normativo relativo a los derechos humanos de los afrodescendientes en el Brasil, y se destacan los avances positivos y algunas deficiencias en la aplicación a las que es preciso hacer frente. En el informe se describe la situación, se ponen de relieve las mejores prácticas y las principales dificultades observadas y se formulan recomendaciones concretas.

\* Documento presentado con retraso.

\*\* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo del resumen, se distribuye únicamente en el idioma en que se presentó.

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## Anexo

*[Inglés únicamente]*

### **Report of the Working Group of Experts on People of African Descent on its mission to Brazil (4–14 December 2013)**

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## I. Introduction

1. The Working Group of Experts on People of African Descent visited Brazil from 4 to 14 December 2013, at the invitation of the Government. The members of the delegation were Mireille Fanon-Mendès-France and Maya Sahli, independent experts.
2. They met government and State officials in Bahia, Brasília, Pernambuco, São Paulo and Rio de Janeiro. In each State, the experts also met municipal-level organs of the National System for the Promotion of Racial Equality, the justice system, the police, human rights and public ministries as well as local civil society organizations, including those of African descent working on a wide range of human rights issues. In Bahia and Pernambuco, they visited traditional Quilombola and Terreiro communities; in São Paulo, the State women's prison and the Museum of Afro-Brazilian Culture and in Rio de Janeiro the Providencia Favela and the LAESER<sup>1</sup> research group in the Federal University of Rio de Janeiro.
3. The Working Group's visit to Brazil can be considered in part as a follow-up to the visit in 2005 of the Special Rapporteur against contemporary forms of racism, racial discrimination, xenophobia and related intolerance.<sup>2</sup>
4. The experts wish to thank the Government for its invitation and assistance during the visit, in particular representatives of the Itamaraty and the Secretariat of Policies for the Promotion of Racial Equality (SEPPIR). They would also like to thank the academics, civil society, non-governmental organizations (NGOs) and particularly Afro-Brazilians met during their visit.

## II. Background and context

### A. Historical context

5. Brazil received 40 per cent of the estimated tens of millions of enslaved Africans brought to the Americas and in 1888 became the last country in the region to abolish enslavement. The Republic was proclaimed in 1889 and a federal and decentralized system was adopted. Whereas the non-white population could not afford a high level of economic development, immigration policies to "whiten" the population were adopted in the early twentieth century; racism and racial discrimination rooted in the ideological pillars of the slave system and colonization prevailed. Brazil was considered to be a "racial democracy" with racism and racial discrimination absent from Brazilian society, yet they remained in the collective unconscious. The legacy of the slave trade, enslavement and colonialism upheld the idea that black people, if allowed into the dominant system, would destroy it from within.
6. While Brazil enjoyed rapid economic growth in the early twenty-first century, that has slowed down in recent years with rising inflation. In 2012, the economy of Brazil grew by 0.9 per cent. The immense size and diversity of Brazil coupled with its federal system make for an extremely complex context. States have varying levels of development, thus, the north-east, which has the largest percentage of Afro-Brazilians, has some of the poorest and least developed States. Brazil can no longer be called a racial democracy, but as

<sup>1</sup> Laboratório de Análises Econômicas, Históricas, Sociais e Estatísticas das Relações Raciais.

<sup>2</sup> Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène (E/CN.4/2006/16/Add.3).

expressed by civil society and some State bodies, it is characterized by institutional racism, in which racial hierarchies are culturally accepted as natural.

## B. Ethnic and demographic situation

7. Brazil has a population of more than 190.7 million. With 47.7 per cent of the population identifying as white, 7.6 per cent as “black” (*preto*), 43.1 per cent as “brown” (*pardo*), 1.1 per cent as “yellow” and 0.4 per cent indigenous, the 2010 census reported for the first time that Afro-Brazilians<sup>3</sup> made up more than half of the population (96,800,000 people).<sup>4</sup>

8. Despite making up more than half the country’s population, Afro-Brazilian economic participation is only 20 per cent of gross domestic product. Unemployment is 50 per cent higher among Afro-Brazilians than European descendants and the average monthly income of European descendants is US\$ 860, nearly double that of Afro-Brazilians at US\$ 466.<sup>5</sup> The life expectancy of Afro-Brazilians is only 66 years compared to 72 years for European descendants. Food security remains an issue for Afro-Brazilians; 43 per cent experienced food insecurity compared to 24 per cent of white Brazilians.<sup>6</sup> A total of 52 per cent of Afro-Brazilians lack housing with adequate sanitation, compared to 28 per cent of European descendants, and 26 per cent of Afro-Brazilians live in households without running water, compared to 8 per cent of European descendants.<sup>7</sup>

9. Many Afro-Brazilians belong to traditional communities and populations; Quilombo heritage communities and Terreiro traditional African religious communities. Quilombos are the descendants of escaped African slaves who created organized free communities, as well as Afro-Brazilians living on lands inherited or donated due to services to the State, lands that they occupied and cultivated within private estates and lands purchased during or after slavery. According to SEPPIR, there are at present 2,400 certified Quilombo heritage communities, but the real total could surpass 3,000 representing some 1.7 million people. They continue to assert their cultural identity and historical ties to their lands. However realizing rights to official land titles remains a challenge. Conditions in those communities are some of the worst in Brazil, lacking access to water, sanitation, education, health and transport services.

10. There is a considerable population of migrants and refugees of African descent living in Brazil, who are at risk of multiple discrimination based both on their African descent and their immigration status. According to the country’s National Committee for Refugees,<sup>8</sup> 65 per cent of asylum seekers in Brazil are from the continent of Africa,

<sup>3</sup> The terms “Afro-Brazilian” and “black” are used here in to refer to all those self-declared as *preto* or *pardo* in the 2010 census unless otherwise specified.

<sup>4</sup> Brazilian Institute of Geography and Statistics, available from [www.ibge.gov.br/english/estatistica/populacao/censo2010/default.shtm](http://www.ibge.gov.br/english/estatistica/populacao/censo2010/default.shtm).

<sup>5</sup> Christian Aid, *The Scandal of Inequality in Latin America and the Caribbean* (April 2012), p. 19.

<sup>6</sup> See the following survey: Pesquisa Nacional por Amostra de Domicílios, *Segurança Alimentar 2004/2009* (Rio de Janeiro, 2010), available from [www.ibge.gov.br/home/estatistica/populacao/seguranca\\_alimentar\\_2004\\_2009/pnadalimentar.pdf](http://www.ibge.gov.br/home/estatistica/populacao/seguranca_alimentar_2004_2009/pnadalimentar.pdf).

<sup>7</sup> See Mala Htun, “From ‘racial democracy’ to affirmative action: changing State policy on race in Brazil”, *Latin American Research Review*, vol. 39, No. 1 (February 2004), p. 63.

<sup>8</sup> CONARE.

including Angolans, Congolese and Liberians.<sup>9</sup> There are also large numbers of Colombian and Haitian refugees, many of whom are Afro-descendants.

### C. Racism and discrimination

11. Racism and discrimination, particularly at the institutional level, were raised as serious concerns by several members of civil society and government representatives working on racial equality. Racism permeates all areas of life yet it has been difficult for Afro-Brazilians to raise and discuss the issue as many national and international academics and actors still subscribe to the racial democracy myth. This is often used by conservative politicians to discredit affirmative actions and targeted policies and laws.

12. Several institutions for the promotion of racial equality such as CEPIR (State Committee for the Promotion of Ethnoracial Equality) in Pernambuco, focus on reducing institutional racism including sensitizing and capacity-building work with police officers. The Pernambuco Public Ministry created a working group against racism which researches the prevalence of institutional racism, holds public audiences and sensitization workshops with police, public service providers and human rights defenders and capacity-building for members of the black movement.

13. The Municipal Secretary for Reparations of Salvador da Bahia spoke about widespread manifestations of racism and racial inequality based on “pigmentocracy” against Afro-Brazilians, despite their being the majority of the population, and about the invisibility and xenophobia from which they suffer. Efforts have been made in certain municipalities to combat institutional racism through the creation of an intersectoral working group on racism and racial equality with representation from different secretariats, training the general public and staff members of governmental bodies on non-discrimination to deconstruct the myth that racism does not exist.

## III. Legal and institutional system

### A. Legislation

14. Brazil’s domestic legal system provides for a clear prohibition of racial discrimination. The Constitution of Brazil<sup>10</sup> criminalizes acts of racism subjecting them to imprisonment without the right to bail or prescription. This prohibition is reflected in Law No. 7716<sup>11</sup> that was later modified by Law No. 9459,<sup>12</sup> which expanded its focus to include acts arising not only from racial discrimination but also discrimination based on ethnicity, religion or nationality.<sup>13</sup>

15. Several decrees have been adopted to address the specific situation of traditional communities and peoples including Quilombola communities and African religious communities. Decree No. 6040/2007 created a National Policy for Sustainable Development of Traditional People and Communities. In addition Decree No. 6261/2007 created the Quilombola Social Agenda.

<sup>9</sup> Cited in Daniella Jinkings, “Africanos representam 65% dos refugiados no Brasil”, *Agência Brasil* (2010). Available from <http://agenciabrasil.ebc.com.br/noticia/2010-08-25/africanos-representam-65-dos-refugiados-no-brasil>.

<sup>10</sup> 1988.

<sup>11</sup> 1989.

<sup>12</sup> 1997.

<sup>13</sup> E/CN.4/2006/16/Add.3, para. 7.

16. In the area of education, Law No. 10.369 of 2003 established guidelines and bases for national education and included mandatory teaching of Afro-Brazilian history and culture in educational institutions. Following a landmark ruling<sup>14</sup> by the Supreme Court on the constitutionality of affirmative action in higher education, the Quota Law was adopted establishing quotas for students from public schools, Afro-Brazilians and indigenous peoples to increase access to higher education (discussed further in chapter IV.A).

17. Significant advances have been made in the area of racial equality legislation. Decree No. 6872/2009 approved the National Plan for the Promotion of Racial Equality, including actions for employment and economic development, education, health, cultural diversity, human rights and public security, traditional peoples and communities, international policy, social development and food security, infrastructure and youth. That was translated into a federal law with the adoption of the Statute of Racial Equality,<sup>15</sup> which defines the principal areas to be addressed by public bodies in order to overcome racial inequality.

18. Several States and municipalities have developed laws against racism, for example São Paulo State Law No. 14–187 of 2010, which punishes acts of racial discrimination providing channels for complaints and sanction.

## B. Institutional and policy framework

19. SEPPIR, created in 2003, participated in the development of the Multi-Annual Plan<sup>16</sup> of Brazil, resulting in the Thematic Programme against Racism and Promotion of Racial Equality being included in 25 other programmes, 96 goals and 52 initiatives and 10 budgetary activities in different areas of the Government.<sup>17</sup> Through the coordination of the National System for the Promotion of Racial Equality, there are also State and municipal institutions for the promotion of racial equality in many regions of Brazil. Those institutions work in partnership with other State and municipal secretariats to combat racism and discrimination and promote racial equality. Their activities include: promoting programmes for vulnerable groups and affirmative action initiatives, supporting the implementation of legislation and policy including State and municipal-level action plan monitoring; courses for the promotion of racial equality since 2012,<sup>18</sup> coordinating and advising on the formulation of new policies for racial equality.

20. SEPPIR has several sub-secretaries and departments including: a secretariat for Affirmative Action Policies, and for Policies for Traditional Communities. A parliamentary adviser works with the National Congress assisting with legislative proposals for the promotion of racial equality.<sup>19</sup>

21. Significant legal and policy advances have been made for Afro-Brazilians in general, particularly during the Lula administration.<sup>20</sup> The Working Group is, however, concerned that many of the bodies, particularly at State and municipal levels, are lacking sufficient financial and human resources to carry out their activities. Many have low visibility in terms of physical presence and position within State or municipal governments.

<sup>14</sup> Law No. 12.711 of 29 August 2012.

<sup>15</sup> Law No. 12.288 of 2010.

<sup>16</sup> Plano Plurianual 2012–2015.

<sup>17</sup> Secretaria de Políticas de Promoção da Igualdade Racial, *SEPPIR 10: Uma década de igualdade racial 2003–2013* (Brasília, Governo Federal Brasil, 2013), p. 6.

<sup>18</sup> *Ibid.*, p. 14.

<sup>19</sup> *Ibid.*, p. 25.

<sup>20</sup> Luiz Inácio Lula da Silva, President of Brazil, 2003–2011 (Workers' Party).

22. Moreover, the increased focus at the legislative and policy level on Afro-Brazilians has led to new opposition and challenges to targeted policies addressing racial inequality. The Working Group is concerned that progress made to date is at risk of regression due to threats, particularly from right-wing groups.

23. Furthermore, many targeted anti-discrimination measures are designed for minorities. Afro-Brazilians now constitute a majority and are continuing to grow, thus racial equality and social inclusion need to be part of universal policies for the society as a whole.

24. Many representatives of civil society expressed concern that current poverty reduction policies, which stimulate growth, are not sufficient for addressing the specific social and economic inequality faced by Afro-Brazilians. The argument that racism and racial inequality are a consequence of poverty is often used to justify policies which reduce poverty but not necessarily eliminating racism. There is very often an intersectionality between poverty and racial discrimination.

### C. Affirmative action policies

25. Brazil has been a regional leader in affirmative action policies in employment and education for Afro-Brazilians and other marginalized groups. Many of those actions are supported or accompanied by the SEPPIR Secretariat for Affirmative Action policies in collaboration with other public and private bodies.

26. Affirmative action based on race/ethnicity in Brazil has been legislated upon since 2003 when Decree No. 4886 created the National Policy for the Promotion of Racial Equality. It has faced serious opposition in Brazil with opponents arguing that it risked exacerbating racial differences and conflicts. Others argued that the racially mixed society of Brazil made targeted affirmative action policies too complex or that such policies constituted racial discrimination against those not eligible. The Working Group notes that there is also another risk, that special measures are pretenses to hide racial discrimination that affects a large part of Brazilian society.

27. Quotas based on State law and demographics have been in operation in some universities since 2004 enabling greater access to higher education. For example, in 2012 Rio de Janeiro's law reserved 20 per cent of places on any course for students self-identified as "black" as well as 20 per cent for students from public schools, and 5 per cent for other excluded groups.

28. The Integrated Programme of Affirmative Action for Afro-descendants, Brasil Afroatitude, a partnership between 10 universities and the Ministry of Health was established to support Afro-Brazilian quota students. With support from SEPPIR and the Ministry of Education it provides financial support to 500 *quotista* students promoting their participation in diverse academic initiatives.<sup>21</sup>

29. While it is still too early to fully assess the impact of the quota system for Afro-Brazilians, some research will be discussed below in the section on education.

<sup>21</sup> United Nations Development Programme (UNDP), *Derechos de la población afrodescendiente de América Latina: Desafíos para su Implementación* (Panama, UNDP, 2012), p. 249.

## IV. Thematic areas

### A. Education

30. Education is compulsory for children between 6 and 14 years of age and there is currently an enrolment rate of 98 per cent for this age group. The 2 per cent not enrolled tends to be in marginalized, rural communities including Quilombola communities. Afro-Brazilian children and young people have traditionally had lower access to education than Brazilians of European descent. In 2008, young Brazilians of European descent attended school for eight years, while Afro-Brazilians had only six years of schooling.<sup>22</sup>

31. As Afro-Brazilians are overrepresented among the rural population of Brazil, one of the barriers they face is the distance from school. The Working Group welcomes initiatives to address this issue such as the Ministry of Education's Caminho da Escola Programme, launched in 2007. It provides safe quality transport for students in rural areas to access schools.<sup>23</sup> The Ministry's Plan of Articulated Action includes work with States and municipalities to develop technical and financial assistance for education in indigenous, Quilombola and rural areas.<sup>24</sup> Afro-Brazilians have some of the highest rates of illiteracy.

32. While between 1988 and 2008 rates of illiteracy fell at a faster rate among Afro-Brazilians than among the white population, in 2008 illiteracy was still twice as common among Afro-Brazilians as among European descendants: 13.6 per cent compared to 6.2 per cent.<sup>25</sup> The worst rates of illiteracy were in the north-east of Brazil, the region with the highest black population, where over 15 per cent of whites and 20 per cent of Afro-Brazilians were illiterate.<sup>26</sup>

33. The Ministry of Education's Literate Brazil Programme, created in 2003, helps to overcome illiteracy among adults, young people and the elderly. The Programme works throughout the country with particular focus on 1,928 municipalities with more than 25 per cent illiteracy rates. Between 2003 and 2010, an estimated 13 million people benefited from the Programme.<sup>27</sup> White students are much more likely than Afro-Brazilian students to attend private schools. In 2008, at the first level of basic education, only 7.7 per cent of Afro-Brazilian students were in private institutions, compared to 18.2 per cent of students of European descent. At middle level, only 7.7 per cent of Afro-Brazilians were educated in private schools and 20.3 per cent of white students.<sup>28</sup>

34. According to civil society, the history and contributions of Afro-Brazilians have been invisible within the education system. Racism and discrimination are a problem in many educational institutions with negative stereotypes of Africans. In 1985, the Government implemented the National Didactic Book Programme to prevent the use of images that transmitted racism or prejudice against indigenous peoples and people of African descent.<sup>29</sup> Civil society members in Pernambuco complained of racist attitudes displayed by teachers towards their students concerning their culture, religion, hair and appearance.

<sup>22</sup> Marcelo Paixão and others, *Relatório Anual das Desigualdades Raciais no Brasil: 2009–2010* (Rio de Janeiro, LAESER, 2010), p. 218.

<sup>23</sup> Plano de Desenvolvimento da Educação, *Sinopse das Ações do Ministério da Educação* (September 2011), p. 45.

<sup>24</sup> *Ibid.*, p. 42.

<sup>25</sup> Marcelo Paixão and others, *Relatório Anual ...*, p. 207.

<sup>26</sup> *Ibid.*, p. 208.

<sup>27</sup> Plano de Desenvolvimento da Educação, *Sinopse ...*, p. 66.

<sup>28</sup> *Ibid.*, p. 234.

<sup>29</sup> UNDP, *Derechos de la población afrodescendiente ...*, p. 247.



35. The adoption of Law No. 10.639 in 2003 sought to address those issues by amending the General Education Law to include African and Afro-Brazilian history in the national curriculum making African and Afro-Brazilian history and culture compulsory at basic and secondary education levels.<sup>30</sup> The Working Group welcomes this law as an important step which should contribute to the elimination of racist attitudes within society and also provide Afro-Brazilian children and young people with a culturally relevant education. It notes with appreciation the many steps taken at both national and local levels for its implementation.

36. As part of its work to promote the implementation of Law No. 10.639 and Law No. 11.635 on religious intolerance, the Pernambuco Committee for the Promotion of Ethnoracial Equality runs a course for priests in theology of religions of African origin in partnership with the Catholic University of Pernambuco and the Higher Education Foundation of Olinda. In 2008, the Ministry of Education developed a network of history teachers in all universities, thereby ensuring since 2011 the inclusion of history teaching in teacher training courses in universities. The Ministry has translated all eight volumes of the United Nations Educational, Scientific and Cultural Organization's General History of Africa series into Portuguese for use in school teaching.

37. The Working Group remains concerned at reports from civil society about the obstacles faced in the implementation of Law No. 10.639, including the lack of suitable training for teachers, lack of relevant school materials and opposition from ultraright, evangelical sects to the teaching of Afro-Brazilian cultural and religious traditions. Civil society in São Paulo spoke of the resistance of teachers to teaching Afro-Brazilian history and culture, with many failing to see their importance.

38. In 2005, the Ministry of Education launched the University for All programme,<sup>31</sup> which promoted access to higher education for low-income students through partial and complete bursaries in private higher education institutions. Between 2005 and 2011, 912,204 bursaries were provided, 48 per cent of which went to Afro-Brazilian students.<sup>32</sup>

39. In 2009, SEPIIR with the National Council for Scientific and Technological Development launched the Institutional Programme of Bursary Scientific Initiation in Affirmative Action which offers around 800 bursaries per year to quota students in federal educational institutions.<sup>33</sup>

40. Following legal challenges claiming that affirmative action in higher education constituted discrimination, the Federal Supreme Court unanimously ruled the use of racial quotas in education<sup>34</sup> as constitutional. On 29 August 2012, Law No. 12.711, the Quota Law, was adopted, establishing criteria for quotas for students from public schools, Afro-Brazilians and indigenous peoples, defining a minimum of 50 per cent access to federal universities and technical further education institutions.

41. Despite its critics, affirmative action has had an impact on the higher educational opportunities of Afro-Brazilians as well as other disadvantaged groups. Yet, the Working Group remains concerned about the limitations of applying affirmative action. In 2008, 26.3 per cent of higher education institutions provided quotas for access to education for Afro-Brazilians, indigenous peoples, public school students, Quilombo and/or students

<sup>30</sup> Ibid.

<sup>31</sup> PROUNI.

<sup>32</sup> Plano de Desenvolvimento da Educação, *Sinopse ...*, p. 96.

<sup>33</sup> SEPIIR 10, pp. 12–13.

<sup>34</sup> On 26 April 2012.

from other groups in situation of disadvantage. However, the number of quotas corresponded only to 10.5 per cent of the places available in higher education institutions.<sup>35</sup>

42. In the same year, 45.9 per cent of quotas went to students from public schools, 38.3 per cent to Afro-Brazilians including those from Quilombola communities, 3 per cent to indigenous peoples, 3.3 per cent to students with special needs and 9.5 per cent to other groups. While quotas enable initial access to higher education, associated costs can still make education difficult for students. Furthermore, certain Afro-Brazilian students face difficulties in finalizing higher education, due to the unequal access that they encounter to quality secondary education.

43. The Working Group hopes that with the recent adoption of the Quota Law, future research will be able to show more positive data on the implementation of higher education quotas; they are certainly necessary, as a first step, to change the structural institutional racism.

## **B. Employment**

44. Afro-Brazilians are underrepresented in State and municipal governments, particularly in senior positions except for within mechanisms for the promotion of racial equality. For example the Municipal Secretary for Affirmative Action in Salvador is the only Afro-Brazilian of the municipality's 12 secretaries.

45. There have been initiatives to increase Afro-Brazilian representation among public positions. The Minister of the Supreme Court,<sup>36</sup> the reporting Minister for the *Quotas* case in the Supreme Court, told the Working Group that while they were able to argue for the constitutionality of quotas in education, such affirmative action in employment, particularly in the private sector, would be much harder. Without sufficient levels of education disadvantaged groups were unable to access professional positions.

## **C. Culture**

46. The issue of Afro-Brazilian culture within Brazilian society is complex, as the Working Group learned from meetings with both government bodies and civil society. On the surface, Afro-Brazilian culture may seem to have important recognition, as the most celebrated cultural manifestations of Brazil have roots in Afro-Brazilian traditions, such as samba music, carnival and capoeira. Yet, many of those traditions have become appropriated by wider society, commercialized and commoditized to such a degree that they are no longer available to Afro-Brazilian communities.

47. The Municipal Secretary of Reparations of Salvador coordinates a Racial Observatory for Carnival specifically to monitor and address that problem.

48. Other Afro-Brazilian cultural manifestations remain on the margins of Brazilian culture; artists and writers face barriers in accessing funding or recognition for their work. The positive promotion and maintenance of Afro-Brazilian cultural traditions are fundamental for promoting a positive self-identity for young people, challenging racism and increasing participation in wider society.

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<sup>35</sup> Marcelo Paixão and others, *Relatório Anual ...*, p. 20.

<sup>36</sup> Ricardo Lewandowski.

49. The Working Group met with the Director and representatives of the Palmares Cultural Foundation, the country's first public institution focused on the promotion of Afro-Brazilian art and culture. Representatives of the Foundation stressed that the budget for work on Afro-Brazilian culture was currently less than 10 per cent of the overall budget for culture in Brazil.

50. Since 1999 the Afro-Brazilian group Olodum has run a Creative Schools Project — the Interdisciplinary Project for Development of Citizenship and Preservation of Black Culture — which promotes positive identity and intellectual development for students. Using the framework of Law No. 10.639, it transforms pedagogical practices (including the use of Afro-Brazilian culture and art to form conscious citizens); confronts inequalities, breaks barriers of racial prejudice, provides a participatory space for the community and disseminates information about the importance of African culture in the construction of Brazilian society.

51. Another concern raised by several members of civil society was the World Cup (2014) and the Olympics (2016). For instance, the Secretary of Social Development and Human Rights in Pernambuco raised human rights concerns as a consequence of the World Cup, such as street clean-ups particularly of children living or working in the streets, sexual exploitation, and training for taxi drivers.

## D. Political participation

52. Several measures have been adopted to increase Afro-Brazilian participation and representation in decision-making spaces. The Ministry of Justice reserves 20 per cent of its supervisory and high-level advisory roles for Afro-Brazilians. There is no law for quotas to ensure a minimum number of Afro-Brazilian parliamentary candidates.

53. Under the initiative of the Nucleus of Black Parliamentarians of the Workers Party and other members of the government, there are a number of legal projects under consideration in the National Congress to increase Afro-Brazilian political participation.<sup>37</sup> The Constitution Bill<sup>38</sup> would add an item to the Transitional Constitutional Provisions Act determining reservation of seats for members of the black population in the House of Representatives and the Legislative Assembly.

54. Those proposals have been accompanied by the Parliament Advisory of SEPPPIR and are in line with initiatives already implemented by several municipal and State governments since 2002. A study carried out by the Institute for Applied Economic Research identified 50 such initiatives, four of which were carried out by the State governments of Paraná, Mato Grosso, Rio de Janeiro and Rio Grande do Sul to reserve seats to increase access to public services.<sup>39</sup>

55. For example, the State of Rio de Janeiro Law No. 6067/2011 reserves 20 per cent of executive and legislative positions (10 per cent where there are less than 20 spaces) for Afro-Brazilians and indigenous peoples. Decree No. 4.3007/2011 reserves 20 per cent of positions in public offices and positions with the executive authorities and the indirect administration for Afro-Brazilians and indigenous peoples.<sup>40</sup> Recently, a similar law has

<sup>37</sup> Presidência da República Secretaria de Políticas de Promoção da Igualdade Racial SEPPPIR-PR, III Conferência Nacional de Promoção da Igualdade Racial (CONAPIR), *Subsídios para o debate* (Brasília, 2013), p. 79.

<sup>38</sup> PEC 116/2011.

<sup>39</sup> *Subsídios para o debate*, pp. 86–87.

<sup>40</sup> *Ibid.*

been approved in the federal administration, setting quotas of 20 per cent for Afro-Brazilian candidates.

56. The Working Group welcomes the affirmative action policies which, if implemented successfully, will increase Afro-Brazilian participation and inclusion in higher education, employment and political processes and in the long term contribute to the reduction of racism and discrimination in those institutions and in society in general. At the same time it echoes concerns that some of those initiatives may merely be concessionary actions to avoid having to deal directly with the existence of racism and discrimination.

57. Further, the Working Group is concerned at continued opposition and backlash particularly by far right political actors and urges that sufficient support be given to those laws by members of the government to avoid a regression. As one academic in Pernambuco pointed out, whenever affirmative action is raised for public debate racism becomes worse. Yet conversely, as the Municipal Secretary for Reparations in Salvador da Bahia highlighted, one of the biggest obstacles to the implementation of affirmative actions was the lack of acceptance or perception that racism existed.

## **E. Administration of justice**

### **1. Access to justice**

58. Acts of racism and discrimination are criminalized in accordance with the Federal Constitution, Law No. 7716 on Racism (1989) as well as several other federal, State and municipal-level laws. Yet, victims of racism and discrimination face several barriers to accessing justice and seeking remedies. These include lack of awareness or knowledge of existing protective laws which may prevent them from reporting cases or pressing charges; negative experiences of the justice system and lack of confidence in the process; discriminatory attitudes or lack of interest among the police and lawyers; lack of financial resources; and geographical marginalization.<sup>41</sup> The Municipal Secretary for Affirmative Action in Salvador highlighted that racism cases did not often reach court as at each stage they became weaker and weaker and that they arrived at court as “injuries” cases not considered as racial discrimination.

59. Societal denial of the existence of racism also remains a barrier to access to justice. Several civil society organizations reported that, where cases were brought to court, convictions were difficult to obtain as the racial democracy myth made it difficult to prove prejudice or discrimination on the basis of ethnicity or colour of skin.<sup>42</sup> There further existed few sensitization or diversity training programmes for judges and other judicial system officials and a lack of available information on the issue.<sup>43</sup> In 2008, SEPPIR helped introduce a professorship in human rights, which included courses for senior officials of the justice system and federal and State-level courses on the rights of traditional communities.

60. There has been a rise in the number of racism cases reaching courts. In the period 2005–2008, 232 second instance cases of racism were heard in courts of justice and a further 41 in regional employment tribunals. Cases in the courts of justice rose from 84 in the period 2005–2006 to 148 between 2007 and 2008.<sup>44</sup> However, while in the period 2005–2006, 39.3 per cent of the cases had a positive outcome for the victims and 52.4 per cent for the accused, in the later period of 2007–2008, only 29.7 per cent of cases had a

<sup>41</sup> UNDP, *Derechos de la población afrodescendiente* ..., p. 142.

<sup>42</sup> Justice Studies Centre of the Americas, *The judicial system and racism against people of African descent: the Cases of Brazil, Colombia, the Dominican Republic and Peru* (Santiago, JSCA, 2004).

<sup>43</sup> Ibid.

<sup>44</sup> Marcelo Paixão and others, *Relatório Anual* ..., p. 261.

positive outcome for victims and 66.9 per cent ruled in favour of the accused.<sup>45</sup> In the employment tribunal cases the majority of perpetrators were legal entities (90.2 per cent).<sup>46</sup> Of the 41 employment tribunal cases between 2005 and 2008, 15 (36.1 per cent) had a positive outcome for the victim while 24 (58.5 per cent) were decided in favour of the accused.<sup>47</sup> The Working Group is concerned that while there has been an increase in the number of cases of racism being reported and taken up, barriers still exist in achieving convictions for the perpetrators of those crimes.

61. There are several mechanisms for access to justice in Brazil. Both the Public Defence and the Public Prosecutor can act judicially or extrajudicially. In appropriate cases, extrajudicial means can be used to mitigate conflicts. The Public Defence acts in administrative, civil and penal areas in favour of the most poor.<sup>48</sup> This can include possessory actions for the defence of traditional ownership, civil judicial action for the reparation of harm caused to the community and civil public action for the defence of diffuse and collective rights including ethnic and territorial rights as well as those for the defence of the environment, combating pollution and access to natural resources.<sup>49</sup>

62. The Public Prosecutor can take action in the following areas: penal action for the accountability of crimes against communities; support for situations of both urban and rural land conflicts through mediation; and civic public action for the defence of the diffuse and collective rights including ethnic and territorial rights, defence of the environment, combating pollution and access to natural resources.<sup>50</sup>

63. The Federal Public Prosecutor<sup>51</sup> works on the following areas: protection of the interests of individuals and indigenous communities, families, children and young people, the elderly, minorities and consumers.

64. The public hearing is an open space for information in accessible language and adequate formats aimed at collecting and considering societal opinions in the deliberation of problems. In land conflict cases for traditional communities which have not received a rapid response, public hearings have been demonstrated to be successful mechanisms for drawing public attention to situations and pushing for attention from the appropriate bodies.<sup>52</sup>

65. Quilombola communities also have the support of several civil society organizations that provide support and advice to traditional communities in the recognition and defence of their rights such as lawyers' associations.

66. The Secretary for Judicial Reform has no specific programmes for Afro-Brazilians but assists them indirectly through strengthening the work of the Ombudsman, supporting community justice through Justice Nucleus in vulnerable communities.

<sup>45</sup> Ibid., p. 264.

<sup>46</sup> Ibid., p. 265.

<sup>47</sup> Ibid., p. 266.

<sup>48</sup> Federal Constitution, art. 134.

<sup>49</sup> Secretaria de Promoção da Igualdade Racial, Estado da Bahia, *Direitos dos Povos e Comunidades Tradicionais*, 2nd ed. (January 2013), p. 44.

<sup>50</sup> Ibid., p. 45.

<sup>51</sup> Federal Complementary Law No. 75 (1993).

<sup>52</sup> Secretaria de Promoção da Igualdade Racial, Estado da Bahia, *Direitos dos Povos ...*, p. 47.

## 2. Criminal justice system

67. The overrepresentation of Afro-Brazilians in the criminal justice system including in custody and in prisons remains a concern. Since the abolition of enslavement Afro-Brazilians have been criminalized, starting with the 1890 Vagrancy Law which outlawed traditionally Afro-Brazilian practices such as capoeira and African religions. This has fed into a culture of racial profiling at all levels of the justice system. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment found that most victims of torture in Brazilian prisons were Afro-Brazilians. According to civil society sources Afro-Brazilians receive higher sentences than their white counterparts for the same crime, and are more likely to suffer discrimination in prison. The Institute for Applied Economic Research found that black people were twice as likely to be killed by the police as whites in cities like Rio de Janeiro.<sup>53</sup> The situation of Afro-Brazilians in the criminal justice system in Brazil could be far worse than the data indicate. The Institute for Religious Studies found that police homicides were twice as high as officially reported and that, in the majority of the cases investigated (64 per cent), the victims were shot in the back at close range — and most of those victims were of African descent.<sup>54</sup>

68. The Ministry of Justice was unable to provide the Working Group with the exact number of Afro-Brazilian prisoners owing to the varied systems for data collection in each State, but it estimates that 75 per cent of the prison population is Afro-Brazilian. According to the São Paulo State Secretary of Penitentiary Administration, the majority of Afro-Brazilians in prison are convicted for robbery or drug-trafficking. The Secretary denied any kind of racism or discrimination within the penitentiary system stating that any overrepresentation of Afro-Brazilians in the system would be due to trends in arrests, trials and sentencing. When questioned about violence or torture by prison staff, the Secretary claimed that most problems of violence within the prisons were prisoners attacking staff.

69. In Rio de Janeiro, a hotline established to track racial discrimination during a two-year period found 104 cases of discrimination in the criminal justice system; an unusually high number considering most individuals do not report those crimes due to fear of retaliation by the police. According to civil society sources, 80 per cent of robbery victims in Rio did not register the crime with the police because they were afraid to interact with police officers. Again, according to civil society, 76 per cent of citizens thought that the police force was directly involved with death squads terrorizing Afro-Brazilian communities suggesting that institutional racism led not only to incarceration but also to excessive use of force and violence.

70. In Pernambuco, the Working Group was pleased to learn of efforts being made to address institutional racism within the police force. The Group against Institutional Racism was created in 2009 and its activities include training and capacity-building for the military police, public campaigns against racism, a hotline to report racist crimes, cultural events, conferences, support and assistance to Afro-Brazilian communities including the Quilombola and Terreiro communities.

71. The São Paulo State Secretary of Penitentiary Administration has developed a human rights education programme. The course includes information on the legal framework of non-discrimination for lesbian, gay, bisexual and transgender people, women, people with disabilities, religious groups, and on laws on racial equality and affirmative policies.

<sup>53</sup> Around 356 per year in 2012 for example.

<sup>54</sup> Report by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston: mission to Brazil (4–14 November 2007) (A/HRC/8/3/Add.4 of 14 May 2008).

72. In São Paulo, the Working Group visited the Capital Female Penitentiary Unit and met a group of French inmates, all of whom were of African descent and a group of Brazilian inmates some of whom were of African descent. Most told the experts that issues of racism and discrimination were not a problem in the prison, although one inmate said she had experienced discrimination when trying to access sexual and reproductive health services. The experts felt that the open environment in which the discussion took place could have prevented inmates from speaking freely.

## F. Multiple discrimination

### 1. Violence and young people

73. The issue of violence against Afro-Brazilians, particularly young people, was raised repeatedly by civil society and several government representatives. The level of violence in Brazil grew significantly in the last decades of the twentieth century. A report by the United Nations Educational, Scientific and Cultural Organization shows that in the period 1979–2003, more than 550,000 people died from gunfire. These homicides grew by 542 per cent and the number of young people who died from gunfire went from 31.6 per cent of all victims to 41.6 per cent.<sup>55</sup> Homicide is now the main cause of death among young people between 15 and 29 years of age in Brazil and it particularly affects young black males living in urban areas. That issue was raised by the Special Rapporteur on extrajudicial, summary or arbitrary executions during his mission in 2007, when he asserted that between 45,000 and 50,000 homicides were committed each year, that homicide was the leading cause of death for 15–44 year olds and that high levels of impunity meant those deaths often went unpunished.<sup>56</sup>

74. According to the Ministry of Health, of all homicides against young people in 2010, 76.6 per cent of victims were Afro-Brazilians and 91.3 per cent were males.<sup>57</sup> A report by the Mapa da Violência — Map of Violence — project shows that of 17,426 homicides involving young people that took place in Brazil in 2011, 76.9 per cent involved Afro-Brazilians (*pretos* and *pardos*).<sup>58</sup> Young Afro-Brazilians are also often victims of racial profiling.

75. One of the biggest concerns is violence perpetrated by the police and security forces against young Afro-Brazilian males. Such complaints are not new with the Unified Black Movement having denounced cases of violence, torture and death since 1978. The infamous Candelaria massacre of eight young people in the streets of Rio de Janeiro in 1993, which raised national and international outrage, is another example of such violence against Afro-Brazilian young people. Twenty years after those events, arbitrary violence and killings of young black people remain of concern.

76. According to a Ministry of Health report based on the System of Mortality Information database in 2006, every 48 hours three people were killed by the police in Brazil, amounting to 46 deaths per month or 560 per year.<sup>59</sup> According to Soares (2003), the police force (civil, military and federal) is one of the only institutions that did not undergo institutional reform at the end of the dictatorship and the adoption of the new

<sup>55</sup> Waiselfisz, 2005, p. 11. Cited in Rodnei Jericó da Silva and Suelaine Carneiro, *Racial Violence: a Reading on Homicide Data in Brazil* (São Paulo, Geledés Black Women's Institute/Global Rights Partners for Justice, 2009), p. 23.

<sup>56</sup> A/HRC/8/3/Add.4, para. 5.

<sup>57</sup> Available from [www.juventude.gov.br/juventudeviva/o-plano](http://www.juventude.gov.br/juventudeviva/o-plano).

<sup>58</sup> Julio Jacobo Waiselfisz, *Mapa da Violência 2013: Homicídios e Juventude no Brasil* (Rio de Janeiro, CEBELA/FLACSO, 2013).

<sup>59</sup> Carvalho, 2008. Cited in Jericó da Silva and Carneiro, *Racial Violence ...*, p. 41.

Constitution in 1988. Consequently, the institution continues to be characterized by a lack of respect for human rights.<sup>60</sup>

77. The police are responsible for maintaining public security as asserted in the Federal Constitution, yet institutional racism, discrimination and a culture of violence lead to practices of racial profiling, overpolicing, blackmail, torture, extortion and humiliation particularly against Afro-Brazilians. The use of force and violence for crime control and public security has become accepted by society at large because it is perpetrated against a sector of society whose lives are not considered as valuable.<sup>61</sup> The Working Group views this as the fabrication of an internal enemy which justifies the use of military tactics to control criminal behaviour and reduce public and private liberties.

78. The Geledés organization raised concern about the lack of attention paid to that issue exemplifying the devaluation of young black lives in Brazilian society. The continued urban violence against youth of African descent was felt by many Afro-Brazilians and NGOs with whom the Working Group met as a “genocide”. The Government strongly rejected that view expressed by civil society.<sup>62</sup>

79. The Working Group understands that the violence perpetrated against young Afro-Brazilian people comes not only from agents of the State but also from organized criminal gangs, many of which involve young Afro-Brazilians in their activities. Yet the State has the responsibility to respect the right to life of all its citizens, to protect them from violence and take active steps to fulfil their right to life. The disproportionate numbers of Afro-Brazilians that live in the poorest areas, afflicted with crime and violence, means that right to a life without violence is not being fulfilled by the State for Afro-Brazilians. In many cases, the majority of the violence and deaths of young Afro-Brazilian people is carried out by the military police. State governments have little control over the behaviour of the police. The São Paulo State government has been battling to demilitarize São Paulo and asserted that it did not have the power to change police behaviour, though it could work hard to change the paths of young people through prevention work in schools and the community.

80. The Working Group welcomes the efforts that have been made to address that issue. In 2012, SEPPIR, in coordination with the National Secretariat for Youth launched the “Youth Alive Plan”. The initiative involves eight ministries and aims to reduce the high rates of homicide among young Afro-Brazilian people through a participatory approach. The Plan focuses its activities on the 132 municipalities where around 70 per cent of deaths have occurred.<sup>63</sup>

81. The Pernambuco Secretary for Social Defence talked about the Pacto Pela Vida (Pact for Life) initiative, a State programme initiated in 2007 to reduce violence, particularly in the capital of Recife. Pacto Pela Vida creates guidelines for all areas of the State government, not just the police. In the first four years of its existence the programme reduced violence by 30 per cent. In April 2007, there were 71 homicides and in October 2013, 26. Prevention work includes working with children in schools.

82. Yet the lack of coordination between the national security system and the judiciary remains a concern. The police operate at State level and as such there is no national policy or approach to recruitment and provision of training for the police forces. Some work has been done to promote human rights and address institutional racism but the police remain a hierarchical institution and those at the top tend to maintain and uphold the prevailing

<sup>60</sup> Soares, 2003, cited in Jericó da Silva and Carneiro, *Racial Violence* ..., p. 37.

<sup>61</sup> Jericó da Silva and Carneiro, *Racial Violence* ...

<sup>62</sup> A/HRC/27/68/Add.2.

<sup>63</sup> SEPPIR 10, p. 12.



culture. The São Paulo State Coordination of Policies for the Black and Indigenous Population<sup>64</sup> discussed the problem of impunity within the police force and also acts of resistance. In São Paulo, one of the main justifications given by the police for killings was self-defence.

## 2. Women and girls of African descent

83. Afro-Brazilian women and girls face intersectional discrimination based on their gender and ethnicity. They are overrepresented in low-paid, often exploitative jobs such as domestic work. In 2004, 67 per cent of Afro-Brazilian women earned less than US\$ 1 per hour, compared to 60 per cent of Afro-Brazilian men and 43 per cent of white women.<sup>65</sup> While access to adequate health care remains an issue for both men and women of African descent, women face particularly life-threatening disparities in access to health services.

## 3. Equality in employment

84. During its meeting with the Secretary for Women, the Working Group spoke with representatives of the Secretary's Programme for the Promotion of Gender and Ethnic-Racial Equality which aims to eliminate discrimination and inequality in the workplace. According to representatives, although unemployment among women fell from 15.2 per cent to 7.5 per cent between 2003 and 2011, women still experience worse work conditions, lower salaries and discrimination in the workplace. Although on average women have more years of education than men (9.2 compared to 7.9 years), they earn less. In addition women do not reach as high levels within organizations as men; men are six times more likely to be in the highest positions in organizations. Of the 8 million female domestic workers in Brazil, 80 per cent are Afro-Brazilian. Congress changed article 7 of the Constitution, bringing labour rights of domestic workers in line with the rights of other workers. The Working Group urges the Government to ratify the International Labour Organization (ILO) Convention No. 189 (2011) concerning domestic work for domestic workers.

85. The Programme for the Promotion of Gender and Ethnic-Racial Equality, created in 2005, is supported by ILO, SEPPIR and UN Women. It works with public and private organizations to design organizational action plans to adopt systematic practices for equality between men and women, address transversally intersectionality of gender and race. However, statistics also show that among women following the Programme, 72 per cent were white and 16.5 per cent Afro-Brazilian and there was real inequality in access to work.

## 4. Maternal mortality

86. Afro-Brazilian women are three times more likely to die in childbirth than white women, owing, in part, to low-quality prenatal care.<sup>66</sup> Ninety per cent of those deaths could be preventable with access to adequate health care. The root causes of high maternal mortality rates (MMR) include socioeconomic, regional, gender and racial disparities in health care. MMR is disproportionately high in the north and north-east of Brazil, as high as 73 per 1,000 due to inequality in health-care provision. According to the Ministry of Health, Afro-Brazilian women are 50 per cent more likely to die of obstetric-related causes

<sup>64</sup> CPPNI.

<sup>65</sup> Suzanne Duryea and Maria Genoni, "Ethnicity, race and gender in Latin American labor markets", in Mayra Buvinic and others, eds., *Social Inclusion and Economic Development in Latin America* (Washington, D.C., Inter-American Development Bank, 2004), p. 253, fig. 13.3.

<sup>66</sup> Inter-American Development Bank, "African descendants by the numbers", available from [www.iadb.org/en/topics/gender-indigenous-peoples-and-african-descendants/development-in-african-descendant-communities,2606.html](http://www.iadb.org/en/topics/gender-indigenous-peoples-and-african-descendants/development-in-african-descendant-communities,2606.html).

than white women. They receive lower quality health-care services, including less prenatal visits, and less information is provided.

87. The Working Group was keen to follow up on the specific case of a young pregnant Afro-Brazilian woman, Alyne da Silva Pimentel Teixeira who died in 2002. In 2008, the NGO Center for Reproductive Rights representing the woman's mother, Maria de Lourdes da Silva Pimentel, sent a communication to the Committee on the Elimination of Discrimination against Women claiming a failure to ensure access to quality and timely medical treatment violating articles 2 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women.<sup>67</sup> The NGO claimed that the victim had suffered from multiple discrimination based on her socioeconomic background and as a woman of African descent.

88. In the decision published in 2011, the Committee on the Elimination of Discrimination against Women's recommendations to Brazil included effective remedies, including financial compensation to the mother and daughter of the victim, and general measures to ensure women's right to safe motherhood and affordable access for all women to adequate emergency obstetric care such as improved training, access to effective remedies and sanctions.<sup>68</sup> The experts welcome the fact that the State has taken steps on the general recommendation concerning training for health-care workers. They also note that the State has created an interministerial working group tasked with overseeing the implementation of the case. While half of the financial compensation has been paid by the Federal Government, the daughter of the victim has still not received compensation and the Working Group urges the Government to fulfil this obligation.

89. In March 2013, the Inter-American Commission on Human Rights held a hearing on the rights of Afro-Brazilians at the request of the Afro-Brazilian civil society organization, Associação Cultural de Mulheres Negras, and Global Rights based in the United States of America. It concluded that while Brazil had worked towards implementing policies to correct discrimination within institutions, they had not improved the situation of women of African descent. Pending further information from the State and petitioners, the Commission will issue recommendations to the State of Brazil.<sup>69</sup>

## 5. Traditional communities and populations

90. Many Afro-Brazilians belong to traditional communities and populations, Quilombo heritage communities and Terreiro traditional African religious communities. Traditional communities have established rights under the Federal Constitution and the process of judicial decision must take into account the rights and interests of traditional communities.<sup>70</sup>

<sup>67</sup> See *Maria de Lourdes da Silva Pimentel v. Brazil*, available from [www.ohchr.org/Documents/HRBodies/CEDAW/Jurisprudence/CEDAW-C-49-D-17-2008\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/CEDAW/Jurisprudence/CEDAW-C-49-D-17-2008_en.pdf).

<sup>68</sup> Ibid.

<sup>69</sup> See <http://hrbrief.org/2013/03/situation-of-the-right-to-freedom-of-expression-in-peru/> and [http://www.youtube.com/watch?v=kabHxUDuXTA&list=PLkh9EPEuEx2st1\\_l-W6cr0o3oH9DxBSDc&index=1](http://www.youtube.com/watch?v=kabHxUDuXTA&list=PLkh9EPEuEx2st1_l-W6cr0o3oH9DxBSDc&index=1).

<sup>70</sup> *Maria de Lourdes da Silva Pimentel v. Brazil*, pp. 49–50.

*Quilombo heritage communities*

91. Under Federal Decree No. 4887 of 2003, the Palmares Cultural Foundation is responsible for recognizing and certifying Quilombo heritage communities in order to obtain land titles. The community must present the Foundation with a report of the history of the community, minutes of a specific meeting carried out by the members of the community through which they recognize themselves as Quilombola, expressing a wish to obtain certification, and where possible, statistics, documents or other information such as photos, reports or studies attesting to the common history of the group or its cultural manifestations.<sup>71</sup>

92. Article 8 of Law No. 12.288 determines incentives to guarantee rights to health and access to land for Quilombolas and articles 31–34 also address rights to land titles, public policies for sustainable development and special treatment of Quilombola communities promoting production and infrastructure. SEPPIR supports the work of federal government bodies to increase policies in areas such as health and education and to develop suitable plans and projects to work with Quilombola communities.

93. The Brazil Quilombola Programme, created in 2004, comprises initiatives by around 20 ministries in thematic areas of access to land, infrastructure, standard of living, local development, productive inclusions, and citizenship rights. State-level seminars are carried out to integrate State governments into the Programme and a workplan is being developed by federal, State, municipal bodies and representatives of Quilombola communities.<sup>72</sup>

94. Collective ownership is central to Quilombola rights. Despite a lack of official land titles, Quilombola communities have lived and worked on their lands for generations and ownership is transferred through the generations. In many cases communities have been forcibly removed from their lands, often fleeing violence and intimidation, in violation of ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries. That should not affect their claim to land but in practice it can make it harder for recognized communities to obtain their land titles and many are caught up in long-standing legal battles with other private landowners and corporations. Eighteen per cent of people protected in the Brazilian Programme for the Protection of Human Rights Defenders are Quilombola community leaders. Furthermore, the Working Group believes that the right to consultation is not fully implemented.

95. According to the National Institute of Colonization and Agrarian Reform (INCRA), the process of gaining official titles for Quilombola communities is long and complex, involving several elaborate steps following initial certification by the Palmares Cultural Foundation. In the north-east alone there are 400 communities awaiting titles. There are many communities that have certification but no land titles. For example while there are 110 recognized communities in Pernambuco only two have received land titles. In other States such as Minas Gerais not one community has received official land titles. Challenges in the administrative process of land titling occur when there is a conflict over the land, multiple claims on the land or judicialization of those claims overlapping with titled lands or conservation areas established by the State.<sup>73</sup> When traditional communities report on threats, violence or environmental degradation, they often experience discrimination.

96. In Pernambuco, the Working Group met with the Secretary for Social Development and Human Rights who has worked with several Quilombola communities facing threats of violence. It also visited the Quilombola community of Castainho which has been fighting for the demarcation of its territory since 1982. While INCRA has begun the process of

<sup>71</sup> Secretaria de Promoção da Igualdade Racial, Estado da Bahia, *Direitos dos Povos ...*, pp. 15–17.

<sup>72</sup> SEPPIR 10, p. 21.

<sup>73</sup> *Direitos dos Povos ...*, p. 39.

compensation for landowners, the process has been incredibly slow. The leader of the community informed the Group that he and several others had received threats from the landowner and his workers.

97. In Bahia, the Working Group visited the Quilombola community of Cachoeira. Despite significant advances made during the Lula administration, it is still lacking basic services. In particular the community needs better roads as heavy rains often leave them inaccessible preventing them from exporting products. There is also a lack of health services. For maternal health, pregnant women have to travel 28 km to Cachoeira for examinations. Many community members lack identity cards which prevents them from accessing services; the nearest place for birth and death registration is 28 km away. The 15 communities have been recognized as Quilombolas and have not experienced problems with local landowners, however the process of land titling through INCRA took 10 years.

98. The Secretary for the Promotion of Racial Equality in the State of Bahia has taken several actions to defend the rights of traditional communities which might come into conflict with the interests of other members of society, including formulation and management of specific policies and guidelines for the rights of traditional communities; assistance in the process of regularization of land titles; support for organizational processes, education and organizational capacity-building; public management for conflict mitigation and monitoring of established mechanisms and State obligations.<sup>74</sup>

#### *Terreiro communities*

99. Traditional African religious communities (Terreiros) are linked to a Terreiro House used to practising African traditions in respect of ancestors, nature and in the context of an extended family.<sup>75</sup> According to a report by the Committee for the Promotion of Ethnoracial Equality of Pernambuco State, there are around 1,800 traditional communities of Jurema, Umbanda and Candomblé in Recife; in Pernambuco, around 6,000 of those and other traditions.

100. In line with national and other State legislation, article 50 of the 1989 Constitution of the State of Bahia asserts that the State will promote necessary actions for the legalization of land in which Afro-Brazilian religious temples are situated. Article 5 of the Federal Constitution provides for freedom of conscience and of belief “the free exercise of religious cults being ensured and, under the terms of the law, the protection of places of worship and their rights being guaranteed” (art. 5(VI)). Yet, many Terreiro populations face widespread discrimination and obstacles in the practice of their traditions. For many, the principal cause of discrimination is not based on ethnicity or colour of skin but on religion.

101. In Pernambuco, the Working Group visited the Ile Oya Terreiro House and learned about the continued discrimination that it and other Terreiros face. There are frequent orders by police to cease their religious ceremonies on account of noise disturbance while no such rules are applied to other equally noisy ceremonies by other religions. They assert that the discriminatory targeting of their practices can be part of an effort to suppress their cultural expression. They note the positive change that Terreiro communities experienced under the Lula administration with greater recognition and visibility; yet their religious practices are often still criminalized and persecuted which is a legacy of an outdated law which prohibited African religious practices.

<sup>74</sup> Ibid., pp. 29–30.

<sup>75</sup> Ibid., p. 21.

## V. Conclusions and recommendations

102. The experts greatly appreciate the comprehensive and informative meetings that were held with government agencies. They note with satisfaction the many programmes and other initiatives that the State implements to combat racial discrimination affecting people of African descent. These exist in government departments, at federal and municipal levels, as well in as the many other institutions that are working on the promotion of the right to equality with non-discrimination. They note the constant progress made since the first election of President Lula da Silva.

103. The experts learned that education was still one of the major areas of discrimination and one of the main sources of inequality. The Working Group also noted that the circle of poverty, inadequate housing and education, limited employment opportunities and challenges in the administration of justice continued to affect the lives of Afro-Brazilians at multiple levels and left them marginalized. Those issues are not yet being sufficiently addressed in a holistic and coordinated manner.

104. Despite the high percentage of Afro-Brazilians in the population and the serious efforts and advances that have been made in combating direct discrimination against people of African descent, the Working Group is concerned by the ongoing structural and institutional racial discrimination and xenophobia that cannot be effectively addressed by the existing legal mechanisms and legislation.

105. The Working Group notes that people of African descent with whom they met shared experiences of serious racism and discrimination based on their skin colour. Based on information received from civil society, the experts expressed concern about the practice of racial profiling by the police, which reportedly results in disproportionately high rates of harassment, arrests and imprisonment of people of African descent.

106. Education is an essential step for fighting negative representations and stereotypes in society. The common history of enslavement and colonization based on the archaic idea of a hierarchy of races and superiority of cultures has to be recognized as a common heritage and shared by former colonizers and former colonized. It is imperative to deconstruct the paradigm which racializes all levels of society, through action at the political, economic and intellectual levels to create an understanding that the world is diverse in its entirety. It is also important to deconstruct the ideology of “whitening” which continues to affect the mentalities of a significant portion of society. This work should be done with the help of the media and with the involvement of the society as a whole.

107. On the other hand, it should also be kept in mind that as the country is a federation of States, most States have also enacted their own legislation prohibiting racial discrimination in different areas where they have jurisdiction.

108. The Working Group found that many of the recommendations made in the report of the Special Rapporteur against contemporary forms of racism, racial discrimination, xenophobia and related intolerance were still relevant and valid and should be implemented.<sup>76</sup> In addition, the Working Group makes the following recommendations:

(a) While there is a strong body of public policy at the federal level the Working Group is concerned that at the State and municipal levels many of the policies have less weight and implementing institutions lack funding and structure. Municipal and State-level organs of the National System for the Promotion of Racial Inequality must be recognized and sufficiently funded so that they are able to carry

<sup>76</sup> E/CN.4/2006/16/Add.3, pp. 20–23.

out their activities effectively. This includes larger teams, more visible and accessible working spaces and improved commitment from other governmental bodies and better coordination to work in partnership on cross-cutting themes;

(b) The adoption of the Quota Law in 2012 is a landmark step towards equality in education. It is essential that further policy steps be taken to ensure that once Afro-Brazilian students access university they are able to remain there for the duration of their studies without facing obstacles of extra financial burdens, discriminatory attitudes and lack of support;

(c) The process for titling of Quilombola lands should be reviewed to make it a more expeditious and less complex process. Further training and sensitization for justice officials concerning the rights of Quilombola communities are needed to ensure effective protection from threats and violence in land dispute cases. ILO Convention No. 169 should be effectively implemented;

(d) The law criminalizing racism is a welcome step in the fight against racism against Afro-Brazilians and other marginalized groups. It is important that the law be fully implemented;

(e) Sufficient support should be given to promote and accompany legislative processes in Congress for further affirmative action, particularly in creating quotas in government;

(f) Policies to prevent violence against vulnerable members of society particularly Afro-Brazilian women and young people are essential;

(g) The independence of the military police has serious consequences for young people of African descent in Brazil. The institution needs a federal level of control. It can be returned to the command of the Ministry of Defence to enable such a control and monitoring of its activities as well as coordinating training and sensitization for officers throughout the country;

(h) Steps must be taken to remove reliance on self-defence claims made by the police in cases of death. This includes the passing of Legal Project 4471;

(i) Further training and sensitization of the police are essential to change the culture of violence under the pretext of national security. This involves working with all ranks of the police force, particularly top levels to change attitudes and behaviour;

(j) The recommendations made by the Committee on the Elimination of Discrimination against Women concerning maternal mortality must be fully implemented;

(k) There is a need for increased investment in teacher training and curriculum materials to ensure the effective implementation of Law No. 10.639 on the teaching of Afro-Brazilian history and culture. Curriculum materials should be improved to guarantee better knowledge of the history of Africa.

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