



**Franciscans International**  
A voice at the United Nations

# UNIVERSAL PERIODIC REVIEW PERU

## JOINT STAKEHOLDER SUBMISSION “CEDET-FI”

*presented by the*

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## INTRODUCTION

1. The Center for Ethnic Development (CEDET) and Franciscans International (FI) respectfully present the following report (joint submission “CEDET-FI”) based on first-hand information and analysis for the review of Peru’s fulfillment of its human-rights obligations during the 14th session of the Working Group on the UPR.
2. CEDET is an Afro-Peruvian organization that was founded in 1999 to offer technical assistance to the Black Movement in Peru. CEDET works with urban and rural Afro-Peruvian communities throughout Peru. CEDET’s mission is to strengthen the ethnic and cultural identity of the Afro-Peruvian community through human-rights defense, capacity- and leadership-building, and comprehensive human development.
3. FI is a faith-based international non-governmental organization with General Consultative Status with the Economic and Social Council of the United Nations. Founded in 1982, FI works with Franciscans around the world to bring the concerns of the poor, the marginalized, and the most vulnerable to the UN.
4. This joint submission emerged out of an FI workshop held in Lima in December 2011 with members of the Peruvian Franciscan Family, CEDET, and local and national human rights organizations. The analysis is based on FI and CEDET’s joint research and first-hand information that CEDET has gathered through its ongoing work with Afro-Peruvian communities, especially along the Peruvian coast in the regions of Piura, Lambayeque, La Libertad, Ancash, Lima, Ica, Arequipa, and Tacna.<sup>1</sup>
5. Peru’s submission for the first-cycle UPR did not make any reference to the particular situation of the Afro-Peruvian population in its analysis of its compliance with international human-rights obligations. Unfortunately, this deficiency reflects a systemic invisibility of this population in the public policy of the country. The invisibility and lack of a critical analysis in international settings consolidates and entrenches the marginalization of the Afro-Peruvians communities.
6. With this joint submission, CEDET and FI invite all stakeholders, and particularly the Government of Peru, to remedy this deficiency by giving special attention in the second-cycle UPR to the human rights of the Afro-Peruvian population.
7. This joint submission concentrates on the rights of Afro-Peruvians; however, the ethnic, racial, and cultural discrimination in Peru infringes on the rights of many minority groups in this multicultural and pluri-ethnic country. In light of Peru’s diversity and international norms of equality and non-discrimination, an analysis of compliance with international human-rights obligations must include differentiated consideration of sub-populations. Special attention should be given to groups that have historically suffered systemic abuse, exclusion, and discrimination.

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<sup>1</sup> There are an estimated 106 communities in Peru with Afro- descendant population. Instituto Nacional para Estadísticas e Informática (INEI), *INEI realiza encuesta de población afroperuana* (2004), <http://www.inei.gob.pe/web/NotaPrensa/Attach/5435.pdf>.

## I. BACKGROUND AND FRAMEWORK

8. Peru's 1993 Political Constitution recognizes that it is a "multicultural and pluri-ethnic country."<sup>2</sup> There have been a series of important antidiscrimination laws, including administrative regulations and criminalization of discrimination.<sup>3</sup> At the local level, there has also been an increase of anti-discrimination municipal ordinances.<sup>4</sup>
9. However, as UNDP confirmed, compared to other countries in the region, "Peru presents scarce institutional achievements in terms of recognizing and guaranteeing the human rights of Afro-Peruvians and in the fight against racism and racial discrimination."<sup>5</sup> Formal advances in the legal framework, the institutional infrastructure, and policies have proved to be only superficial progress. These have not translated into a discernible improvement in terms of fulfilling human-rights obligations with regard to the Afro-Peruvian population. The legal and institutional framework still is not aimed at addressing the deeply rooted racism or the systemic and long-standing exclusion, invisibility, and discrimination of the afrodescendant population.

### A. Institutional Infrastructure

10. The National Institute of Andean, Amazonian, and Afro-Peruvian Peoples (*Instituto Nacional de los Pueblos Andinos, Amazónicos y Afroperuanos*, INDEPA) was created in 2005 and installed at a ministry level to be "the lead agency for national policies." INDEPA was given the mandate to propose and oversee public policies and to coordinate with local governments to execute projects and programs aimed at promoting, defending, investigating, and affirming the rights and unique development of the Andean, Amazonian, and Afro-Peruvian peoples.<sup>6</sup> Despite this important formal recognition of the need for institutionality, civil society has consistently denounced that INDEPA never fulfilled the role for which it was designed and has not intervened at the level of public policy on behalf of the Afro-Peruvian population.

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<sup>2</sup> Political Constitution of Peru (1993), art. 2.19.

<sup>3</sup> For example, in the area of employment discrimination, Law 26772 prohibits discriminatory requirements in announcements of employment opportunities. This Law was modified by Law 27270, which defines the concept of discrimination. Supreme Decree 019-2006-TR regulates the Work-Inspection Law. Supreme Decree 004-2009-TR, the most recent legal norm regarding employment discrimination, punishes employers that require domestic workers to wear uniforms in public spaces.

<sup>4</sup> In 2008 and 2009 more than 40 provincial municipalities and districts and three regional governments emitted anti-discrimination ordinances, including the municipalities of Miraflores, Magdalena, and San Miguel, the department of Lima, the provincial municipalities of Arequipa, Huancayo, Juaja, Chiclayo, Canchis, and Urubama in Cusco, as well as the regional governments of Apurímac and Ayacucho.

<sup>5</sup> UNDP, *Derechos de la población afrodescendiente de América Latina: desafíos para su implementación* (2010), p. 105.

<sup>6</sup> Law N° 28495 (April 15, 2005), regulated by Supreme Decree O65-2005-PCM (August 12, 2005).

11. In 2008, INDEPA came under the Ministry of the Woman and Social Development (*Ministerio de la Mujer y Desarrollo Social*, MIMDES).<sup>7</sup> This change in institutional organization lowered the status of INDEPA, which was initially established as a decentralized office with budgetary and administrative autonomy. In July 2010 the Ministry of Culture<sup>8</sup> was created and INDEPA was fused with this Ministry through absorption.<sup>9</sup> This has further reduced the political weight and status of the Institute dedicated to ethnic minorities. Although INDEPA continues to formally exist and receive public resources, all of INDEPA functions are now under the *Vice Ministerio de Interculturalidad*.
12. None of these changes in the institutional organization responded to the criticisms of the ineffectiveness of INDEPA and have instead reduced the profile and status of the agency. In 2011, the *Defensoría del Pueblo* published a study of the human-rights situation of the Afro-Peruvian population and concluded that “INDEPA’s performance in recent years falls far short of the central role it should have as the lead agency in Afro-Peruvian issues.”<sup>10</sup>
13. INDEPA does not reflect a political commitment to guaranteeing the rights of ethnic minorities. The institutional infrastructure has proven ineffective and, as a result, the State has not advanced toward the fundamental objective of adopting specific and strategic measures to address the root causes of racism and discrimination in the country. In Peru today there is still no institutional infrastructure to promote and ensure effective public policy to guarantee full exercise of rights in conditions of equal citizenship.

## B. Policy Measures

14. “One of the most serious problems that Afro-Peruvians face is the State’s limited express recognition of their rights as a people, as well as the notable absence of specific and concrete public policies to fight against racism and racial discrimination in the country.”<sup>11</sup>

### *National Human Rights Plan (2006-2011)*

15. The National Human Rights Plan (NHRP) approved on December 10, 2005<sup>12</sup> included as Strategic Area 4: “Implement affirmative policies in favor of the rights of the most vulnerable sectors of the population, in conditions of equal treatment and non-

<sup>7</sup> Supreme Decree N° 001-2007-MIMDES (February 23, 2007), replaced by Law N° 29146. See also Law 28495 and Supreme Decree N° 001-2008-MIMDES.

<sup>8</sup> Law N° 29565 (July 21, 2010).

<sup>9</sup> Supreme Decree N° 001-2010-MC (September 26, 2010).

<sup>10</sup> “Los Afrodescendientes en el Perú: Una aproximación a su realidad y al ejercicio de sus derechos” – Serie Informes de Adjuntía – Informe N° 003 – 2011 – DP / ADHPD – De la Defensoría del Pueblo del Perú.

<sup>11</sup> UNDP, *Derechos de la población afrodescendiente de América Latina: desafíos para su implementación* (2010), p. 105.

<sup>12</sup> Supreme Decree N° 017-2005-JUS.

discrimination.” This area has as its second Strategic Objective: “Guarantee the rights of the Indigenous and Afro-Peruvian peoples.” One of the projected results would be: “Promote the recognition and visibility of the afrodescendant population as a constitutive part of the Peruvian Nation.”

16. Despite these public-policy guidelines and the formal recognition of Afro-descendants as a sector of the population requiring affirmative attention and policy measures, the Peruvian State did not mention the situation of Afro-Peruvians in its national report for the first-cycle UPR in 2008. The report included analysis of other groups considered to be “vulnerable sectors of population” under the NHRP (women, indigenous peoples, children and adolescents, elderly, migrants, and people living with HIV/AIDS). Even in a forum specifically designed to examine such questions, the State’s report submitted to the Committee for the Elimination of Racial Discrimination in 2009 was criticized for including “scant information”<sup>13</sup> regarding Afro-Peruvian communities.
17. Regarding the same sections of the NHRP, the *Defensoría del Pueblo* concluded in 2011 that “regardless, these norms have not reached their objectives. This demonstrates the invisibility in which Afro-Peruvians currently find themselves.”<sup>14</sup> This invisibility is a structural and persistent obstacle that impedes the design and implementation of public policies for the guarantee and promotion of the rights of the Afro-Peruvian population.
18. In CEDET’s research with Afro-Peruvian communities about their knowledge of the NHRP, only 0.6% of the 1500 people surveyed reported knowing about the Plan.<sup>15</sup>

### ***Historical Declaration (2009)***

19. A long-standing obstacle for effective public policies for the promotion of the rights of the Afro-Peruvian population has been the lack of official recognition of the history of slavery and the current reality of marginalization, racism and discrimination. “Afro descendants’ history of slavery and servitude is tied to the context of discrimination and exclusion. Acknowledging this historical development is absolutely necessary to comprehend the current situation of this population.”<sup>16</sup>
20. In November 2009 the Peruvian government declared a “Historical [Apology] to the Afro-Peruvian People for abuses, exclusion and discrimination committed against them and recognition of their efforts in affirming our national identity, disseminating values

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<sup>13</sup> U.N. Doc. CERD/C/PER/CO/17 ¶17 “The Committee expresses concern **at the low profile of the Afro-Peruvian communities in Peru, as reflected in, for example, the scant information provided about them in the national report**, in the national census and in public policies relating to all areas of public life in the country.” (emphasis added).

<sup>14</sup> “Los Afrodescendientes en el Perú: Una aproximación a su realidad y al ejercicio de sus derechos” – Serie Informes de Adjuntía – Informe N° 003 – 2011 – DP / ADHPD – De la Defensoría del Pueblo del Perú.

<sup>15</sup> CEDET, La Población Afroperuana y los Derechos Humanos - Diagnóstico sobre el plan nacional de derechos humanos en localidades con presencia afroperuana.

<sup>16</sup> “Los Afrodescendientes en el Perú: Una aproximación a su realidad y al ejercicio de sus derechos” – Serie Informes de Adjuntía – Informe N° 003 – 2011 – DP / ADHPD – De la Defensoría del Pueblo del Perú.

and defending the country.” The declaration was made through a public ceremony with senior government representatives and a resolution emitted by MIMDES in the official gazette.

21. The drafting of this declaration lacked the seriousness that a true reckoning with the past would require. In Spanish, the text reads that the declaration “expresses historical pardon to the Afro-Peruvian people,” which would imply that the State is forgiving the Afro-Peruvians. Clearly, this was not the spirit of the decree or the intention of the drafters. However, the declaration was not given the commitment, importance, or attention that would be required to make a serious gesture of recognition of State and societal responsibility in the history and roots of discrimination and abuses that continue today. The title of the act reflects this confusion and a less-than-full commitment. This has had the consequence of reducing the impact on public opinion and limited the support for the act among Afro-Peruvians.
22. More substantively, the declaration did not make any mention of slavery. The text referred only generically to the causes of discrimination and exclusion. It was broad and unspecific to such an extent that this historical apology could apply to many social groups that have suffered discrimination throughout the history of the country. Instead of shedding light on a past of systematic abuse, exploring repercussions in current Peruvian society, and unequivocally condemning discrimination that continues today, this public act has further distorted the historical memory of the country and entrenched the invisibility of a part of Peru’s collective identity.
23. Notwithstanding possible modest advances in terms of formal and normative recognition of the ethnic minorities and their rights, these have not been accompanied by coordinated and strategic actions to make them effective. To date the issue remains buried and invisible, and the State has not shown sufficient political will through a comprehensive strategy to eliminate the manifold forms of racial discrimination in the country. As a consequence, potential progress in the normative and institutional framework or in public-policy design or measures has not meant advances in terms of improving the human-rights situation of ethnic minorities or eliminating de facto discrimination in the enjoyment of rights.

## Recommendations

### 24. CEDET and FI urge the Government of Peru to:

- a) **Elevate and support the institution(s) responsible for ethnic-minority questions with sufficient human and financial resources;**
- b) **Establish an office for Afro-Peruvian Issues within Ministries and other institutions involved in the promotion and protection of human rights;**
- c) **Design and implement a national policy to eliminate racism and racial discrimination with dedicated attention to the main ethnic and cultural groups, including Afro-descendants;**

- d) **Establish an ethical code against racism and discrimination for all public-sector staff and representatives;**
- e) **Implement the National Human Rights Plan with specific activities at the local and national levels aimed at generating recognition and visibility for the Afro-Peruvian population as a constitutive part of the Peruvian Nation;**
- f) **Implement the Durban Declaration and Plan of Action.**

## II. PROMOTION AND PROTECTION OF HUMAN RIGHTS

### A. International Human-rights Obligations

#### *Equality and Nondiscrimination*

25. A major obstacle in terms of increased compliance with obligations to guarantee the full enjoyment of human rights in conditions of equality has been the lack of official national statistics disaggregated by race and ethnicity. There is a lack of official information as to the specific situation of the Afro-Peruvian population, as to the degree to which they enjoy their rights, and how these compare to other sub-sections of the population. This information is necessary to be able to identify structural or latent discrimination and to promote equality and the full exercise of rights. Even basic information regarding demographic characteristics of Afro-Peruvians, their geographic distribution in the country, and their socio-economic conditions is limited.
26. The design and implementation of effective and coordinated public policies requires statistical bases and monitoring to provide current and detailed information for policy-makers. The availability of such statistical information is directly related to diagnosing and remedying violations and is essential for the concrete promotion and protection of the rights of minority groups.
27. The National Institute for Statistics and Information (*Instituto Nacional para Estadísticas e Informática*, INEI) is the public entity in charge of producing and disseminating official statistical information, “to contribute to the design, monitoring, and evaluation of public policies and to the process of decision-making by the socio-economic agents and academic community by providing timely, reliable and high-quality statistics.”<sup>17</sup> INEI’s primary objective is: “to ensure the production and broad dissemination of statistical information in a timely and reliable manner, for the improved knowledge of the national reality and appropriate decision-making.”<sup>18</sup>
28. However, INEI does not have the specific instruction or practice of applying a differentiated perspective that responds to Peru’s multicultural and pluri-ethnic reality and does not systematically disaggregate its statistics and analysis for the variable of

<sup>17</sup> See INEI, <http://www.inei.gob.pe/>.

<sup>18</sup> Reglamento de Organización y Funciones del INEI, Decreto Supremo N° 043-2001-PCM (April 21, 2001), art. 4(a).

Afro-descendance.<sup>19</sup> The last time that the national census included a variable for race was in 1940. This statistical invisibility makes it impossible that the official information accurately reflect the national reality, it contributes to the invisibility of Afro-Peruvians in public-policy design, and reduces the effectiveness of these policies in the on-the-ground promotion and protection of human rights in conditions of equality and non-discrimination.

## Recommendations

### 29. CEDET and FI urge the Government of Peru to:

- a) Carry out a comprehensive and detailed study of the Afro-Peruvian population and the degree of enjoyment of rights;
- b) Include specific indicators in the national census;
- c) Include disaggregated statistics and differentiated analysis in all periodic reports to international human-rights oversight bodies and for a to accurately evaluate fulfillment of obligations with respect to ethnic and racial minorities;
- d) Procure strategic alliances with academic, inter-governmental, and non-governmental actors to conduct and promote regular and detailed diagnostics of the enjoyment of rights by Afro-Peruvians.
- e) Invite the Special Rapporteurs in charge of issues of racism and racial discrimination for the OAS and the UN to support the State in designing and implementing a strategy to study the human-rights situation of minorities in compliance with international obligations.

### *Right to Education*

30. The Constitution establishes that early, elementary and secondary education is mandatory.<sup>20</sup> According to the Constitution, the State “fosters bilingual and intercultural education, according to the characteristics of each zone;” “preserves the diverse cultural and linguistic manifestations in the country;” and “promotes national integration.”<sup>21</sup>

31. In Peru, education is a fundamental of each person and of the society.<sup>22</sup> “The State guarantees the exercise of the right to a comprehensive and quality education for all and the universalization of basic education. Society has the responsibility to contribute to education and the right to participate in its development.”<sup>23</sup>

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<sup>19</sup> See, for example, INEI, Perú: Evolución de los Indicadores de Empleo e Ingresos por Departamentos, 2001-2010 (2011).

<sup>20</sup> Constitution, art. 17.

<sup>21</sup> *Ibíd.*

<sup>22</sup> General Education Law (2003), art. 3: “La educación como derecho”.

<sup>23</sup> General Education Law (2003), art. 3: “La educación como derecho”.



32. A 2006 national survey<sup>24</sup> found that 13.8% of the Afro-Peruvian population is not enrolled in Regular Basic Education. This percentage exceeds the already troubling national average of 11.8% non-enrollment.<sup>25</sup> Certain regions, mainly along the coast and in urban areas, stand out for especially elevated rates of non-enrollment. For example, La Libertad, Lambayeque, Cajamarca and Piura report rates of non-enrollment among Afro-Peruvians that are significantly higher than the national average: 16.3%, 16.5%, 25.5% and 26%, respectively.<sup>26</sup> It is urgent that these elevated and disparate levels of non-enrollment in Basic Education are investigated to identify the root causes and to develop targeted public-policy measures and corrective actions.
33. There is a notable gap with regard to university education—Afro-Peruvians enroll in university studies at a much lower rate than the national average. The 2006 survey concluded that only 6.2% of the Afro-Peruvian population enrolls in a university, well below the national rate of 12.1%.<sup>27</sup> The Government of Peru confirmed that only “a minimal percentage of Afro-descendants make it to the university system” and reported the troubling statistic that only 2% of these successfully complete their university studies.<sup>28</sup>
34. These statistics must be a call to action to investigate the causes of the low levels in terms of exercise of the right to education, as well as the reasons behind the disparities along racial lines. The response should be concrete and targeted public-policy action based on the demographics and needs of the population and the characteristics of each zone.
35. One of the problems with the biggest impact on the Afro-Peruvian population is also rooted in the educational system. To date, Afro-Peruvians have not been able to study and learn in a system that takes into consideration their culture, identity, history, needs, or interests. The quality of the educational services in Afro-Peruvian communities must improve and the educational content across the country must be diversified and contextualized. The invisibility of the Afro-Peruvians in the design and content of the curricula reflects and entrenches the generalized invisibility in the public policies of the Nation.

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<sup>24</sup> Encuesta Nacional de Hogares (2006).

<sup>25</sup> “Los Afrodescendientes en el Perú: Una aproximación a su realidad y al ejercicio de sus derechos” – Serie Informes de Adjuntía – Informe N° 003 – 2011 – DP / ADHPD – De la Defensoría del Pueblo del Perú, p. 56.

<sup>26</sup> “Los Afrodescendientes en el Perú: Una aproximación a su realidad y al ejercicio de sus derechos” – Serie Informes de Adjuntía – Informe N° 003 – 2011 – DP / ADHPD – De la Defensoría del Pueblo del Perú, p. 57.

<sup>27</sup> ENCO 2006

<sup>28</sup> “Los Afrodescendientes en el Perú: Una aproximación a su realidad y al ejercicio de sus derechos” – Serie Informes de Adjuntía – Informe N° 003 – 2011 – DP / ADHPD – De la Defensoría del Pueblo del Perú, p. 61.

## Recommendations

### 36. CEDET and FI urge the Government of Peru to:

- a. **Implement policies and programs that provide incentives for families to guarantee their underage children attend school and complete Basic Education;**
- b. **Incorporate the history of Africa and the contributions of Afro-Peruvians to Peruvian history into the curricular plans;**
- c. **Promote the creation of Afrodescendant studies academic programs in the universities;**
- d. **Guarantee the fulfillment of the domestic norms that permit and call for the inclusion of local educational content that re-evaluate and affirm the ethnic identity, history, and culture according to the locale;**
- e. **Increase the capacity and sensitivity of professors in multicultural pedagogy, human rights and the principles of equality and non-discrimination, and the history and contributions of the Afro-Peruvian population.**

## III. VOLUNTARY COMMITMENTS AND RECOMMENDATIONS FROM THE FIRST-CYCLE UPR

37. In the first cycle of the UPR, the United States asked the Government of Peru about what measures had been adopted “to discourage acts of discrimination against Afro-Peruvians and to promote upward mobility in terms of economic social status.”<sup>29</sup> The Philippines recommended that Peru continue paying attention to promoting and protecting the human rights of vulnerable groups.<sup>30</sup> The national report for the previous UPR did not include any analysis of the situation of Afro-Peruvians despite domestic policy guidelines to promote their visibility. To remedy this deficiency an intentional and concentrated attention should be paid to this population during the second cycle of the UPR.
38. In the previous UPR cycle, the Government of Peru accepted the recommendation to report regularly to human rights treaty bodies and to respond to special procedures’ communications and questions<sup>31</sup> and to demonstrate its commitment to coordinating with civil society, including NGOs, academics, and research institutions, as it develops and implements domestic human rights policy (United States of America) and to involve them in the follow-up work to the UPR (United Kingdom)<sup>32</sup>.
39. In presenting its candidacy for the Human Rights Council, the Government of Peru reiterated its invitation to special rapporteurs, independent experts, and working groups and affirmed that Peru “maintains a policy of strict compliance with its international

<sup>29</sup> U.N. Doc. A/HRC/8/37/ (May 28, 2008) ¶41.

<sup>30</sup> U.N. Doc. A/HRC/8/37/ (May 28, 2008) ¶52.

<sup>31</sup> U.N. Doc. A/HRC/8/37/ (May 28, 2008) ¶52(17)

<sup>32</sup> U.N. Doc. A/HRC/8/37/ (May 28, 2008) ¶52 (20).

human rights obligations and with the recommendations and decisions of the global and regional system for the promotion and protection of human rights.” On this same occasion, Peru also made several voluntary commitments:

- a) Continue strengthening its promotion and protection of all human, civil, political, economic, social and cultural rights, with emphasis on their universality, interdependence, and indivisibility;
- b) Increase the implementation of social-inclusion, equality, and poverty-eradication policies to create a better quality of life and well-being for all citizens;
- c) Make all the constitutional, administrative, and penal measures for eliminating discriminatory practices completely operations and promote formal and substantive equality of all people within its jurisdiction, according to obligations assumed under international instruments; and
- d) Ensure the effective implementation of the policies adopted under the National Human Rights Plan (2006-2011).

## CONCLUSION

40. The voluntary commitments made by the Government of Peru must be reaffirmed and deepened. CEDET and FI advocate the recommendations included in this joint submission as concrete steps for the Government of Peru to begin to translate the political declarations into concrete transformations for the enjoyment by Afro-Peruvians of their human rights in conditions of equal citizenship and non-discrimination.