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THE HUMAN RIGHTS PROTECTION REGIME FOR AFRO-DESCENDANTS THE CASE OF LATIN AMERICA AND THE CARIBBEAN

By: Leonardo Reales¹

ABSTRACT

Some states have been proactive in ratifying laws that protect ethnic minorities in Latin America and the Caribbean, but Afro-descendants do not benefit much from these laws. Self-identification as an 'ethnic minority' for Afro-descendants has been problematic. Some Afro-descendants defend the term *Afro-descendant peoples* whereas others agree with the use of *ethnic minority* as the ideal concept to identify them as a group or population. In any case, most Afro-descendants support an effective human rights protection regime as a key tool to help overcome their historical problems. This article studies in depth the crucial importance for Afro-descendants of enhancing this "still-weak" regime. The text represents one of the few works of

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its kind that explores in detail the limitations of the Afro-descendants' human rights struggle in the region.

Key words: Afro-descendants, human rights, identity, ethnic minorities.

RESUMEN

Si bien algunos Estados de América Latina y el Caribe han ratificado normas para proteger a las minorías étnicas, los(as) afrodescendientes no se han beneficiado mucho con la aprobación de las mismas. La autoidentificación como 'minoría étnica' para la población afrodescendiente ha sido problemática. Algunos(as) afrodescendientes utilizan el término *pueblos afrodescendientes* mientras otros(as) prefieren el concepto *minoría étnica* cuando de autoidentificarse como grupo o población se trata. En cualquier caso, los(as) afrodescendientes en general apoyan la existencia de un régimen efectivo de derechos humanos como herramienta clave de su lucha histórica en pro de la superación de los problemas estructurales que los(as) afectan. Este artículo analiza en detalle la importancia crucial para los(as) afrodescendientes de consolidar dicho régimen, el cual es todavía "débil". El texto es uno de los pocos trabajos que explican las múltiples limitaciones que enfrentan los(as) afrodescendientes para defender sus derechos humanos en la región.

Palabras clave: Afrodescendientes, derechos humanos, identidad, minorías étnicas.

INTRODUCTION

The extreme poverty, social exclusion and racial discrimination that Afro-descendants in Latin America and the Caribbean have historically faced are structural problems that should be of concern not only to social researchers and regional non-governmental organizations interested in development and human rights, but also to governments and international financial institutions. There is no doubt that numerous economic, cultural, and socio-political benefits would accrue for the region from the implementation of strategies to eliminate such problems. International interest in this situation has grown over the last seven years, as is evident in the proliferation of articles, reports and documents demonstrating the need for reducing such marginalization and enforcing human rights laws in order to achieve equitable development.

In Latin America and the Caribbean, no human rights protection regime exists for Afro-descendants. While a few countries in the region have been proactive in ratifying international human rights laws that protect indigenous peoples, most people of African descent have been historically excluded from benefiting from these laws. At the same time, self-identification as an 'ethnic minority' group has been problematic in different ways. Through international advocacy

opportunities, most notably with the so-called African Diaspora of the World Conference against Racism in 2001, and learning from the indigenous groups' struggles in Latin America and the Caribbean, some Afro-descendant advocates in the region are "successfully" pushing countries to establish new protection mechanisms for their communities as an ethnic minority.

The purpose of this paper is to fold: (1) to study in depth the international human rights framework that protects Afro-descendants in Latin America and the Caribbean, and (2) to analyze in detail the consequences of discriminatory practices on Afro-descendants, as well as the main challenges of their *regional* struggle for enforcing an effective protection regime.

The paper is divided in six parts: First, an introduction, in which a general overview of Afro-descendants is presented; second, previous relevant research on the topic is outlined; third, an analytical framework of various terms regarding Afro-descendants and other ethnic groups in Latin America and the Caribbean is presented; fourth, central aspects of the Afro-descendant history are described; fifth, both international and regional human rights instruments that protect Afro-descendants as a ethnic minority are extensively studied; and sixth, a conclusion, in which the limitations to effectively implement a protection regime for Afro-descendants in the region and their current challenges are underscored.

Although there is a lot argument about the actual statistics on Afro-descendants in Latin America and the Caribbean, Afro-descendant and international financial institutions estimate that the region has at least 150 million people of African descent, some 30% of it's total population (Leonardo Reales 2005). Some empirical studies have indicated that regional underdevelopment is directly related to the Afro-descendant social situation and their extremely limited chances to succeed economically and politically (Jonas Zoninsein 2001). This disadvantageous situation is seen in populated countries like Colombia or Brazil, where the vast majority of Afro-descendants live below the so-called extreme poverty line.

The above situation confirms the non existence of a regional protection regime on which the Afro-descendant population could rely. Despite the fact that most governments in the region have ratified international human rights treaties that protect ethnic minorities, Afro-descendants continue to suffer constant violations of their civil, political, economic, social and cultural rights. These grave violations of human right have been explored by several authors although they have not paid much attention to their historical causes. In any case, their documents serve as critical references for this paper since they present extensive analyses on human rights treaties and laws that protect Afro-descendants in Latin America and the Caribbean.

Before turning to the case of Afro-descendants in the region, prior relevant research on the topic and the analytical framework of the article will be outlined. The debate of the meaning of

the terms ‘minority’ and ‘Afro-descendants’ will be also studied in detail. These two concepts are rooted in particular cultural and political histories: ‘minorities’ in Europe and ‘Afro-descendants’ in the Americas. As will be evidenced in the text, the absence of political will to recognize the existence of racism against people of African descent has limited their human rights struggles as an ethnic minority. It seems clear, nevertheless, that Afro-descendant leaders and human rights activists have been successful in forging a “transnational identity”² and advocating for protection of that group, including through innovative use of international law. As a result, the *international* regime that protects the people of African descent in Latin America and the Caribbean seems to be more dynamic than ever before.

PREVIOUS RESEARCH ON THE INTERNATIONAL PROTECTION REGIME FOR AFRO-DESCENDANTS

Texts and reports from non-governmental organizations and international institutions such as the Inter-American Development Bank (IDB), the United Nations Development Program (UNDP), the UN Economic Commission on Latin America and the Caribbean (ECLAC), and the United Nations Office of the High Commissioner for Human Rights (OHCHR) have given accurate portrayals of the Afro-descendants’ human rights situation, but they have not analyzed in depth the causes of their marginalization and exclusion. Academics have also failed by ignoring the importance of well-documented studies that would help explain the international protection regime that Afro-descendants can utilize as a political strategy to overcome their socio-economic and political problems as a group. In any case, Ariel Dulitzky (2001), Felipe González and Jorge Contesse (2004), Corinne Lennox (2006), Reales (2005), and Zoninsein (2001) have provided extensive papers on the contemporary history of Afro-descendants and racist practices against them. Their works serve as key references for this article since they explore the actual cases of racial discrimination against Afro-descendants throughout Latin America and the Caribbean.

Other relevant documents describe the international human rights treaties that most states in the region have ratified to protect Afro-descendants. Alvaro Bello and Marta Rangel (2002), Martín Hopenhayn and Alvaro Bello (2001), Peter Oakley (2001), and Carlos Sojo and Estanislao Gacitua (2001) present a well-documented balance of these treaties and other human rights laws, even though they do not study in depth their effectiveness in practice. This balance, however, will be used in the text as a critical source.

² This concept refers to the identity that many Afro-descendants have regardless of their countries of origin. By using this term, Afro-descendants (throughout the Americas) also want to exalt cultural practices that are rooted in Africa.

In terms of the information that shows differences between Afro-descendants and the rest of the population in Latin America and the Caribbean, the article takes into account the work of Maurice Bryan and Margarita Sánchez (2003). These scholars have emphasized that socio-racial discrimination exists in the region, based on statistical comparisons between the Afro-descendant people's living conditions and the social situation of most "Whites" and Mestizos (light-skinned mixed people).

Several texts acknowledge that Afro-descendants have made a significant contribution to Latin America and the Caribbean. These texts will be utilized to explain the socio-economic and political context that has historically characterized the region. It should be underscored that there are authors who study racist practices, social exclusion, and marginalization in Latin America and the Caribbean. They focus on how Afro-descendants have been systematically excluded from the political and higher education systems. The documents these authors use will be also used to explain how 'non-officially recognized' racist practices have, for decades, significantly affected not only most Afro-descendants in the region but society as a whole.

The lack of well-documented works that analyze and measure the tendency to reject Afro-descendants is undeniable. There are few studies that explore the apparently-strong relationship between racist practices and social problems of Afro-descendants as an ethnic minority. Lennox (2006), however, presents an outstanding text that explains the effect of the so-called changing protection regimes for minorities and indigenous peoples on African and Latin American states. Her work is the most critical source for the analytical framework presented below.

AFRO-DESCENDANTS AS AN ETHNIC MINORITY: ANALYTICAL FRAMEWORK

Before studying the definitions of 'minority' and 'Afro-descendants' as a distinct (ethnic) minority, the relevant concepts used in the text are briefly explained as follows: Racism is the arbitrary naturalization of physical and cultural differences that leads people to degrade certain groups through social processes³ (Fernando Urrea and Olivier Barbary 2004). It is important to point out that in Latin America and the Caribbean racist ideas came from the colonial epoch and have persisted throughout history, in spite of the abolition of slavery and the creation of equity laws. In the early 1920s, in fact, most states approved racist laws that encouraged the immigration to the region of European (white) people to 'improve the race' (Reales 2005). Racist ideas remain as a complex problem that affects not only ethnic groups but also society as a whole.⁴

³ Note: The translation is mine.

⁴ The author uses a multidisciplinary approach to explore in depth both racism-related practices and identity issues. This approach combines elements from the international human rights law, sociology, history and political science.

Another concept that is extensively utilized in the text is racial discrimination, which is defined, according to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), as any distinction, exclusion or preference based on race, color, descent, or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition or exercise, on an equal footing, of human rights and fundamental freedoms in the economic, cultural, social, political or any other field of public life.⁵

Racial-discrimination practices are considered (constitutionally speaking) “grave” crimes in most Latin American and Caribbean countries. However, the systematic violation of economic, social, and cultural rights of the Afro-descendant population -by both state and non-state actors- and the lack of political will to make effective minority rights, clearly indicates the persistence of such denigrating practice throughout the region.

Based on the international protection regimes for minorities and indigenous peoples, the Afro-descendant population can be classified as an ethnic minority. But who is a minority and who is indigenous? Do most Afro-descendants see themselves as a minority? Before answering these questions, it should be noted that there are no universally accepted definitions of “minority” or “indigenous peoples” either in law or in practice (Lennox 2006).⁶

The United Nations, since the 1960s, has intended to be a leader in opening discussion on this particular issue, with the UN Sub-Commission on the Promotion and Protection of Human Rights (notably previously called the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities) appointing independent experts to offer suggestions. Francesco Capotorti (1991) proposed a legal definition of ‘minorities’ and José Martínez an early definition of indigenous peoples. Capotorti recommended that, for the purposes of the application of the International Covenant on Civil and Political Rights (ICCPR),⁷ the term minority may be taken to refer to a group numerically smaller than the rest of the population of the State, whose members, being nationals of the State, possess ethnic, religious, or linguistic characteristics differing from those of the rest of the population.

José Martínez (1986) defines indigenous peoples and nations as those which, having a clear historical continuity with pre-invasion or pre-colonial societies that developed in their territories,

⁵ Article 1. International Convention on the Elimination of All Forms of Racial Discrimination.

⁶ The author does not intend to establish ideal definitions of these concepts. It should be noted that neither academics nor activists have come to a consensus on how to define both terms.

⁷ The Covenant holds (Article 27) that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to practice their own religion, or to use their own language.

consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They are determined to preserve their territories in accordance with their own socio-cultural patterns and values.⁸ Lennox (2006) asserts that none definition has proved satisfactory to all stakeholders. For example, many experts feel that the application of minority rights should not be limited to citizens, as Capotorti argues. Others are concerned that in linking the concept of 'indigenous peoples' to a connecting with pre-invasion or pre-colonial societies, Martinez is reflecting a bias towards the experiences of colonialism in the Americas.

The international minority-rights framework is embodied in three texts: Article 27 of the ICCPR, Article 30 of the Convention on the Rights of the Child (CRC), and the well-known UN Declaration on the Rights of People Belonging to National, Ethnic, Religious and Linguistic Minorities (UNDM). The ICCPR has been ratified by more than 150 states and the CRC by almost 200⁹; while the UNDM is a non-legally binding soft law text, which was unanimously adopted by the UN General Assembly in 1992.

Article 27 of the ICCPR (and Article 30 of the CRC)¹⁰ entitles those people belonging to minorities to practice their culture, language, or religion, including in community with the other members of their group. The UNDM draws on Article 27 and other international human rights laws and recognizes that minorities have the right: to exist; to non-discrimination; to participate in decision-making spaces that affects minorities or the regions in which they live; to participate effectively in political, economic, social and cultural life; to education that reflects their identity; to maintain their own associations and peaceful contacts across borders with other members of their group; and to participate in progress and development in their country.

While it is accepted that all indigenous peoples can use the above protection regime, other groups, like the Afro-descendants, still need to "demonstrate" that they are a "minority" to gain special human rights benefits. Consequently, self-identification as either a minority or indigenous is relevant. Being a 'minority' or 'indigenous' means being able to make certain rights claims upon states. It is for this reason that states frequently have tried to avoid recognition of groups as 'minorities' or 'indigenous peoples' (Lennox 2006).

It should be noted that Article 27 of the ICCPR applies only to States in which people belonging to ethnic, religious, and linguistic minorities *exist*. In order to address this issue, the Hu-

⁸ For a discussion on these definitions, see Martínez José. *Study of the Problem of Discrimination against Indigenous Populations*. New York: United Nations, 1986.

⁹ Accurate as of December 2007. Note: These human rights treaties have been ratified by most Latin American states.

¹⁰ Article 30 states: "In States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with the other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language."

man Rights Committee (HRC), which is the UN Treaty Body with responsibility for reviewing the implementation of the ICCPR, argues that the existence of minorities in a given State does not depend upon a decision by that State but must be established by objective criteria.¹¹ Similarly, the International Labor Organization (ILO) Convention 169 recognizes that *self-identification* as indigenous or tribal shall be regarded as the fundamental criterion for determining the groups to which the provisions of the Convention apply. The principle of self-identification has now become a normative principle for both the minority rights and indigenous rights regimes.¹²

Some ethnic groups have found it easier than others to make these self-identification proclamations. The concepts of 'indigenous peoples' and 'minorities' are not as universal as they appear, each rooted in a particular time and space: 'indigenous peoples' emerging from a social movement dominated by actors throughout the Americas since the 1970s; and 'minorities' from the experiences of bilateral and multilateral treaties in Europe since the 17th century.¹³ It should not be surprising if the terms do not fit as well in other socio-political spaces. Where the concepts 'minority' or 'indigenous peoples' do not have common currency in local, national, or regional discourses, ethnic groups seeking to utilize these terms for the purpose of accessing international protection standards may find it awkward or difficult to do so.

The existing categories may also seem unsatisfactory in their meaning. For example, the meaning of the term 'minority' can have negative connotations, depending on etymology and/or socio-political usage (Lennox 2006). Other groups may feel they simply are 'peoples' without wanting also to be considered 'indigenous,' a concept that may also be perceived as denoting communities that are socio-culturally backward and undeveloped. These concepts are not power-neutral: to be a 'minority' or 'indigenous people' in the meaning of the concept in international human rights law is to be a distinct and implicitly less powerful section of the population of a state requiring some special protection. This idea, in fact, may not sit well with some community leaders and activists who seek to empower their fellow members, as occurs in countries with a strong presence of Afro-descendants like Colombia (Reales 2005).

The success in pushing the normative interpretation of the right to self-determination is indicative of the potency of the agency of minorities and indigenous peoples themselves. Their actions are reshaping interpretations of the concepts of 'minority' and 'indigenous peoples' and are changing the landscape of regional human rights protection regimes (Lennox 2006).

¹¹ For more information on this debate, see Human Rights Committee, *General Comment on the Rights of Minorities*. New York: United Nations, 1994.

¹² This is recognized also in the inverse (in that all individuals have the right to not identify as a minority).

¹³ For a discussion on this historical process, see Lennox (2006).

They have been aided in part by international and regional human rights mechanisms and actors that have contributed by opening space (sometimes in the face of state opposition) for a discourse to emerge around these “new” identities and rights.

It is important to underline that in most Latin American countries, the term ‘minority’ has been deemed inappropriate or negative. For instance, the use of the concept to denote numerical smallness may seem “illogical” given that Afro-descendants are such a large population in Latin America and the Caribbean, totaling more than 150 million people (Zoninsein 2001). The simple notion of being a numerical minority is certainly debatable when describing such (demographic) magnitude of people.

Some Afro-descendants in the region feel a negative connotation to the term ‘minorities’ in the sense that it is seen as less empowering, implying some weaknesses on the part of so-named groups. In Spanish-speaking countries, *‘minorías’* (‘minorities’) is often perceived as a term that ‘minimizes’ the problems of certain groups. Hearing comments like “Afro-descendants may have numerous problems, but they are just an ethnic minority, and what the country needs is to solve the problems of the entire population” is a common occurrence in the region.

Although the language of ‘communities’ or ‘people’ resonates most for Afro-descendant leaders and best represents the sense of solidarity they seek to create,¹⁴ some social activists are currently promoting the strengthening of “Afro-descendant self-awareness” as an ethnic minority. This “consciousness” is related not only to the benefits that some leaders and activists see in the use of the international protection regime but also to their identity-building process.

Coming to a consensus in terms of selecting the proper concepts used to define certain groups is not generally an easy task. The point is perhaps best illustrated by the well-known experience of the indigenous peoples’ movement (Lennox 2006). This movement rejected the terminology of ‘minority’ in favor of that of ‘peoples’, which they felt better reflected their identities and which aligned them with the decolonization process and the concomitant right to self-determination.

Since the 1970s, the movement has grown immensely, and a key focus of their advocacy on the international level has been addressing the issue of defining what it means legally and politically to be an indigenous people. The preoccupation with securing unqualified recognition of their communities as peoples under the meaning of the term in international law reflects a firm desire by many indigenous leaders to have their people recognized as “equal” peoples, not lesser peoples (Lennox 2006).

¹⁴ Juan de Dios Mosquera. Afro-Colombian political leader. Interview with the author, Bogotá, June 2005.

While most of their political efforts have been resisted by states, this constant struggle for the respect of human rights has influenced the normative understanding of this right to include internal self-determination. Afro-descendants have learned several lessons from the indigenous movement. This helps explain why they are focused on taking advantage of the existence of the international protection regime to reflect their interests as an ethnic group. They continue to strive to shape the discourse on their rights while using their identity as a political tool. Nevertheless, Afro-descendant leaders throughout Latin America and the Caribbean recognize that there is still much (cultural and socio-political) work to be done as regards to self-identification, since the pull factor for many Afro-descendants to self-identify as “Whites” or “Mestizos” remains.¹⁵

The aforementioned factor comes from the racist elites’ idea of promoting the “whitening” of the population as the best strategy to “improve their race” and is the main reason why creating cultural and socio-political incentives to “belong” to the “Afro-descendant minority” continues to be one of toughest challenge for the leaders.

WHO ARE THE AFRO-DESCENDANTS?

The experiences of people of African descent across Latin America and the Caribbean are complex and diverse, even when most of them have historically remained (equally) ignored by the states. The Afro-descendant population ranges from a large demographic majority in several Caribbean states to a relatively-small numerical minority in the continental ones (Lennox 2006). They have different experiences of slavery, oppression, exclusion, and colonialism that influence their position in modern society. Some communities are urban and others are rural. Many Afro-descendants live in particular coastal regions or other territories they have settled in since the slavery epoch. There are variations in tradition (and even in language), and they descend from different tribal groups across Africa (Minority Rights Group International 1995). Some Afro-descendant leaders believe, nevertheless, that they have been, and are being, successful in forging a common identity under the rubric of all being people of African descent, bearing the same legacy of slavery, marginalization, and racism that their ancestors began fighting centuries ago.

There are many commonalities between indigenous peoples of Latin American and people of African-descent. Politically and socio-economically, indigenous peoples and Afro-descendants generally occupy the lowest social stratum, sharing similar concerns as regards to the elimination of racial-discrimination practices and extreme poverty, and the promotion of equitable access to adequate health services, social programs, loan markets, and education facilities.

¹⁵ Self-identification is a key tool for ethnic minorities. It helps empower them and makes it easier for them to prove the existence of systematic racist practices against them, when these practices exist.

ties, including ethnic programs or education in their mother tongue (Cristina Torres 2002 and Clare Ribando 2004).

Land is a crucial issue for many Afro-descendant communities, which have typically lived in the same territories since the end of or escaping slavery, as occurs with some '*quilombos*' in Brazil (Darien Davis 1999) and '*palenques*' in Colombia (Nina de Friedemann 1993). While in some nations aspects of indigenous and Afro-descendant cultures are mainstreamed (e.g., food, music, dance), socio-racial discrimination is common against both groups throughout the region. Politically, Afro-descendants have not been able to lay claim to the kind of rights and exceptional participation measures that indigenous peoples have secured in recent years thanks to national and international advocacy (Lennox 2006).

Both groups can link their present day marginalization and exclusion to a common cause: colonialism. People of African descent, however, cannot claim to be 'indigenous peoples' given the construct of that concept in the region. The manner in which the 'indigenous' identity has been constructed in Latin America and the Caribbean means that 'indigeness' (only) belongs to those pre-colonial peoples who occupied territories for millennia and who continue to practice their ancestral traditions, cultural expressions, and livelihoods (Lennox 2006). They are 'peoples' whose self-determination rights have been denied by colonialism.

Arguably, the self-determination of the vast majority of Afro-descendants has also been denied by colonialism. People of African descent were brought to the territory by colonizers and slave-traders involuntarily, and many still retain distinct socio-cultural lives, as expressed through music, land use, livelihoods, etc. Those who have been "integrated" into mainstream society have done so only at the lowest levels of the social hierarchy (Dulitzky 2001).

Some Afro-descendant communities like the *Raizales* and the *Palenqueros* in Colombia are currently seeking legal recognition not only as Afro-descendant ethnic minorities but also as 'indigenous peoples' at both regional and international levels. As the Colombian Ministry of Interior (1998) underscored, the Afro-Colombian *Raizales* on San Andrés Island, are a "unique" ethnic community. The *Raizales* speak both *bandé* (a language of African origin) and English and have religious traditions that are not practiced anywhere else in the country.

Despite the state recognition of the *Raizales*, they are permanent victims of racist practices that have produced internalized racism problems among them. Some *Raizales* do not even speak Spanish, but they still hear from intellectuals that their nation's mother land is Spain, which tends to negatively affect their cultural heritage as an ethnic community (Dulph Mitchell and Leonida Bush 2002).

The heritage and history of the *Palenqueros* has also been ignored, even when the United Nations Educational, Scientific and Cultural Organization (UNESCO) declared this community as a patrimony of humanity. The Palenqueros live in *Palenque de San Basilio*, a small town founded by escaped slaves centuries ago, which is well-known for being the *first free town in the Americas*. Central for this community is the so-called language of *Palenquero*, which is the only Creole language in the Americas comprising a Spanish basis with characteristics of several Bantu languages (De Friedemann 1993). The *Palenquero* language constitutes a vital factor reinforcing socio-political cohesion among community members.

The Palenqueros are not only severely threatened by the market transformation, which shrinks local production modes, but also because the Colombian armed conflict is affecting their surroundings. Outside their small town, the Palenqueros are subjected to racial discrimination and ethnic stereotyping leading to a denial of their 'ancestral' values. As UNESCO (2005) underlines, the increasing influence of commercial media and unsuited high school curricula are eroding the community's heritage, which leads to cultural homogenization.

Neither the Raizales nor the Palenqueros have been officially recognized as 'indigenous peoples'. Some Afro-Colombian human rights advocates, however, are currently working on this legal 'recognition' issue. They believe the international protection regime gives them sufficient tools to pressure the State in order to gain such recognition.

There is only one Afro-descendant group in the region that has been widely and officially accepted to be an 'indigenous people': the so-called '*Garífunas*'¹⁶. The *Garífunas* are descendants of escaped slaves, who practice traditional livelihoods linked to their environment, often living in coastal regions (Francesca Gargallo 2002). Although the *Garífunas* cannot, strictly speaking, be considered "original" inhabitants of "Latin American" territory, they have retained evidence of their African heritage, which led the Guatemalan state to recognize them as 'indigenous peoples'.

The significance of being recognized as 'indigenous' in Latin America and the Caribbean means that groups can claim certain rights protection, in particular to land and different forms of autonomy (Lennox 2006). This is relevant given the wide ratification of ILO Convention No. 169 in the region. The fruits of many decades of human rights advocacy by the indigenous move-

¹⁶ In Guatemala, for instance, *The Agreement on Identity and Rights of Indigenous People*, signed in late 1995, acknowledges that the Guatemalan nation is multi-ethnic and multicultural in nature and that the indigenous peoples include the Maya, *Garífuna* and Xinca peoples. The Government of Honduras reports that a "significant initiative in the matter of recognition of the rights of the country's aboriginal and Afro-descendant people has been Honduras' ratification of ILO Convention No. 169 concerning Indigenous and Tribal Peoples" (UN Doc. CCPR/C/HND/2005/1 (26 April 2005): para. 321. Note: The *Garífunas* also live in Honduras, Belize and Nicaragua.

ment have been realized in the form of special representation in government, specially targeted social development programs, creation of national bodies on indigenous affairs, recognition of ancestral land rights, and use of natural resources. In this regard, the Afro-descendant communities are still far behind indigenous peoples, and their interests and political demands are, in most countries, not as mainstreamed into policy discourse as those of indigenous peoples.¹⁷ Furthermore, many Afro-descendants still feel that they are more likely to succeed socio-economically and politically when denying their ethnic origin. That is why it has been particularly hard to empower Afro-descendants based on their identity. Despite these obstacles, an Afro-descendant ethnic identity-building process is growing stronger throughout the region. This political process is based on the communities' historical legacy, as argued below.

AN OVERVIEW OF THE AFRO-DESCENDANTS' HISTORY

In the 1810s, when the wars for Independence in Latin America and the Caribbean began, society was divided by statute and custom into socio-racial castes (*sociedad de castas*), which comprised, broadly speaking, Euro-Mestizos, free people of African descent (Afro-Mestizos and Afro-Indigenous persons), indigenous people, and slaves. The castes were ruled by white people (both Europeans and Creoles). Free Afro-descendants were not permitted to become professionals or to enter the various civil or military bureaucracies. When the militia was created, free Afro-descendants were permitted to serve but only in segregated units (Jay Kinsbruner 1994).

The term '*casta*' was a pejorative reference to those of mixed blood, before and during the independence process. Rolando Mellafe (1984) notes that the preference was to be considered *Euro-Mestizo*, so as to be, socio-racially speaking, "close to the rulers." Some free Afro-Mestizos and Afro-Indigenous purchased a 'pure-blood certificate' from authorities. This operation, known as '*gracias al sacar*,' was used not only to gain respect but also to have access to state benefits (Reales 2005). Afro-Mestizos and Afro-Indigenous then perceived the so-called *blanqueamiento* (*whitening*) as the best strategy to "ascend" in the so-called socio-racial structure inherited from colonial times.

The situation of slaves was obviously the worst. Even though sometimes owners were "respectful" to their slaves and manumitted them after years or decades of hard work, most slaves were treated as beasts. This is one of the reasons why, from the first days in Spanish American slave society, running away, or '*el cimarronaje*,'¹⁸ was a common occurrence.

¹⁷ For a discussion on this advances, see Lennox (2006).

¹⁸ The Spaniards initially called '*cimarrones*' the animals (bulls, horses, etc) that escaped from their stables.

Once slavery was abolished in Latin America and the Caribbean in the 1850s and 1860s,¹⁹ Afro-descendants found themselves in the same cultural, socio-economic, and political situation, suffering the consequences of the denigrating discourses created within the framework of slavery. Historical texts indicate the reproduction of the so-called socio-racial pyramid (structure), in spite of equity laws promoting the existence of a society formed by free men and women living under the same judicial and human rights conditions. Racist practices, in fact, grew stronger throughout the region, affecting both Afro-descendant and indigenous communities.

These practices spread in the region as they were imposed by national political elites who controlled the states (Dulitzky 2001). Researchers list two phenomena among the consequences of such practices: the internalized racism and “invisibility.” The internalized racism causes many people of African descent not only to deny their ethnic origin but also to discriminate against their own families. It is a complex “psychological problem” which is not easy to overcome since both the media and the education system reproduce negative images of those who have African background and hide their key contribution to the region.

Despite this key contribution, which included thousands of soldiers of African descent who died seeking the Independence of “their” nations and the abolition of slavery, most Afro-descendants neither have been included in society as equal citizens, nor have they been given real opportunities to enjoy their rights. As William Sharp (1968) would say, Afro-descendants could have been become free before the law, but their “race” continued to be the sign of their inferior socio-economic status.

Most Afro-descendants continued to be dehumanized despite the advent of the so-called ‘republican world.’ Those who survived the war for Independence did not substantially improve their political situation or living conditions, not even when freedom and civil and political rights were granted. Two centuries later, Afro-descendants, who are still marginalized throughout Latin America and the Caribbean, have found in the reconstruction of their political history a valuable tool to feed their identity discourse and enhance the international protection regime that benefits them as an ethnic (minority) group.

AFRO-DESCENDANTS IN LATIN AMERICA AND THE CARIBBEAN

The indigenous movement has been successful in bringing their concerns to the attention of states and international actors. Thirteen states²⁰ in the region have ratified the ILO Convention

¹⁹ Slavery was abolished throughout Latin America and the Caribbean in the 1850s and 1860s; Brazil did not abolish the institution until 1888. Brazil is known, in fact, for being the last country that abolished slavery in the western hemisphere.

²⁰ The states in the region that have ratified the ILO Convention 169 are: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Paraguay, Peru and Venezuela.

169 Concerning Indigenous and Tribal Peoples. This is evidence that at least at the policy level there is a commitment to recognizing indigenous peoples and taking their rights seriously. Many states have also given recognition to some indigenous peoples and have established measures to give effect to their rights, inter alia, to land, natural resources, and autonomy (Lennox 2006).

In sharp contrast has been the absence of attention to the human rights situation of Afro-descendants, who total about 150 million people in the region, nearly four times the population of indigenous peoples (Bello and Rangel 2002). Largely descendants of slaves, Afro-descendant communities continue to experience marginalization and racism. They are rarely represented in key public and private positions, have lower levels of human development, and for many decades remained as an “invisible” minority (Reales 2005). This “invisibility,” however, has decreased in the past seven years or so, marked by the (political) mobilization of Afro-descendant activists to push for greater inclusion of their communities and recognition of their rights (Lennox 2006).

What is interesting for those concerned with the discourse of minority rights is that Afro-descendant leaders in Latin America and the Caribbean typically have not chosen to express their ethnic identity as a ‘minority.’ Indeed, some leaders even outright reject the ‘minority’ label. Instead, they have most frequently self-identified as a ‘people’ or ‘peoples.’ On the face of it, the interests of Afro-descendants, principally to end discrimination, to promote their cultural heritage and to participate equally in society, match well with the international minority-rights framework. In practice, however, some Afro-descendants in Latin America and the Caribbean have aligned their specific claims much more closely to those institutions and rights recognized for indigenous peoples, including land rights (Lennox 2006). The self-identification of Afro-descendant peoples and how this relates to their rights claims are extensively explained below.

AFRO-DESCENDANTS AND THE INTERNATIONAL HUMAN RIGHTS REGIME

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa in 2001, became the most important reference for the struggle against racism and racial discrimination in Latin America and the Caribbean. Its final declaration illustrated such importance as follows:

“Afro-descendants (in Latin America and the Caribbean) have for centuries been victims of racism, racial discrimination and enslavement and of the denial by history of many of their rights. They should be treated with fairness and respect for their dignity and should not suffer discrimination of any kind. Recognition should therefore be given to their rights to culture and their own identity; to participate freely and in equal conditions in political, social, economic and cultural

life; to development in the context of their own aspirations and customs; to keep, maintain and foster their own forms of organization, their mode of life, culture and religious expressions; to maintain and use their own languages; to the protection of their traditional knowledge and their cultural and artistic heritage; to the use, enjoyment and conservation of the natural renewable resources of their habitat and to active participation in the design, implementation and development of educational systems and programs, including those of a specific and characteristic nature; and where applicable to their ancestrally inhabited land.”²¹

It should be noted that the 2001 World Conference against Racism was the direct result of international and regional efforts to eradicate racist practices throughout the world. These efforts began in 1948, when the Universal Declaration of Human Rights was enforced. The UN General Assembly relied on this human rights text to propose and approve the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in the late 1960s. The legal adoption of this human rights instrument by most Latin American and Caribbean countries, with a view to improvohich the situation of ethnic groups, “makes it easier” for Afro-descendant activists to demand the effective implementation of human rights laws. Actual implementation though is difficult to secure due to the non-recognized racist and exclusionary practices (at both public and private levels) that persist throughout the region.

Bryan and Sánchez (2003) underscore that the perpetuation of systems and attitudes that confine Afro-descendants to low-paid, racially-defined areas of work, where education plays a limited role in terms of advancement is still seen by most activists to be only a slightly altered, modern version of slavery. Ironically, most Latin American and Caribbean states have ratified all international human rights treaties that protect their Afro-descendant communities, but both Afro-Latinos and Afro-Caribbean people continue to be strongly affected by structural problems such as extreme poverty, racial discrimination, exclusion, and marginalization. Afro-descendants still present the worst indicators in terms of their access to the education system, to health and social services, to land and housing, and to loans and labor markets, which has made them the poorest of the poor in the region. In any case, Afro-descendants may use not only the CERD and the ILO Convention 169 but other international human rights instruments to help overcome their dramatic situation. Among these instruments,²² activists point out the following ones:

- * The International Covenant on Economic, Social and Cultural Rights (ICESCR).
- * The International Covenant on Civil and Political Rights (ICCPR).

²¹ World Conference against Racism. 2001. Final Declaration. Durban: United Nations.

²² For information on human rights instruments, see *Compilación de Instrumentos Internacionales*. Bogotá: United Nations / OHCHR, 2002.

- * The Convention on the Elimination of Discrimination against Women (CEDAW).
- * The Convention on the Rights of the Child (CRC).
- * The American Convention on Human Rights (ACHR).
- * The Additional Protocol to the ACHR, known as 'Protocol of San Salvador'.

The above instruments state that ethnic minorities (i.e., the Afro-descendant people) shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. The CEDAW, which focuses on the elimination of discrimination against women, is extremely important for Afro-descendant women, who are victims of both racial and gender discrimination throughout the region. The "double discrimination" problem has significantly worsened their living conditions. This is why Afro-descendant women are, in fact, the poorest persons in the region (Reales 2005).

Both the ACHR and the Protocol of San Salvador not only protect the economic, social and cultural rights of minorities but also prohibit all forms of exclusion, racial discrimination, and racism against ethnic groups and individuals. This prohibition includes the elimination of racist expressions and offensive stereotypes in the media and high school text books. Those expressions and stereotypes, however, are still a common occurrence in the region.

While the CERD and other international human rights treaties have greatly advanced efforts against racism and have set forth countless provisions, recommendations and conclusions of unquestionable importance, they should be updated and tailored to the reality in Latin America and the Caribbean. Circumstances have changed significantly since the late 1960s and early 1970s, when most of these human rights instruments were approved. This is why the International Human Rights Law Group (2003) pointed out that those treaties' impact in Latin America and the Caribbean would be greatly strengthened by the explicit identification of those victims of discrimination, including Afro-descendants and indigenous peoples. Further, only a handful of states in the region have recognized the Committee on the Elimination of All Forms of Racial Discrimination's (CERD) jurisdiction to hear individual complaints from those who have been victims of racist practices, in accordance with Article 14 of the CERD. Article 14 establishes that governments which have ratified the CERD must assume their responsibility of rectifying the violations of the Convention.

According to the International Human Rights Law Group (2003), international human rights instruments dealing with national, ethnic, religious, and linguistic minorities also are not fully appropriate to the current reality of the region. For instance, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, which is constantly monitored by the Working Group on Minorities of the United Nations Subcommittee on Protection and Promotion of Human Rights, provides certain helpful standards, but it is not

supported by effective enforcement mechanisms. More important, the Declaration does not speak to the contemporary reality or the aspirations of ethnic minorities in Latin America and the Caribbean. While the linguistic and cultural rights of indigenous peoples are of concern, there is a wide range of other issues that marginalized groups like Afro-descendants consider equally important. How can one assess the current state of the Afro-descendant human rights movement in the region? Why do most activists see the approval of an Inter-American Convention against Racism and Racial Discrimination the best human rights tool ever to help enhance the protection regime for Afro-descendants in Latin America and the Caribbean? The author intends to answer these questions in the last section of the paper.

PROMOTING A REGIONAL PROTECTION REGIME FOR AFRO-DESCENDANTS

Latin America and the Caribbean is the region in the world with the worst distribution of income, and this situation has deepened for the last two decades because of the implementation of wrong socio-economic development models and policies. Distribution of income is even worse when considering the ethnic component. Without a doubt, in all Latin American and Caribbean countries, white people and Mestizos have more opportunities than Afro-descendants to succeed socio-economically and politically (Bryan and Sánchez 2003).

Despite the dramatic situation of most Afro-descendants, their contribution to the region has been extensive. Afro-descendants are producers of goods and services, and they represent a market of at least one hundred and fifty millions costumers. They are central to many key areas of production, and the standard of living of the middle-classes of most countries in the region could not be maintained without the domestic work contributions of Afro-descendant women.

Moreover, the informal sector that provides goods and services and feeds the low-income and poorer sectors of Latin America and Caribbean is sustained by Afro-descendants (Bello and Rangel 2002). In short, the region's quality of life today would be completely unrecognizable without the active presence of Afro-descendant people. Yet, like their ancestors decades before them, they are not properly rewarded economically or even respected socially.

As has been evidenced throughout the text, Afro-descendants need to unite their efforts in order to put pressure on states and create a regional protection regime. The response from some Afro-descendant leaders over the last ten years or so has been to establish a more coherent social movement with articulated, shared goals (Lennox 2006). Six of these goals remain as priorities: 1) the elimination of racist practices in the region, including through affirmative-action laws and institutional change; 2) ethnic-oriented development programs; 3) recognition of land rights; 4) improved access to education; 5) curriculum reform to reflect Afro-descendant history; and 6) census reform and improved collection of disaggregated data.

It is important to point out that in individual countries there has been some progress. For instance, Inter-American Dialogue (2004) indicates that five countries in Latin America and the Caribbean (Brazil, Colombia, Ecuador, Honduras and Nicaragua) have formally recognized land entitlements for people of African descent. In Colombia, nonetheless, many Afro-descendants in the Pacific region have not even had the chance to make effective the above entitlements as their lands are affected by internal armed conflict and drug-trafficking activities.²³

While some of these concessions were made in the 1990s (for example, Colombia passed crucial legislation on Afro-descendants through Law 70 of 1993), much of the progress has come since the UN World Conference against Racism (WCAR), held in Durban, South Africa, in 2001. There, states embraced the so-called *Durban Declaration and Programme of Action* (2001). The key success of Durban was the elevation of Afro-descendants to a 'named group' with specifically rights and targets, thus incorporating the name of 'Afro-descendants' into the international law lexicon. As Edward Telles (2004) would say, Durban brought renewed energy into existing cooperation to address the disadvantageous situation of Afro-descendants in Latin America and the Caribbean, while also helping to unite a diverse group of people across the world beyond the region, behind a cause in recognition of their common experience.

The Declaration underlined the importance of special rights for the 'people of African descent.' These rights very closely parallel those recognized for indigenous peoples; even specific rights to land and natural resources, typically only elaborated in relation to indigenous peoples in international discourse, were acknowledged at Durban (Lennox 2006).

It should be noted that much of the Durban text on Afro-descendants comes directly from the Regional Conference of the Americas, held in Santiago, Chile, in 2000. Civil society actors feeding into this process utilized the term 'Afro-descendant peoples,' which was not initially adopted by Latin American and Caribbean states or at Durban. Some Afro-descendant human rights activists have continued to push for recognition of their rights, not as indigenous peoples or as minorities but as peoples of African descent. Other activists strongly defend the term *ethnic minority* as appropriate to advocate for the Afro-descendant communities in the region.

This controversial debate has been characterized by the fact that the rights that most Afro-descendants have claimed are a kind of "hybrid" of existing international standards on minority rights and indigenous peoples' rights. Many Afro-descendants include, for instance, land rights in their discourse (which do not appear in the so-called minority rights discourse) but have not, to date, asserted the 'right to self-determination,' which is so prevalent in the indigenous

²³ For information on the Afro-Colombian case, see Afro-Colombian National Movement Cimarron (2004).

peoples' rights discourse, particularly in Latin America. Yet some Afro-descendant advocates persist with the language of 'peoples' instead of ethnic minorities.

According to Lennox (2006) there could be many reasons for choosing not to self-identify as an ethnic minority. It does not appear that the actual rights recognized in the minority rights regime are inappropriate; indeed, Afro-descendants would claim that the various rights contained, for example, in the UNDM, are relevant to them. The reason is most likely either that the set of rights recognized for minorities is too limited in scope or the identity of 'minority' is ill-fitted to their own interests. This is what has motivated indigenous peoples to establish a separate rights regime and what appears to be motivating some Afro-descendant leaders in Latin America and the Caribbean to follow a similar path.

What is interesting, however, is that most Afro-descendants (those who support the use of the term ethnic minority and the ones who do not) are now focused on enhancing an effective regional human rights regime to reflect their interests. The success of indigenous peoples in this regard is clearly evidenced by the OAS Draft American Declaration on the Rights of Indigenous Peoples.²⁴ The path laid by indigenous peoples has led to tremendous attention to their issues by states and international actors alike, and it should not be surprising if some Afro-descendants use this as a model for achieving their own, often similar, social goals.

It should be underlined that the relationship between the two movements -indigenous and Afro-descendants- has sometimes been cooperative and sometimes strained. The strength of the indigenous claims arguably has come in large part from their 'otherness,' which entitles their communities to particular rights. If Afro-descendants have the same rights, this may challenge the still unsecured space that many indigenous peoples have long been struggling to create within states. There is a genuine tension in many states between indigenous and Afro-descendant actors, where Afro-descendants are unwilling to accept that indigenous peoples have gained substantive concessions from states while Afro-descendants remain overlooked (Bryan and Sánchez 2003).

Many Afro-descendant leaders clearly see much to be gained from carving out a 'distinct' ethnic identity for their communities in Latin America and the Caribbean. There is no doubt that 'people of African descent' exist. The international community has started to respond to this fact, creating new institutions to address this particular constituency, much as was previously done for indigenous peoples. The "recently-created" UN Working Group of Experts on People of African Descent, established in 2002, is one of the evident products of the UN World Con-

²⁴ For more information on such as success, see Lennox (2006).

ference against Racism. The UN Office of the High Commissioner on Human Rights continues to hold regional seminars for Afro-descendants, such as the one held in Chincha, Peru in early November 2005 to focus on poverty reduction and the achievement of the UN Millennium Development Goals.²⁵

The author participated in this seminar, where attendants underscored that although many countries have passed statutes to recognize Afro-descendants as an ethnic minority, and to punish racist practices, few of these laws are being enforced. Also, attendees confirmed that in the region freedom of movement and advancement in the political and socio-economic arena is blocked by these practices and by most workers lacking knowledge about minority rights.²⁶

The above complex situation forces a large mass of workers to be available consistently to function only as cheap labor in several sectors where “white” people and “Mestizos” do not wish to work. This not only stifles the self-development of the vast majority of Afro-descendants but also perpetuates the extremely-unequal distribution of income that has historically characterized Latin America and the Caribbean.

Despite racist practices and other grave human rights violations, Afro-descendants have mobilized their communities to put pressure on regional institutions regarding the empowerment of “their” protection regime. The most important regional Afro-descendant outcome to date was (is) the establishment of a ‘*Special Rapporteur on the Rights of People of African Descent and Racial Discrimination*’ at the Inter-American Commission on Human Rights of the Organization of American States (OAS). Pressure from Afro-descendant leaders resulted in the OAS approving urgent exploratory discussions on the creation of an Inter-American Convention against Racism and Racial Discrimination.

The OAS has approached the issue of the rights of people of African descent by focusing on non-discrimination; indeed neither the above Special Rapporteur nor the proposed Convention exclusively target Afro-descendants. The scope of claims made by most Afro-descendant leaders, nevertheless, are not limited to “non-discrimination rights,” even though such rights

²⁵ The Millennium Development Goals complement the international human rights treaties in so far as they seek the elimination of poverty and the promotion of social development in a non-discriminatory framework. In that sense, it is important to say that if the main objective is strengthening economic growth and development, all countries in the region should guarantee the elimination of institutionalized racism. For discussion on these Goals, see Reales (2005).

²⁶ This text does not pretend to statistically measure the effectiveness of national and international human rights laws throughout Latin America and the Caribbean. No doubt a study of that kind would complement this article. It should be mentioned, nevertheless, that the lack of “ethnic statistics,” particularly before the approval of these laws, makes it difficult for scholars to do such study.

are paramount for them. Protection of cultural heritage, education reform and land rights also feature strongly in their ethnic discourse. Most Afro-descendants expect these claims to be included in the proposed Inter-American Convention against Racism and Racial Discrimination.

As the International Human Rights Law Group (2003) has strongly suggested, instituting a regional convention against racial discrimination and racism would enhance the Inter-American System for the Protection of Human Rights. A regional convention would be in keeping with the OAS's practice of reiterating international human rights instruments and expanding upon them where necessary to address dynamics in particular to Latin American and Caribbean states. Indeed, the Inter-American System has developed as a combination of reiterations of and expansions on national and international efforts, as well as uniquely regional efforts.

The OAS has promulgated several regional instruments that borrow heavily from existing international instruments, including the American Convention on Human Rights (ACHR), which draws from the ICCPR, the Protocol of San Salvador, which excerpts many of the provisions in the ICESCR word-for-word, and the so-called Convention of Belém do Pará, which touches upon many of the themes articulated in the CEDAW. As succinctly stated in an introductory clause to the Protocol of San Salvador, the reiteration of laws allows rights to be "reaffirmed, developed, perfected, and protected" in the regional context (International Human Rights Law Group 2003).

The World Conference on Human Rights recognized in the 1993 Vienna Declaration that regional arrangements play a fundamental role in promoting and protecting human rights. These arrangements serve to reinforce universal human rights standards, as contained in international human rights instruments (Reales 2005), and evidence has proven these statements true.

Regional articulations of international laws not only strengthen protection regimes, but they also promote greater accountability and more effective enforcement mechanisms, which, in turn, protect against further human rights violations. A regional convention against racism and racial discrimination would also be a progression of the OAS's long-standing endeavors, as it would constitute a means of translating those endeavors into concrete institutions and minority-rights statutes, giving them heightened impact (International Human Rights Law Group 2003). As Afro-descendant activists point out, a regional convention of this kind would be the "natural" next step in the process initiated by the efforts surrounding the UN World Conference against Racism. A regional convention against racism and racial discrimination would surely strengthen the overall framework of the Inter-American System for the Protection of Human Rights.

A regional convention against racial discrimination would also make a serious statement about the region's rejection of its long history of slavery and exclusion and would complement existing domestic laws and human rights institutions. It would send a message not only to

Afro-descendants but also to indigenous peoples, migrants, and refugees, that their rights are worthy of protection and that any violation of their rights is actionable before various regional human rights institutions.

To sum up, a regional convention against racism and racial discrimination would fill in the gaps left by existing regional and international human rights instruments. It is undoubtedly the “logical” next step toward a more effective protection regime for Afro-descendants and other historically-marginalized groups in Latin America and the Caribbean.

It should be emphasized that Afro-descendant human rights advocates are confident about the prompt approval of the proposed convention. This is why they continue to strive to shape the discourse on their ethnic identity and special rights. Even though there has been some relevant support from international non-governmental organizations, such as the Inter-American Dialogue and Global Rights, to bring Afro-descendant leaders together, the bulk of the advocacy has been undertaken by local, national, regional, and international non-governmental organizations of Afro-descendants who work in cooperation at all levels.

There is no doubt these organizations have been somewhat successful in enhancing the aforementioned human rights discourse (struggle). Implementing an effective protection regime for Afro-descendants, however, will continue to be a hard task for them given the lack of political will to follow this human rights path in most Latin American and Caribbean nations.

CONCLUSION

There is still no (regional) human rights protection regime for Afro-descendants in Latin America and the Caribbean. While states in the region have been slightly proactive in ratifying international human rights laws that protect indigenous peoples, most people of African descent have been historically marginalized from benefiting from these important laws. At the same time, self-identification as an ‘ethnic minority’ for Afro-descendants has been problematic in different ways. Some Afro-descendants leaders defend the use of the term ‘Afro-descendant peoples’ as the most appropriate for their human rights struggle, whereas other advocates agree with the term ‘ethnic minority’ as the ideal concept to identify them as a distinct group.

What is interesting, however, is that most Afro-descendants (those who support the use of the term ‘*ethnic minority*’ and the ones who do not) are now focused on promoting an effective regional human rights protection regime to reflect their interests and historical claims. As shown in the paper, indigenous peoples have been more successful than Afro-descendants in enhancing “their own” protection regime in Latin America and the Caribbean. The path laid by indigenous peoples has led to tremendous attention to their issues by states and international

actors alike. This is the reason why it should not be surprising if some Afro-descendant leaders utilize this as a model for achieving their own, often similar, socio-economic and human rights goals.

Although there is an extensive *international* human rights framework that protects Afro-descendants as an ethnic group, this historically-marginalized population apparently requires the creation of special (domestic and regional) laws that help recognize racist practices and punish violators of the laws. As many Afro-descendant activists declare, these laws should start with the approval of special statutes against racism and racial-discrimination practices, promoting this way the creation of national commissions against those practices that directly interact with both public and private sectors of communities (Reales 2005). Commissions of this kind would surely encourage states to accept the competence of the CERD to examine complaints from individuals that have been victims of these practices, in accordance with Article 14 of the CERD.

Most Afro-descendant human rights activists are confident about the prompt approval of the recently-proposed *"Inter-American Convention against Racism and Racial Discrimination."* For them, a regional convention against racism and racial discrimination would fill in the gaps left by existing regional and international human rights instruments. They see this "forthcoming" human rights treaty as a key step toward a more effective protection regime for Afro-descendants in the region. In the meantime, and despite the historical obstacles to enforce human rights, activists continue to strive to shape the discourse on their identity and rights as a distinct (ethnic) minority group.

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