UNIVERSIDADE Ð
COIMBRA

Luana Xavier Pinto Coelho

States in Denial:
Anti-Black racism, Law and Policy in Brazil and Peru

Doctoral thesis submitted for the Doctoral Programme in Human Rights in Contemporary Societies, supervised by Dr. Silvia Rodríguez Maeso and Dr. Thula Rafaela de Oliveira Pires and presented to the Institute of Interdisciplinary Research, University of Coimbra.

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Institute of Interdisciplinary Research of the University of Coimbra

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Abstract

This thesis aimed to unravel the regimes of denial of racism persistent in Brazil and Peru. By looking at the institutionality, I examine the many ways racism can be simultaneously recognized in official discourse and supposedly combated through policies and legislation, and perpetuated through structures, practices, performances and knowledge. Racism, as historically rooted in colonialism and racial enslavement, is a long-term process that created races as ontological differences, reified by institutional practice, normalization and regulation. I start with the assumption that the legacy of racial enslavement still works to draw the boundaries of humanity, placing Black subjectivity as precarious within the institutions of the Racial State. Therefore, the analysis is attentive to official discourse - the control of language, the permitted and prohibited vocabulary and/or behavior - in contrast to the social claims by Black social movements and the experiences of Black people within State institutionality. Two approaches guided the research objectives and questions: i) The racial rule and the search for justice within the Justice System; and ii) Claims in the cracks: (im)possibilities of antiracist struggle within the Racial State. The first approach focuses on law and the struggle against racism, combining research methods of *storytelling* with the critical discourse analysis of the documents available in two legal cases. In Peru, I investigated the case of Azucena Algendones, the only conviction under the crime of discrimination on racial grounds. In Brazil, I analyzed the constitutional class action ADPF 635 PSB vs Rio de Janeiro State, the so-called ADPF das favelas (Slums ADPF), being a paradigmatic case where petitioners placed Black genocide and institutional racism at the center of the complaint. The case studies showed the role of the legal regime in securing the racial order. In the second approach, I relate Brazil and Peru to broader debates on racism and antiracism, more specifically, I focused on public policies and legal debates developed to either guarantee specific rights for Black people, or to fight racism. The analysis included processes of policymaking and implementation by the Directorate for Policies for Afro-Peruvian Population, DAF, within the Ministry of Culture of Peru (2009-2020); and the policies developed within the National Secretariat for Policies for the Promotion of Racial Equality, SEPPIR (2003-2016) in Brazil. The analysis of the country's narratives and official discourse included a multi-scale approach, with one case study of the regional human rights system of the Organization of the American States, in order to exam the role of Peru and Brazil in the debates for the construction of the Inter-American Convention Against Racism, Racial Discriminations and Related Intolerance (2005-2013). The analysis of in-depth interviews with various participants in those processes, together with the critical analysis of documents, policies and legislation enable the understanding of how the Racial State adapts to different claims for rights without necessarily changing its structure. The various sources brought to the investigation revealed how the ideological control of the institutions, the constant performance of race, the functioning of the white narcissistic pact and, especially, the denial of race, all sustain the perpetuation of racism.

Keywords: anti-Black racism; antiracism; rights; Racial State; legacy of racial enslavement

Resumo

Esta tese teve como objetivo desvendar os regimes de negação do racismo persistentes no Brasil e no Peru. Ao olhar para a institucionalidade, examino as várias maneiras pelas quais o racismo pode ser simultaneamente reconhecido no discurso oficial e supostamente combatido por meio de políticas e legislações, e perpetuado por meio de estruturas, práticas, performances e produção de conhecimento. O racismo, historicamente enraizado no colonialismo e na escravização racial, é um processo de longo prazo que criou raças como diferenças ontológicas, reificadas pela prática institucional, normalização e regulamentação. Parto do pressuposto de que o legado da escravização racial ainda funciona para traçar os limites da humanidade, colocando a subjetividade negra como precária dentro das instituições do Estado Racial. Portanto, a análise está atenta ao discurso oficial - o controle da linguagem, o vocabulário e/ou comportamentos permitidos e proibidos - em contraste com as reivindicações sociais dos movimentos sociais negros e as experiências de pessoas negras na institucionalidade do Estado. Dois enfoques orientaram os objetivos e as questões da pesquisa: i) A regra racial e a busca por justiça no Judiciário; e ii) Reivindicações nas brechas: (im)possibilidades de luta antirracista dentro do Estado Racial. A primeira abordagem centra-se no direito e na luta contra o racismo, combinando os métodos de investigação de storytelling com a análise crítica do discurso dos documentos disponíveis em dois processos judiciais. No Peru, investiguei o caso de Azucena Algendones, única condenação pelo crime de discriminação racial. No Brasil, analisei a ação coletiva constitucional ADPF 635 PSB contra o Estado do Rio de Janeiro, conhecida como ADPF das favelas, sendo um caso paradigmático em que os peticionários colocaram o genocídio negro e o racismo institucional no centro da denúncia. Os estudos de caso mostraram o papel do regime jurídico na garantia da ordem racial. Na segunda abordagem, relaciono o Brasil e o Peru com debates mais amplos sobre racismo e antirracismo, mais especificamente, com foco em políticas públicas e debates jurídicos desenvolvidos tanto para garantir direitos específicos aos povos negros, quanto para combater o racismo. A análise incluiu processos de formulação e implementação de políticas pela Diretoria de Políticas para a População Afro-Peruana, DAF, no Ministério da Cultura do Peru (2009-2020); e as políticas desenvolvidas no âmbito da Secretaria Nacional de Políticas de Promoção da Igualdade Racial, SEPPIR (2003-2016) no Brasil. A análise das narrativas e do discurso oficial dos países incluiu uma abordagem multiescalar, com um estudo de caso do sistema regional de direitos humanos da Organização dos Estados Americanos, a fim de examinar o papel do Peru e do Brasil nos debates para a construção da Convenção Interamericana contra o Racismo, a Discriminação Racial e a Intolerância Conexa (2005-2013). A análise de entrevistas em profundidade com diversos participantes desses processos, aliada à análise crítica de documentos, políticas e legislações permitem compreender como o Estado Racial se adapta a diferentes reivindicações de direitos sem necessariamente alterar sua estrutura. As diversas fontes trazidas para a investigação revelaram como o controle ideológico das instituições, a constante performance da raça, o funcionamento do pacto narcísico branco e, principalmente, a negação da raça, tudo isso sustenta a perpetuação do racismo.

Palavras-chave*: racism anti-negro; antirracismo; direitos; Estado Racial; legado da escravização racial*

List of Acronyms

ADPF – Arguição de Descumprimento de Preceito Fundamental

ADI - Ação Direta de Inconstitucionalidade

ADC – Ação Direta de Constitucionalidade

CERD - Committee on the Elimination of Racial Discrimination

CEDET – Centro de Desarrollo Étnico

CEDEMUNEP – Centro de Desarrollo de la Mujer Negra Peruana

CELADE - UN's Economic Commission on Latin America and the Caribbean

CNJ – Conselho Nacional de Justiça (National Justice Council)

CNPIR - Conselho Nacional de Promoção da Igualdade Racial (National Council for the Promotion of Racial Equality)

CONACOD - Comisión Nacional Contra la Discriminación (National Coordination Against Discrimination)

COOPERA - Coordenadoria da Promoção da Equidade Racial (Coordination for the Promotion of Racial Equity)

CRFB - Constituição da República Federativa do Brasil (Brazilian Federal Constitution)

DGPI - Dirección General de los Derechos de los Pueblos Indígenas (Directorate for the Rights of Indigenous Peoples)

DAF - Dirección de Políticas Para Población Afroperuana (Directorate for Policies for Afro-Peruvian Population)

DEDR - Dirección de la Diversidad Cultural y Eliminación de la Discriminación Racial (Directorate for Cultural Diversity and Elimination of Racial Discrimination)

DEM – Partido Democratas

DPERJ – Defensoria Pública do Estado do Rio de Janeiro (Public Defenders' Office of Rio de Janeiro)

EEPA - Estudio Especializado Sobre Población Afroperuana (Specialized Study on the Afro-Peruvian Population)

FIPIR - Fórum Intergovernamental de Promoção da Igualdade Racial (Intergovernmental Forum for the Promotion of Racial Equality)

GRADE - Grupo de Análisis para el Desarrollo (Development Analysis Group)

GTPA – Grupo de Trabajo con Población Afroperuana (Apro-Peruvian Population Working Group)

GTPI - Grupo de Trabajo de Políticas Indígenas (Indigenous Policies Working Group)

ICERD - Convention on the Elimination of all forms of Racial Discrimination

I/A Court H.R. – Inter-American Court of Human Rights

IACRH- *Inter-American* Commission on *Human Rights*

INAPE - Instituto de Investigaciones Afroperuanas (Afro-Peruvian Research Institute)

IEP – Instituto de Estudios Peruanos (Peruvian Studies Institute)

ILO – International Labour Organization

INEI - Instituto Nacional de Estadística e Informática (National Institute of Statistics and Technology)

MC – Ministerio de Cultura de Perú (Minitry of Culture of Peru)

MINDIS - Ministério de Desarollo e Inclusión Social (Ministry of Development and Social Inclusion)

MNU – Movimento Negro Unificado (Black United Movement)

MNFC - Movimiento Nacional Francisco Congo (National Movement Francisco Congo)

NGO – non-governamental organization

OAS – Organization of American States

OIPPA - Orientaciones para la implementación de políticas públicas para población afroperuana (Guidelines for the Implementation of Public Policies for the Afro-Peruvian Population)

PLANDEPA – Plan Nacional de Desarrollo para la Población Afroperuana (National Plan for the Development of the Afro-Peruvian Population)

PLANAPIR - Plano Nacional de Promoção da Igualdade Racial (National Plan for the Promotion of Racial Equality)

PMERJ - Polícia Militar do Estado do Rio de Janeiro (Military Police of Rio de Janeiro State)

PPA – Plano Plurianual (Pluriannual Plan)

PSB – Partido Socialista Brasileiro (Brazilian Socialist Party)

SEPPIR – Secretaria Nacional de Políticas de Promoção da Igualdade Racial (National Secretariat for Policies for the Promotion of Racial Equality)

SINAPIR - Sistema Nacional de Promoção da Igualdade Racial (National System for the Promotion of Racial Equality)

STF - Supremo Tribunal Federal

STJ – Superior Tribunal de Justiça

TEN – Teatro Experimental do Negro (Experimental Black Theater)

UNB – Universidade de Brasília

WEOG - Western Europe and Others Group

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Introduction

> *In 2006, we decided that as a minister, I would visit the newsrooms and owners of major newspapers in Brazil, and so I managed to gain access to some of them. And once, in São Paulo, talking to the owner of one of the main newspapers in Brazil, after about an hour and a half of conversation - after I had explained what was SEPPIR, after I had talked about the 20th of November, (...) this gentleman looked at me, looking right into my eyes, and asked, 'where did you learn to speak so well?'*(K. R. da C. Santos and Souza 2016, 65)[1]

> *(...) a person from the State even came and told me "what are you going to do with a legal decision? (...) so you can hang it in the living room?" So it seemed to me, (...) if you are on a path of struggle in which you have already lost everything, I did not conceive of someone telling me "why do you want a sentence from the judiciary? To hang it…" I couldn't conceive [this reaction] because I think that she had to see that what I was fighting for was my dignity as a human being, not the sentence!* (Azucena Algendones, 2018)[i]

Race is a historically rooted, embodied and territorialized socio-legal construction. Both theories and institutional practices perpetuate and update race through its reification, regulation, normalization, and performance. Different social actors regularly perform race, either with practices of segregation, insult, racial humor, and other forms of subjugation, but it is the institutional normalization and reproduction of the racial line that dictate the beneficiaries of privileges and entitlements controlled by State power. The normalization of the racial rule is the result of a historical process that created differentiations between human beings as hierarchical and ontological, in constant need to be regulated and controlled.

The two testimonies of Black women that open this introduction, the first one from Matilde Ribeiro, the first Minister of Racial Equality in Brazil, and the second from

[1] "Em 2006, nós decidimos que eu como ministra visitaria as redações e os donos dos grandes jornais no Brasil, e então consegui ter acesso a alguns deles. E uma vez, em São Paulo, conversando com o dono de um dos principais jornais do Brasil, depois de cerca de uma hora e meia de conversa – depois de eu ter explicado o que era a SEPPIR, de ter falado do Dia 20 de Novembro, (...) – esse senhor olhou para mim, olhando bem nos meus olhos, e perguntou, 'onde foi que você aprendeu a falar tão bem assim?'" (K. R. da C. Santos and Souza 2016, 65)

Azucena Algendones, an Afro-Peruvian that sought justice against racism within the justice system in Peru, have the potential to elucidate how deep racism works on everyday configurations of power in anti-Black societies. The way racism dehumanizes people marked as Black is a very concrete, real-life, everyday experience. Matilde Ribeiro's description of how that white man stared at her in amazement illustrates the abyss between talking and being heard, or between occupying a high place at the government and projecting the power emanating from that position. In this testimony, a large newspaper owner was sitting in front of a State Minister but could not see beyond the racial construction of the "Black woman". He embodied such a comfortable position to the degree that he could externalize his astonishment to her "erudite language", engaging in an active performance of dehumanization. In the testimony of Azucena, the racial violence she was denouncing was naturalized and normalized, in a way that her search for justice was unintelligible to those holding power positions to administrate justice, her struggle was belittled. Her suffering was read as "common practice in workplace", evidencing that the protection of Black dignity is not guaranteed by a rights system within the racial rule.

The testimonies are also illustrative of my analytical framework in this thesis to examine two tensions within the Racial State. Drawing on David Goldberg's theorization, I take race as "integral to the emergence, development and transformations (conceptually, philosophically, materially) of the modern nation-state" (2002b, 4). The Racial State is the modern State, or "the state's definition in racial terms, thus becomes the racial characterization of the apparatus, the projects, the institutions for managing this threat, for keeping it out or ultimately containing it" (ibid., 34). As a threat, race must be managed and controlled, but also denied. Thus, there is a constant tension "between racial conditions and their denial" (ibid., 6). The second tension is related to the rule of law and proclaimed equality principles, whereas the Racial State is governed by the racial rule, then "caught always in the struggle between subjection and citizenship" (ibid., 105).

Taking Brazil and Peru as examples of the functioning of Racial States, my goal is to unravel the regimes of denial of racism persistent in both countries despite legal advancements and the implementation of antiracist policies. By looking at the institutionality, I examine the many ways racism can be recognized by the official discourse and supposedly combated through policies and legislation, whereas racism is

perpetuated through structures, practices, performances, and knowledge. Thus, I am especially attentive to official discourse - the control of language, the permitted and prohibited vocabulary and/or behavior (van Dijk 1993) - in contrast to the social claim by Black social movements and the experience of Black people within State institutionality.

To assess the regimes of denial of racism, it was necessary to define racism. When dealing with the State and the Law, concepts are particularly powerful means to control the limits of recognition. Drawing on Cheryl Harris' approach, I consider that "definition is so often a central part of domination" (1993, 1763) and that "although the substance of race definitions has changed, what persists is the expectation of white-controlled institutions in the continued right to determine meaning - the reified privilege of power" (1993, 1762) – that is, State control of definitions is central to the regimes of denial of racism. In this sense, as Stanley Cohen argues, "denial is thus not a personal matter, but is built into the ideological facade of the state. The social conditions that give rise to atrocities merge into official techniques for denying these realities" (2001, 10).

Early in the development of this work, it became evident the relevance of conceptualizing racism to the antiracist struggle. While talking to various antiracist activists in Brazil and Peru I inquired about the concept of racism. They gave me valuable lessons to frame the phenomenon, which helped identifying languages, choices, and vocabularies that I placed as part of the regimes of denial. I also understood that those constructions are not fix, they are part of processes of a permanent dispute over meaning.

In this introduction, I explain the conceptual choices I made regarding race, states of denial and anti-Black racism, and how they relate to the contexts I analyzed. Then I describe the research design, focusing on my methodological paths, fieldwork description and theoretical analytical tools. I also present a critical reflexivity of the process and challenges that I faced throughout the research. I end with an outline of the thesis and short summary of each chapter.

Race as the ontological difference

Working with critical race studies scholarship, I understand racism as a system of oppression that produces dehumanization by creating race as ontological difference (Da Silva 2009; 2016; 2019). The racial difference or raciality draws the limits of the human,

placing racialized peoples outside humanity. It is the idea of race that produces the "truth of the cultural and physical differences between Europeans and those inhabiting non-European spaces" (Da Silva 1998, 208). Created as an ontological and epistemological category, race establishes the "connection between physical traits and cultural differences" (Da Silva 1998, 208), dividing humanity into collectivities as racial groups. In Silva's argument race as such "maintains a rather naturalized conception of racial differences" (ibid., 208), still constitutive as "others of Europe". Then, deeply embedded in the idea of Europe itself through the theoretical elaboration of the European and the non-European, race "becomes the primary demarcation of domination in the modern era" (Lentin 2017).

Barnor Hesse argues that in racialized modernity race is an assemblage of "meanings and significations of 'European'/'non-European' social existence" (2007, 656). Consequently, this conception of race goes beyond the understanding that it relates solely to "phenotype" or "skin color" (Lentin 2017). Nonetheless, dissociating the understanding of race from biological discussion does not mean to efface *corporeal markers* defining the superiority of the Europeans as *white*:

> The idea of racialized modernity allows us to interpret modernity as a historical and discursive 'European'/'non-European' colonial process. It considers the ways in which an established yet indeterminate geographical Christian entity coalesced as 'Europe', becoming culturally, economically and politically marked white in relation to its designations and marking of a 'non-Europe'. From the sixteenth century onwards peoples (nations/tribes), identities (Christians/pagans), ecologies (landscapes/wildernesses), cultures (civilized/savage), histories (progressive/arrested), corporealities (superior/inferior) were embodied through Euro-Onto-Colonial structures and discourses as either 'white/European' or 'non-white/ non-European'. (Hesse 2007, 659–60)

Racialized modernity means that Europe is constructed as the reference of civilization and superiority, where race is described and perceived as attached to various representations, such as history, culture, climate associated with "colour coded bodies" (Hesse 2007, 654). Even the theories of the scientific racism from the XIX and XX centuries did not articulated race solely through biological features, those corporeal markers were in association with a backward culture, even if sustained on a biological determinism. The controversy of those debates was around the possibility of the racialized peoples for progress or to acquire a "civilized culture". The idea of *development* or *progress* is embedded in racialized modernity, updating current racial hierarchies, but

reinforcing the idea of white Europe as developed in opposition to the underdeveloped racialized world (Goldberg 2002b).

There is a substantial amount of work dedicated to investigating the theoretical foundations of racism, particularly in European philosophy and its elaboration on the human and its intrinsic nature, such as rationale or will, that created the theoretical foundations for the idea of race to be possible (see Césaire 1978; Fanon 2002; Wynter 2003; Da Silva 2008, 2009, 2019; Stelder 2021; Quijano 2000a; Bertúlio 2019). The theorical construction helped to legitimize colonialism and racial enslavement in the Americas. In my research I aimed to interconnect the theoretical dimension with its practice, in order to unveil the "work of race" (O'Toole 2015) in Brazil and Peru, that is, to explore how racial categories were constructed, regulated, limited, sustained and updated. This approach presupposed my engagement with the historical dimension of colonialism and racial enslavement, as well as the theoretical construction that discussed, conceived, and described the nation and its problems, its aspirations, and solutions. Theory is important for the idea of race, but its sedimentation is possible through institutionalized practices, the reification of places and stereotypes, hierarchical social locations, State control of bodies, beliefs, and projects of emancipation. Then, here the concept of *institutional racism* raised by the Black movement (Ture y Hamilton 1992) becomes relevant.

The first theoretical choice I made was to understand racism and race as historically produced, meaning that I would be distant from universalizing approaches that could dilute or reduce the phenomenon. First, drawing on Denise Ferreira da Silva's work, I consider that "slavery and colonialism composed the historical ground upon which race, gender, and nationess have written the various versions of black subjectivity" (1998, 330). Second, following Saidiya Hartman's approach to history, I consider that the "effort to reconstruct the past is, as well, an attempt to describe obliquely the forms of violence licensed in the present, that is, the forms of death unleashed in the name of freedom, security, civilization, and God/the good" (Hartman 2008, 13). Therefore, considering racism as a result of historical processes, and focusing on the Black experience in the diaspora, the *legacy of racial enslavement*[2] is central to my analysis. As a legal regime

[2] This legacy of the past that informs present forms of violence, was critically analyzed under various assertions, such as "legacy of slavery" (Harris 1993, 1714; Bento 2002a, 28; S. J. de A. e Silva 2008a, 108),

that endured for more than three hundred years, where Black people were deprived of humanity/ subjectivity through the fungibility of the Black enslaved (Hartman 1997), I work with the hypothesis that the ideological support and institutional regulation of racial enslavement still inform the logic of anti-Black racism.

In order to follow this path of enquire, I dedicate Chapter 1 to a historical overview of how race and racism were constructed in Brazil and Peru. It provides elements to explore the functioning of anti-Black racism as a legacy of racial enslavement, focusing on the legal regime. The analysis takes into consideration that *whiteness* and *Blackness* are antithetically constructed, so anti-Black racism also informs whiteness. Both constructions, as legacies of racial enslavement, are manifest in the racial rule, that is, *racial presumptions* of rightfulness, ownership, and subjectivity as pertaining to whiteness, and the denial of Black subjectivity through *fungibility*. As pointed out by Sadiya Hartman "chattel slavery" enhanced whiteness, not only by designating inferior and superior races but also by "'racializing rights and entitlements' and 'granting whites' domination over blacks" (Hartman1997, 24).

The racialization of rights and entitlements informs current configurations of inequality and oppression, that is, unequal access to power positions, public investment, and material living conditions, such as land or labor. In this sense, Evandro Piza argues that both the State and the Law functioned to "deny rights to the Black population, to distribute privileges to the white part of society and, especially, to reproduce the social exclusion of black men and women" (2019, XV author's translation). The author concludes that "racism occupies a central place in the understanding of both criminal and non-criminal mechanisms to guarantee rights" (ibid.). I work with critical race theory to question the role of Law in institutionalizing the racial regime (cf. Bertúlio 2019; Flauzina 2006; Harris 1993; Willians 2013; Delgado and Stefancic 2013; Bell Jr. 1980).

Despite presenting a strong critique of the legal field for sustaining racism, I am aware of the strategic use of the rights grammar in the antiracist struggle. Black activists and organizations have articulated and mobilized the discourse of human rights, disputing *humanity*. At the same time, they have looked at the racist rationality of the modern State

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the "afterlife of slavery" (Hartman 1997), the "continuum of slavery" (D. Alves 2017, 107; A. Flauzina and Pires 2020, 13), the slavery heritance (Moura 2019, 70) and enslavism (Broeck 2017, 139).

and the use of law for the control/ killing of the Black body (cf. Flauzina and Pires 2020; Flauzina 2006; Duarte and Freitas 2019; Góes 2016; Da Silva 2009; J. A. Alves 2014a). Therefore, this work is permeated by the constant tension represented by the inherent contradiction between claiming rights - *law as utopia* - while unveiling the various faces of the Racial State - *law as racial rule* (Goldberg 2002a). Boaventura Santos (2003) has defined this tension as one between social regulation and social emancipation when the Liberal State has the monopoly in producing/ reproducing the legal order. I will not attempt to efface this tension, even though while discussing the racial rule I bring about reflections on legal theory that question the possibilities of antiracism within a rights framing. In this context, I intend to look at State processes, practices, and narratives that can help us understand how deep the racial rule is imbricated in liberal democracies. Focusing on the Racial State enables the understanding of how it adapts to different claims for rights without necessarily changing its structure, which allows for the racial rule to keep functioning, (re)producing raciality and Black dead bodies.

Latin American (nation-)States *in denial*

Stanley Cohen's analysis of two forms of denial (Cohen 2001) tailored my understanding of the regimes of denial when looking at the State and particularly in the Latin American context. First, the literal denial, which is only possible in a globalized world if it is combined with ideological justification. This ideological construct in Latin America is *mestizaje* or racial democracy, which projects the nations as places of racial homogeneity (Peruviannes and Braziliannes) and, in the end, denies race divisions as "black and white" through the common national identity as mestizos, in the case of Peru, or as a place of racial harmony in the case of Brazil.

The second form of denial is through interpretation, "the raw facts (something happened) are not being denied" (Cohen 2001, 7), but "by changing words, by euphemism, by technical jargon, the observer disputes the cognitive meaning given to an event and re-allocates it another class of events" (ibid., 8). States can recognize that violence or inequalities exist, but they are interpreted as a consequence of other phenomenon, such as poverty. To those forms of denial of racism, I add a third one that becomes evident when looking at public policies, which is evasion. I can recognize some social claims advanced by groups historically governed through racial lines, but only if I evade the

racial vocabulary. By assigning them other categories or approaches to their social claim, the institutional recognition deviates from antiracism altogether.

Anti-racialism plays a significant role in the denial of racism through evasion, that is, when State and international institutions have invested in vocabularies to erase race as a valid category (Araújo and Maeso 2016). The permitted language includes ethnicity, diversity, and the multicultural vocabulary. As explored by Alana Lentin, multiculturalism - as an institutional policy - places the focus on "the importance of cultural identity, depoliticized the state-centred antiracism of the racialized in postcolonial societies" (2005, 380). Racialized peoples are constructed as "cultural subjects" with an oblivion of the past and its legacies - colonialism and racial enslavement - to the present. In the case of Latin America, Charles Hale suggests that the concept of culture that institutions have incorporated is "taken as innocent or transparent" (2018, 507) and not embedded into the racial order. In order to avoid claims that can threaten the Racial State, institutions and the use of culture are actively promoting "the rejection of the ongoing presence of the past" (Harris 1993, 1761).

When Lélia Gonzalez (1988) dissertates about the sophistication of racism in Latin America, she argues that not naming race does not mean overcoming the racial order, but only that more sophistication is in place to implement racism by denegation. In this context, racial affiliations within the legal order were easily replaced by categories such as *vagrants*, *criminals*, *illiterates*, and *the poor* that seem 'colorblind'. Until current days, poverty is by far the most efficient colorblind argument to deny racism as a cause of social inequalities, even though little concern is shown to the fact that both Black and Indigenous peoples are the majority in poverty (Dulitzky 2001). In this context, social differences as racially produced were also constantly denied by ideologies of racial democracy and mestizaje (Bertúlio 2019, 39). Mestizaje allows erasing racial positioning such as "the Black" or "the white", or racial identification at large.

Latin America reproduces anti-Black racism "in the very denial of its existence" (Lloréns 2020), promoting a sort of "Latin American exceptionalism". In Peru, an argument often found in many studies[3] relates to the "complexity of our racial reality" and the difficulty to "name the other" in racial terms (Kogan, 2010). In Brazil, mestizaje is often presented

[3] See De la Cadena, 2001; Kogan & Galarza, 2014; Oboler, 1996; Virginia Zavala & Zariquiey, 2009.

as an argument against rights provisions for the Black population, with the argument that is impossible to define "who is black or brown" to be a beneficiary of public policies (A. N. Júnior 2019, 55). As Jaime Amparo Alves ironies "if you want to know who is black or white in Brazil, just ask the police" (2018, 20).

The comparison with the United States constantly reinforces Latin American "exceptionalism", with the argument that the region has never implemented a racial legal regime such as Jim Crow. The problem with those assessments is to reduce the legal regime to *written rule* or the need to expressly mention *race* as a legal category to provide for rights and entitlements. Tanya Hernández criticizes Latin American studies' focus on "legal codes" when customary laws dictating racial exclusions were enforced by the State through the policing of public spaces, biased regulations of religion, and racist education, to mention a few (2013, 16). Additionally, where there is a *de facto* racial segregation regime, the omission of the State also works in supporting and sustaining its functioning. Dora Bertúlio (1994) argues that the legal system is more than written rule, also legal reasoning, legal interpretation, jurisprudence, and legal opinion, are all aspects of a legal regime seen in broader terms.

In this sense, what differs between the experience of the United States and the experience of Latin American countries is how race is *a valid (or invalid) legal category* to assign rights and entitlements. In the United States, because race was not legally denied, and racial conflict was overt in public discourse, law and jurisprudence, the products of racism -such as the *black* and the *white* - were objects of scrutiny within the judicial system, and this has allowed the production of a consolidated critical legal scholarship on race and racism, such as critical race theory (see Delgado and Stefancic 2013). For instance, Cheryl Harris' work (1993) investigated court cases to assess how whites mobilized identity as a rightful expectation that she related to whiteness as property. Such analysis would be challenging in contexts of denial of racial differentiations as legally valid.

Landmark legal cases in the United States have made explicit how the legal field interprets race in relation to equality, such as the leading case Plessy v. Ferguson (1896) that settled the "separate but equal doctrine", or later, the Brown v. Board of Education case (1954), discussed by Derrick Bell (1980). When looking at Latin America, the sophistication of the racial rule reflects on how it is enforced in the denial of race as a

valid category to assign rights and duties, but also in the denial of the *Black* and the *white* subjects within *mestizaje* ideologies. Until recently, this legal-political choice impacted the possibilities of generating a legal debate on race through the study of jurisprudence, and how it demarcates the boundaries of humanity/subjectivity. This sophistication, to use Lélia Gonzalez argument, forces us to explore how racial rule works in Latin America despite the regimes of denial.

The legal-political choice for racelessness of Latin American States also impacts the possibilities of creating a scholarship on race and law beyond the limits of anti-discrimination (the proscription of illegitimate differentiation on racial grounds) and, more recently, international human rights regulations on racism. And because racism in the international human rights law has been a restricted concept - as an ideological aberrance to the liberal law (cf. Maeso 2018; Hesse 2004) -, the development of critical race theory in the countries defined by "racial paradise" or "racial democracy" is slow.

A change in this pattern comes when countries start to provide rights through racial identities, as it is the case of Brazil with the laws of affirmative action policies. As race becomes a legal category to provide for rights' entitlements, the judicial system is mobilized to interpret this legal command and estipulate its limits concerning the principles inscribed in the Brazilian Constitution. In the Brazilian case, the Constitutional Court (Supremo Tribunal Federal) was confronted by a series of class actions, which set the precedent for the constitutional uses of racial categories, such as "Black", being two the most relevant cases: *DEM vs UNB* ADPF 186-2 DF[4] and *CFOAB vs Presidency and National Congress* ADC 41-DF[5]. The Ellwanger case (HC 82.424-2 RS)[6] was a landmark

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[4] The first class action against the cota system for Black students implemented by one federal University (UNB), which fostered the first discussion on the constitutionality of positive discrimination. Despite the positive outcome, the recognition of the constitutionality of affirmative actions based on racial categories, the Justice's arguments still resorted mostly to the need to integrate Black students and the benefits of diversity to public universities (see at Duarte, Bertúlio, y Queiroz 2020).

[5] This class action was centered on the constitutionality assessment of the federal law 12.990/2014 that granted 20% of places in federal jobs to Black people.

[6] The case Ellwanger (HC 82.424-2 RS, 2003) is landmark case on the interpretations of the constitutional crime of racism set the precedent on the legal understanding of race and racism. On a case of antisemitism, the court debated the meaning of race for the Brazilian reality, concluding that race is socially construct: "the existence of different races stems from a mere historical, political and social conception, and this that must be considered in the application of the law" (Correa, HC 82424/RS, full content, 568). Justice Correa concluded that antisemitism is a form of racism because in the Nazi doctrine Jews were constructed as races in a hierarchical position (ibid., 569). The debates of this case, though, places it as a landmark, as three minority votes argued that if race is socially constructed, in the case of Brazil, racism is against Black people. In their perspective, we live in an anti-Black society because of the legacy of racial enslavement.

case on the interpretations of the constitutional crime of racism that set the precedent on the legal understanding of race and racism. I analyzed those precedents in Chapter 3 for their importance of the understanding of race and racism by the Brazilian jurisprudence. The Peruvian constitution does not recognize race to assign rights, so there is little jurisprudence on the topic. Nevertheless, as Indigenous rights were assigned based on "cultural identity", the case of *Paisana Jacinta* on racism against Indigenous people reveal the judicial understandings of race and racism in that context, and I briefly discuss it in Chapter 2.

Finally, in order to understand the potential and limits of the antiracist discourses and policies, as in contexts such as Brazil and Peru, we need to unveil the racist foundation of the liberal thought (the anti-discrimination clause) and its direct link to the human rights discourse, challenging the pretense neutrality of the law. To comprehend the continuities of the colonial-racial-modern State in the legal discourse is crucial to unveiling how race is still central to power relations in Latin American countries. On the other hand, the Black struggle have challenged the Racial State, so they are still seen as a *threat* (Goldberg 2009), a population that needs to be under constant surveillance and control (J. A. Alves 2018), they represent the embodiment of the underdevelopment that Latin America States have tried so hard to erase to become 'progressive' as Europe (cf. Quijano 2000a; Luciano 2012; Nascimento 1980). This grammar is perpetuated in numerous ways but are all a legacy of racial enslavement.

Relating Brazil and Peru

Relating Brazil and Peru in this thesis created an imbalance but also an opportunity to challenge certain assumptions about the analysis of race and racism. First, most political and academic thinking in Peru directly refuse race as a valid legal category, insisting that this is a practice of racist States (Sulmont 2011). Thus, the denial of race in the legal field in Peru is a source of the first imbalance, also responsible for the yet embryonic state of the academic debate in this area. On the other hand, this presents an opportunity because law has assigned rights to different social groups, giving room to different approaches to the same phenomena. The political choice to erase race from the vocabulary replaced it with cultural identity or ethnicity. Understood as a concept dissociated from authoritarian

or negative group divisions, ethnicity regulates the lives of Black and Indigenous peoples, marked as culturally different from the "normal" society (cf. Saldívar 2012; Montoya 2013; Hale 2005). This legal-political option leads us to the debate known as the "multicultural turn" in Latin America (cf. Wade 2010; Rahier 2019; Paschel 2016) that I address in Chapter 4 in order to understand how the denial of racism is constantly updated from different institutional places. In this context, I foreground the claims from social movements and how the State received/ perceived them, for unraveling how the tensions within the Racial State function.

The second imbalance is related to the focus of most academic production on race and racism. In Peru, the analysis that prevails in social sciences tends to look at the situation of the *mestizo*, Indigenous peoples and *de-indinization* processes and their ambiguity in relation to current trends of racism (cf. Virginia Zavala and Zariquiey 2009; Rochabrún 2014; Cadena 2001; Vega, n.d.; 2018; Kogan 2010; Oboler 1996; Kogan and Galarza 2014; Drinot 2014; Manrique 2014). Thus, while the antiracist struggle has the Black population as the main protagonist (Valdivia 2013), they remain invisible in many studies produced on racism, with some exceptions[7]. More conceptual approaches to racism in Peru tend to emphasize the complexity of the country's context that would make it exceptional. The first argument is that racial configurations are so complex that is difficult to define the limits of "who discriminates and who is discriminated" (Rochabrún 2014, 18). In this sense, the particularity of Peru is an argument often found in many studies that relate to the "complexity of our racial reality" and the difficulty to "name the other" (Kogan, 2010). Studies on university students' perception of race and racism often focus on students' difficulty to describe themselves as racialized and the tendency to feel uncomfortable with the question (cf. Oboler 1996; Cadena 2001; Kogan and Galarza 2014; Virginia Zavala and Zariquiey 2009). The second argument insists on reducing racism to a physical marker (phenotypical characteristics, skin color, etc), separating conditions of culture or poverty from the theoretical analysis, which is illustrated by a debate among distinguished Peruvian academics, Guillermo Rochabrún, Paulo Drinot and

[7] Nestor Valdívia in GRADE has produced a series of studies on Afro-Peruvians (Valdivia 2013; 2011; Martín Benavides, Torero, and Valdivia 2006), besides Afro-Peruvians organizations and black academics have been those producing most of the publications on the topic (Luciano 2012a; Centro de Desarrollo Étnico 2005; 2013; Lazarte 2011; Julca 2010; Valdivia 2013).

Nelson Manrique, entitled *Racismo, ¿solo un juego de palabras?* (2014), published by the Ministry of Culture.

Much of the knowledge on racism with a focus on the experience of Black Peruvians was produced by Black peoples themselves, from the early efforts by Nicomedes Santa Cruz (Arboleda Quiñonez 2017) to the work of Black academics such as Jose Carlos Luciano and José Campos Cheche (Luciano 2012, 21) among others. Nevertheless, this does not mean that Black people were generally invisible in the academic thinking, but as argued by Julca (2010, 83), most of the studies produced were historical analyses focusing on the Black presence in Peru during colonial times (cf. Aguirre 2005b; 2005a; Carazas 2019; Barrantes 2018; O'Toole 2012; Castro 2005), with a great void of academic production on the period after abolition and contemporary times. It is lacking a consistent reflection on the legacy of racial enslavement in the development of knowledge production and current institutional functioning, particularly in the legal system (cf. Coelho and Silva 2020).

In Brazil, similar to the Peruvian case, Black activists and intellectuals have produced knowledge[8] on racism, violence, State practices and social structures of Brazilian society (cf. Ramos 1954; Moura 2019; Gonzalez 1988; Carneiro 2005; Nascimento 1978). However, the study of "the Black" has had major academic attention in the fields of history and sociology, which had a great focus on the "Black problem" until the 1980s as extensively debated by critical scholars (cf. Moura 2019; Bertúlio 2019). Critical analysis in the field of history is vast (cf. Chalhoub 1990; Batista 2003; Schwarcz 2007), pushing for transdisciplinary dialogue that allows to relate those historical accounts to current patterns of racial subjugation. Most recently, the analysis of the legal history and racial enslavement have also been explored, producing critical legal scholarship on race and law (Bertúlio 2019; Flauzina 2006; Góes 2016; Pires 2013; Duarte 2019; Queiroz 2018).

It is in the legal field where most of the imbalance between the two contexts is found. Recent efforts by Brazilian scholars have produced reflections from different legal

[8] It is not without challenge that knowledge is produced. A research on publications at main publishers in Brazil has showed that from 1990 e 2004, 93,9% of the authors were white. A number that has not changed much, as reported by El Pais in a note about Brazil's biggest book fair, available at https://brasil.elpais.com/brasil/2018/05/21/cultura/1526921273_678732.html, acceded on the 10/01/2019.

perspectives. Critical work on criminology have pushed the debate on racism in legal scholarship (cf. Flauzina 2006; Góes 2016; D. Alves 2017; Pires 2013; Freitas 2019; Duarte and Freitas 2019). Brazilian legal scholars have also engaged with critical legal theory, Black studies, and anti-discrimination law (cf. Ferreira and Queiroz 2018; Neris 2018; Bertúlio 2019; Flauzina and Pires 2020; Flauzina 2006; Moreira 2017; Almeida 2019), which has been increasing in the last decades, particularly after the implementation of affirmative action policies in public universities.

The academic production on racism has changed dramatically, as one can see by a search on the Brazilian national thesis database[9]. The interest in the topic of racism raised together with the enforcement of the law making it mandatory quotas for Black students in public universities in 2012, even if the number began to go up already in 2002 when some state universities implemented a quota system in its entrance criteria. Just as an illustrative example, the graphic below shows the number of Ph.D. theses produced in Brazil from 1990 to 2018 having 'racism' as the word reference of the search [10].

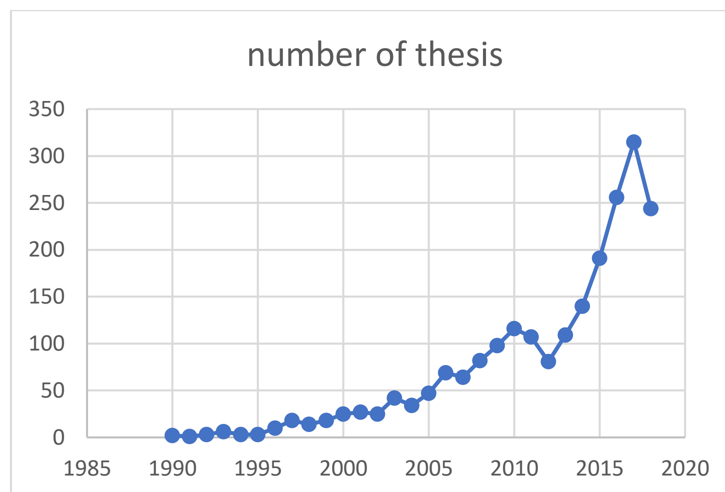

Figure 1. Number of theses on racism

Source: Luana Coelho, 2018

[9] Capes thesis database, available at <https://catalogodeteses.capes.gov.br/catalogo-teses/#!/>
[10] 2.155 are the number of thesis on the national data basis using 'racism' as the word of reference, if we put the words 'racial discrimination' the number goes up to 10.371. If publications such as books and papers are to be also considered it will evidence how the production on the topic raised in the last 10 years.

In Peru, debates on Law and racism are not abundant[11]. The inaugural work was done by Wilfredo Ardito Vega, both breaking with the regime of denial echoing in the silence of doctrine or jurisprudence, and engaging with the public debate on racial discrimination that led to a series of local regulations (Vega 2010; 2015; 2009; 2018). Vega's Ph.D. thesis (2010) focused on access to justice with greater emphasis on the Indigenous or rural perspective. Ardito's work engages with critical reflections on racism and the justice system and acknowledges the Afro-Peruvian experience. The relevance of his discussion rests on his focus on race and racialization as key elements of discrimination in Peru, and de-naturalize differentiations based on social class, geographical location, or poverty. More recently, the work of Mariela Noles Cotito also dialogues with the anti-discrimination frame, presenting to the Peruvian academic debate concepts proper to this scholarship (Noles 2016a; 2016b; 2017). According to Black activists, research on law and racism, particularly on the justice system, is deficient in Peru: "there is a line of investigation that must be done in the Judiciary, sentences must be rescued that (…), here there is a quota of racism from the judge, I don't know, but it's research, readings, a series of things... so it's not easy, I think..." (AP - 22)[ii]

The choice of putting two contexts in relation – Brazil and Peru – forces us to be attentive in order to see beyond State boundaries, to put anti-Black racism in relation to theories, ideas and practices that circulate globally and are locally put into action. The proposal here is not to compare those two countries, how they understand racism, or how they have implemented antiracist policies. On the contrary, *relationality* helps us to think through the theoretical knowledge on race, racism, and discrimination that circulates at the international and regional levels and how they shape nationalized legal and policy practices. As Goldberg proposes, "[W]hat a relational account adds, however, is not just the historical legacy. It enables one to see how the colonial shaped the contemporary, planted racisms' roots in place, designed their social conditions and cemented its structural arrangements" (2014, 1280).

[11] I looked at legal doctrine on race and racism namely as such. Peru has a long tradition on legal pluralism, that has questioned the State official justice system. However, racism is not the conceptual frame here, but rather colonialism (cf. Fajardo 2006; Flores 2015; Ansión et al. 2017; Merino and Valencia 2018). Even when the justice system is depicted as racist when criminalizes indigenous justice or when exclude people because monolinguism, this body of literature does not engage with scholarship on critical race theory or even anti-discrimination law.

These two countries have two main historical and political differences concerning Nation and State formation, and Black population. The first one is historical, that is, the difference in scale regarding the use of Black enslaved labor in each territory. Whereas in Peru the Spanish colonial enterprise has used Indigenous forced/enslaved labor extensively, Brazil stands as the country in the world that received the largest amount of enslaved people kidnaped from Africa and the latest one to legally abolish racial enslavement in 1888. The second difference is political, that is, how the political commitment to the antiracist struggle is articulated: whereas in the case of Brazil, since 2003, the creation of the National Secretariat for Policies for the Promotion of Racial Equality has placed race at the center of a series of public policies undertaken, in Peru, there has been a dominant cultural approach to inequality that was made explicit with the creation of a Vice-Ministry of Interculturality in 2010, and a Directorate for Policies for Afro-Peruvian Population in 2013, both within the Ministry of Culture.

Despite differences produced by political process and history, Brazil and Peru's national constructions, narratives, practices, and institutions are in relation to broader experiences of Black peoples in the diaspora. Both countries have claimed the *exceptionality* of their national context, either using mestizaje/mestiçagem ideologies[12] or racial democracy to deny racism (cf. Dulitzky 2001; Hernández 2013; Guimarães 1999; Gonzalez 1984; Nascimento 1978; Luciano 2012). They also have a majority of non-white population, but are governed by white/ mestizo elites, reproducing institutionalized racist practices at structural levels. Those historically rooted practices have a deep impact on both contexts.

Drawing on Lélia Gonzalez's work and the concept of *amefricanidade* (1988), the analysis of the Black diaspora should overcome barriers – territorial, linguistic, ideological -, to understand the historical process in the Americas through its shared experience of intense cultural dynamic (adaptation, resistance, reinterpretation). The experience of Black people in the Americas was marked by the denegation of their inheritance since Latin America, even in its name, reproduces white supremacist values and standards while overlooking Black and Indigenous peoples. Since colonial times, *Amefrica* is about the strategies of "cultural resistance, in developing alternatives of free

[12] Even acknowledging the critique of De la Cadena (2001b) that mestizaje was not a national identity in Peru because of the strength of *Indigenismo*, the discourse on racism uses often the resort to 'we are all mestizos' to argue on the exceptionalism of racial relation in Peru (Zavala and Zariquiey 2009).

social organization, which concrete experiences are found in the *quilombos, cimarrones, cumbes, palenques, marronages* and *marrons societies*, spread throughout the different corners of the continent" (Gonzalez, 1988, 79). Even though the focus is not on the various forms of Black resistance, they are central to understanding how the white fear of Black freedom moved the racial rule.

Accordingly, the choice made in the use of racial categories is context oriented. In Peru, Black people are officially named Afro-Peruvians, so I will apply this terminology when it is necessary to engage with the categories used in legislation and State discourses. I acknowledge, together with Lélia Gonzalez (1988), the danger of narrowing to a nation-state scope the understanding of the Black diaspora in the Americas. So, even resorting to this terminology for methodological purposes, it does not limit the reflection that I intend to do that necessarily extrapolates State boundaries. The resort to the category of *mestizo* might be also necessary, as it is a recurrent terminology in many studies on racism in Peru. Particularly related to the process of "*desindianización*" – also denominated "*cholificación*" (Quijano 2014c, 652), or the denial of the Indigenous identity, the *cholo* has represented a population "in between" and the "cultural conflict" that shapes Peruvian national identity since the 1950s (Quijano 2014b).

In the case of Brazil, for similar reasons, I will use the category *Black* as *negro* in Portuguese. *Black* is the term used both by State policy and social movements (even if the latest have also re-signified the word *preto*). One note is important to contextualize the word *Black* in the Brazilian context, once it is not a given. First, it is a result of a significant effort of the Black movement to reject a mixed-race category in favor of a unified Black identity. Second, strategically it allowed for the consolidation of a Black majority that impacted the debate of public policies. Thus, Black people (*negros*) refer to those people that self-identify within an existing color scheme of Brazilian census: *pardos* (light skin Blacks) and *pretos* (dark skin Blacks). As Brazilians have used to identify themselves racially due to census or surveys, *pardo* often functions as a mixed-race category and can encompass people with Indigenous ancestry (see a critical analysis in C. T. da Silva 2013). Nonetheless, *pardo* is not seen as a political identity, or a national identity as the case of Peru and the *mestizo*. Besides, it is historically connected to a Black ancestry. As Dora Bertúlio properly debates:

> ... the Black and *Pardo* references are used in the text only when the official data of the Institute of Geography and Statistics - IBGE are presented. This institute, and historically the Brazilian State, from the period of slavery, created a division in the black group that referred to a (desirable) proximity to the standard white group. Thus, the mestizos could already present themselves, no longer as black, but being included in the "pardo" group were, at the same time, coming out of the worst condition for a new one, which, in any case, was not the original "evil", the black one. It should be noted that this standardization is not self-enforcing - people do not say "I am pardo", they only include themselves in this group as an alternative to not being included in the "black" group that ironically identifies color rather than racial group. (1994, 5, authors' translation)

The project of a unified Black identity was a political one, not a subjective one (even if it can be), directed to challenging racial democracy arguments in showing that the inequality in Brazil was greater between whites and non-whites, and not between *pretos* and *pardos* (Gonzalez and Hasenbalg 1982). Thus, even though identity plays a role when Black social movements try to re-signify the negative association with Blackness, focusing on identity does not occupy a central place in the analysis. Then, I can discuss identity when used as a tool to recognize rights or how State encapsulation can affect people's claims, but the focus is on how the State routine practice perpetuates dehumanization and white privilege through racialization.

The choice for anti-Black Racism

My focus on anti-Black racism is a methodological and analytical choice. The creation of "the Indian" and "the Black" is entangled with the creation of the *human* as the *white man* (Wynter 2003), that reflects on national discourses around progress, citizenship, and rulership. Nevertheless, the way Indigenous and Black peoples were different regulated impacts current forms of racism. In Peru, the so-called "Indian problem" (Drinot 2016) has taken most of the academic and political efforts to analyze Peruvian society and to reflect on nation formation. Both the State and a considerable part of the academia have been theorizing about the "Indian" in various attempts to "de-indianize" the country or to "integrate" the various peoples into the Peruvian nation (Quijano 2014a). This also poses a challenge to our goal to undertake an Afrocentric analysis (Gonzalez 1988), as the Black people are highly invisible in those debates (Valdiviezo 2012, 20).

In Brazil, the debates around the legacy of racial enslavement have placed Black people at the center of social debates over the nation, where "the enslaved was made the main responsible for the ills of the Brazilian nation" (Cardoso 2014, 36). Efforts to answer to

the so-called "Black problem" became one of the greatest academic efforts in sociological and anthropological academia (Moura 2019, 33). The obsession with focusing the "problem" at the Black population is termed by Guerreiro Ramos as the "pathology of the white Brazilian" (1954). This has two consequences, explored by Lourenço Cardoso, the "oblivion of the oppressor" meaning the invisibility of the white as enslavers; and the invisibility of the Indigenous peoples' role or positionality in racial enslavement (Cardoso 2014, 36).

Few works debate the Indigenous and the Black experience of racial rulership in relation. Although I am not undertaking this task throughout the thesis, I briefly introduce the debate because the way both peoples were differently regulated impacts current debates on racism in the Americas. Drawing on Lelia Gonzalez (1988), *Amefrica* is constructed of a shared history of oppression of Indigenous and Black people. The efforts against their alliance and differences in (racial) regulation were part of the colonial project. Differences in Black and Indigenous peoples' racialization starts on ontological debates around slavery. The Indigenous people were considered to have a soul (Pope Paul III bull Sublimis Deus, 1537), then not subject to enslavement, but servitude was imposed to "save" them from their "barbarian" condition. Boaventura de Sousa Santos explains that this statement was not equalizing Indigenous peoples and the white Europeans because their soul was an "empty vessel, an anima nullius" (2007, 75), to be fulfilled with Christian values.

Rachel O'Toole gives an important account of that differentiation when looking at the Peruvian context to point out that "official discourse contrasted the qualities of blacks and Indians to justify Spanish colonialism" (2012, 18). The "Indians" were depicted as miserable and fragile, being constantly at threat – even by the Black men –, so they needed the protection of the Spanish Crown. Nevertheless, the author demonstrates that "casta divisions were malleable, especially when labor was in demand" (O'Toole 2012, 19), to evidence that Indigenous were often working in similar conditions as the enslaved Blacks. This account is similar in Brazil, where Jesuits, such as Padre Antonio Vieira, were against Indigenous enslavement but did not predicate similar protective defense of Africans (Pécora 2019). In Brazil, Indigenous enslavement was abolished in 1831[13], and

[13] The Indigenous peoples in Brazil were consider minors, or uncapable for civil life until 1988 (Cunha 2018). According to Dornellas, "*em 1847, haviam-se passado 16 anos da promulgação da lei imperial que*

recent studies have proven that Indigenous forced labor was largely utilized and commercialized as late as the mid-19th century (Dornelles 2018).

The controversy around Indigenous enslavement, illustrated by the Valladolid debate[14], reproduced a "silence regarding the experience of enslaved African and Africa-descendant people, who regularly endured violent punishment and were uncompensated for their labor" (O'Toole 2012, 21). Still according to Rachel O'Toole's analysis of the Peruvian context, the way African enslaved peoples were excluded from religious-political debates suggests that "while blacks were expected to suffer the conditions of slavery, Indians were not" (ibid). Consequently, Indigenous peoples were taken as under constant threat, in need of protection or guidance. In the Peruvian context, the discourse of "protection from the black peoples" (ibid., 21) evidences the white fear of a Black and Indigenous alliance that resulted in the constant mobilization of a discourse of enmity between both peoples, so "the constructed nature of Indian-black hostility was more visible in an official language when contrasted with local realities" (O'Toole 2012, 23). In the case of Brazil, several experiences of resistance to both racial enslavement and colonialism were undertaken with Black and Indigenous peoples' alliances (Arruti 1997), such as the formation of quilombos - many of them hosted both peoples (Werneck 2016, 158)-, or popular revolutions against white elites, such as *Cabanagem* (1835-1840)[15].

The histories of dehumanization of peoples in Latin America created *anti-Indigenous* and *anti-Black* racism. Nonetheless, the construction of the *Black* in the colonial discourse as equal to slave deprived Black peoples of any element of *subjectivity*. Arguing on how racism has differentiated groups such as *Blacks* and *Indigenous* in the Americas, Weheliye states that "while slaves were not accorded the status of being humans that belonged to a different nation, Indians could theoretically overcome their lawful foreignness, but only if they renounced previous forms of personhood and citizenship"

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estipulou a ilegalidade da escravidão indígena, 22 quando a tabela com os valores para resgate foi criada. A lei de 1831 estipulava a revogação das Cartas Régias de 1808, libertando os índios do regime de escravidão e impondo um regime tutelar, considerando-os como menores, mantidos sob os cuidados dos Juízes de Órfãos." (2018, 39).

[14] The "natural" superiority of the European invaders was constructed under racist assumptions, properly illustrated by the debate known as Valladolid, between Bartolomeu de las Casas and Ginés de Sepulveda, 1600-1601, "as to whether or not the New World Indians were equally "men" (Las Casas) or "slaves-by-nature" (Sepúlveda)" (Wynter 2003, 332).

[15] Cabanagem was on popular uprising formed by blacks and indigenous in the Pará, Amazon region, in the Years of 1835-1836" (F. B. Júnior 2013, 1368).

(Weheliye 2014, 78). In a similar note, Rachel O'Toole has identified that in the Peruvian colonial rule Indigenous subjectivity was recognized, even if inferior to the Spanish rulers, and then, "from their racial location- a constructed and powerful legal category of difference - indigenous people were, therefore, able to take advantage of limited powers when they correctly 'acted' as Indians or in accord with colonial expectations" (2015, 213).

While exploring how peoples were differently regulated for the benefit of the colonial project, I am not focusing on differences within distinct racialized groups. Nonetheless, I am in dialogue with critical academic scholarship that suggest anti-Blackness can explain the current endangered condition experienced by Black people. I acknowledge that their theoretical propositions are insightful to think of Latin America. I often engage in discussion of anti-Blackness because they have explored the consequences of racial enslavement in various contexts beyond the United States, such as Brazil (Vargas 2018; J. A. Alves 2018). By saying that, I also share some critiques to the anti-Blackness theoretical premises as explored by Silvia Maeso (2020), such as the universalization of Black experience and the centrality of anti-Blackness as the referent to humanity that risks erasing the role of whiteness in the system of racial oppression. As already mentioned, I draw on Denise Ferreira da Silva's (1998) proposition that we should avoid taking race as a universal concept to understand both Black and Indigenous subjectivities in any given context. This argument is not to reinforce context specificities or exceptionalism, but the historical account is essential to avoid the universalization of racial constructs that can diminish the works of race on a given context. I work with authors that understand the racial construction of *Blackness* is a dialectical process and antithetical to the construction of *whiteness* (Fanon 2008; Wynter 2003; Gonzalez 1984; Carneiro 2005; Goldberg 2002b).

For this body of literature, race demarcates the limits of humanity, working to construct both *whiteness* and *Blackness*, or the "non-being as the foundation of being" (Carneiro 2005). Black in racial enslavement "is conceptualized and treated as a thing, fungible, and dispensable, workable and killable, and thus cannot be seen in the paradigm of self and other, which, after all, logically is an intrahuman binary" (Broeck 2017, 23). Subjectivity is a quality existing within this intrahuman binary, whoever is outside is in the zone of nonbeing (Fanon 2008). Nonetheless, even if there is no intrahuman binary

here, there is a human and non-human binary, as Blackness informs whiteness. There is a human only because there is a non-human[16]. The fungibility of Africans and their descendants, treated as a commodity in the system of racial enslavement, functioned as a marker of their inhumanity, removing Black people's *subjectivity*. The objectification of people was "a legal fact that was legitimized with the racist assumption that to be black is to be a slave" (Duarte et al 2015, 32). Therefore, racism constitutes a dialectical process of humanization and dehumanization, which still informs the legal regime despite the liberal command of "equality to all".

The research design: questions, processes, and inquietudes

Considering the political contours of available data on racial inequalities opens the question of better understanding the limitation of legal recognition and the scope of institutionalization of the antiracist struggle within the Racial State. The data from the Atlas of the Violence in Brazil illustrates how anti-Black racism puts into practice a genocidal policy (Flauzina, 2006). In the last ten years, the Black homicide rate rose 23.1 percent; in the same period, the rate among non-Black people fell by 6.8%. The homicide rate is also higher among Black women, the homicide rate for every 100,000 Black women increased by 15.4%, while among non-black women there was a decrease of 8% (Cerqueira et al. 2018). Similar numbers are going to be found in the incarceration of Black people, assess to education or health. In the case of Peru, the lack of disaggregated data[17] by race or ethnicity, in particular regarding violence and the penal system, makes it difficult to assess detailed data such as in Brazil. A study published in 2015 by the

[16] Sylvia Wynter theorizes on how the creation of the human, or the Man, was only possible because colonialism allows for the parallel to be made. So, the human was philosophically possible as a rational being, because there was an irrational being not fully human. In her words: "It is, therefore, as the new rational/irrational line (drawn between the fundamental ontological distinction of a represented nonhomogeneity between divinely created-to-be-rational humans, on the one hand, and divinely created-to-be irrational animals, on the other) comes to be actualized in the institutionalized differences between European settlers and Indians/Negroes, that the figure of the Negro as the projected missing link between the two sides of the rational/irrational divide will inevitably come to be represented in the first "scientific" taxonomy of human populations, that of Linnaeus, as the population that, in contrast to the European (which is governed by laws), is governed by caprice (Linnaeus 1735). So irrational that it will have to be governed by others." (2003, 306)

[17] Peru included in the national household survey of 2017 a question on the 'self-declared ethnicity', after a long struggle of the black activists for disaggregated data and a series of recommendations from CERD on country's reports (Noles 2017).

Ministry of Culture showed that the Black population is experiencing poverty, disadvantages in jobs and living conditions (Benavides et al. 2018).

So, yes, something is wrong, and we should question the limitations of the legal framework implemented so far by the States to fight racism. We must ask if State recognition of Black peoples' rights worked to deconstruct the myth of "racial democracy" or challenge the racial hierarchization in the routines of the justice system. Are those strategies representing cracks into the system or just an accommodation into the Liberal State? Have those legal and policy efforts truly challenged the regimes of denial of racism or changes in the discourse were only convenient for the pacification of the growing social mobilization of Black people? Two approaches guided the research objectives and questions: i) The racial rule and the seek for justice within the Justice System; and ii) Claims in the cracks: (im)possibilities of antiracist struggle within the Racial State.

The racial rule and the seek for justice within the Justice System

The first approach of analysis connected knowledge production within Law with the practice of legal institutions regarding Black people's claim for dignity. The investigation assessed how the legal field in Brazil and Peru debates race and racism. It encompassed the in-depth analysis of legal cases to assess: i) how the legacy of the racial enslavement works in the legal field? and ii) how the regimes of denial of racism perpetuate despite legal advancements on Black people's rights? The initial hypothesis assumed, together with critical race theory scholars, that colorblindness within the Justice system reproduces through formalism and the myth of legal neutrality (Bertúlio 2019; Delgado and Stefancic 2013; Derrick Bell Jr. 2013; Harris 1993). Additionally, in Latin American contexts, the denial of race and racism in the legal field is also based on mestizaje ideologies (Bertúlio 2019; Duarte et al 2020), as well as on the oblivion of the oppressor, or a permanent silence about whiteness (Cardoso 2020).

The resort to the judicialization of racism has often frustrated those seeking justice within the system (Pires and Lyrio 2011; Flauzina 2006), leading to conclusions of the inherent contradiction of condemning racism in a juridical system made to control the Black body (cf. J. A. Alves 2018; Flauzina 2006). Nonetheless, the criminalization of racism and the use of the judicial system in claims for justice have been strategically employed to expose

the contradictions of the Liberal State. It was also relevant to assess which legal theories were more permeable to the judiciary, such as the confrontation of institutional racism or the use of anti-discrimination doctrines. For that reason, I also undertook interviews with practitioners, lawyers, and activists from Black organizations and from the Black movements to assess their view of the role of rights within the antiracist struggle and their experience with judicialization.

In Peru, I analyzed Azucena Algendones' case, standing as the only conviction under the crime of discrimination on racial grounds. I combined *storytelling* with the critical analysis of the documents available in the legal case. Storytelling built on everyday experience can be an effective legal method to confront this normalization of Black dehumanization (Delgado and Stefancic 2001, 39), particularly in a country where anti-Black racism is largely silenced. In Brazil, I analyzed the constitutional class action ADPF 635 *PSB vs Rio de Janeiro State*, the so-called *ADPF das favelas* (Slums ADPF), being a paradigmatic case where petitioners placed Black genocide and institutional racism at the center of the plaint. I employed a different methodology, not resorting to storytelling to expose the violence in which the State "fights crime" in Black neighborhoods. Those narratives have been overused and, in the case of Brazil, the spetacularization of police violence in TV shows and movie industry for the entertainment business has reinforced racial imaginaries (see Carter 2017; J.A. Alves 2014b; Sales and Muniz 2020; Corrêa 2006). Therefore, I focused the analysis on the documentation available on the website of the *Supremo Tribunal Federal*, which was part of the lawsuit. My main goal is to explore the legal reasoning to assess how jurists engaged with race and racism in this case, where Black genocide is at the center.

Claims in the cracks: (im)possibilities of antiracist struggle within the Racial State

In the second approach I relate Brazil and Peru to broader debates on racism and antiracism, more specifically, I focused on public policies and legal debates developed to either guarantee specific rights for Black people or to fight racism. The analysis included: a) the framework in the policies debated/ implemented at the Directorate for Policies for Afro-Peruvian Population, DAF, within the Ministry of Culture (2009-2020); b) the policies developed within the National Secretariat for Policies for the Promotion of Racial Equality, SEPPIR (2003-2016) in Brazil; and c) the role of Peru and Brazil in the debates

for the construction of the Interamerican Convention Against Racism, Racial Discriminations and related Intolerance (2005-2013).

The national scale comprised different timeframes. Peru is currently developing a series of policies, studies and regulations on both racial discrimination and Afro-Peruvians' rights during this investigation. For that reason, the scope of analysis goes from 2009 to 2020. In the case of Brazil, the political crisis that led to changes in the national government implied a limit to the timeframe to 2016, when the new government extinguished SEPPIR as a State Ministry. The multi-scaled analysis considers the "circulation of legal arguments, instruments, and decisions across national, regional, and global scales" (Medina 2016, 141), linking the regional debate to States' discourses and national practices, in the context of global efforts to advance standards to fight racism, particularly those established at the third World Conference against Racism, Racial Discrimination, in Durban, South Africa 2001, namely the Durban Declaration and Programme of Action (DDPA) and its impact on the negotiations on the Organization of American States (OAS) to develop the "Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance" (Inter-American Convention).

This approach to the research questions combined two methods: a) *critical discourse analysis* (van Dijk 1993) to look at policy documents, processes, regulations and institutional discourse to understand: i) which are the policy theoretical approaches, the choices of vocabulary, the permitted and prohibited language in the fight against racism? ii) how race and racism is translated into public policy? iii) how much of the Durban Declaration - particularly the recognition of racism as a legacy of racial enslavement - impacted the regimes of denial and anti-Black racism? iv) does State (legal) recognition of Black people's rights worked to deconstruct the myth of racial democracy?; and b) *testimonies* of those *outsiders-within* (Collins 2000) to explore: i) how Black people within State institutionality reflect on the strategy to crack from within?; ii) what are the main challenges and how does the Racial State respond to antiracism from within? iii) What are the limitations of unveiling the Racial State from within the State?

In both contexts, most of the government officials in charge of such policies were Black women[18], who came from Black movements' activism and occupied governmental positions for the first time. Patricia Hill Collins explores the category of *outsiders-within* to refer to the position of Black women, that "can never lead to power because the category, by definition, requires marginality" (2000, 289). In Collins proposition, though, "using the insights gained via outsider-within status" (Collins 2000, 289) provides a unique opportunity to both reflect and challenge the current racial "interconnected domains of power—structural, interpersonal, disciplinary, and hegemonic" (ibid.).

I listened to those outsiders-within through in-depth semi-structured interviews with Black activists that have occupied (or still do) jobs within the State to put forward an antiracist agenda, both in Peru (DAF) and Brazil (SEPPIR). The State structure for policies for Black people was/are mostly run by Black women, even though my interviews have encompassed various governmental officials, in different positions, including men. Engaging with Van Dijk's proposal to critical discourse analysis, the author alerts for the limits of those members of less powerful groups when present as participants in the discourse, as we should pay "special attention to those forms of context control", meaning how the analyzed event was formatted, taking in consideration, for instance "when chairs organize discussions, allow or prohibit specific speech acts, monitor the agenda, set and change topics or regulate turn-taking" (ibid., 260). Additionally, the author proposes to "pay more attention to top-down relations of dominance than to bottom-up relations of resistance, compliance and acceptance" (1993, 250). This *bias* steer the look to the institutions, challenging dominance, unveiling the power relations and processes that perpetuates control of one group over another. Van Dijk states that "power and dominance are usually organized and *institutionalized*" (1993, 255), so the behavior of one person is not relevant, but understanding how some practices are supported and legitimated, sometimes enforced by State policy.

Looking critically at antiracist policies in contexts where the State has absorbed professionals from the social movements and/or is in constant articulation with civil

[18] In Brazil SEPPIR was conducted by Matilde Ribeiro (2003 to 2008), Édson Santos (February 2008 to March 2010), Eloi Ferreira Araújo (March 2010 to December 2010), Luiza Helena de Bairros (2011 to 2015), Nilma Lino Gomes (January 2015 to October 2015). In Peru the Directorate was conducted by Owan Lay Gonzalez (April 2014 to December 2015), Susana Matute Charún (2016 – nowadays), but Rocío Muñoz Flores was the General Director of Intercultural citizenship (2012 to 2016).

society consultative spaces is challenging. A precipitated assessment of the role of those activists inside policymaking mechanisms can mislead the focus of the analysis to more long-term structures, conditions, and possibilities for articulating an antiracist agenda within an anti-Black State. Both in Peru and Brazil, the main representatives of the governmental office were/are in dialogue with participatory spaces with Black organizations (*Grupo de Trabajo con Población Afroperuana* - GTPA and the *Conselho Nacional de Políticas de Igualdade Racial* - CNPIR). Then, together with Oliveira (2017), I am not interested in entering a debate of "activism of results", that can fall into the evaluation of the Black activists' participation in the State, neither I want to problematize possible cooptation. When talking to government officials who were also Black activists, my purpose was to understand the mechanisms through which racism operates, unveiling the barriers, the limitations, and the discursive strategies encountered to de-radicalize, that forced to compromise with or change policies and narratives. Throughout the interviews, the pain, the frustration, and the illness of the body came to the surface, together with testimonies of the violence of everyday racism within the State, through denial, paternalism, exoticization, ethnicization, and victimization.

The research process

This thesis had two challenges from the beginning: the broad contextual scope of analysis and its interdisciplinary character. On one hand, due to the broad scope - two different contexts and a multi-level approach -, it has missed the opportunity to deepen the investigation for the benefit of identifying wider logics. Aiming to provide an overview of the debates on race and racism but also to focus on the regimes of denial, the broad scope was justified, but I acknowledge that detailed accounts of policies, processes, and impacts were overlooked. On the other hand, interdisciplinarity poses a challenge for academic reflection, still very steered towards each field's logic and vocabulary. The challenges of interdisciplinarity were various. First, empirical work on law and race is still scarce, so coming from a legal background, I struggled with empirical methods. Additionally, Latin American studies, Black studies, or critical race studies are transdisciplinary, but their production is closer to the fields of sociology, anthropology, and history.

Despite challenging, interdisciplinarity brings a unique opportunity for theoretical and analytical dialogues and provides distinct and complementary analytical tools. The study

innovates on providing a relational approach on law and race in Latin America, linking two contexts with broader debates on racism, in an interdisciplinary dialogue. The work also fills a gap in the human rights studies in Latin America by looking to the regional system in relation to the national narratives, in a multi-scale analysis. Even though other studies have investigated law and race/racism in Latin America (Hernández 2013; 2019; Rahier 2019; Garavito and Días 2015), this study adds to a formal analysis of law and jurisprudence the empirical aspect through interviews with various participants. Comparative studies have often focused on Brazil and Colombia (Paschel 2016; Wade 2012), and between Brazil and the United States (Da Silva 1998; Mitchell 2022). Some broader research projects have encompassed various countries, including Brazil and Peru, but asking different research questions, such as race and discourse in Latin America (Dijk et al 2009) the relevance of skin color to (Telles 2014b) or the meaning of antiracism (Wade and Figueroa 2021).

This thesis was integrated in a broader research project named POLITICS - The politics of anti-racism in Europe and Latin America: knowledge production, political decision-making, and collective struggles[19]. The project aimed to understand how power relations shape antiracism in different contexts and the links between the global, national, and local levels, as well as the processes of dialogue and conflict between grassroots organizations and institutions. Politics was guided by three interrelated issues, being represented by three research streams (RS) as represented: "RS-A: Anti-racism within regional and state political and policy frameworks; (ii) RS-B: Cultures of scholarship and the study of racism and (post)colonialism in State universities and (iii) RS-C: Tackling everyday racism concerning police practices and representations in the mass media" (Maeso 2016, 1). My work was under the scope of the RS-A in dialogue with RS-C.

Some conceptual and methodological choices were initially presented at the project Politics and constantly debated with the rest of the team (comprising the principal researcher, the project manager, three post-docs researchers and three Ph.D. candidates), and I found additional paths, new theoretical reflections, and methodological choices throughout my investigation. They all added to the knowledge gained by the richness of

[19] This project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (grant agreement No ERC-2016-COG-725402).

doing a thesis within a larger project, but also by the challenges presented during the fieldwork and my own theoretical explorations.

The framework of analysis included data from various sources. From a literature review on race and racism in Brazil and Peru, the investigation encompassed legal and political texts, minutes of public debates, reports and studies, public archives, videos, and other formats available and records. The empirical part comprised fieldwork observation and participation and in-depth interviews that enable the analysis of competing interpretations and power/knowledge/space relations. I stayed a total of six months in Brazil and Peru, three months in each country, where I conducted fifty-four interviews (see Annex, list of interviews). I also attended several events, participated in policy discussions, classes in universities and other activities, such as protests and public hearings.

I undertook two visits to Peru, the first one in October 2018 and the second one from May to June 2019, doing my fieldwork mostly in Lima. I am especially grateful to Cecilia Ramírez Rivas from CEDEMUNEP, for opening so many doors, making possible to participate in several events where policies for Afro-Peruvians were discussed. Through her guidance I participated in the meeting of the GTPA (Working Group of the Afro-Peruvian Population) in the Ministry of Culture. It was a single opportunity, as they were debating a new bill on Afro-Peruvians' rights and demanding the recognition as a *people*. I went with Cedemunep to the "Peru-Africa friendship day", a diplomatic event organized annually by the Ministry of Foreign Affairs where all the organizations of Afro-Peruvians are invited every year and counts with the presence of the diplomatic representations of several African countries with missions in Peru. I also attended, together with Cecilia, the IX International Congress on Intercultural Justice, when Afro-Peruvian organizations were invited to participate for the first time. During the Intercultural Justice Congress, Cecília introduced me to Azucena Algendones, and I could learn about the struggles within the judicial system to denounce racism in Peru. I also attended an ordinary meeting of the Working Group of Afro-Peruvian Women in the Ministry of Women and Vulnerable Populations, and an ordinary meeting of the CONACOD in the Ministry of Justice and Human Rights. During my stay in Peru, I could participate in other events, organized by CEDET, Ministry of Culture, in the Universidad Mayor de San Marcos, to mention a few. I conducted 30 semi-structured interviews with Black activists, government officials, lawyers, professors, as indicated in detail in Annex 1 'c'.

In Brazil, I conducted the fieldwork from October to December 2019, in São Paulo, Rio de Janeiro and Curitiba. Having my own network in Brazil, where I worked as a human rights activist, I relied on my contacts to gain access to research participants. I want to thank especially Lucia Xavier from Criola, for providing me with various contacts in Rio de Janeiro, and Rodnei Jericó from Geledés for hosting and guiding me in São Paulo. In those cities I participated in several events, such as Day of Debate on Penalty Abolitionism (*Jornada de Debate sobre Abolicionismo Penal*), with a leacture with Vera Malaguti, promoted by CRESS/RJ; Seminar "Democracy and Public Defender in Latin America: an analysis of the (in)volution in the current historical context", organized by Fórum Justiça and the Black Women's Organization Criola; 7th metting of the Fórum Permanente de Política e Justiça Criminal, entitled "Public Security Necropolitics" (*Necropolítica de segurança pública*), hosted by EMERJ; Seminar "Justice for whom? Reflections to racialize access to justice" (*Justiça para quem? Reflexões para racializar o acesso à justiça*), promoted by DPE-RJ, at Fesudeperj; participation in the protest for the Human Rights Day against the Black genocide at Assembleia Legislativa do Estado do Rio de Janeiro (ALERJ); and the Encontro Nacional 'Violências de Estado, processos de resistência e limites epistemológicos do Direito', at PUC-Rio. I also attended the public hearing "Violation of human rights of the black population in Brazil: what to do?", promoted by the Coalização Negra por Direitos, at OAB/SP in São Paulo. I did some interviews in-person, but as I was investigating policies from an extinguished ministry, key research participants were in various parts of the country. In this case, I conducted some interviews online and others replied to a written questionnaire. In total, I interviewed 24 people in Brazil (see Annex 1 'c').

Critical reflexivity

Critical reflexivity on the researcher's positionality has been a central concern in critical race studies, as it entails power relations existing between researchers and researched not limited to individual identity but also how "social position come to dictate their view of, and impact within, society" (Le Bourdon 2022, 2). Working on various contexts, with different groups, confirms that positionality can shift, placing us as an 'insider' or as 'an outsider'. This comes from racial identities and positionalities, but also from the institutional settings where we are developing our research. Being in a privileged space, such as the university, also produces uneven power relationship, reinforced by an

academic privilege of critical interpretation that allows the academic narrative to gain prominence over other forms of knowledge production (Allen 2005, 990).

My positionality during the fieldwork varied, at moments I was an insider as an antiracist activist, as a racialized woman, as Latin-American. Other times I was an outsider for being a foreigner, a researcher from a European University, or a human rights lawyer. For instance, doing research in Peru on public policies for Afro-Peruvians, I felt as an insider as an antiracist activist, so I could connect to the topic, its struggles, and challenges, which are result from the interconnected histories of afrodescendants in the Americas. Nevertheless, most of the time, I was an outsider. I am not a Peruvian, I knew little about racial construction in the country and I had a lot to learn from local activists about anti-Black and anti-Indigenous racism. Drawing assumptions from my own activism could damage my learning process and, especially, my listening. Additionally, coming from a European University people often saw me as a European researcher. Coping with my frustration, I asked to activists I interviewed what they thought the research could help on their struggle. One of them was honest enough to say straightforward “nothing”. Another one told me that we could research topics they could not, especially because we could easily reach high levels of government that they would never do. She added that presenting the results and providing evidence for what they have been saying for years - regarding flaws in public policies - was a way to strengthen the claims as we came from a place of privilege (a European University). I realize how unfair this situation was, and how Afro-Peruvian activists’ views are disregarded and distorted: they should be listened to regardless of our participation, but this was a way to deal with situated power relations and distinct locations of power, even if I felt particularly uncomfortable to be placed as belonging to a privileged position.

Researching in Brazil placed me mostly as an insider, as I mobilized my own network to access key research participants. At moments though, I was placed uncomfortably as an outsider. During one interview with a historical activist from the Black women’s movement, she looked at the project Politics materials and said, “decades ago there was the Unesco project, now you are in a new 5-year project to research racism in Brazil”. It was very unsettling to be in the same place as the Unesco project, but she saw a researcher coming from Europe and financed by the European Research Council and draw her conclusions. On a different take, in Brazil, there is also a growing fatigue of activists or

"trendy" researched communities to be part of new investigations, and researchers are finding more resistance or even less access. On top of the fatigue, there is a growing awareness that the university and the academic production at large are hardly committed to knowledge production that interests the peoples that become "objects" of study. A personal experience during my fieldwork is illustrative. Even though I mobilized my personal network to have access to the interviewee, she made clear to me that she is currently denying interview requests. According to her:

> I think that research has to be related to the agendas that the movement is proposing to do, I no longer want to participate in research that is exclusively in the interest of the researcher, I don't want to anymore, I literally don't want any more. I only give an interview today if I think that what I'm going to say has some connection with the struggle of my people anywhere in the world, if not, I am sorry, but I won't do it (...). Sometimes I tell my friends that I'm tired, right, I say "oh I'm tired", to express that... with the idea that we need to use this space at the academy to leverage with projects, but we need to be alive first, you know? [the research] must be related to the life of the subject you are talking about and not just the interests that me [as researcher], with my head already formed, go there [to the community] to debate but trying to see there and when I don't see what I materialized in my head, I 'no, I went, but they weren't really indigenous, they weren't organized, the quilombolas there weren't well organized and that's why I changed my research to another quilombo because there they are well organized and such'. Well, first we have to discuss what is this organization concept? Because if it is a group that has been there for over 300 years and is still there, are you going to say that this group is not organized? Like this? Based on what are you going to talk about? So, I think this is one of our challenges. (AB-10)[iii]

We had this conversation one day after an event where she presented the results of a research done by a human rights organization and the social movement she coordinates (a national network of quilombolas communities) on racist violence against the quilombos. She argued that so much research has been done on those communities in Brazil, but a detailed account of violence concerning their struggle for land (murders, land grabbing, threats) needed to be done outside the university. Her case reinforces Linda Tuhiwai Smith's (1999) reflections that research is needed, however, academic research design has been largely disconnected to either local struggles or community pressing needs.

In the end, even if we acknowledge the flows on activist research, or the challenges in producing knowledge beyond the scope of the academic requirements, being activists make it difficult to draw the lines between the object of research and the outcomes of the research in terms of its usefulness for concrete struggles and real lives. I can only hope that the result of the research can add to critical debates on the contexts studied and

beyond. Despite writing this thesis in English, I accepted invitations to publish in Spanish and presenting the results in various events in Peru. Similarly, I participated in debates in Brazil and published in Portuguese.

Thesis outline and chapter summaries

This PhD thesis addresses two main *tensions*. I divided my thesis into two parts to better explore these tensions: Part I - The Racial Rule and Part II - Antiracism within the Racial State. Each part is composed of three chapters and with one chapter providing with more conceptual debate and literature review for the issues addressed and others with case studies' analysis.

Part I comprises chapters 1, 2 and 3, and explores the (im)possibilities of justice for Black people within an anti-Black juridical system. The central objective is to better understand how racism - as a system of dehumanization - operates in the legal system, both in theory and in practice in the contexts under investigation. I take the legacy of racial enslavement as essential to understand the functioning of racial presumptions in administering justice. The goal of this part is also to reveal how the regimes of denial of racism operates within the legal field, applying critical race theory propositions regarding the neutrality of liberal law, colorblindness, formalism, and the control of the meaning to reduce the scope of racism that is recognized by the legal discourse.

Chapter 1 presents a brief socio-historical analysis of race, nation and racial rule in Brazil and Peru necessary to give foundation to reflections on the legacy of racial enslavement. I briefly present the national discourses around progress, citizenship, and rulership to assess how in Latin America the "the Black" and "the Indian" are created as races and how white supremacy is enforced. I discuss the colonial/racial rule in both contexts, showing how the Racial State differentially regulated peoples and introducing the theoretical debate on its consequences. Then, I relate both contexts to discuss how the end of racial enslavement and the proclamation of the Republic used various mechanisms to perpetuate the racialized legal regime. This historical account gives elements to discuss the legacy of racial enslavement, presenting a theoretical proposition for thinking law and race.

Chapter 2 explores the possibilities (or not) of claiming Black dignity within the judicial system, by conducting an in-depth analysis of a racial discrimination legal case in Peru. Through the case study I discuss anti-Black racism, how it works in the justice system and how Black people's dignity remains largely unprotected. I articulate the outcomes of Azucena Algendones' case to the legacy of racial enslavement in producing Black inhumanity, evidencing how the ideological control of the institutions, the performance of race and the denial of race function in the routines of Justice. This case study opens the dialogue with Brazil, as the challenges to make justice in face of a racial discrimination offense have parallels in both contexts. I interviewed practitioners, lawyers with experience with the judicialization of racism in national courts and human rights forums. Through their narrative I explore the ways of institutional racism in dialogue with broader critical (legal) race theories that discuss similar challenges to antiracism within the justice system.

Chapter 3 presents a study of the Brazilian jurisprudence on race and racism, including the in-depth analysis of a legal case in Brazil, the constitutional class action ADPF 635 *PSB vs Rio de Janeiro State*, the so-called *ADPF das favelas* (Slums ADPF), that became paradigmatic for placing institutional racism and Black genocide at the center of the legal argumentation. The class action is a joint initiative from various antiracist organizations and some institutions to bring to the judicial debate the Black genocide while questioning the violent outcomes of police operations in majority Black neighborhoods in Rio de Janeiro. I investigate legal arguments and debates from the petitioners, *amicus curiae,* and the justices' opinions in the injunction decision, as well as testimonies brought by the public hearing called by Justice Fachin, rapporteur of the class action. Exploring the regimes of denial in the case of Brazil steers the research to ask the questions in a slightly unique way. First, here the facts are not denied, as to say, Black over victimization is recognized by institutions. Second, the issue of the case in trial is a public policy, with a collective impact. In this manner, the analysis of the court case aimed to understand how the judicial system can acknowledge Black death but still deny institutional racism.

Part II comprises chapters 4, 5 and 6, where I explore the tensions within the Racial State by looking at how the State negotiate, interpret, constrain, and recognized Black peoples' social claims. Then, I engage with different scholarships from Black studies, critical race theories and Latin American studies. Exploring the multi-level approach of

the research, the analysis of the relations, arguments and theories employed at the regional level (Organization of American States) articulate to international trends and countries' national approaches to policies to fight racism.

Chapter 4 summarizes key debates on the rights recognition framing in Latin America since the late 1980s, the controversies around the use of ethnic-racial categories in legal texts, and how the "threat of race" has pushed for the ethnicization of both Indigenous and Black struggles. I aim to show the importance of controlling the political language and vocabularies, setting the terms of the debate, to sustain the institutional racial order. Then, I briefly introduce the trajectory of the Black movement since the 1950s to historicize the Black struggle in the region, and the State response in different phases, placing Brazil and Peru within the histories of *Améfrica* (Gonzalez 1988) or Black resistance within the racial order. Finally, I present how States are currently institutionalizing the "black agenda", describing the choices of policies for Black peoples in Peru and Brazil.

Chapter 5 explores how much of the mobilization of the Latin American States and the Afro-Latin American movement for the preparation at the Durban conference (2001) and its related outcomes impacted the debates to build the Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance (2013). The commitments reached at the Santiago Conference (2000) adopted at Durban gave hope that the region could advance on international standards in the fight against racism. By looking at country reports, drafts of the convention, and interviews with some participants of the debates at the Organization of the American States, focusing on the leading role of Brazil, I explored the tensions, controversies and main arguments mobilized in the years of negotiations. Employing critical discourse analysis and the use of legal reasoning in human rights negotiations, the aim was also to assess if building a binding instrument to fight racism in the Americas challenged its regimes of denial strongly present in the official discourse, unveiling the different strategies employed for its perpetuation. The analysis revealed that a consensus was possible only moving away from "Durban language", showing how disputed concepts and remedies places racism still as a rightly politically sensitive issue in the region.

Chapter 6 explores the tension within the Racial State when antiracism becomes part of the State's agenda by looking at policy initiatives for either fighting racism or promoting the rights of Black people in Peru and Brazil. I discuss antiracist policy frameworks together with the testimonies of Black people within government structures to listen to those outsiders-within. By putting in relation the process and the negotiations of policy design through the testimonies of those who were within State structures, my goal is to expose the mechanisms of racism and its regimes of denial in the living experience of Black people occupying governmental places. The interviews revealed challenges deeply rooted in institutional racism and their impact on the choices made in policymaking, the size of the budget allocated, the format and content of regulations, and the permitted and prohibited terms and discourse.

Finally, I draw the general conclusions while identifying four mechanisms for the reproduction of racism, despite Black struggles for freedom, Black insurgency and Black lives in Brazil and Peru's social history. I infer that racial subjection persists through the functioning of those mechanisms that inform the racialized legal regime, which are: i) the ideological control of institutions; ii) the normalization of the performance of race; iii) the functioning of the narcissistic pact; iv) the state of permanent denial of race.

PART I – THE RACIAL RULE

Chapter 1. The limits of humanity: socio-legal constructions of race in Peru and Brazil

This chapter explores legal-political debates that emerged from the period of colonial rule to the consolidation of the Republic States of Peru and Brazil (until the 1950s), based on a literature review and the analysis of legal frameworks. Taking racial enslavement as a legal regime that has colonially ruled Black bodies for centuries, I aim to understand how it has shaped institutions of control and knowledge production necessary to sustain Black inhumanity for the benefit of white life and property. This historical overview explores legal and political debates impacting legal concepts such as subjectivity, personhood, citizenship, and morality. And because the racial rule has impacted differently Indigenous and Black lives, they not often coincide in the struggles for autonomy, despite sharing concrete experiences of oppression throughout the continent (Gonzalez 2011). Their relation to the State has also been distinct, a consequence of how differentiation was important to sustain racial control and white supremacy. My analytical choice is to focus on Black peoples in the diaspora, but I dialogue with Indigenous peoples' experiences whenever it is important to understand the construction of race and the racial rule in both contexts.

The Chapter is divided into four sections. In the first section, I look at Peru to provide a short historical account of discourses of race, racial regulation from the colonial to the Republic. In the second section, I present a historical account of racial rule in the Brazilian context. In the third section, I relate both contexts to discuss how the end of racial enslavement and the proclamation of the Republic used various mechanisms to perpetuate the racialized regime. In the last session, I discuss the legacy of racial enslavement for thinking law and race.

1.1 Racial enslavement and White fear in Peru[20]

From the beginning, colonialism functioned through racial lines. The Iberian model of colonialism implemented a social-racial division in order to control labor, land, and power under the racial rule in the Americas. The Spanish crown adapted a regime similar to the one deployed on European soil in the colonies: the "*limpieza de sangre*" or cleanliness of blood, used to hierarchize and control non-Christians, such as Roma communities, Jews, and Moors (Gonzalez 1988). In what became Peruvian territory, this hierarchization relied on differentiated legal regimes for the various peoples living: one system for the whites, called the Republic; another system, called "*Pueblos de Indios*" or "Republica de Indios" regulated the lives and territories of Indigenous peoples; and a third one for enslaved African peoples, ruled outside the "res publica" (Cotler 2009, 30). As a Catholic State[21], the Spanish crown invested in a powerful weapon to racially divide and legitimately control the conquered peoples: the Catholic Church and its Christian morality.

The colonial State regulated the systems of forced labor of Indigenous and enslavement of Black peoples differently. As Indigenous peoples were considered *vassals* to the Spanish Crown, a tax was imposed to be granted the "king's protection". The indigenous tax or *mita*, guaranteed Indigenous labor, but also enabled the decentralization of the colonial administration, as this practice relied on regional authorities (Cotler 2009, 53). The *mita* rendered various communities dependent on landowners – *gamonales* - and organized the oligarchical power structure. The use of Black enslaved people was a factor of social distinction for wealthy enslavers who used them mostly in the cities, such the capital of the Vice-kingdom (*Virreinato del Perú)*, Lima, but also in large plantations situated mostly in the Coastal areas of the country (Aguirre 2005b; Arrelucea 2018) and also present in Andean regions (O'Toole 2012). Considering my intent to dialogue with the Black diaspora experience, I give more emphasis on Black peoples in racial

[20] A previous version of sections 1.1 and 1.2 of this chapter was published in Coelho, Luana Xavier Pinto. 2021. "Law and Race in Latin America: Brazil and Peru in an Echo of Two Stories." Interface: A Journal for and about Social Movements, Rising up against institutional racism in the Americas and beyond, 13 (2): 51–75.

[21] The "natural" superiority of the European invaders was constructed under racist assumptions, properly illustrated by the debate known as Valladolid, between Bartolomeu de las Casas and Ginés de Sepulveda, 1600-1601, "as to whether or not the New World Indians were equally 'men' (Las Casas) or 'slaves-by-nature' (Sepúlveda)" (Wynter 2003, 332).

enslavement, as the Indigenous experience has been extensively studied (cf. Drinot 2016; Cadena 2004; Cotler 2009; Restrepo and Rojas 2010; Degregori and Degregori 2014).

In colonial Peru, white fear was driven by both Indigenous and Black insurrection. Racial regulation was proportional to the need to control the population and guarantee their submission. The regulation of the occupied Spanish territory, known as "*La recopilación de las Leyes de Indias*" (1680)[22] regulated the different "peoples", demarcated by racial codes. The 7th law forbids sexual and labor relations between Blacks and Indigenous, even prescribing penalties for the white 'masters' that employed them simultaneously. The fear of a Black and Indigenous alliance was transferred into a rigid control of both groups' socialization. For example, Black people were forbidden to drink *chicha* or to go to "rancherías de indios", regulated by the "Siete Partidas del rey Alfonso el Sabio, Partida IV, Título VI" (Arrelucea 2018, 83).

In the case of Lima, the presence of both freed and enslaved Africans fostered white fear of "losing control over that population, seen as disorderly, immoral and incapable of decent behavior" (Arrelucea 2018, 23). Lima had a high rate of Black population, which could be up to 44,6% by the XVIII century, from those, 19% were freed, which raised the need to exercise constant control (2018, 65). In Peru, the Catholic Church was key to the colonization process, holding juridical power in the Ecclesiastic Tribunal. If we take into consideration that the Church was responsible for birth and death certification, marriage, and the moral control of society, its power over surveilling the public space in the name of "public morality" was relevant. Civil and criminal cases were taken to the Royal Audience (*Real Audiencia*). The Brazilian case is slightly different, because in most of the colonial period, "justice" was left in the hands of private landowners (Flauzina 2006). In that context, even though the Church played a key role in the moral control of society, it was not directly administrating justice as extensively as in the Peruvian case.

Such forms of racialized legality assured control of the Black body, stipulating rights and duties through racial lines. The free Blacks were a source of great fear, and in seeking to remind them of their 'proper place', as non-humans, their lives were extensively regulated. According to the *Ley de Indias*, the freed "negros y mulatos" were to pay tax

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[22] Available at: http://www.gabrielbernat.es/espana/leyes/rldi/indice/indice.html , accessed on the 15th September 2020.

to the Spanish Crown (Libro VII, titulo V, ley primera). To enforce this command, the 3rd law prescribed that freed Blacks had to live with known 'masters', so it could be possible to collect the payment. According to the regulation, freed Black people were not recognized as having a fixed residence - "*no tiene asiento*", so they were not allowed to move from the "master's" house without a license of the ordinary justice. If any freed Black person was found outside their "master's" home, there were to be arrested and made to learn how to "live accountably and with reason". Besides, the "idle freed" were to be sent to work in the mines (4th law). At that time, vagrancy was also a crime, leaving little room for Black freedom in a racial enslavement system. The third law on freed Blacks are very illustrative of the limits of freedom for Black in racial regime, so I cite in length:

> *Ley iii. Que los Mulatos, y Negros libres vivan con amos conocidos, para que se puedan cobrar tributos. Hay dificultad en cobrar los tributos de Negros, y Mulatos libres, por ser gente, que no tiene asiento, ni lugar cierto, y para esto conviene obligarlos à que vivan con amos conocidos, y no los puedan dejar, ni pasar a otros sin licencia de la Justicia ordinaria, y que cada distrito haya padrón de todos, con expresión de sus nombres, y personas con quien viven, y que sus amos tengan obligación de pagar los tributos a cuenta del salario, que les dieren por su servicio, y si se ausentaren de ellos luego noticia a la Justicia, par que en qualquier parte donde fueren hallados, sean presos y sueltos a sus amos con prisiones, y apremiados a vivir, de forma, que haya cuenta e razón. Mandamos a los Virreyes, y Justicias, que assi lo ordenen, y provean.*

Ley de Indias also regulated the lives of enslaved Black peoples, defining severe penalties for rebellion and *cimarronaje*. If an enslaved person was away from their duties for more than 8 days, they would be whipped 100 times. In the case of committing a felony (as *cimarronaje*, for instance), the penalty was death in the gallows. The leaders of the rebellion were to be made examples of and the 26th law removed the requirement of a judicial trial. Aguirre (2005b, 25) narrates how captured *cimarrones* were immediately executed and their bodies publicly exhibited. The Plaza Mayor was the center of Lima and the colonial domain, where the colonial power was enforced, and the public punishment took place. As described by Arrelucea Barrantes:

> People would go to the plaza and observe the punishment of bandits, maroons, petty thieves, and other criminals. In this space, the exercise of authority was highlighted and their representatives were granted the natural right to inflict severe punishments. In addition, the show had its doses of persuasion and intimidation: after seeing the dismemberment of a person, more than one looked for another alternative to their problems. (2018, 64 author's translation).

According to Arrelucea (2018) and Aguirre (2005), Black people were more severely punished, as they occupied the lowest place in the racial hierarchy. Such public demonstrations of violence were necessary for the naturalization of identity and place, of different bodies and their different geographies (McKittrick 2006, 13). The performance ratified racial hierarchies and maintained a constant atmosphere of *terror*. The exercise of violence was also needed due to the actual threat that *cimarronaje* posed to the enslavement system. It proposed projects of Black political liberation – opposing the colonial ideology of "Black inhumanity" -, and the relationship between the *palenques* and other sectors of society, such as commercial relations by providing foods and other goods (Pastor 2008, 18), challenged the colonial system (white supremacy) in itself, by naturalizing Black freedom.

It is important to note that despite a color-coded differentiation in the regulations, mobilized mostly for the freed enslaved, this form of racialized legality did not guarantee privileges. Even the supposed advantage of *morenos,* those with lighter skin*,* was precarious. As a result, those who were freed or enslaved were not drawn in contrast by a color code from Black to *moreno*, but from Black to white. As the 6th law reveals, "the son of a Spanish and a black woman were to be preferred in the purchase by their father", as to say, the son of an enslaved women was an enslaved child, so "color" variation was therefore deemed secondary to determining control over the enslaved body. The use of "black" indistinctively, for instance, could encompass both freed and enslaved. The 12th law is illustrative, which stated that Blacks could not be outside their "master's house" at night. Or the 5th law, which determined Blacks ought only to marry other Blacks, whether freed or enslaved. The only differentiation declared by the law was to *morenos*, and according to the 10th law, freed *morenos* should be properly treated and should not be disturbed, if living peacefully (19th law). *Mulatos* and *Zambaígos*, on the other hand, were equal to *negros*, in the provision that they could not carry weapons (24th law). The use of various racial categories by the law (*negros, mulatos, zambaígos, morenos*) was intended to make humanity/fungibility indisputable and not open to interpretation. Thus, Blackness was fully regulated.

Maribel Arrelucea (2018) and Rachel O'Toole (2012) demonstrated how racial regulations were permeated by constant negotiation. Black people have struggled for freedom in various ways, and sometimes by mobilizing the system in their favor. The

State control against *cimarronaje*, punished with death, made it not always an option. There were many motivations to go to trial as plaintiffs, such as: claiming the validity of a freedom letter; demanding a fair price for one's freedom; accusing one's "master" of abuse; and claiming the right to marry, as Carlos Aguirre exemplifies (2005b, 27). Nonetheless, the racialized legality, even if exceptionally negotiated, still set the hierarchies of control and vigilance that all Black people, freed or not, were subjected to. The simple fact that the regulation existed demonstrates that it worked as an instrument of constant threat and coercion, even if not fully enforced. The power to negotiate in those plaints was not in the hands of the Black people, it was secured in the hands of the whites and their institutions. Consequently, we are not talking of equal relations or access to the legal system that provided avenues to claim humanity. In a regime that regulated specific peoples as fungible, they could never set the terms of the negotiation. It is not by chance that Black women and men were trying to prove they were good Christians, or that they were honest or good workers. Those attempts of getting recognitiong of their morality proves that they could only mobilize the values conceived as valid by those white institutions, particularly shaped by Christian morality.

There was also a blatant gender differentiation in racial enslavement, where Black women were seen as sources of sin and moral corruption (Arrelucea 2018, 89) and were overly sexualized. It was of vital importance, for Black women, to demonstrate their "honor", so they often petitioned for a catholic marriage since the "illegitimacy" of their unions or children were sources of dishonor (Arrelucea 2018, 78). In the case of Peru, jobs of lower social esteem were also relegated to Black women, such as butchering animals or selling in the streets. These were perceived as violent and dirty jobs. Such racial gendered differentiation is important in racial enslavement, and conversely, the immorality of Black women set the contours of white women's femininity/decency.

Sexuality and race were constantly mobilized to draw racial lines between Black (men and women) inhumanity and white (men and women) humanity. According to Katherine McKittrick, "spatial differentiation communicates sexually promiscuous, immoral, perpetually pregnant, inferior stereotypes; it reaffirms the places and spaces available within the racist patriarchy through the unfree body" (2006, 82). Within these interrelated spatial and bodily constructions, "white femininity, white masculinity, and white corporeality are, for the most part, rendered protected and protectable" (ibid). Whiteness

had to be protected from the dangers of the oversexualized and immoral body, particularly in specific geographies: "slave quarters, plantation homes, fields, kitchens are, for black women, unprotected—it is in the material landscape, at work, in the home, and within the community, where the body is rightfully retranslated as inferior, captive, and accessible to violences" (McKittrick 2006, 82).

With Peru's independence, the proclamation of liberal values was intended to leave behind the racial regime of the colonial rule. Nonetheless, the work of race was not erased by legal declarations of equality, when the racialized regime was in place to guarantee Black subjection and to protect whites' expectations.

The Republican/ national (racial) rule

The work of Marcel Velásquez Castro (2005) explores the "cultural construction" of the Afro-Peruvian by the Criollo elite between 1775 and 1895, providing important accounts on the legal-political tensions at the beginning of the Republic. Debates for the elaboration of the Constitution of 1823 showed the tension around liberal values, as to say, the property rights of enslavers and the claim of equality of all (that could put an end to racial enslavement). While some abolitionists defended the gradual abolition of slavery, enslavers argued that the economy would collapse without this labor force for the plantation system (2005, 202).

The first Republican Constitution of 1823 sanctioned the end of the transatlantic slave trade, but a series of decrees[23] legalized the commerce within the Americas, signaling the satisfaction of slaveowners' requests. The independence of Peru (1821) and the advent of the Republic changed little the lives of the Black and Indigenous peoples. The *caudillos* – the military - and the regional oligarchies – los *gamolanes* - forged an alliance in order to guarantee their privileged status (Cotler 2009). During the early years in the Republican era, Black people and Indigenous learned who 'we' represented in the sentence "we are independent". The regime of racial enslavement remained, and San Martin signed only

[23] According to Castro, "el 10 de marzo de 1835, el general Salaverry dictó un decreto estableciendo la legalidad del comercio e importación de esclavos de países americanos (QUIRÓS 1831-42: V, 50), en clara contradicción con la Carta Política de 1834.147 Posteriormente, en el marco de la Constitución de 1839, la cual amparaba la posibilidad de importación de esclavos, se dictó la ley del 29 de noviembre de 1839 mediante la cual se ampliaba el tiempo de servicio de los libertos a sus amos hasta los 50 años (QUIRÓS 1831-42: VI, 487)." (2005, 205)

residual legislation in 1821[24], providing freedom for the children of an enslaved person and of those Black men who fought in the independence war. Abolition was stated in 1854 when slaveowners were financially compensated by the State for their "property losses".[25]

The letter addressing the Constituency of 1834 by José María de Pando[26], a Republican politician, evidenced the white fear of Black freedom, but also the incompatibility of the "slave" with the new Peruvian citizenship. Pando argues that a "slave" is not a full Man because he "requires long civil and moral training to enter society as a citizen" (Castro 2005, 204). Besides, Pando also referred to the experience of Santo Domingo, or Haiti, to say that freedom from slavery would be dangerous, as "*la gente de color*" are prone to barbarism and horrible crimes. We can attest how juridical arguments defining the boundaries of citizenship were racialized, reifying morality and civility as inherent to whiteness and antagonist to Blackness.

The liberal principles enunciated by the Constitution of 1823 regulated who was a *citizen.* Article 17 stipulated the requirements, which included literacy and ownership of land or a recognized profession. This last requirement has been pointed out as a liberal opening to citizenship that could encompass Indigenous and free Blacks (Velasco and Rojas 2013). Nonetheless, the condition of citizens could be suspended, according to Article 24 due to the following: being *morality* inept for free labor; the condition of domestic labor; the lack of job or another form of employment; those criminally processed; and those whom scandalous form of life offended the public morality. This list was slightly changed in the new Constitutions of 1828 and 1860, with a polemic break in 1856 (Castro 2005, 225), but the censitary vote remained until the constitution of 1928. The motifs for the suspension of the citizen status are illustrative of the constitution of a racialized citizenship in the Republican era. If we consider who was in domestic labor, who were constantly described as immoral, and the criminalization of Black peoples, it is not an overstatement to conclude that Black people were outside the limits of citizenship.

[24] Carlos Aguirre (2005b, 17) tells an interesting fact on how Bolívar has promised black slavery abolition when he was in a meeting with Alexander Petión in free Haiti, but broke this promise as he relied on economic elites to support his political project.

[25] According to Julio Cotler, the government payed sic millions of pesos to compensate the losses of enslaver. (Cotler, p. 109)

[26] "Reclamación sobre los vulnerados derechos de los hacendados de las provincias litorales del departamento de Lima en 1833" (Castro 2005)

In addition, the constant reference to *Christian morality* is significant, since it was attached to the condition of whiteness or *blancura*, as argued by Castro-Goméz (2005). The first Constitution declared Peru a Catholic nation, forbidding the practice of any other religion (Articles 8 and 9). The constitutional rank of the Catholic religion lasted until 1979 when Peru becomes a secular State. However, even this recent constitution recognized the importance of the Catholic Church to the historical, cultural, and *moral* formation of the country, a text that remains in the current Constitution of 1993 (Article 50).

After the independence, San Martin stated that criminal legislation of the Spanish colonial rule remained in force, being *Las Siete Partidas* and *La recopilación de las Leyes de Indias* (Arias 2019). Despite previous attempts to promote a codification of the disperse Spanish regulation, Peru has its first Penal Code only in 1863. This code is illustrative of the continuum role of the Catholic Church in stating the boundaries of (racialized) morality. Articles 99 to 107 describe the crimes against religion, including the celebration of any cult that was not from the Catholic Religion to be sentenced with imprisonment and even expatriation; besides any immoral act was to be severely punished. Articles 372 and 373 proscribe offenses against the Catholic Church, such as blasphemy or any act of "irreverence". Articles 374 to 379 describes the offenses against "morality", including any public offense such as intoxication. Articles 380 and 382 proscribe offenses to public order, such as gatherings and spectacles causing noise and disturbance. Thus, being "moral" is a condition for citizenship that justified a rigid control over public spaces and public practices of spirituality, demarcating racial lines with a particular emphasis on embodied/engendered behavioral codes. A historical study from Ana Cecilia Carrillo and others (2002) has demonstrated the criminalization of Indigenous and Black behavior in relation to the Catholic moral regime. Despite the rigid control over Indigenous people, the study revealed that most of the convictions under "*extirpación de idolatrias"* were of Black people (Carrillo et al 2002).

In Lima, as Aguirre's comprehensive study demonstrates, the emergence of the criminal question at the end of the 19th century and the beginning of the 20th revealed how abolition fostered elites' anxiety with Black freedom. According to him, an alleged rise in levels of criminality in Lima was constantly related to "the release of thousands of slaves who had no purpose in life other than to become involved in crime" (Aguirre 2005a, 21). For

those elite sectors of Lima, former enslaved were prone to criminality "given their moral and intellectual handicaps" and only "harsh labor and social and political control would prevent them from destroying society" (2005a, 21). Lack of morals was associated with the lower classes of Lima, leading to racialized descriptions of moral degradation, which included Black people, Indigenous and Chinese. On the other hand, crime was often associated to vagrancy and idleness, evidencing a "concern with labor discipline" (Aguirre 2005a, 34).

The Pacific war is an important event to assess how racial tensions and different discourses over "nation" were mobilized, being pointed out in the literature as the moment of "the birth of modern Peru" (Aguirre 2005a). From 1879 to 1883 the government needed to recruit the "masses" to fight the war against Chile over the commerce of the south pacific. Indigenous peoples or rather, *campesinos*, were recruited to fight in the war, but they took that opportunity to reclaim their stolen land, thus fighting indistinctly Chileans and landowners[27] (Cotler 2009, 124–25). As Peru lost the war and part of its territory to the Chileans, the defeat was blamed on the Indigenous[28].

In this context, in 1881 Ricardo Palma wrote to President Pierola: "In my opinion, the main cause of the great disaster of the 13th is that the majority of Peru forms an abject and degraded race, which you wanted to signify and ennoble. The Indian does not have the feeling of the nation [*patria*]; he is a born enemy of the white man and the man of the coast" (apud Cotler 2009, 125 author's translation). The Indigenous people were often accused of being anti-nationalist and *white fear* mobilized a robust regulation seeking the

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[27] According to Cotler the Chinese workers, who were also employed in conditions of servitude, joined the rebellion against the landowners joining the "brigade infernal", destroying farms and their resistance. (Cotler, p. 125)

[28] The literature is demonstrative of how those debates were alive among intellectuals. If on the one hand the 'indigenous' were depicted with pity and sorrow from the point of view of Christian morality and liberal principles, on the other hand the paternalistic gaze was fueled by racist assumptions of inherent inferiority. The novel by Clorinda Matto de Turner *Aves sin Nido* is a narrative that contains all those elements. The book's preface wrote by the Emilio Gutierrez de Quintanilla, correspondent of the Royal Spanish Academia in 1889, give us an illustrative idea of the construction of "us" and "them" in the newborn Republic. "The indigenous race, divorced from our interests, excluded from our nation, left us surrendered to the fury of General Chile, who only came to take revenge on the white race, and only fought boldly when this general led the war to his mountains and homes. But then the fighting had the bloody inequalities that in the times of the conquest always gave the civilized European victory over the disorderly masses of barbarian Indians. (…) Yes, I also applaud immigration, because I recognize the urgent need for a blood superior to ours to restore honest feelings, instill again the notion of duty, melt social life and reconstitute political order. (…) Let's call the Indian to our sociability and culture, since emancipation gave freedom to the same country for all Peruvians" (Turner 1889, 8–10)

‘de-indianization’ of the country. The aim was to erase cultural-political affiliations, so a new one could be established: the Peruvian identity - a unified national identity still missing for national integrity.

The “Indian problem” was seen in different perspectives and propositions for its solution, but it was hand to hand with the racial construction of other major groups categorized as “inferior races”: the Black people and the Chinese. Industrialization as the solution for Peru’s “underdevelopment” had a great civilizational intent and, underneath, “racial improvement” (Drinot 2016, 17). In Paulo Drinot’s account, modernization implied education for capitalism or the conversion of Indigenous into workers – *obrero*. The country’s elite saw the Peruvian population as an obstacle to progress because they were racially inferior (Drinot 2016, 29).

At the same time, a nationalist thought is constructed against the idea of the “white Lima”, resourcing elements of Indigenous culture to build the *peruanidad* or the national identity. President Leguía’s government (1908–12; 1919–30) is illustrative of how the State conveniently absorbed this narrative. While populist in his ‘pro-indigenous’ discourse, Leguía celebrated Spanish colonialism, even if recognized the need to break “with negative conceptions of Spain’s racial legacy” (Sultmont and Callirgos 2014, 137). Influenced by contemporary trends in criminology, the president proposed a bill of the criminal code (approved in 1924) that prescribed the degree of civilization of Indigenous peoples applying the concepts of *savages* and *semi-civilized* (Núñez 2019, par. 42–43) to assess their criminal responsibility.

Although Black people were not directly regulated in criminal laws as the Indigenous, the inherent criminal behavior associated to Blackness was drawn on discourses over *moral*. Even when more biological theses of racial inferiority were dismissed by those interested in the social condition of crime, “the line between the social condition of existence and the inner morality of the lower classes remained blurred” (Aguirre 2005a, 50). The case of Jorge Villanueva Torres, who was sentenced in 1957 to the death penalty, is very illustrative of how anti-Black racism informed the racial rule in Peru. A white child was found dead and one single witness placed a Black man nearby the location where the body was found. Soon enough, the media named the suspect the “Monstruo de Armendáriz”, reporting details of a sexual crime. The only piece of evidence necessary

for Torre's conviction was the witness statement saying that saw Torres in the vicinity, so Torres was presumed guilty.

This case of Torres illustrates how a Black man is not entitled to subjectivity and does not need to be definitively placed at the scene of the crime. This case also teaches us that Blackness was synonymous with criminality, where fungibility worked as *in dubio against black*. A more recent analysis of the case has shown that the child might not have been a victim of murder at all, bearing injuries consistent with an accident[29]. Torres was the last person the Peruvian State sentenced to death before the capital penalty was abolished for this type of crime[30], and this is the only reason we know about Torres's fate. The last person to be legally executed by the Peruvian State was a Black man.

1.2 The "black problem" and the white pact in Brazilian history

In Brazil, the Portuguese colonial power authorized the enslavement of African peoples in 1549, being abolish only in 1888. During those more than three hundred years, Brazil becomes the biggest destination of enslaved people, with an estimated 5,8 million people forcedly brought from various African regions, a number that is only an estimation considering the illegal traffic and unaccounted trips[31]. The legacy of racial enslavement, the need to control the Black body, and how white fear is exercised shapes Brazilian history and its racist foundations (Flauzina 2006, 44). Black death and torture are central to this history as in, "rigidly hierarchical societies need the death ceremonial as a spectacle of law and order" (Batista 2003, 32 author's translation).

The high number of Black peoples in Brazil has also mobilized a constant fear of Black insurrection. The regulation was targeting the need to control and exemplarily punish any attempt of Black non-submissiveness that questioned the racial enslavement system. Thus, the *quilombos* or marrons were the main target to be annihilated as political

[29] See more about the case in <https://lpderecho.pe/conmemoran-60-anos-ejecucion-monstruo-armendariz/>, accessed on the 1st September 2020.
[30] The death sentence is still valid in Peru for cases of terrorism and crimes against the nation (Constitution Article 140).
[31] The Project Voyages has examined 34.948 records of Slaveships, building an extensive databased on the history of the transatlantic trade, showing how Brazil/ Portugal ships have been major responsible for the biggest forced migration of history. Available at http://www.slavevoyages.org/assessment/estimates, accessed on the 28.05.2018.

communities and erased from people's memories or hopes, physically or spiritualty. The *alvará* issued on Lisbon in 1741 is illustrative of the message of the regime against Black freedom:

> LICENSE in the form of a law, because Your Majesty considers it good that the blacks who are found in quilombos, being in them voluntarily, are put with fire on a shoulder with the letter F and if they are found with this mark, an ear is cut off, with no more process than the notoriety of the fact. By resolution of His Majesty, of March 1, 1741, in consultation with the Overseas Council of December 2, 1740. Registered on page 98V, liv.9, of provisions of the secretariat of the Overseas Council, western Lisbon, March 6, 1741 Published the Alvará in the form of a law in the Chancellery of the Court and Kingdom, Western Lisbon, March 7, 1741.[32] (Cotta, n.d., 2 author's translation)

By the time the colonizers "found" gold in the Americas, the need to enhance the control of its domains increased and the regulation becomes deadlier for those who challenged the system. Luciano Góes describes that in 1669, the murder of a *quilombola* or a runaway enslaved was not considered a crime; and in 1701 those who have killed a *quilombola* were to be award with "six gold octaves per head of black *aquilombado* dead in combat". White fear was quite evident in a 1741 provision stipulating that any gathering of five or more Black people was considered a *quilombo* (Góes 2016, 175). In those provisions we also see the privatization of "justice" through an award system, creating a generalized harsh environment of constant fear, mistrust, and violence. The renowned Quilombo dos Palmares (1580-1716) is an example of Portuguese and the white elites fear of Black insurrection[33].

In this ambiance of constant instability, the formal independence from the Portuguese rulership was seen by the elites as a solution to guarantee the continuity of the enslavement system and avoid changes in power. The independence of Brazil was triggered by the fear of what was happening in the Spanish-controlled territories, but

[32] Original in Portuguese: "ALVARÁ em forma de lei, porque Vossa Magestade há por bem que os negros que forem achados em quilombos, estando neles voluntariamente, se lhes ponha com fogo uma marca em uma espádua com a letra F e sendo achados com esta marca se lhes corte uma orelha, sem mais processo que a notoriedade do fato. Por resolução de Sua Magestade, de 1º de março de 1741 em consulta do Conselho Ultramarino de 2 de dezembro de 1740. Registrado na fl.98V, liv.9, de provisões da secretaria do Conselho Ultramarino, Lisboa ocidental, 6 de março de 1741. Publicado o Alvará em forma de lei na Chancelaria mor da Corte e Reino, Lisboa Ocidental, 7 de março de 1741".

[33] Palmares came to be a Republic in itself, formed by many cities and with a complex political structure that guaranteed its survival in the center of the Portuguese "colonial Empire" for more than 100 years. According to Luciano Goes, in 1630 Palmares accounted for 3000 inhabitants, but by 1654 there were 23.000 to 30.000 *quilombolas*, which represented around 13% of Brazil's population at the time (2016, 175).

especially by the need to avoid the Haiti effect, or the Black people taking power (Queiroz 2018). The Búzios uprising in Bahia (1798-1799) and the Pernambuco revolution (1817-1818), and so many other popular revolutions throughout the country, shared in common the large participation of racialized people and the claim for equality (Queiroz 2018). Many enslaved fled captivity, and even enlisted as troops to fight for independence because, for them, independence meant freedom from racial enslavement.

Marcos Queiroz stresses that the political divisions among the whites – between liberals and the supporters of the Portuguese monarchy – were seen as inconveniences[34]. Subsequently, the Portuguese king's son declared the country's independence in 1822, installing a monarchy that last 67 years, perpetuating relations with Portugal, but on different terms. The Empire lasted as the racial enslavement system, representing the greatest national pact of whiteness to remain in power[35]. The discourses of freedom during the debates on the constituent Assembly of 1823 show how legal-political debates managed to assure the supremacy of the right to property for political stability – including the property over the Black body. At this point, the ideas of "freedom, citizenship, property, and race were umbilically connected" (Queiroz 2018, 117). Debates over the extension of Brazilian citizenship are illustrative of how the political power understood whiteness as inherent to it. Giving the example of deputies' speeches at the Constituent Assembly, Queiroz demonstrates how the free Black was a problem within the racial enslavement and a constant challenge to the master-slaved duality, unveiling the racist logic beyond the enslaved-free equation.

On the other hand, even those liberals who saw "slavery" as a problem, an odious system that the nation inherited, proposed a slow process of emancipation to avoid the "cancer

[34] Queiroz exemplifies this debate transcribing a letter from a French agent to the king of Portugal: "todos os brasileiros, e sobretudo os brancos, não percebem suficientemente que é tempo de se fechar a porta aos debates políticos, às discussões constitucionais? Se se continua a falar em direitos dos homens, de igualdade, terminar-se-á por pronunciar a palavra fatal: liberdade, palavra terrível e que tem muito mais força num país de escravos do que em qualquer outra parte. Então toda a revolução acabará no Brasil com o levante dos escravos, que, quebrando suas algemas, incendiarão as cidades, os campos e as plantações, massacrando os brancos e fazendo desse magnifico império do Brasil uma deplorável réplica da brilhante colônia de São Domingos." (2018, 111)

[35] It is interesting to highlight that one of the discussed topics in the Assembly of 1823 was the amnesties of those regional elites who took part in dissents with the Empire or with the Portuguese monarchy. The Constitution was part of the pact of the white elites to guarantee a 'smooth' transition, as to say, an independence that did not affect the racial-social structed hierarchies despite political disagreement within the white elites. Thus, the narcissistic part was fulfilled. (Queiroz, 2018)

of captivity" bursting out with violence against "vital parts of the civil body"[36]. Then, the differentiation between civil rights and political rights marked the legal arrangement to sustain the racial lines that divided free men between Black people and whites. All citizens, but not equal. The Constitution of 1824 granted political rights only to landowners (those with a minimum annual income, owning industry or commerce, Article 92, v), even though all free men were nominated as voters, they had to meet the minimum income and ownership requirements. Besides, those who were not Catholics or not physically or morally capable were not entitled to political rights (Article 8).

Once again, the element of *morality* appears as a component for citizenship, configuring a barrier that is as impossible to cross as racialized morality. As Queiroz dissertates, deputies at the Assembly of 1823 defended the "slow emancipation and moral instruction" of the enslaved, racially marking Black people as immoral, but as part of the new citizenship that must be "morality improved" and guided to civilization. Then, in the deputy's words, instead of cultivating the hatred of the Africans, the proposition of constitution freedom should "inspire their gratitude and emulation to be obedient and industrious" (apud Queiroz 2018, 176). Part of the "civilizational path" was the transition from enslavement to free labor that required the disciplining and strict control of Black workers to their access to citizenship. The racist narrative of Black aversion to work or their inability to conform an obedient workforce was described as an obstacle for the advancement of the nation and sustained a central policy of the Empire: the incentive for white European immigration, seen as providing more suitable workers necessary to the modernization of the country. While the white European was the salvation of the nation, the need to control/discipline the Black body was an organizing principle of the punitive system and public security policies. The white fear of Black insurrection was the motive behind the penal code of 1830. The Black body was still seen as an object, a commodity, and a source of great fear, that is, a primary target of the criminal justice system. The code prescribed the insurrection of the enslaved with capital punishment (Articles 113 to 115)[37].

[36] Queiroz, citing the speech of Deputy Silva Lisboa, who showed the fear of events in Haiti if in Brazil, but argued that to end the regime abruptly would be problematic because Africans should be slowly inserted into society. (2018, 165)

[37] The code procribes for the crime, as "INSURREIÇÃO. Art. 113. Julgar-se-ha commettido este crime, retinindo-se vinte ou mais escravos para haverem a liberdade por meio da força. Penas - Aos cabeças - de morte no gráo maximo; de galés perpetuas no médio; e por quinze annos no minimo; - aos mais - açoutes.

The wide use of African enslaved labor had a side effect that the elites were now struggling to reverse: the Africanization of the country. By 1834 around 44% of Brazil's population was composed of enslaved people (Batista 2003, 129). The control over the use of public space in the urban centers became mandatory to contain the large number of enslaved and freed Black populations. According to Ana Flauzina, the need to regulate the freed Black led to the formulation of vagrancy as wrongdoing so they were not allowed to exercise "freedom without the bonds of surveillance" and the offense meant "the criminalization of freedom" for Black people (2006, 57). Regulations at the local level replicated the need to control public space. Flauzina argues that "the proliferation of municipal laws regulating this type of matter [circulation and practice of religious worship] illustrates the interference of public power in the daily life of the Black segment, as a way of delimiting the spaces for circulation and occupation of the city, as well as the social rise of the freed" (Flauzina 2006, 57 author's translation).

Despite the rigid control over the Black body, Black people, enslaved or not, have also mobilized the justice system and the "slavery law" in their fights for freedom or dignity. Recent studies on the slavery law (Campello 2018), but also more consolidated scholarships on historical analysis of lawsuits litigated by Black people (Chalhoub 1990), evidence the various strategies to influence one's own destiny. Sidney Chalhoub, investigating the archives of legal courts from 1860 to 1880, documented how Black people tried to influence their commercialization processes or mobilized the "slavery law" on their favor. The historian also evidences the thin line dividing the permitted violence - as punishment for the enslaved actions - and the protection of the enslaved life – as valuable merchandise. This limit intended to protect the enslavement system in order to guarantee the perpetuation of a lucrative system that depended on the enslaved *life*. As the system complexified, the profits made with the slavery system were not only due from extracting value from free labor, but from commerce and insurance of enslaved bodies as a valuable commodity. In this sense, the enslaved bodies were central to generating profit and financing enslaved economies (used as collateral, insurance, mortgaged, etc.), an

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Art. 114. Se os cabeças da insurreição forem pessoas livres, incorrerão nas mesmas penas impostas, no artigo antecedente, aos cabeças, quando são escravos. Art. 115. Ajudar, excitar, ou aconselhar escravos á insurgir-se, fornecendo-lhes armas, munições, ou outros meios para o mesmo fim. Penas - de prisão com trabalho por vinte annos no gráo maximo; por doze no médio; e por oito no minimo."

interesting aspect of racial finance of the enslavement system analyzed by Amy Bride (2020) that finds correlations to Chalhoub's narrative.

The decay of racial enslavement in Brazil had a strong relation to how the enslaved tensioned and resisted processes of commercialization, especially against the growing interprovincial trade that caused rupture in affection relations (Chalhoub 1990, 82). According to Chalhoub, those acts of "insubordination" in resisting interprovincial trade, created in the southeast the image of the "bad enslaved from the north" (ibid). Those processes of resistance helped the later prohibition of the interprovincial trade, by the creation of an impeditive tax to the import of enslaved people from other provinces within the country. It is also in this context that discourses over "proper" labor force invested in the idea that the country's progress was dependent on the import of white immigrants. With the inevitable eruption of abolition[38], Black people were stereotyped as unfit for paid work, lazy and alcoholic, while whites were depicted as honest and more skilled. It is then that the "myth of the incapacity of the Black" is created, precluding the paid job for the huge contingency of freed Black people:

> The color prejudice is thus dynamized in the capitalist context, the non-white elements are stereotyped as indolent, alcoholic, not persistent at work and, in contrast, by extension, the white worker is presented as the model of the persevering, honest, sluggish habits and with a tendency for savings and job stability. The white model is chosen as the ideal worker and calls for a systematic and subsidized migration policy, alleging the need to boost our economy by importing a superior worker from a racial and cultural point of view and capable to supply, with its labor, the needs of the expanding Brazilian society. (Moura 2019, 98–99 author's translation)

Racial enslavement was gradually abolished, at least in paper: first, the slave trade was forbidden (1850) and then the children of an enslaved woman were declared born free (1871). Clovis Moura ([1988] 2019) demonstrates a relationship between the decomposition of the enslavement system and the number of immigrants entering the country. Once the transatlantic trade was forbidden, and restrictions to internal trade were imposed, a new business opportunity opened with the European immigration. Moura

[38] Besides the growing internal resistance to slavery, there was also a pressure from the world powers for abolition. This process is represented by a series of treaties between Portugal / Brazil and England. Examples are the Anglo-Portuguese Treaty of 1818 and the Anglo-Brazilian Treaty of 1826, as well as the Law of 7 November 1831 (Duarte et al., 2015).

criticizes how some Brazilian sociologists[39] while analyzing this historical process reinforced racists ideologies, such as the supposed unfitness of Black to work, but justifying it as due to the "trauma of slavery". By doing so, those sociological arguments transferred the blame to Black people for their marginalization from the free labor market (Moura, 2019, 130).

The republican project: whitening the nation

The whitening project in Brazil aimed to guarantee a controlled and surveilled life (when it was not death) for Black people while investing in the wealth and power for whites. The examples are countless, but one law is particularly illustrative due to its consequences to current unequal racial conditions in the country: the Land Law of 1850 or *Lei de Terras*. In 1850, the Empire established a new proprietary legal regime to regulate the "disordered" land occupation throughout the country's vast territory (Prioste 2017). The passing of the Land Law guaranteed the ownership of those who currently occupied land and it prohibits from then on, the acquisition of land by other means than by purchase. The law set deadlines for occupants to legitimize their tenure and request ownership of the land, inserting property management in the logic of State bureaucracy. Considering how improbable was for most Black and Indigenous communities to take on the bureaucratic procedures to claim their occupied land - we were still under a racial enslavement regime -, this norm becomes the milestone of Black and Indigenous exclusion from legal access to land. This same legal instrument also regulated the policy of *whitening,* establishing a program to foster white migration. The law provided land to white European immigrants willing to settle in Brazil[40], through public policies that benefited landowners that could access governmental funds by adhering to the program[41].

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[39] Moura criticizes particularly the work of Celso Furtado, an eminent political economist, for reproducing the racist ideologies of the elites that the white immigrant was more skilled and fit for the work, while blacks were lazy and indolent (Moura, 112-113).

[40] Article 18 original text: "Art. 18. O Governo fica autorizado a mandar vir annualmente á custa do Thesouro certo numero de colonos livres para serem empregados, pelo tempo que for marcado, em estabelecimentos agricolas, ou nos trabalhos dirigidos pela Administração publica, ou na formação de colonias nos logares em que estas mais convierem; tomando anticipadamente as medidas necessarias para que taes colonos achem emprego logo que desembarcarem."

[41] The State's racist policies regarding access to property continue in the Republic, using public resources directly to grant public lands to European whites who wanted to "colonize" the interior of the country. Decree no. 528 of 1890 that regulated immigration stipulated the public policy of access to agricultural properties for European immigrants, through prizes and bonuses grant to landowners who joined the program. In its art. 20 stipulated that "any landowner who wishes to place European immigrants on his property, is entitled to the favors contained in this decree". The decree stipulated in detail the benefits granted to white immigrants, ensuring that they are installed on properties that respect the minimum

Whitening, as a project of the Racial State, was broader than only fostering white migration. In the elite's urge to whiten the population, Black genocide was always an option. From 1864 to 1870 Brazil, together with Argentina and Uruguay, went to war against Paraguay due to a borders dispute. The mandatory summons for enlistment made the Black population, freed or not, a target, together with Indigenous peoples (or *caboclos*, in the legal vocabulary). The enlistment to war was mandatory to all men, but the "substitute law" (n. 1220/1864) allowed landowners to send their enslaved men in the place of their sons. The government also bought enslaved men to enlarge the troops, as well as promised freedom for those who enlisted, having in mind to access runways (Rodrigues 2009, 217). Even though there are no official numbers of how many Black men fought in the war in the Brazilian troops, the drastic decrease in the Black population at the time – from 2,5 million in 1860 to 1,5 million in 1872 – lead to the conclusion that the Black troops were part of the project to 'de-Africanize' the country through physical extermination, as suggested by Luciano Goes (2016, 165).

Liberal white elites and the Army, which came out victorious from the war, pushed for the end of the Empire and the beginning of the Republic (1889). The first presidents of Brazil were military. White abolitionists, such as Joaquim Nabuco, foresaw the development of the country by embracing liberal and republican aspirations, while the Black claims for social change should be avoided. Góes argues that the abolitionism of those white elites meant the "empowerment of the white as paternalistic and protagonist of the Black freedom, keeping the passivity that dissolved the racial tensions, controlling the black and ignoring all the resistance and the struggle embodied in rebellion" (2016, 167–68). This excerpt from 1883 illustrates the thinking of the white abolitionists, which contains a seed of Brazilian "exceptionalism" later named as racial democracy:

> Slavery, for our happiness, never soured the soul of the slave against the master - collectively speaking - nor did it create between the two races the mutual hatred that naturally exists between oppressors and oppressed. For this reason, the contact between them was always free from harshness, outside slavery, and the colored man found all avenues open before him. The debates of the last legislature, and the liberal way in which the Senate agreed to the eligibility of freedmen, that is, to the erasure of the last vestige of inequality from the previous condition, show that color in Brazil is not, as in the United States, a prejudice against whose obstinacy it can do little, the talent and merit of those

requirements for access to basic services (access to water, limits of proximity to railways, healthiness, etc.). In addition, the decree regulated the maximum price that the land could be sold so to facilitate the purchase of the plots after a ten year period, with the delivery of a provisional title of property when the immigrant was established.

> who incur it. This good intelligence in which the elements, of different origin, of our nationality live is a public interest of the first order for us.[42] (Nabuco 2000, 10–11 author's translation)

In 1890, the burning of the files of slavery - ordered by the renowned jurist Rui Barbosa and minister in the newborn Republic - set the difference between white and Black abolitionists. According to the official discourse, the burning of the files served to put an end to the history of racial enslavement, especially to claims for compensations by the "dispossessed" enslavers. The official discourse proudly sustained that the State did not pay any compensation. Duarte, Carvalho Neto, and Scotti (2015) present a different narrative, showing that there was indeed a progressive compensation for the enslavers before the formal abolition. Additionally, the Black abolitionist movement has strengthened the claim for reparations due to the horrors of enslavement, having José do Patrocínio, a renewed Black abolitionist, even made the calculations for the financial compensation of the formerly enslaved people. The reference to these historical events and the various narratives around them serves to illustrate how the official history of Brazil is about pacification and oblivion, on the one hand, and the use of law and the legal system in sustaining the power (racial) relations, on the other.

The Brazilian Republic is founded in the post-abolition period and a series of norms were reissued to inaugurate this new legal regime within the framework of political liberalism (Bertúlio 1994). Positivism was also the theoretical foundation of the newborn political community, as demonstrated in the national flag inscription: "order and progress". In 1891, the first Republican Constitution declared that "all are equal before the law"[43], defined that the State is secular, all forms of association and manifestation were permitted, and, above all, private property is protected. Liberal aspirations are found in the Constitution, with all the promises of modernity. As Dora Bertulio (1994) demonstrated, the legal diplomas are articulated differently, to promote the universality

[42] Original in Portuguese: "A escravidão, por felicidade nossa, não azedou nunca a alma do escravo contra o senhor - falando coletivamente - nem criou entre as duas raças o ódio recíproco que existe naturalmente entre opressores e oprimidos. Por esse motivo, o contato entre elas sempre foi isento de asperezas, fora da escravidão, e o homem de cor achou todas as avenidas abertas diante de si. Os debates da última legislatura, e o modo liberal pelo qual o Senado assentiu à elegibilidade dos libertos, isto é, ao apagamento do último vestígio de desigualdade da condição anterior, mostram que a cor no Brasil não é, como nos Estados Unidos, um preconceito social contra cuja obstinação pouco pode, o talento e o mérito de quem incorre nele. Essa boa inteligência em que vivem os elementos, de origem diferente, da nossa nacionalidade é um interesse público de primeira ordem para nós."

[43] As mentioned earlier, the indigenous peoples were expressly out of citizenship, and they were only considered capable of self-government in the 1988 Constitution.

of the main principles of liberalism, but still guarantee the control of the "racialized". This is evident in the Republican Penal Code of 1890 – promulgated two years after the formal abolishment of enslavement (1888).

Bertúlio highlights how the devaluation of Black people in legal texts was exposed without referring to "race", and this is evident in the 1891 Constitution in the enunciation of civil and political rights (1994, p. 16). Article 70 excluded "beggars and illiterates" from voting[44]. Thus, citizenship is limited to a restricted group of literate whites, where the presence of one or two Black men could be tolerated to prove that equality is fulfilled, while the entire Black population is excluded and pushed to the margins of citizenship. Ana Luiza Flauzina (2006) also demonstrates how, at the beginning of the Republic, the exclusion of citizenship meant the entry into the punitive system. The decrees of 1893 and 1899 ordered the correctional imprisonment of beggars and vagrants, whilst simultaneously denying bail to the homeless. According to the author, "the punitive republican architecture of that first period, which fundamentally aims at incorporating the urban mass and the spoils of slavery into the industrial and productive development project, carries a basic racial dimension" (Flauzina 2006, 71).

1.3 The newborn Republics, race, and the "national problem"

By the end of the 19th century, academic and political discourses in Brazil and Peru were enthusiastic of eugenic thought. The debates between intellectuals in the late 19th and early 20th centuries concerned a need to overcome the "demographic problem", as most of the population was comprised of Black, mestizos, and Indigenous peoples. The new Republics needed the new and modern *man* to leave behind the backwardness and horrors of enslavement and colonialism, and so the ideology of whitening was reinforced, now with a scientific basis. Common to Latin American countries, the whitening ideology "reproduces and perpetuates the belief that the classifications and values of the white West are the only true and universal ones" (Gonzalez 1988, 73).

[44] The denial of voter status for "illiterates and beggars" is maintained in the 1934 Constitution (Art. 108), curiously removed in the 1937 Constitution (which inaugurates an authoritarian regime, then without free elections), but which reappears for the illiterate in the Constitution of 1946, and then maintained in the Constitution of 1967. Those who cannot express themselves in national language did not have political rights, marking a relationship between nationalism (colonial nation-state - Portuguese) and citizenship. Those restriction were only removed by the current Constitution of 1988.

In Peru, the exponents of this scholarship were Clemente Palma, who translated the work of Gustave Le Bon, defended the thesis '*El porvenir de las razas en el Perú*' (The future of the races in Peru) in 1897 (Hilario 2019). Javier Prado, who also defended his thesis at San Marcos University few years earlier, entitled '*El estado social del Perú durante la dominación Española*' in 1894 describes the Black population as lascivious and immoral (Hilario 2019, 92). For Prado, enslaved Blacks did not contribute to Peru's progress, on the contrary, miscegenation was believed to lower whites' moral criteria and intellect (Carazas 2019). It is within this specific "moral compass" that the Peruvian academia engaged with eugenic European theories, applying scientific methods to describe the different races in the late XIX century and beginning of the XX. The "Indian problem" was seen from different perspectives, but overall, it went together with the racial construction of other major groups, categorized as "inferior races", including the Blacks and the Chinese.

Carazas (2019) and Hilario (2019) have debated how Peruvian intellectuals and academia invested in the ideologies of race improvement and nation formation but defended the elimination of non-white races. One of the "solutions" for the problem was the *blanqueamiento* through mestizaje. There were two different mestizaje projects in the political debate. One was proposed by those within "scientific racism" and aimed at "improving the race" by mixing the Indigenous and the Black person with whites, leading to whitening of the population. The other, presented by Mexican José Vasconcelos, was "*la raza cosmica*", the mestizo as the perfect, singular race. Milagros Carazas argues that even those intellectuals critical of eugenic approaches to mestizaje defended the mestizo as being "a new social type that assimilates more rapidly to western culture, although it is uprooted in the process", as the words of socialist Jose Carlos Mariátegui[45] (Carazas, 2019, 5).

The regionalization of race in the country enlightens the understanding of these national projects. For instance, the Lima-Cuzco dichotomy (epitomizing the *Costa vs. Sierra* divide) is relevant to this debate as the *indigenistas* composed an important intellectual

[45] Mariátegui discussed Vasconcelos' idea of the mestizo as the "cosmic race" in the *Seven Essays*. For him, Vasconcelos was a utopist because "el chino y el negro complican el mestizaje costeño. Ninguno de estos dos elementos ha aportado aún a la formación de la nacionalidad valores culturales ni energías progresivas" (Mariátegui 2005, 305).

and political movement in Peru that mostly sustained mestizaje as a national project. Marisol de la Cadena (2004, 103) shows that by the beginning of the 20th century half of the theses defended at the University of Cuzco were concerned with how to suppress the "deficiencies" of the Indigenous personality to avoid the negative consequences of their "degenerate race" for the construction of civilization. Different from Lima intellectuals, Cuzco's *indigenistas* revitalized the Inca Empire as the great civilization to build a sense of nationalist pride based on a glorified past. They advocated against the eugenic mestizaje project, as the corruption of the "pure Indian race" and supported education as the way to "civilize" the Indigenous peoples. De la Cadena (2004) argues that the *indigenistas* represented an alternative project to Lima, which they considered as anti-Indigenous and pro-Spanish, yet still embedded in racist conceptions of progress as de-indianization.

As the violence in rural areas and land expropriation were a constant source of tension, the racial construction of the *gamonales,* to differentiate them from the *hacendados* (the "good" landowners), was politically relevant. Cuzco intellectuals mobilized anti-Blackness to contrast both the *haciendados* (the white and owners) and the Indigenous peoples ("pure and submissive" race) to the *gamonales*. Cuzco elites demonized the *gamonales* relying on anti-Black stereotypes, and this newspaper article from 1922 is illustrative:

> Chopped off pox, with sunken eyes and very small, with thin and frizzy hair, [skin colour] pulling black, with a flat nose, thick lips, thick moustaches, no beard, to look cannibalistic [...] talking stuttering, always wearing a black suit and red or green tie, [...] affection to steal the lands of the defenseless indigenous people, of criminal tendencies (55. El Sol, 31 de junio de 1922, p. 3). (apud Cadena, 2004, 99, author's translation) [46]

Arguing to be morally superior to the Criollos from Lima, the *indigenistas* also had to differentiate themselves from the *gamonales*. This narrative reinforced racial lines across social places of superiority/ inferiority. Even though *gamonales* could be seen as mestizos, as an economic elite, they were reproducing whiteness. Wilber Hilario emphasizes that "the gamonal was also recognized in the *imagery of whiteness*, although

[46] Original in Spanish: "Picado de viruelas, de ojos hundidos y bien pequeños, de cabellos ralos y crespos, [de color de piel] tirando al negro, de nariz chata, de labios gruesos, de bigotes gruesos, barba ninguna, de mirar canibalesco [...] de hablar tartamudeando, siempre terno negro i corbata roja o verde [...] afecto a robar las tierras de los indefensos indígenas, de tendencias criminales. 55. El Sol, 31 de junio de 1922, p. 3" (Cadena 2004, 99).

it did not share the *habitus* of the Lima elite. However, the *misti* constructed a reality in which he recognized himself as superior to the Indian, with whom he established ambivalent relationships" (Hilario 2019, 95).

The country's elite saw the majority of Peruvian population as an obstacle to progress because they were racially inferior (Drinot 2016, 29). Nonetheless, a nationalist thought was constructed against the idea of the "white Lima", extracting elements of Indigenous culture to build the *peruanidad* or national identity. Later, the Black Peruvians would become important for the solidification of the mestizo ideology by incorporating their culture into the *criollo* one. The popularity of the Black urban culture in the 1950s, particularly in Lima, turned out to be, as Aguirre discussed, "a central element of the criollo culture, that for many was the authentic manifestation of Lima identity and even the Peruvian one" (2013, 143–44). The absorption of the Black element in the so-called *criollo* culture turned out to be one of the stronger arguments of Peruvian mestizaje, as the celebration of the positive mixture of cultures. Nevertheless, it served to reinforce an anti-Black argument of Black assimilation, mostly urban and pro-Spanish - as *criollo* also means the Spanish born in the Americas and still represents a white identity. On the other hand, Black people were rendered highly invisible in the debate about the construction of the national foundational myth. The work of Suzanne Oboler on racism in Peru raised a concern with the denial of the race question through mestizaje. For her,

> The presence of blacks as an integral part of Lima's *criollismo* seems to serve as a justification for the relationship between race and power in Peru being understood and resolved mainly, though not exclusively, in socioeconomic and status terms, and not racial (1996, 37).

In Brazil, Raimundo Nina Rodriguez was a physician who translated the work of the Italian Cesare Lombroso and inaugurated the positivist criminology approach, based on the "inherent" criminal nature of the Black person (Góes 2016). In 1894, Nina Rodriguez publishes his first book "Human races and the criminal liability in Brazil", stating that the "inferior races" should not be equally treated by criminal law, because their primitivism, impulsivity and imprudence represented a greater risk to society (Góes 2016). Meanwhile, eugenic intellectuals, such as Sylvio Romero (1851- 1914) and Oliveira Viana (1883-1917) saw the potential of miscegenation to assure the future of the country. For instance, Romero believed that miscegenation was a transitory and intermediary phase for a future white nation (Munanga 1999, 52). Viana also argued that miscegenation

was good because it could provide a gradual whitening of the population and should be encouraged. His demographic projections showed that the progressive racial mix would lead to the growth of the percentage of "Arian" blood and European features – being superior - would prevail (Costa 2001, 145).

The Decree 528 of 1890, for instance, declared free entrance to the country for individuals fit for work, however, the entrance of those "Indigenous from Asia and Africa"[47] would depend on approval by the National Congress. The original text is illustrative:

> *Art. 1º E' inteiramente livre a entrada, nos portos da Republica, dos individuos válidos e aptos para o trabalho, que não se acharem sujeitos á acção criminal do seu paiz, exceptuados os indigenas da Asia, ou da Africa que sómente mediante autorização do Congresso Nacional poderão ser admittidos de accordo com as condições que forem então estipuladas.*[48]

Gilberto Freyre's *Casa Grande e Senzala* (The Master and the Slaves, 1933) represented a change in Brazilian social thinking, describing racial relations as harmonious, stating that Black and Indigenous people had contributed positively to Brazilian culture and portraying the *mestizo* as a positive element in the national identity (Munanga 2003). Kabengele Munanga concludes that Freyre's work created the founding myth of the nation, portraying a harmonious union of the three races. According to Freyre's argument, the peaceful race relations in Brazil was related to the Portuguese people "character", which favored miscegenation as they did not have an "idea of race".

The government of President Getúlio Vargas (1934-1945; 1951-1954) was the first to articulate the nationality around a genuine "Brazilian culture" while instituting numerous racist policies. Elements of Black culture became part of the Brazilian nationality - or the idea of Brazilianness - and were valued and encouraged, such as *samba* and *capoeira*. The separation between religiosity (persecuted as magic or charlatanism) and "popular culture" is evidenced in projects from the 40s and 50s, with the cataloguing and promotion of various manifestations within the scope of national "folklore". A growing

[47] The term "indigenous" is used here to delimit a racial differentiation in African and Asian populations. Those continents were mostly under the colonial rule of several European nations, and so there were white settlers. The racial regulation differentiated the population in colonial territories dividing them into "indigenous" and "assimilated". In Portugal, the Indigenato Statute was in force until 1961 and provided, for example, that the "indigenous" could be subjected to forced labour (Tjipilica and Valério 2014).

[48] "Article 1 The entry into the ports of the Republic of valid and able-bodied individuals who are not subject to criminal action by their country is entirely free, with the exception of indigenous people from Asia or Africa who only have the authorization of the National Congress may be admitted in accordance with the conditions then stipulated." (author's translation)

intellectual movement started to value *popular culture*, in addition to the institutionalization of organizations around *folklore* (Tsezanas 2010). On the other hand, the Constitution of 1934 provided federal states with the authority to "stimulate eugenic education" (Article 138).

In both contexts in the post-independence period, European standards sustained the elites' desired nation-state model, but also with an inherent fear: the fear of Haiti, or Black liberation. Consequently, those new Latin American States would not be "considered nations unless it was admitted that a minority of colonizers in charge were genuinely representatives of the entire population" (Quijano 2000b, 565). In this perspective, the ideology of *mestizaje* enabled the desired national unity or homogeneity, after all "we are all mestizos". Both Brazil and Peru have claimed the exceptionality of their national context, either using mestizaje ideologies[49] or racial democracy myth to deny racism. Nevertheless, Black and Indigenous peoples have been central to the construction of national narratives, even if the elements extracted from each of them in the composition of nationalist symbolism were always controlled (Munanga 1999; Drinot 2016).

The region has also used mestizaje and racial democracy ideologies to sustain its legal innocence, supported by the alleged non-institutionality of the racial order (Hernández 2013). Homogeneity of nation-states in Latin America occurred in the discursive field, even though they were created and "conceptualized by whites, through whites, for whites" (Nascimento 1980, 15). This legal-historical overview exposes the continuities of legal-political regimes of white supremacy, drawing the lines of the human in the racialized legal regime. Restricting the use of direct racial expressions in the legislation did not remove the racial content that remained in the liberal formulations of citizenship during the Republican era. Legal reasoning and juridical-political debates over the nation that framed rights and entitlements as racial conceptions, articulated in the ideas of progress, development, and civilization. In addition, the constant mobilization of morality as an

[49] Even acknowledging the critique of Cadena (2001) that mestizaje was not a national identity in Peru because of the strength of *Indigenismo*, the discourse on racism uses often the resort to 'we are all mestizos' to argue on the exceptionalism of racial relation in Peru (Zavala and Zariquiey 2009).

element for citizenship delimited the boundaries of humanity to whiteness (which mestizos can often occupy in the "passing"[50], but in a precarious way).

1.4 The legacy of racial enslavement: rethinking law and race

On the colonized territories, the various mechanism employed to institutionalize, enforce, and theorize race were routinized in institutional practices, but also naturalized by the unsanctioned racist social behavior. Thus, the *performance of race* - naturalized by no-institutional contestation of racist violence or by the violent repression of struggles for freedom of Black and Indigenous people -, sedimented demarcations of race.

The construction of Blackness as something dangerous and, at the same time, the exposure of Black bodies in public spaces, public torture, and subjugation, were/are central to the construction of society as a whole, and not marginal (McKittrick 2006). If we look at Brazilian and Peruvian cities, we can see that the torture of Black non-submissiveness had to be public. Additionally, the definition of vagrancy and the exercise of any form of spirituality other than Christianity as wrongdoing meant "the criminalization of freedom" for Black people (Flauzina, 2006). The message about the "place" of Black people in society was central to the formation of hierarchies of power; and it was/is how racialized power relations were/are reproduced. Comprehending the continuities of the colonial-racial-modern State by decoding the *institutional performance of race* is crucial to unveiling how racism determines power relations in Latin American countries. In this sense, agreeing with Maeso, institutional racism encompasses "discriminatory legislation and policies endorsed and put into place by the state, and patterns of racist routine governmentalities sustained by public and private (in)actions and affecting the key life spheres" (2018, 13).

Looking at the legacy of racial enslavement we see how black fungibility – the objectification of Blackness as equal to enslavement, stripping Black people's humanity/

[50] Monica Figueroa argues that being mestizo is a privilege that offers a safer, albeit precarious, place that is closer to whiteness. The privilege position of the mestizo is deeply connected with his/her position in the class structure. The wealthy mestizo is tolerated in higher social circles, whereas the poor mestizo is not. So, the "passing" is not so much a matter of colour, but a more complex set of characteristics that can pull the mestizo up from "the other side" (2010, 398).

subjectivity - still informs the logics of anti-Black racism (Hartman, 1997). A socio-legal regime that endured more than three hundred years has a heavy legacy, which is present in how racial-legal constructions sustained Black inhumanity but also white humanity. My argument is that the fungibility of the Black (non-human/object), in contrast with the subjectivity of the white (human/subject) is how racial enslavement imprinted central ideas, practices, and patterns that produce current racial differentiation.

In this account, the *racial rule* (Goldberg 2002b) determines who is the object of constant legal control and who is the subject of rights. In a society governed by racial rule, the racial positionality determines the use of law for control and surveillance – the Black body - or protection – white bodies[51] -, particularly property rights[52], being both within the racialized legal regime. Then, how the State acts in protecting rights or controlling/surveilling the body conforms to the Fanonian *zones of non-being* and the *zone of being*.

Drawing on Fanonian analytics, Thula Pires (2019, 69) problematizes how juridical colonialism normalized conflict resolutions by the parameters of the zone of being, while the experience in the zone of non-being is understood as a result of State inefficiency or human rights violations. This theoretical elaboration places racist violence as outside the legality, and not the result of the racialized legal regime. Those two zones are segregated spaces but need to be sustained by a routine performance of race, both institutional and legal. The zone of being is self-segregated through State protection and financing of whites' living standards (Harris 1993), whereas the zone of non-being is defunded, constantly surveilled, and subject to violent policing (Hattery and Smith 2021).

Those racial-legal constructions work as *systems of presumptions*, informing the routines of the institutionalized practices in distinct stages of service provision, such as the justice administration. Understanding the idea of presumption and how it works enable us to assess the way *Black subjectivity* is always *precarious* within the racialized legal regime.

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[51] In a racialized society, whites are presumably citizens, but some of them can also be pushed outside citizenship if they defy the class/sexual/engendered/able-bodiedness patterns of normality. A comprehension of intersectionality as proposed by Black feminism does not equalize the various conditions. (Collins 2017)

[52] David Goldberg (2002c, 101–2) discussed that the modern state was never simply a conduit of capital, "they have ensured economic wellbeing for some". For him, the state has done so according to three conditions deep racial: a. regulating migration; b. shaping social and sexual interaction, "sculping the face of demographic definition" and; c. controlling crime, predicated primarily in relation to property rights.

The idea of *precarity* is important because it explains that we are not talking about immutable or rigid divisions, but about the impacts of socio-historical racial constructions that when naturalized remain highly unquestioned/ unsanctioned in the daily practice of power institutions. Additionally, when I am looking at processes of racial subjugation, or I use the category of *Black inhumanity*, I am doing so concerning the *racial rule*. There is Black life, as Guerreiro Ramos (1954) insisted, but the racist system places Black lives as *always in peril* (Hartman 2008) or unprotected by the State and its legal apparatus. So, legal subjectivity for a Black person in the racialized legal regime is a *precarious* condition.

The modern declarations of rights to all can generate expectations that Blackness can also inhabit a condition of subject of rights, and this is the tension of liberal law as the racial rule, "caught always in the struggle between subjection and citizenship" (Goldberg 2002a, 105). Those modernity promises of freedom and equality, as Bertúlio argued, guarantee enough *ambiguity* to support the legal denial of racism. This duality in discourse and legal practices "creates in the citizen the expectation of respect, justice and equality, and is [Law] the State Institution above any suspicion" (Bertúlio 1994, 18), but "following or respecting the laws in Brazil may be more a question of power within the social/racial structure than of maintaining an established legal system" (ibid., 19).

In post-colonial contexts, whiteness is also historically molded as white supremacy[53], and through the institutions the *narcissistic pact* functions to support the current power positions of whites, as theorized by Maria Aparecida Bento (2002). If we consider the *narcissistic pact* as creating privileges within the "community of law"[54], we realize that

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[53] Bento alerts that whiteness cannot be seen as a racial identity but as "synonymous of oppression and domination" (2002, 163). Understanding racism as system of oppression that creates races, and racism as dehumanization, we cannot conceptualize whiteness a racial identity, even though it is the central part of the oppressive system, perpetuating as white power. David Goldberg criticizes the misuse of the term racialization to indicate any given description of a group in racial terms. For him, this misuse loses Fanon's original proposal, where racialize is in opposition to humanize (Goldberg 2002b, 12). In this perspective, even though I agree with Ruth Frankenberg (2004) that white people tend to see themselves as racially neutral and, thus, there is the need to see how whiteness as marked, it does not imply whiteness as a racial identity. Besides, as Sara Ahmed (2004) provokes, whiteness is only invisible or not marked for whites, because it is a very much visible presence for those non-whites.

[54] Fitzpatrick (1990) proposes that the rationality of liberal law imprints on the "community of law" an ethos, guided by what is reasonable or common sense. Its operation relies on rational functioning of the legal process, in the form of right, that has certain "typical membership" or identities that are assimilated within. His reflection still relies on the idea that there is a "in" and an "out" of the "community of law", and there is where differentiation, such as racial one, lays.

everyone is included, but only a few are part of the pact allowing to manipulate the codes and institutions to be above legal control but still subject to its protection. Agreeing with David Delaney, there is no “outside the legal landscape”, but “what rights we feel we have or feel obliged to recognize others as having often depended on our location in the legal landscape” (1998, 14). That is why the concept of *precarity* is central when dealing with a system that sustained itself through the ambiguity inherent to the declaration of equality. Nonetheless, in a racial legal regime only whiteness inhabit ontologically humanity[55].

Additionally, the investment on knowledge production to provide for representations of “the Black” and “the White” has a direct impact on the boundaries of humanity (and what it entangles in terms of State protection), thus legal subjectivity. Following Denise Ferreira da Silva (2009), there was a long investment in the philosophical elaborations of Blackness's inherent immorality. Racialized morality also derives from fungibility, it works to establish the limits of subjectivity (which dignity is inherent), removing from Black people rights related to *personhood*, such as honor, the control of their body, their image, and their name. Consequently, there is a *racial legal presumption* that Blackness is untruthful and immoral, tending to disorder or criminality. *Whiteness,* on the other hand, informs a series of presumptions associated with *subjectivity* and *personhood*, such as the presumption of ownership[56], trustworthiness, competence, and development (see Moura 2019; Ramos 1954; Duarte et al 2015; Goldberg 2002b; Luciano 2012; Gonzalez 1984; Harris 1993).

From the historicity of the racial regime, we can also grasp the relevance of spatial dimension of race. In the *zones of being*, the Black body is also in constant surveillance. The urban space - planned for the enjoyment of the whites (Goetz et al 2020) - become soon a space where race is a primary concern. David Goldberg explains that “the concern

[55] In a racialized society, whites are presumably citizens, but some of them can also be pushed outside citizenship if they defy the class/sexual/engendered/ able-bodiedness patterns of normality. A comprehension of intersectionality as proposed by black feminism does not equalize the various conditions. (Collins 2017).

[56] According to the Study of Duarte, De Carvalho Neto, y Scotti: “a) There is symbolic identification of whites as legitimate owners and producers of development, even when they exploit large estates with rudimentary production techniques, with environmental damage, without labor rights, benefiting from specific credit policies and tax advantages; b) There is an identification of the lands of small landowners (especially when perceived in a racialized way as “non-white”), of traditional, indigenous and quilombola communities, with the delay and practical impossibility of these groups being able to appear as landowners”. (2015, 31 author’s translation)

over race became those about the nature and discipline, aesthetics and morality of public space, about who can be seen where and in what capacity" (2002b, 173). This anxiety was constant in countries in Latin America particularly in urban centers, where the Black population was considerably large, when not the majority. In these contexts, in white spaces Black people were only allowed as "servants", a position that is constantly re-assured through the performance of race, such as the racial insult. A racialized person becomes dangerous, though, when she/he defies this spatialized/racialized positionality. The "servant" can be turned into the "criminal" as soon as they are perceived as "dangerous". Dangerousness is associated with this Black man/ woman who "does not know his/ her place", these are conformed in the place of the criminal because he/ she breaks the racial order. Such as the *cimarrones* or *quilombolas* of yesterday, Black freedom still boosts white fear (Azevedo 2004).

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This chapter aimed to unravel how both *whiteness* and *Blackness* have been historically molded as antithetical. Since the beginning of the modern colonial rule, the "property title" or the "letter of freedom" had little value because the proof of ownership was made by the "white possession of a black body" (Duarte et al 2015, 32), inserting in the legal reasoning the milestone of *racial legal presumptions*. The Peruvian and the Brazilian Republican projects were aimed to develop a nation by European standards, meaning Christian and white. By setting those objectives, all the lives of those placed outside humanity - Black and Indigenous – were placed *in peril* (Hartman 2008). By not matching the desired nation standards, Black and Indigenous peoples became the "national problem", so the "*logics of obliteration*" (Da Silva 2016) was inherent to the Republican project. Both Republics are celebrating two centuries now, and this period has demonstrated that the logics of obliteration was behind various genocidal practices.

Nonetheless, there is a constant tension in the Republic project because of the need for an obedient workforce to produce national progress, so the *logics of obliteration* coexists with the *logics of exclusion*. In Denise da Silva's (2016) argument, the perversity of the *logics of exclusion* is allowing the celebratory language of *inclusion* when the State implement measures that only meet the market's needs (disciplined labor force and expansion of consumer markets). There is also a second tension that kept the State from

fully implementing the Republic project, which is the Black and Indigenous struggle for freedom. Autonomy and freedom of those placed outside humanity have posed a threat to the colonial State, and they still represent a threat to the Republic, challenging "national integrity", "national identity", and disrupting national development projects.

Chapter 2. Claiming Black dignity in the Justice System: the case of Azucena Algendones

In this chapter, I explore the possibilities (or not) of claiming Black dignity within the judicial system, by conducting an in-depth analysis of a racial discrimination legal case that unfolded after Azucena Algendones filed a complaint in Huancayo (Peru). This legal case study opens the dialogue with Brazil, as the challenges to make justice in face of a racial offense have parallels in both contexts. Regardless of the possible critique of legal-political choices concerning the criminalization of racial discrimination, the flaws in regulation does not justify the low response from the justice system to racial discrimination complaints (Hernández 2019). Through the detailed reconstruction and analysis of this case, I discuss anti-Black racism, how it works in the justice system and how Black people's dignity remains largely unprotected. My analysis links the outcomes of Azucena Algendones' case to the legacy of racial enslavement and how it effects in reproducing Black inhumanity.

In legal texts, the criminalization of racial discrimination (or racism, in the Brazilian case) is intended to protect the legal interest of *human dignity*, which is a central value in most democratic constitutions[57] and the core of human rights protection (S. J. de A. e Silva 2008). Human dignity can be harmed by the disrespect of the constitutional command of equality (which non-discriminate is implied) or to disrespect other components of *personhood*, such as image or honor (Silva Júnior 2002). The illicit act harms a person or a group of people in their *subjectivity*, even if in abstraction encompasses the entire group. In this manner, any individual that feels affected could mobilize the justice system to seek reparation.

There is another legal provision for racism, where the protected legal interest has a much more comprehensive scale, defined as *humanity*. This scope of legal protection comes from the international order, where racism is amongst the "crimes against humanity" and, therefore, the most serious of all crimes. Some countries adopt the criminalization of

[57] article 1, III of the Brazilian Constitution 19988 and article 1 of Peruvian Constitution 1993.

racism based on this premise, categorizing racism as crimes *lesa patria* or crimes against humanity, which is the case in Peru, even though proscribing discriminations in general terms[58] (CP article 323). Most modern democracies criminalize racism in these two ways, either as racial discrimination in the form of racial insult and discrimination in accessing goods and services considered public or available to the public; or as a crime against humanity, described as a systematic and intentional act against a particular group, by promoting ideas of racial superiority.

The demands for the criminalization of racism have divided antiracist thought, as critical criminologists would insist that such a demand would reinforce the idea of control by fear and strengthen the Penal State, which is a key face of the Racial State (Pires 2013). Flauzina (2006) explores that the Racial State can use the criminalization of racism or racial discrimination as a powerful discursive tool, being aware that the selectiveness of the penal system renders this normative innocuous. Additionally, the legislation describing racist practices as a wrongdoing can serve as an institutional shielding, reinforcing the idea that racism is an issue related to isolated (individual) practices and not within the State *rationale* (Flauzina, 2006, 78). On the other hand, Richard Delgado argues that "when victimized by racist language, victims must be able to threaten and institute legal action, thereby relieving the sense of helplessness that leads to psychological harm and communicating to the perpetrator and to society that such abuse will not be tolerated, either by its victims or by the courts" (Delgado 2013, 183).

This controversy is far from being resolved, and criminalizing racism is seen by some antiracist activists as politically disputing values in society. As argued by Márcia Lima and colleagues (2016), the value of the legal instrument that criminalizes a given conduct is the potential to communicate the gravity of the act and uncover racial conflicts in a society governed by racial democracy ideology. For the authors, the recognition of racism as a crime in the Brazilian Constitution was a victory, because "for the black population, the possibility of using the language of rights is not trivial." (Lima et al 2016, 25) In a similar note, Patricia Williams is critical to arguments that rights are "disutile, even harmful" because it "trivializes this aspect of black experience specifically, as well as that of any person or group whose genuine vulnerability has been protected by that measure

[58] Peru actually does not criminalize racism per se, the criminal code proscribes discriminations, including racial, as a *lesa patria* crime.

of actual entitlement that rights provide" (Williams 2013, 101). For the author, the possible damages of the use of rights are "lesser historical evil than having been unnamed altogether", since the "black experience of anonymity, the estrangement of being without a name, has been one of living in the oblivion of society's inverse, beyond the dimension of any consideration at all" (ibid, 102). For Williams, the experience of rights assertion is undissociated to how the Black struggle has built both solidarity and freedom. Natalia Neri (2018), assessing this classical debate within Critical Race Theory (and because Williams was directly debating with critical legal theorists and their pessimist view of rights), argues that Williams' proposition is more about "*understanding the dynamics of race in our society* and the perception of *law as a field of dispute*" (2018, 270) than focusing on the pessimist view that fighting for rights was all in vain. I ponder how those two facets of rights struggles walk together, being not only a legal matter but also a political one.

This chapter is divided into three sections. The first section explores broader challenges to present racial complaints in Peru, discussing the normalization of racist practices, but also the juridical-political choices in how racial discrimination is sanctioned. The second section discusses Azucena Algendones case, thorough *storytelling* I narrate the different moments of her saga for justice, from the challenges to press charges to the final judicial outcome. The last section places Brazil and Peru in relation, debating the ways of institutional racism in claims for dignity in both contexts. Despite differences in regulation and even scale, we can still underscore patterns of anti-Black racism within the justice system.

2.1 "*Me gritaton negra*": unsanctioned practices of Black dehumanization

> *"Tenía siete años apenas,*
> *¡Qué siete años!*
> *¡No llegaba a cinco siquiera!*
> *De pronto unas voces en la calle*
> *me gritaron ¡Negra!*
> *¡Negra! ¡Negra! ¡Negra! ¡Negra! ¡Negra! ¡Negra! ¡Negra!"*
> Victoria Santa Cruz, 1960

The poem of Victoria Santa Cruz "*me gritaton negra*" illustrates the common socialization of Blacks in Peru through the violent encounter of being singled out as

"*negra*", making the person not only hypervisible but also nameless. Frantz Fanon's famous passage crosses borders to share his own experience in the white world, "look, mom, a negro" ([1952] 2008, 103), he is then objectified, and dehumanized. Calling out and objectifying are performances of racial hierarchies and racial segregation (Lima, Machado, and Neris 2016), inherited from the historical process of Black dehumanization. Its naturalization (daily unsanctioned practice) or even its denial in the Latin American context (due to the ideology of mestizaje) are part of the continuum of colonial violence that affects in a particular way the bodies and knowledges marked as "black" by racial enslavement.

In the Peruvian context, this experience of being hyper-visible also relates to how the mestizo has been made normative and then, invisible. Monica Moreno Figueroa argues that mestizaje functions as "a normative privileged location of identity that is normalized and ambiguous" (Moreno 2010, 399), functioning by the exercise of naming the other, placing oneself in a safe distance from "who has very clearly Indígena features" (ibid, 393). I add here that the performance of race in Peru places the Black also outside normality, so naming "*negro/a*" functions to assure the racial hierarchical structure, as Victoria Santa Cruz experienced and expressed in this powerful poem that starts this sub-section.

Similar to the Mexican experience analyzed by Moreno, mestizaje in Peru creates a supposed raceless context, meaning that "we Peruvians find it very difficult to define ourselves racially, unless we are white", but "it is easy for us to define the Other" (Virginia Zavala and Zariquiey 2009, 266). Even if race places a constant tension that makes daily interactions about race, mestizaje ideology still works to deny the existence of rigid racial boundaries. The way the mestizo sees the other racially was conceptualized by Abeyamí Ortega Domínguez as the *mestizo gaze* or "the 'right to see' in the public sphere, while it does not have to comply with 'being seen', as it is positioned in a privileged place of invisibility" (Ortega 2018, 23). The gaze plays a key role in racial segregation, as well as the racial insult, even if they are described or understood as minor or "covert" manifestations of racism[59].

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[59] Sultmont and Callirgos argue that "since Peruvians learn that the racism instilled in them should be rejected, the manifestations of racism are usually covert, disguised, or appear in conflict situation, for example, when composture is lost, and in insult" (2014, 142).

The case of Azucena Asunción Algendones illustrates how racial insult confirms a very violent routine that Black people are exposed to, that is mostly diminished, naturalized, or seen as "just a joke". Algendones suffered persistent racial harassment in the workplace, with the connivance of colleagues and superiors that pushed her to claim legal protection for her dignity. Her case became notorious in Peru as the first criminal conviction under Article 323 of the Penal Code proscribing "discrimination or incitement to discrimination" (Sentencia No. 479-2015-2JPL-PJCSJJU). The case is emblematic because it illustrates the challenges of pressing charges of racial discrimination in *a country in denial* of racism, since the difficulties to access justice, the various ways she was re-victimized during the entire trial, the inherent anti-Blackness of the justice system, to the personal sacrifice represented by her attempt to denounce a severe situation of racism at workplace. Algendones' persistent fight leads to a historic sentence, breaking the silence of the judiciary in the face of racism.

Between the cold pages of a lawsuit and all the procedural arguments, the complaint was about a struggle for dignity and, in the end, for Algendones' own life. In a country where racism is taboo, and racial harassment is often read as "just a joke", *storytelling* built on everyday experience can be an effective legal method to confront this normalization of Black dehumanization (Delgado and Stefancic 2001, 39). While I narrate her battle for justice in the labyrinth of a Kafkaesque judicial and legal system, I also share her experience, feelings, and suffering through the struggle "to restore her dignity". I am aware of the problems in reifying narratives of Black suffering when this imaginary of victimization has been the place racism confined Black lives. Nonetheless, in countries in denial of racism, storytelling of "everyday experiences with perspective, viewpoint, and the power of stories and persuasion to come to a better understanding of how" society sees race (Delgado and Stefancic 2001, 38), and can be an effective tool to confront denialist discourses. I am also doing so because Azucena Algendones considered it important to have her story told, so people could know the in-between lines of the legal battle, which represented only a small part of her struggle. In addition, Algendones' fight for dignity is part of a larger political struggle of the Afro-Peruvian movement and the Latin American Black diaspora, who still find barriers in the justice system to protect their rights (Hernández 2019).

The rise in public complaints of racism, particularly having Afro-Peruvians organizations as protagonists, has pushed for an inaugural contestation of current trends of anti-Black racism in Peru. The work of Lundu, for instance, broke the silence when they launched a national campaign *Apúntate Contra El Racismo* in 2009 "that places the issues of racism and sexism at the front and center in Peruvian socio-politics" (Mendel 2014, 13). They also filed complaints of racial discrimination, being paradigmatic the case of the comic show "Negro Mama"[60], where the comedian resort to blackface and negative stereotypes of Blacks in a grotesque figure (Pineda 2020). Mosquera Rosado, a young Black activist, argues that "the contradictory responses to Negro Mama and other characters found in the national media can be understood, on the one hand, as a consequence of hegemonic ideologies that hinder the debate on discrimination and racism in Peru" (Mosquera 2017, 130 author's translation).

In terms of the antidiscrimination legal frame, Peru has a dispersed regulatory system, structured in different levels and sectors according to where the violation takes place. In addition to the constitutional anti-discrimination clause[61], the regulations differentiate the administrative sphere from the criminal one. In the administrative field, several rules prohibit discriminatory practices in education[62], work[63], consumption[64] , and public service[65]. The Report of the Defensoria Del Pueblo from 2013 details the complicated arrangement of institutions of control and regulations, presenting a critical review of how discriminations are sanctioned in Peru. Even acknowledging that this dispersion could be confusing for those in need to press charges, this research participant, working at the

[60] Jorge Benavides is a Peruvian comedian that for almost three decades represented two characters on national television that have mobilized both Black and Indigenous communities in denouncements of racism (see at Noles 2018; Rosado 2017; Molleda y Salvador 2019). Negro Mama, a Black character with anti-Black stereotypes, and Paisana Jacinta, with Indigenous women negative stereotypes, which I discuss further in this chapter.

[61] Constituición del Peru de 1993. "Artículo 2°. Toda persona tiene derecho: (…) 2. A la igualdad ante la ley. Nadie debe ser discriminado por motivo de origen, raza, sexo, idioma, religión, opinión, condición económica o de cualquiera otra índole."

[62] The 'Ley Nº 28044' Education General Law (Ley General de Educación) – establishes the equity principle in education, inclusion and interculturality, as to value the countries' cultural diversity.

[63] The Law N° 26772 provides for the non-discrimination in the access to jobs and education. The labor regulation also provides for the contravention of harassment, based on race among others (Decreto Legislativo Nº 728, Ley de Formación y Promoción Laboral, aprobado por Decreto Supremo N° 002-97-TR del 27 de marzo de 1997).

[64] The Law nº 29571 Consumers Code (Código de Protección y Defensa del Consumidor), provides for consumers to have equal treatment in any commercial transaction.

[65] The Ethics Code of Public Service (La Ley del Código de Ética de la Función Pública, Ley Nº 27815) provides that all civil servant must act accordingly to Constitutional principles and not discriminated.

Ministry of Justice, confirms the preference to find solutions through less burdensome means, as to say, to avoid criminal charges:

> At the administrative level, cases of discrimination are also solved, now Indecopi has cases in which they have sanctioned institutions for discriminating against people with intellectual disabilities, against people from the LGBTI population, and now it is prosecuting the company that we brought to explain its advertising here at Conacod, no. So, yes, there are measures that are a little more effective, if (…) district or provincial municipalities (…) had an ordinance against discrimination, a specific procedure, let's say, there are more immediate and less burdensome mechanisms than a criminal sanction that, finally, is not effective. (AP-7) [iv]

Racial discrimination has only recently been criminalized after various amendments to the Penal Code regarding the description of the crime, being the last one edited in 2017. Article 323 prescribes the crime of "discrimination or incitement to discrimination" [66], within the section "crime against humanity", together with torture and genocide. Despite being considered a crime against humanity, the sanction is not severe (from 2 to 3 years, aggravated by one more year if done by a public employee). As I have already mentioned, at the time of writing this dissertation, there has been only one conviction on the crime prescribed in Article 323, and this is the case of Algendones. In this context, there has not been a development of legal debates on race and racism through the analysis of court cases or jurisprudence in Peru.

Despite the choice to regulate discriminations mostly through the administrative sphere, Defensoria del Pueblo's report shows that this venue is not as efficient as the government wants to picture. All these different administrative areas have their mandate to both receive plaints and provide the solution. For instance, if someone is discriminated at a restaurant or a shopping mall, they must present a complaint to Indecopi (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual*). Similarly, the Ministry of Labor (*Ministerio de Trabajo y Promoción Social*) oversees the

[66] "Artículo 323.- Discriminación e incitación a la discriminación: El que, por sí o mediante terceros, realiza actos de distinción, exclusión, restricción o preferencia que anulan o menoscaban el reconocimiento, goce o ejercicio de cualquier derecho de una persona o grupo de personas reconocido en la ley, la Constitución o en los tratados de derechos humanos de los cuales el Perú es parte, basados en motivos raciales, religiosos, nacionalidad, edad, sexo, orientación sexual, identidad de género, idioma, identidad étnica o cultural, opinión, nivel socio económico, condición migratoria, discapacidad, condición de salud, factor genético, filiación, o cualquier otro motivo, será reprimido con pena privativa de libertad no menor de dos ni mayor de tres años, o con prestación de servicios a la comunidad de sesenta a ciento veinte jornadas. Si el agente actúa en su calidad de servidor civil, o se realiza el hecho mediante actos de violencia física o mental, a través de internet u otro medio análogo, la pena privativa de libertad será no menor de dos ni mayor de cuatro años e inhabilitación conforme a los numerales 1 y 2 del artículo 36." (Article modified by Article 1 of Legislative Decree No. 1323, published on January 06, 2017)

labor inspection. Education, Health, Ministry of Women have inspections for the correspondent issues. A complaint can be dismissed if it was not presented to the adequate authority or if considered that the complaint does not relate to racially motivated acts (if the plaintiff says there was racial discrimination, but the situation is perceived as gender discrimination, for example). The pattern demonstrated in the report is illustrative, wherein an average of half of the cases are dismissed or terminated due to lack of evidence and/ or wrong motif of denouncing. From 2011 to 2012, 68% of the complaints presented to the Public Attorney's office were archived (2013, 78), and 43% of the cases processed by Indecopi were dismissed due to lack of evidence (2013, 64). This sectorized system can over-bureaucratize the protection against discriminations and make it difficult to consolidate a systematized set of precedents and standards.

The burden of proof placed on the plaintiff's shoulder is often the source of dismissing many complaints. Both administrative and criminal instances are considered punitive so, in theory, the demand for evidence is harder to guarantee the protection of the innocence principle. Studies have shown that criminal and civil legal spheres deliver quite different responses, "criminal cases require stronger evidence and a higher burden of proof than civil cases" (Hernández 2019, 350). The proof of "racist intent" is presented as the main obstacle, once it is quite impossible to prove what goes in one's mind, which is a great fiction of the criminal law (Lima et al 2016). Civil cases can be more facilitated because there is no need to prove intent, and in spheres such as consumer rights, there is the reversal of the burden of proof in favor of the consumer. In Peru, the reversal is not automatic, and only when Indecopi presents the case, they need to present the proof, contrarily the plaintiff needs to support the evidence. Considering the unequal relationship between the consumer, the businesses, and Indecopi, producing evidence is key to the fragility of cases:

> If we take into account that acts of discrimination are usually presented in a covert way, appearing to be legitimate and actually hiding a prohibited motive, and that a person who alleges discrimination –many times– finds himself in unequal conditions compared to the author to prove these behaviors or practices, it is important that the State ensure in all cases (initiated ex officio or by party) a serious, impartial and effective investigation, using all the necessary tools for that purpose. (Defensoria del Pueblo de Perú 2013, 68)

In Brazil, because there is the reversal of the burden of proof in consumers relations, this sphere has been chosen by some activist lawyers to present charges of racial

discrimination. Moreover, resorting to civil justice enables to shift the focus from the "racist individual" to institutional practices. One example was given by one research participant, who represented the victim of racial discrimination in a shopping mall, and the complaint intended to target the mall and not the particular security guard who prevented the victim from using the elevator. The strategy was towards broadening the debate by relating the mall to racist practices:

> in consumer law, you have the reversal of the burden of proof and alleging hyposufficiency (...) you don't need this criminal law thing, the criminal process of the search for the truth, no I know what, which is much more absolute than in civil cases, whoever has more likelihood should win, so that is to say, if the other musicians came through the door and entered with their instruments, you don't need to prove anyone's intention, guilt, or anything, so it is the strict liability of the mall and as a matter of racial attribute as it was recognized, so that was it. The proof when you go to the civil case it is less burdensome for the plaintiff and we can prove it better also because of that... (AB -3)[v]

In civil procedures, there is no need to prove intent, as the company holds strict liability, (even if this does not always mean that demonstrating the racial motivation of actions is dismissed). Besides, in civil cases, the victim of racial discrimination can also present charges directly to the justice - if assisted by a lawyer, which already draws lines in access to justice. In criminal cases, contrarily, there is the intermediation of the police to register the complaint and undergo the investigation, and the Public Attorney's Office to present the case, adding layers to navigate the institutional racism. The low response rate of the criminal justice system caused some to conclude that "the criminal laws do more harm than good inasmuch as they sustain institutionalized race discrimination with their inefficacy while portending to be a means to address it" (Hernández 2019, 351).

This research participant, a lawyer from Brazil, raises important concerns to the criminal spheres regarding racial discrimination, one is the fact that most situations are is still perceived as a minor offense, disregarding the effect it has on the victim in the long term:

> Civil jurisdiction has a growing number of convictions (very small in terms of numbers, if we consider the high rate of racism in everyday life), especially through compensation in ordinary civil justice and labor justice. Criminal jurisdiction is undoubtedly more resistant to the application of anti-racist criminal law because it starts from the fallacious premise that it would be a crime with little or no offensive potential. The traumatic and harmful effect that the experience of racial discrimination has on its victims is disregarded. (AB -21) [vi]

Recently in Peru, a different strategy employed by Indigenous organizations[67] to denounce racism was to mobilize the right to "cultural identity" in a constitutional legal case against Jorge Benavides, the comic that interpreted Negro Mama, who also have a character called *Paisana Jacinta*, reproducing racists stereotypes of Indigenous women. The complaint was filed in 2015, and in 2019 Resolution 109 from Juzgado Mixto de Wánchaq decided in favor of the petitioners. According to the legal advisors, Jacinta "represented negative stereotypes associated with Andean women: violence, vulgarity, dirt, lack of intelligence and among others" (Molleda and Salvador 2019, 64). The defendant filed an appealed at the *Corte Superior de Justicia de Cusco*[68] and the final decision is issued in 2020, with four opinions of superior judges, being only one against the plaint with arguments of freedom of expression. The main argument of the complaint was that the program "generates a stereotype that only causes, promotes and reinforces discrimination based on ethnic and cultural origin against [Indigenous women], instead of promoting full respect for their cultural identity, as well as their full integration into the Nation" (00798-2014-0-1001-JM-CI-01, complaint, 1). [vii]

The first singular opinion by judge Delgado Aybar sentenced in favor of the appealed. According to him "censorship is or is not the solution to eliminate racism, discrimination, unequal treatment, or lack of opportunities regarding Andean women, who, by the way, deserve the greatest respect, like all citizens" (00798-2014-0-1001-JM-CI-01, Delgado Aybar, 24). The argument that any restriction to the show would limit basic constitutional principles of freedom was heated in the Peruvian society. El Comercio, one the oldest and most relevant newspaper in Peru (linked to economic and cultural elites), publicized, in an editorial piece (2018), its regret that Peru could issue such a decision, and that democracy loses when judges defy freedom of expression: "banning a television program (like banning a soap opera, a movie, or a painting because someone finds it harmful) is

[67] The case Paisana Jacinta was filed by four campesinas (at least is how they self-identified): Cecilia Paniura, Rosa Supho, Irene Quispe and Rosalinda Torres, who are community leaders and active in the organizations Asociación por la Dignidad y Derechos de las Mujeres del Cusco, la Escuela de Mujeres Micaela Bastidas de Espinar y la Red de Mujeres de Canchis. Legal counseling was provided by a human rights organization IDL – Instituto de Defensa Legal, that took the case as strategic litigation on indigenous rights. They filed a constitutional case against the TV channel Frecuencia Latina and the comedian Jorge Benavides, who represented the comic character Paisana Jacinta for almost 30 years.

[68] The appeal was filed by Jorge Luis Luren Benavides Gallegos, la Compañía Latinoamericana de Radiodifusión S.A. Frecuencia Latina and also the public institutions that were part of the plaint: Ministerio de Transportes y Comunicaciones, Ministerio de Cultura, Ministerio de la Mujer y Poblaciones Vulnerables y al Ministerio de Justicia y Derechos Humanos.

nonsense that is incompatible with a free society. And the ruling of the Judiciary is nothing more than an inadmissible censorship."[69]

Judges Holgado Noa and Castro Alvarez issued a dissent opinion against the appeal. They argued that the Constitution of Peru recognizes the pluri-culturality and pluri-ethnicity of the country and protects cultural manifestations and the need to promote "national integration" (00798-2014-0-1001-JM-CI-01, Holgado Noa, 3). The opinion goes from page 8 to 19 through the description of episodes, showing scenes of explicit racial insult, humiliation, and negative stereotypical representation, proving evidence of the racist content of the show[70]. The judge concluded that "the character is not a fiction in its entirety" (ibid.., 22), but by affecting all "Peruvian Provincial Andean Women", the TV character ended up "violating not only their cultural identity, which it generates in itself, but has also created a 'stereotype' based on 'racial discrimination', and has even modified the concept of 'provincial woman', showing her as a 'fool'" (ibid., 23). The judge did not use the vocabulary of "indigenous women", and race or racism have limited references. Nevertheless, the lack of legal argumentation on both, race and racism, can be a reflect of the little academic work available in Peru within the legal field. The singular opinion of superior judge Castro Alvarez just added to the argumentation that there was a discrepancy in the treatment of Jorge Benavides characters Negro Mama[71] and Paisana Jacinta. According to him, "it should not be lost sight of that said program 'negro mama' was sanctioned for having racist content, while the program 'paisana Jacinta' was not, despite the fact that its content is similar" (00798-2014-0-1001-JM-CI-01, Castro Alvarez, 38). Following the line of argumentation, the judge Alvarez provided a concept of racism, connected to "ethnic and cultural origin":

> Racism is a social concept that identifies fundamental features of discrimination based on ethnic and cultural origin, practiced by certain social

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[69] Available at < https://elcomercio.pe/opinion/editorial/paisana-jacinta-editorial-nadie-ria-noticia-582828-noticia/>, accessed on January 25th 2022.

[70] As an example, the Judge argues "Previously, it has been shown in the considerations - analysis of the program - that indigenous women are identified as a "dirty" person, "who does not speak well or pronounces words in a very grotesque way", "who always understands situations in a morbid way", "who is mistreated by people who are not like her", who calls herself "gross chola"; In addition, she walks in an inappropriate way, often compared to an animal from the mountains (llama, alpaca) or, failing that, she is represented as an animal when she has eaten from the garbage and had to fight with dogs – program 115 Jacinta tamalera – pointed out literally to the analysis of the program in the present: consequently the demanded claim exceeds the teleological suitability test. (00798-2014-0-1001-JM-CI-01, Holgado Noa, 21)

[71] The case was administratively analyzed after a complaint by the Afro-Peruvian organization LUNDU, by the Sociedad Nacional de Radio y Televisión del Perú.

> circles and which, as the foundation of a democratic society, is prohibited by international treaties and the legislation of most States. Precisely what is denounced through this constitutional lawsuit is that the aforementioned program 'Paisana Jacinta' promotes discrimination based on ethnic and cultural origin towards Andean women. (00798-2014-0-1001-JM-CI-01, Castro Alvarez, 38)

The opinion that settled the dissent was issued by Yuri Jhon Pereira Alagón. In a long and grounded piece, based mostly on international human rights on racial discrimination, particularly CERDs recommendations, including the interpretation of the ICERD on cases of freedom of expression, the judge argued that Peru is obliged to comply with the international standards once ratified the ICERD. The superior judge pointed out that Peru ratified the ICERD, so it is obliged to fulfill Article 4 of the convention, and "in the Committee's view, the prohibition of the dissemination of all ideas based on racial superiority or hatred is compatible with the right to freedom of opinion and expression" (ibid., 10). Judge Pereira also recalled that CERD directly stated that Peru should "combat racial stereotypes" (ibid., 10). Confronting the naturalization of racists practices on TV, the superior judge quotes many academic works that have analyzed the Peruvian media, including one conclusion that says:

> Given that racist ethnic humor has taken refuge in dominant ideologies that come from the colony, there are those who fight against the naturalization of the inferiority of Andean culture and languages and accuse this program of spreading these contents and reinforcing the status quo. To conclude, it should be noted that ethnic humor directed at peripheral groups with little social value and little voice in the mass media is a powerful weapon that contributes to maintaining an unfair situation of social and cultural domination.[72] (apud 00798-2014-0-1001-JM-CI-01, Pereira Alagón, 15)

The judge Pereira Alagón recognized the link between inequalities and discrimination, saying that this social condition reflects the tendency "to minimize or ignore the existing problems of intolerance, which does nothing but maintain this practice." (ibid., 18). He emphasized the cultural value of the quechua language, also undervalued by the TV show, mentioning the recognition of "our ancestral culture", presented in the Constitution in Article 49, when Cuzco is proclaimed the "historical capital of the Republic" (ibid., 24). This this argument, he revealed a particular sentiment of Cuzco inhabitants that antagonized with Lima, as dissertated by Marisol de La Cadena (2004). Therefore, in addition to the suspension of the program Paisana Jacinta, the superior judge Pereira

[72] De los Heros, Susana. Humor étnico y discriminación en la paisana Jacinta. En: Soprag 2016; 4(1): 74–107. En: https://doi.org/10.1515/soprag-2015-0011. Publicado online: 7 Jun 2016.

issued that the State have to comply with CERD recommendations to Peru, including “avoid the propagation of messages, programs and publicity that continue to perpetuate the stigmatization of indigenous people and Afro-Peruvian communities through the representation of stereotypes”, and “accelerate the elaboration and approval of a code of ethics for the media in which they commit to respect the dignity, identity and cultural diversity of indigenous peoples and Afro-Peruvian communities” (CERD, 2018).

As we can see, in the case of Paisana Jacinta, even considering the limitations on legal theory in Peru, the decision used the resources available to argue that negative stereotypes were not only producing racial discrimination, but also violence and hate against Indigenous people. The last vote, for instance, explored deeply the international doctrine, sustaining almost entirely on CERD’s recommendations, being coherent with Peruvian tradition to mobilize in constitutional disputes jurisprudence of international courts and human right bodies. A practice that is still very uncommon in Brazil, so that recently the National Justice Council issued a resolution saying that courts must respect and take into consideration on their decisions the international human rights conventions and jurisprudence (CNJ, 2022).

Examining how the court case debate national identity, we can identify a commonality in most judges’ opinions - the valuing the country’s cultural diversity - and the recognition that racial conflict is part of their history. In the case of Peru, most of the judges engaged in rights’ coalition assessment to support that freedom of expression was not protected when violating the right to “cultural identity”. However, they have little argued on how violations of human dignity or honor of Indigenous people are directly related to the historical construction of racial categories. Neither law nor rights are a-historical or should be read disconnected to the process of subjugation and its memory. History is relevant for law when “aims to solve, in the present, problems that almost always have a long duration, but are presented with new dimensions in the case discussed” (Duarte and Scotti 2019, 353 author’s translation).

In the final part of the Judge Holgado’s opinion, she quoted Jose Maria Arguedas: “because we were born in a divided country: Indians, mestizos, whites, we divided by

almost insurmountable fences"[73] (00798-2014-0-1001-JM-CI-01, Holgado Noa, 35). Later she added that, "it is up to the Judiciary to prevent the extinction of those fences that have been generated over time, even calling this country by the Peruvian writer Arguedas as a country of 'All bloods', as so many cultures coexist, and they must live in communion" (ibid., 35). Despite of the use of this national narrative, the history of racial subjugation of Indigenous people is not taken as a central argument to assess harm to plaintiffs' honor, even when taking the depreciative and racist attributes of the character as contributing to a culture of discrimination. Thus, racism as a historically constructed system of oppression is not a comprehension explored in this court case.

The following section describes in detail the personal and institutional barriers faced by Azucena Algendones, in the in-depth analysis of her legal case. I also develop a critical reflection on the mobilization of justice as a strategy for the anti-racist struggle.

2.2 Algendones' Fight for Dignity in the Anti-Black Judicial System

... el primer caso de discriminación con temáticas raciales, pero demoró mucho, mientras tanto me destrozaban. (AP -1)

Everything starts in March 2012, when a series of racial harassment practices at the workplace (public water company in Huancayo) became unbearable for Algendones. The aggression came mainly from one colleague, but the complicity of the others, particularly from the general manager and the head of human resources, aggravated the situation. One fact, seen as a "just a joke", was the replacement of Algendones' identification card picture with that of a monkey. She protested administratively to her superiors, intending to stop the harassment, but presenting the complaint was the last straw to start a sequence of persecution acts aiming to force her into quitting the job.

[73] The judge quote this reference as: Jose Maria Arguedas. Motivaciones del escritor, 1966, in original "Porque nosotros nacimos en un país dividido: indios, mestizos, blancos, dividimos por vallas casi infranqueables".

Even before Algendones pressed charges, and as an attempt to demote her from doing so, the harassment escalated, from constant insult, to worsen the physical conditions of her work environment. The co-workers saw what was happening, but were afraid to support her and face retaliation, “they yelled at you and sometimes no one wanted to get involved because no one wants to lose their job, well, no one wants to lose their job either, everyone sees what's happening to you and says 'oh, poor thing, what's happening', but really [they need to] keep the job and that's how it happened…”[viii]. The ultimate degradation was the accusation of theft, using the stereotype that “*todo negro es ratero*” (AP-01). Then, “they created a robbery offense for me, money that I never saw, money that I never took”[ix]. She was again humiluated, but always mobilizing racial slurs: "even an employee insulted me, she would even say, I have paper evidence of that, *'negra rabatonera*,' things like that, right?"[x]. For Azucena, this situation was about power relations, those who discriminated felt encouraged to do so, and felt legitimized, “because mostly the one who discriminates against you or mistreats you because of your race is the person who has power, well, it's always like that, the person who has power and these people had it.” (AP-01)[xi]

Azucena Algendones was suddenly asked to work in another office, in a district with little infrastructure, within three days. As she is also a person with disabilities, who cannot climb stairs or sit for long hours in inadequate chairs without going through a lot of pain, changing her workplace was a severe degradation. When Algendones arrived to the new office place, the guard at the entrance door had received an order prohibiting her entry, and so he did. A journalist who was there at this moment witnessed how she is prevented from entering the company facilities, and all this is recorded on video. Soon after this event, she was fired with charges of misappropriation of funds, of taking some money she never saw or heard about. By mobilizing stereotypes of “black criminality” she faced criminal charges.

Azucena Algendones’ battle for her dignity is a tangle of various judicial court cases. From an internal complaint of harassment at the workplace, she saw herself on the battlefield of many lawsuits. I summarize the cases here, just to put in evidence the retaliation she suffered for speaking up. As Algendones tried to find the means to bring criminal charges for racial discrimination, one case of harassment in the workplace is

processed at the Labor Court, under labor laws against racial discrimination[74]. In retaliation, the chief of human resources denounced her for misappropriation of funds of an amount of 20,95 soles (~ USD 6), for which she was fired under fair dismissal allegations. Then, two lawsuits are filed, one to annul the fair dismissal in the Labour Court and one presented by her superiors in the criminal court, charging her with peculation.

In 2015, Algendones is declared innocent by the criminal charge of peculation, but contradictory she is convicted to pay a fine as a civil responsibility. She appealed this decision, and the Court of Appeal reduced the amount but did not cancel the obligation to pay the fine. While this judicial battle is ongoing, one and a half years later to her dismissal, in 2015, the Labor Court sentenced the company to reinstall Algendones to her workplace, considering there was no reason for a fair dismissal. Despite the importance of this decision - she became unemployed and has gone through financial difficulties to support the costs of the lawsuits-, she is relocated to the same workplace where she was harassed. The work environment remained poisoning for her, the racial harassment continued, and she had yet not managed to criminally charge those responsible.

> I suffered a year of mistreatment because you think that everything is going to end, that they are going to get tired, that they are no longer going to annoy you, that is, but you realize that it is getting worse, worse and that there is no… and in finally, there came a time when they did not let me enter the company, incredible! That has been the trigger for the complaint and now… (AP-1) [xii]

In 2012, Azucena Algendones started a crusade to present criminal charges of racial discrimination. Being unclear how she should proceed, she sought help in State institutions, such as the *Ministerio Public*o and the *Public Defender's Office*. Her first attempt was to bring the charges to the District Attorneys' Office (*Fiscalía*). At first, the DA's office was not convinced that the facts configured racial discrimination, until their own attempt to gather information from the company was denied, raising a concern that led them to issue an order to the company obliging them to comply with the investigation. As the lawsuits started to pill up, and Algendones could not afford the costs of private lawyers, she tried to access a public defender. The right to free legal counseling was denied with the argument that she was employed, so they could not assist her. When she

[74] Article 30, 'f', of the Law "Ley de Productividad y Competitividad Laboral" (DS N. 300-97-TR) proscribes: "f) los actos de discriminación por razón de sexo, raza, religión, opinión, idioma, discapacidad o de cualquier otra índole".

finally lost her job and faced a criminal charge, Algendones tried once more to access a public defender, but this right was again denied, with the argument that she must be in "extreme poverty" to have the right to a public defendant.

The first institution to understand what Azucena Algendones was going through was the *Defensoría del Pueblo*, which launched a report (2011) on the situation of the Afro-Peruvian people. Despite their willingness to assist the case, the institution had no litigating powers, "so it is a good ally, but it can't do much from the position either..." (AP-02)[xiii], as one Black activist commented. Azucena Algendones found herself with little institutional support to denounce the aggression she was living through and started looking for a private attorney. She searched for legal counseling for more than a year because no one wanted to accept her case. Some lawyers she consulted with recommended her to press charges of slander, discouraging her to present criminal charges of racial discrimination.

This lack of support and, particularly, the disregard for the racist violence she suffered, places her in a perpetual stage of re-victimization. Again and again, her suffering was not a source of astonishment nor worthy of justice. The difficulties narrated by Algendones in obtaining legal advice in the face of a situation of racial discrimination are unfortunately not unique to his case. As demonstrated by the conclusion of the Report of the Justice Studies Center of the Americas CEJA, "when [Afro-Peruvians] manage to access some type of legal defense, it normally falls into the hands of people who replicate the racial prejudices installed in a system that shows no sensitivity towards the racial issue" (CEJA 2004, 58). CEJA's 2004 conclusions are still confirmed by the Azucena case.

Feeling helpless, Algendones looked for help outside State institutions, and it is when she found out about CEDEMUNEP (*Centro de Desarollo de la Mujer Negra Peruana*). From this moment on, her struggle is no longer dismissed or singled out, she joined the collective efforts of the Black movement to fight against racism. CEDEMUNEP provided her with the accompaniment, support, and advice she needed to broaden the scope of her denouncement. With them, she went to Lima to search for the support of human rights institutions, including those responsible for the fight against discrimination. They knocked on every door: Congress, Ministry of Women, Ministry of Culture, Ministry of

Human Rights. In those institutional spaces the denial of racism was reproduced, her situation was once more diminished, and she listened over and over that "I do not think it is a case of racism" and "why do you bother; it is normal to have insults at the workplace". It was hard to listen that the level of violence she was experiencing was completely normalized and naturalized. In the end, it seemed that she was the one with a problem for raising the infamous "problem of racism" in the tolerant nation. Algendones also realized that racism was nobody's business, as she listened repeatedly "this office has no mandate on this case". In desperation for her own life, she questioned:

> I got to a point where I said if I turned up dead in the bathroom, the only thing I would have to say is "it's nobody's business"! That is, I got to a point where I was even afraid, I said how could it be? Suddenly they can do something to me in the bathroom, they can send me to hit, that is, one gets afraid, there comes a time when one gets afraid! (AP-1)[xiv]

Algendones found some help at the Ministry of Culture, that at the time was implementing the online plataform *Alerta Contra el Racismo*. Even though she recognized that some people within the State were making personal efforts trying to help, soon she realized that they were tied up by the bureaucracies of denial: "they made superhuman efforts to be able to see the way to file, but their normative parameters did not allow them, that is, I saw that they made renewed efforts, but that they had limitations to be able to..." (AP-01)[xv]. In an interview, one of the government officials responsible for *Alerta contra el Racismo* places the difficulties she found in making racial discrimination denounces more effective, and not just symbolic:

> But my big goal was to have an efficient reporting system. That the complaint of racism begins to be worked on because in most cases, even when it is a crime and an administrative offense, discrimination, that is, there are several sanction mechanisms, are not applied and have not been applied. (...) people had the procedures for complaints against racism as a complaint and it is not a complaint, because it is a crime, right? Then it happens like […] the problem is reduced and what the platform sought was precisely to make that begin to change and it was the most difficult thing because making the whole system […] just make the complaints reach from one institution to another It was almost like a problem that we had to solve with NASA, it was like, can't it be that difficult? But the interoperability of the systems was very difficult, that is, I have always talked about there being a whole bureaucracy around the implementation of the guarantee of a right that is amazing because it really hinders a lot that you can give facilities to the citizen when in It's actually your duty, isn't it? (AP-4)[xvi]

During this personal journey, Algendones realized that there is a structure in place, a regulatory mechanism of State bureaucracy that prevents cases like hers to thrive. The bureaucracies of denial most of the time surpass the fact that there are people with "good

intentions" within State structures. Denouncing racism within a Racial State is an unfair battle, the power relations are far from even. Her case illustrates Delgado and Stefanic argument that "racism is embedded in our thought processes and social structures (...) then the 'ordinary business' of society—the routines, practices, and institutions that we rely on to affect the world's work—will keep minorities in subordinate positions" (2001, 22). The perversity of institutional racism is found precisely in its reproduction in the normal practice of the institutions, and not in illegal or deviant practices. The difficulty of guaranteeing the protection of a right for a Black woman, which in theory is the obligation of the State, is proof that the normal function of State structures maintains the current racial hierarchy.

Algendones also realized the personal cost of presenting charges for racial harassment, as her life became a nightmare. She understood why nobody wants to press criminal charges of racial discrimination in Peru: "then it's like you understand and say 'ah, that's why people do not report', to avoid this bitter taste, that bitterness, that nightmare that turns your life after reporting, right?" (AP-01)[xvii]. There is no mechanism to grant protection from retaliation once a victim decided to go forward with the charges. The slowness of the judicial system and the lack of victims' protection against retaliation open venues for re-victimization. Her case proves the conclusion of Professor Ardito, who explains how "institutions that legally process discrimination [charges] do not have personnel to support the victims. In the Judiciary or in the Public Ministry, the personnel that should attend to them often reproduce discriminatory practices" (Ardito 2017). Algendones case attested that the system is structured to avoid people to ever pressing charges:

> so you make the complaint and that allows people to do what they want with you, especially when it is a work environment where they have power, right? The power of being able to do with you what they think is best. So, in that sense it is something that our system lacks, our system lacks and above all the celerity (AP-01).[xviii]

Algendones returned to Huancayo without answers or support from government institutions. She was about to give up, founding only barriers for the criminal charge to concretize. Nonetheless, she realized that she could not quit, "I also think that what strengthened me to continue with the complaint is that I knew that if I left it, I would not survive, with that I tell you everything! At one point I also became aware that I couldn't

leave the process because I got to […] yes, there is emotional fatigue, I got very tired, physically and emotionally. They destroyed my soul […]" (AP-01)[xix]. The psychological effects of the racist abuse and of the impunity or the disregard for the denouncement of the abuse has been demonstrated by studies. According to Delgado "racial slurs may cause long-term emotional pain because they draw on and intensify the effects of the stigmatization, labeling, and disrespectful treatment that the victim has previously undergone" (Delgado 2013, 183).

Algendones recalled the role of the local media in Huancayo in not allowing the case to fall into oblivion, being one of the few that stood with her since the beginning. And the journalist that accompanied the case was who recommended her to a lawyer that finally understood her situation as a criminal offense of racial discrimination. In 2013 Azucena Algendones could finally rely on someone that felt outraged by the violence committed against her: "he made it his own in humanity, that is, as a human being he could not conceive that there was racism and he made it his own, but not all of us, as I say, have the blessing of finding a lawyer who fights with you for so many years, right? " (AP-1)[xx]. Despite the important role the lawyer played, Algendones knew that finding legal aid was not sufficient. She knew that being the first case of criminal charges for racial discrimination in Peru[75] she would also need a political mobilization around the case[76].

Political mobilization and the organized Black movement

As mentioned, in 2013 Algendones contacted an organization of the Black movement, seeking more political support. Meeting CEDEMUNEP, and its Director Cecilia Ramirez Rivas, represented a turning point in her struggle for justice. Azucena learned not only about the organized Black movement but also about Black women's solidarity. She recalls "you can't imagine, she made his own, she made the case his own, she knocked on every door there was and would be, every door there was to knock" (AB -1)[xxi].

[75] The case of Azucena is the first case of a criminal complaint under article 323 of the Penal Code. The Urriola case of 2001 is also a complaint of racial discrimination against Afro-descendants, but mobilized the existing legal mechanisms to denounce, as described by the CEJA report (2004).

[76] There is one back story to all this case that cannot be told in this narrative, but maybe it is important to point out that political forces were mobilized to prevent her to go further, and how this developed ended up being the reason she was feared for her life and pushed for political support. The political entanglements were also preventing many local authorities and lawyers to help her, they were also afraid to "upset" the wrong people. It shows that in cases such as this, there can be power relations at stake that makes institutional support even more crucial to guarantee that any victim could have a minimum of justice, but also safety.

Algendones could rely on an organization that could understand the gravity of the abuse she was going through. CEDEMUNEP provided her with the political and technical-legal assistance, but also with the emotional support:

> (…) it comforts you to see that there is a person who is supporting you so that this does not go unpunished, that was what she did with me, she helped me, she knocked on my doors and said 'this cannot go unpunished, after so much', but also here there was a problem with the judiciary, it took so long… (AP-01)[xxii]

CEDEMUNEP was also engaging for the first time in criminal charges for racial discrimination, so it was a learning process for the social movement as well. Cecilia Ramirez had broad experience on international political mobilization, as CEDEMUNEP was part of the *La Red de Mujeres Afrolatinoamericanas, Afrocaribeñas y de la Diáspora.* Then Ramirez sought for support in the Latin America Black women's organizations network. Two organizations helped them to establish a strategy, the International Institute on Race, Equality and Human Rights and Geledés Instituto da Mulher Negra (Brazilian Black women's organization), both with legal expertise in denouncing racism nationally and internationally at the United Nations and the Organization of American States.

> We didn't have the experience of having a case, so [Geledés] and other colleagues in the region helped us. So, for example, they told us that we had to generate a protection issue for the victims, so that they are not harassed, so that no more offenses are created. (...) There is no institution, although we can say that there are Afro-Peruvian Human Rights institutions, but there is no Afro-Peruvian institution that has expertise in this area, right? We as CEDEMUNEP had to learn like on the run, from what we could and we supported Azucena from the areas we could, right? more than anything about advocacy, looking for recommendations, talking with the people from the OAS, with the people from the Institute [on Race, Equality and Human Rights] about what we should do, giving Azucena strengths because she was severely mistreated, that is, very, very heavily abused. (AP -2)[xxiii]

Ramírez problematized the limitations of Peruvian legislation against racial discrimination, particularly the "choice" in defining the crime within the "crimes against humanity" in the Penal Code: "it was very complicated because racism as such was typified within Crimes against Humanity (…) but we lacked an element to confirm that it was indeed racial discrimination" (AP -2)[xxiv]. Besides, the description of the crime on article 323 leads to an interpretation that can harder the proof even further. The article 323 proscribes "acts of distinction, exclusion, restriction or preference that *nullify or impair the recognition, enjoyment or exercise* of any right of a person or group of persons recognized by law". Thus, there has been an interpretation that the plaintiff needs to prove

the impediment to exercise one's right due to the racist acts, which would exclude racial harassment or verbal abuse (Ardito 2017). Nonetheless, agreeing with Ardito, "we are of the interpretation that the right to dignity is being affected" (ibid.).

This legal-political barrier was one of the reasons they pushed forward a broader debate on the challenges to press charges of racism in Peru, using Azucena's case as a paradigmatic one. The legal strategy to place racial discrimination among the most severe forms of crimes was a way the means of proof was hardened. Nonetheless, the sanction is not as severe and, in practice, racial discrimination is still perceived as a minor offense. The outcome of this "contradiction" is the increase in procedural bureaucracy that leads to long court cases that, in the end, issue short-term sentences most probably suspended or even prescribed.

The narrowing of racial discrimination to a punctual fact with minor consequences, or the argument that practices of racial insult are "generalized" in Peruvian society, ignores cases such as Azucena's. In one interview with a member of the Minister of Justice, working at CONACOD (*Comisión Nacional Contra la Discriminación*), fighting racism through criminalization is a "populist" solution, and administrative spheres were the adequate venue. In his argument, "if we had to imprison all discriminators in the country, that is, this is also a structural issue, we all have something racist in the country, let's say, the situation is strong, and 3/4 of the country would have to pay prison for some act of discrimination." (AP-7)[xxv]. The research participant used structural racism to deny State responsibility. Mobilizing the idea that racism is culturally embedded in Peruvian society, little can be done by institutional spaces besides "educational campaigns" and local regulations, such as the "*ordenanzas locales o provinciales, distritales o provinciales"*. In addition, he used the inefficiency of the justice system to justify the choice to not recommend a solution via judicialization:

> Because if we have a process, first the process never starts, and if it does start, it could take this... 6 years, 5 years, in the judiciary, then, as it is, let's say, the meaning of the rule is being lost. It is neither prevented nor sanctioned, there must be other types of measures that allow us to combat discrimination in the country, which comes from prevention and issues also linked to education. (AP 7)[xxvi]

His reflection shows a deeper problem on how legal thinking in Peru addresses racism. Even agreeing with his critique that criminal law is not going to provide a solution for

racism, one cannot disregard the political value of criminalization, when this is the line that demarcates what society understands as “unacceptable behavior”. Back to Delgado’s argument, victim of racist language should be able to pursue legal action to stop to psychological harm of the sense of helplessness, but also to communicate “to the perpetrator and to society that such abuse will not be tolerated, either by its victims or by the courts” (2013, 183). Additionally, the judicialization of racism is a strategy by social movements to expose racial conflicts in regimes of denial of racism. Then, to resort to arguments of the inefficacy of the criminal law or the justice system in a country that has not faced racial charges in those venues means only a denial of State responsibility, in addition to downplaying the gravity of racism in itself.

For all those reasons, being the legal limitations within criminal law and the lack of political will within State institutions, CEDEMUNEP and the partner organizations were aware that Azucenas’ case was a singular opportunity to discuss the limitations of access to justice by Afro-Peruvians. They knew most should be taken out of the case, because “people do not like to denounce cases of racism, which is why this very issue ends up re-victimizing oneself” (AP -2)[xxvii]. When they realized that charges of racial discrimination were no one’s job, guaranteeing visibility was crucial, “so it was quite complicated because when we started looking for support, including the Ministry of Culture, we didn't find it because, that is, no institution was competent for the case, none! None!” (AP -02)[xxviii].

One successful visibility strategy was to present Algendones case at the United Nations. In 2018, CEDEMUNEP presented a shadow report[77] for the Committee on the Elimination of Racial Discrimination - CERD, when Peru was evaluated on ICERD implementation. The report described Azucena’s case, lining down the various limitations encountered to access justice, to provide for victim’s protection, and to have a final decision from the Peruvian justice (CERD, 2018). Cecilia Ramírez guaranteed the personal participation of Azucena Algendones at the United Nations Human Rights Council, in Geneva, being both present in the section with civil society. In the concluding observations on the combined twenty-second and twenty-third periodic reports on Peru,

[77] Informe alternativo a los informes periódicos 22° y 23° del Perú para el Comité para la Eliminación de la Discriminación Racial (CERD)

the Committee expressly mentioned the case, lining a series of recommendations under "access to justice"[78]:

> 38. The Committee is concerned by the fact that such a small number of complaints of racial discrimination have been filed. It also notes with concern that, to date, a decision has been handed down in only one such case, that of Azucena Algendones, and that that case is still pending without right of appeal. The Committee is also concerned at the fact that, notwithstanding the adoption of the National Plan of Access to Justice for Persons in Vulnerable Situations of the Judiciary for 2016–2021, Afro-Peruvians and members of indigenous peoples continue to face difficulties in gaining access to justice (art. 6). (CERD, 2018)

Furthermore, CERD observations on the Peruvian State report also show concern with the institutional debility of those responsible to combat racism: "10. The Committee is concerned about the ineffectiveness of the National Commission against Discrimination [CONACOD] and the Racism Alert Platform in combating racial discrimination, in part owing to a failure to allocate adequate funding to those mechanisms (art. 2 (1))"(CERD, 2018).

This international mobilization was important to assure that the case could reflect beyond the individual scope of the sentence. For the Black movement, the case could be mobilized as strategic litigation to force broader debates of access to justice and legal/juridical fight against racism. As discussed below, the legal debate was still limited, but the conviction in the first instance was an important victory.

Finally, a victory: the first instance decision

The sentence on the criminal charges' plaint was issued in 2015 and convicted the head of human resources and the company's general manager under article 323 of the Penal Code to serve 3 years in prison (suspended for two years) and to pay fines of 5.000 nuevos soles, in solidarity. Despite being a victory, as first time the Peruvian Judiciary "criminally convicted an individual for racial discrimination against an Afro-Peruvian"

[78] § 38 (…) (a) Adopt effective measures to ensure that all victims of racial discrimination have easy access to swift and effective legal remedies and compensation; (b) Guarantee access to justice for indigenous peoples and members of the Afro-Peruvian community and ensure that their fundamental rights and due process safeguards are upheld by, inter alia, increasing the number of interpreters and the opportunities for gaining access to free legal assistance; (c) Provide training on a regular basis for police officers, prosecutors, lawyers, public defenders, judges and justice system officials in order to raise their awareness about the negative effects of racial discrimination and to ensure the effective application of the Convention (CERD, 2018).

(Hernández 2019, 350), the emphasis on multiple discriminations downsized the role of racism. The decision engages with anti-discrimination doctrine, emphasizes the various aspects of Algendones' identity that could be causes of discriminations at a workplace, and do not explore deeper the legal concepts of racism or racial discrimination. Algendones was concerned that the "racial element" of the discrimination was going to be out, in the end:

> As I was saying to the president of the judiciary, "why is your hand trembling to say that it is racism, yes or no, yes with all its name? I told him", he remains silent, but now I think that is going to happen, [he says] "well, yes, no, they put the figure of the monkey on it, it has all the racial connotations, but you have to include this and this", you realize?[xxix].

The decision recognized that multiple discriminations took place, based on her "skin color", for being a person with a disability, and a member of a union[79]. Then, the conviction was granted by other components of Algendones' identity, which are better recognized as valid in current legal-political thinking, such as the fact that she was a member of the union's directive board, which was underlined more than once in the decision.

There was an emphasis that the discriminatory acts were directed linked to her "labor rights", reinforcing the interpretation that the crime of article 323 needs a proof that the exercise of rights were nullified or restricted. The sentence stated: "Discrimination in the workplace is a daily and universal social phenomenon that causes inequalities between people and generates social disadvantages" (479-2015-2JPL-PJCSJJU, Quispe Cama, 17). Then, the illegal acts perpetrated against Algendones "were intended to nullify or undermine the recognition, enjoyment or exercise of the labor rights of the aggrieved party" (ibid., 17). Even though the events effectively affected Algendones' labor rights, for her what she suffered was racism, with an impact on her dignity as a human being,

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[79] The argumetns of the sentence were: "En el presente caso se atribuye a los acusados L.P.P y A. G. S.G haber discriminado, en su condición de funcionarios públicos, el accionar laboral de la agraviada, **no solo por su color de piel, sino también por su condición de dirigente sindical en SEDAM – Huancayo y por su condición de discapacitada**, resaltándose que los actos discriminatorios se habrían iniciado luego que la agraviada formula una denuncia laboral por motivos raciales contra la trabajadora de SEDAM J. P H. Si bien es cierto, no es materia de investigación los actos que habría cometido la señora J. P. H., sin embargo constituyen precedentes sobre los actos de discriminación de la que sería victima la agraviada. Asimismo, el sólo hecho haberse dispuesto da rotación de la agraviada a otra sede de SEDAM no constituye en sí un acto de discriminación, sin, embargo, teniendo en cuenta los antecedentes, así como las circunstancias posteriores se puede concluir que efectivamente hubo discriminación de parte de los acusados para con la agraviada" (479-2015-2JPL-PJCSJJU, 25, highlights from the author).

and for this reason she sought justice. For her, the sentence had to say directly that her dignity was affected by the racial discrimination she suffered.

Still according to Algendones, there was an argument prevailing in the jurisprudence that whatever happens in a workplace had to be framed as "labor discrimination". This emphasis, for her, was a final attempt to erase the "bad word" of racism from the decision: "they did not accept racism, they did not accept it, (…) but as I told the judge, why don't we call things by their name? Or not? or not? So, I started from there, I realized that it was very difficult for them to accept that racism exists, that we have normalized it so much, right?" (AP-01)[xxx].

The legal argumentation that denies race or diminishes its role in the violent situation lived by Algendones is essential to the colorblindness that supports the judiciary's neutrality regarding race. One strategy is to equalize race to "skin color", disconnecting from the historical process of racial subordination, and avoiding a perspective that places race as a "race-conscious remediation, into a potential weapon against subordination" (Harris 1993, 1768). In this case, as Cheryl Harris formulates, "the official rules articulated in law deny that race matters" (1993, 1768). So, reduced to "skin color" as mentioned in Algendones' sentence, race is downplayed, "the assertion that race is color and color does not matter is, of course, essential to the norm of colorblindness" (Harris 1993, 1768).

The definition of the crime in Article 323 has also a direct link to how the sentence engages with the broad anti-discrimination clause. The law does not opt for a narrow focus but criminalizes "discrimination or incitement to discrimination" (*Discriminación e incitación a la discriminación*), based on "race, religion, nationality, age, sex, sexual orientation, gender identity, language, ethnic or cultural identity, opinion, socio-economic status, immigration status, disability, health condition, genetic factor, filiation, or any other reason". This legal choice was criticized by the Committee on the Elimination of Racial Discrimination (CERD), that expressly mentioned the concern "that the State party has not yet incorporated a specific definition and an explicit prohibition of racial discrimination in its legislation that includes all the elements contained in article 1 of the Convention (art. 1 (1) and art. 2 (1) (d))" (CERD, 2018, 2). The CERD concluded

that Peru was not complying with the ICERD by not adopting specific legislation on racial discrimination, not including its definition in legal texts.

Even though debates on race or racism are not abundant in Peru, legal scholarship always produces analysis on all types of crimes, in books of comments and legal reviews. As Felipe Villavicencio teaches, discrimination is a willful misconduct. The subjective element, according to the author, is special, that is, it is necessary to have the *will* to discriminate with the *intention* of nullifying or impairing the exercise of rights (Villavicencio Terreros 2014, 104). For this case, the judge quotes one of those books to highlight that discrimination can only be punished if proved the element of *intent*. The emphasis on intentionality, as we discussed before, is one of the reasons why racial discrimination is so little punished. That is why, even in the anti-discrimination doctrine, it is considered direct discrimination when the act resorts, for instance, to "racial stereotypes" (Rios 2008, 94).

In the case of Azucena, the racial content of the harassment was explicit, but, if it was not the case, the fact that she was removed from her office without apparent reason, was evidence of discriminatory behavior from her superior against her. Debates on similar situations developed in the United States are called the "burden-shifting approach", which consists of a method that transfers to the employer the need to prove that his/her act was done in similar situations to other employees (Rios 2008, 111). For sure those methods do not overcome the challenge of the intentionality proof but place into the legal debate the need to acknowledge that placing on the plaintiff the burden to proof the defendant's intentionality will not produce the result to curb illegal behavior.

Despite this critique to the sentence's legal reasoning, particularly for not representing jurisprudence advances on racial discrimination in Peru, its importance stands for granting the conviction, including the racial element of the discrimination. This result, though, is mostly due to Azucena's persistence in focusing on the issue of racism, not allowing it to vanish from the equation. For her, the racial component was central to the series of acts of discrimination, since all the humiliations she suffered used of racial categories for subjugation.

The appealed court

The overwhelming evidence in the case favored the first instance decision but did not prevent what happened at the Court of Appeal. The decision of the 2nd *Juzgado Penal Liquidador de Huancayo* that condemned the aggrieved was appealed to the Court of Appeals (*Sala Penal Liquidadora de la Corte Superior de Justicia de Junín*). On May 24, 2016, the Court of Appeals issued Resolution no. 37, revoking the conviction, acquitting both accused. According to Algendones' lawyer, this decision was "shameful"[80], as the evidence was overwhelming. Even the *Fiscalia*'s opinion was for the conviction verdict. The lawyer was incredulous by the result of the Court of Appeals, where they considered that the evidence was not enough. According to him:

> … so there is good police verification, there is a statement from the security guard, there is even a video that [shows] she is not allowed to enter neither as a citizen, nor as a user, nor as a worker and it is a public institution where no one can restrict the entrance to anyone and one of the vigilantes is the one that points out that the head of human resources is the one who gave the order, so to this it is added other acts that put the face of a monkey on the identity cards, that is, situations that have led to the generation of the act of discrimination. (AP-6)[xxxi]

The Resolution does not dissertate on theories or provide much argument to its verdict. The choice for proceduralism is a safe route to guarantee the system's neutrality. Critical Race Theory identifies one common practice to avoid dealing with racism altogether is resorting to procedural arguments, exposing how the "rule of law" can be mobilized in the regimes of denial of racism. Sentences can evade the racial question by focusing on technicalities. Neil Gotanda argues that "because the technique appears purely procedural, its normative, substantive impact is hidden" (2013, 35). In this manner, the author suggests that colorblind is a technique used to deflect "from the substantive to the methodological" (ibid), avoiding any consideration of race. By using the bureaucracies of denial, the justice system can sustain its "innocence" against arguments of racial bias. Focusing on procedural aspects, such as the lack of evidence, *La Corte Superior de Justicia de Junín* avoid entering the substantive debate.

[80] "porque en verdad era vergonzoso, para mí era vergonzoso. […] Vergonzoso no porque haya habido una mala defensa, sino vergonzoso porque lamentablemente pues existen jueces que no saben meritar los medios de prueba y el…" (AP -6)

Algendones's legal counsel was critical to this argumentation: "it was achieved in the end through a sentence that unfortunately was revoked by the superior court under a criterion, from my professional point of view, it did not merit the evidence with which the crime had been committed" (AP -6)[xxxii]. Algendones remembers this day with great sorrow. The way the Court of Appeals dismissed all the evidence without much argumentation was inconceivable. When confronted the judge, she listened: "'Mamita is fine, here we are not going to agree with you, but you have another instance'… that was the judge's only response, because there were just three judges, that's how it was (…) They hadn't assessed the figure of the monkey, as if it did not exist…" (AP –1).[xxxiii] To present a new appeal, now at the Supreme Court (*Corte Suprema*), was again a great personal effort, both financial and emotional.

Throughout the legal case, some small things, seen as insignificant, revealed that her saga for justice was not shared by many people in power positions. In this same day, the Appealed Court acquitted the defendants, one person from the State asked, "but what are you going to do with a sentence?". This was hurtful to Azucena, the question was a denial of her right to access justice and to claim her dignity:

> I came with tears in my eyes to say, I mean, because people... even a person from the State came and said 'what are you going to do with a sentence?' (...) I couldn't imagine someone telling me 'what do you want a sentence from the judiciary?' (...) I think she had to see that what I was fighting for was my dignity as a human being, not a sentence! (AP -01)[xxxiv].

The fact that people within the government could not "understand" why Algendones was fighting for justice was in itself an act of dehumanization, a reproduction of the fungibility, where justice does not conceive humanity for those in the zone of non-being (Pires 2019, 70). For Azucena, the matter was "that justice be given to me as the human being that I am, because I deserve respect, as do all human beings on earth" (AP -1).[xxxv]

If we recall Judith Butler ungrievable lives, some people are not to be grieved because "there is no present structure of support that will sustain that life, which implies that it is devalued, not worth supporting and protecting as a life by dominant schemes of value" (2012, 10). The case of Azucena is an example of how Black dignity cannot be processed by the Peruvian Judiciary, which reproduces racist legal and juridical presumptions that places Blackness outside the boundaries of legal subjectivity. The denial of racism is not literal in the legal case, but the legal discourse deviates to debate the substantial matter,

normalizing the denial of a Black person's dignity. The replacement of Algendones' image to that of a monkey and the testimony that she was called "*negra cocodrillo*" by colleagues, should not be open to interpretation. The direct discrimination is evident through the mobilization of racial stereotypes. Nonetheless, by arguing that there was no evidence, the Court of Appeal judges normalized Azucenas' dehumanization, as a practice that is not under judicial protection. The survival of Black fungibility is confirmed when there is no recognition of moral damage to a person who, placed outside humanity, does not have her personhoods rights protected: Algendones' image is unprotected (it can be animalized), and her name is unprotected (she can be unnamed).

At the end of 2018, Algendones' appeal for annulment of Resolution n. 37 is appreciated by the Supreme Court. In May 2019, a supreme executive order is issued, and the resolution was declared null and void, with the argument that it did not merit the means of proof. Before it was possible to celebrate the decision, which guaranteed that another collegiate would analyze the case at the Junín Court, an ex officio decision is issued for the **prescription** of the plaint. Consequently, the definitive archive of the lawsuit is ordered in October 2019. This outcome is perverse but consistent with the legal-political choices to formulate Article 323 as a crime *lesa patria* but with a short-term penalty. Placed as a severe crime in the penal code, the burden of proof is hardened, thus the court case can be bureaucratized and time-consuming. On the other hand, as the penalties are going to be short, the prescription is the most probable outcome. In this case, three years was the prescription time.

The case of Azucena Algendones had a "disastrous and inconceivable" outcome, those are the words of Cecilia Ramírez. Despite the personal cost, the fact of having brought to the last consequences the denunciation of the violence experienced in the workplace, and later in the justice system, it allowed breaking with a silence that perpetuated in Peru. The narration of her struggle for justice exposes the institutional fabric that reproduced the precarity of Black subjectivity as unprotected by the legal system. Regardless of the outcome, Algendones' fight for her justice changed not only her but also impacted the Peruvian legal system, breaking the invisibility of anti-Black racism.

When I was in Peru in 2018, it was the first time the IX International Congress on Intercultural Justice included Afro-Peruvians, and Azucena participated presenting her

case to an audience of judges and members of the justice system. According to the secretariat who organized the event, the resistance was huge to include Afro-Peruvians in a space dedicated to the Indigenous issues, "the intercultural subjects"[81]. Despite this discomfort with racism within the Congress, the Declaration of Lima, signed after the event, recognized that Afro-Peruvian population suffered from discrimination in access to justice.[82] Even being the first time that Afro-Peruvians were included in the intercultural justice debates, their demands to the judicial field was not what was expected to be brought to an "intercultural dialogue". The rounds of debates with Afro-communities mapped their complaint, being mostly about access to justice and racism within the justice system.

> When we have been in these conversations with the Afro-Peruvian populations, that was the word that was used, racism. The judges, the secretaries, the police are racist against us, they always treat us, they said, in a bad way, eh... *negrito, negrita*, then it is diminishing the person when interacting, it is not given an equal treatment, then they have made that very clear in the conversations that took place, right? (AP-22). [xxxvi]

A particular challenge in the Peruvian case is the choice for the intercultural approach when looking at the "different" peoples, which I explore further in Chapters 4 and 6. As a result, even when institutional racism is placed as a central problem for the justice system during the communities' hearings, the challenge for Afro-Peruvians' claims is interpreted from a perspective of *difference* or *special justice*. According to a research participant, the judges are not open to treat people differently: "The judges themselves are not so open because it costs them too much to have a differentiated treatment, that is basically I think the big problem when thinking about implementing things favorable to groups with differentiated rights..." (AP -22)[xxxvii]. Ironically, what the judges are used is

[81] According to the research participant, "to incorporate Afro-Peruvians into an issue of justice considering some cultural variables, racism and these things that have a very great burden (...) one of the questions asked by the judges who participated in the congress in Lima is and why are we talking about Afro-Peruvians, if for us interculturality is only community members, indigenous people, that is, work is being distorted, why have they done that?" (AP-22). *"Incorporar a los afroperuanos a un tema de justicia considerando algunas variables culturales, racismo y estas cosas que tienen una carga muy grande (...) una de las preguntas que se hacían los jueces que participaron en el congreso en Lima es y por qué estamos hablando de los afroperuanos si para nosotros la interculturalidad solamente es comuneros, indígenas, o sea, se está desvirtuando el trabajo, ¿por qué han hecho eso?"*

[82] The Declaration stated: «existe un problema de discriminación en el acceso a la justicia de la población afroperuana y la elaboración de un diagnóstico integral es necesaria determinar la dimensión estructural del problema». Available online at https://www.pj.gob.pe/wps/wcm/connect/c3dfb90047a632bbbdb5bf1612471008/Declaraci%C3%B3n+de+Lima+2018.pdf?MOD=AJPERES&CACHEID=c3dfb90047a632bbbdb5bf1612471008, accessed on 08/08/2022.

to provide “a different” treatment, and not the other way around. In the next section, I introduce some of the shared challenges lawyers and victims of racism face in Brazil to make justice while navigating layers of institutional racism, uncovering patterns that cross borders.

2.3 The ways of institutional racism in claims for Black dignity

Relating Brazil and Peru in this dialogue on the challenges to claim Black dignity in an anti-Black justice system can reveal patterns of racism and its functioning that cross borders. In this section, I bring dialogues I had in Brazil with lawyers working in human rights or antiracist organizations with victims of racism or racial discrimination. While in Peru strategic litigation is not a strength of Afro-Peruvians organizations, in Brazil, few important Black organizations have focused on producing judicial precedents, denouncing racism, and disputing this field as a politically important one. Those organizations have assessed that the justice system should be confronted by denounces of racism, and the outcome of those disputes has impacted rights’ recognitions and changed jurisprudence. I interviewed members CEERT, Geledés, Iara Institute, Criola, and Black lawyers that often collaborate with strategic litigation or racial discrimination charges.

There is no hope that the current justice system will provide justice for Black people, but there is a recognition that this institution should not be left untouched. In a context where denouncing racism or racial discrimination is still particularly challenging, the interviews illustrate how institutional racism affects the entire process, with so many layers and instances that are mostly masked. My goal is to rely on *storytelling*, sharing the activists’ experience, to unveil fractions of the functioning of institutional racism within the justice system that echoes the experience of Algendones in Peru. Those stories do not account for all that can still be unveiled, but they provide a picture of the challenges to make racism accountable in an anti-Black society.

In the case of Brazil, racial discrimination has been minimally sanctioned, and the limitations posed by several studies (cf. Lima et 2016; Silva Júnior 2002; R. L. S. Júnior 2006; Hernández 2019; Pires 2013). The Constitution of 1988 innovates on how it regulates racism. As Hedio Silvia (2002) elaborates, the Brazilian Federal Constitution

distinguishes the practice of racism (art. 5, item XLII), from other forms of discrimination (art. 5, XLI), proscribing racism as a crime of severe nature, subject to imprisonment, both unbailable and imprescriptible. Nevertheless, the text of the 1988 Constitution does not describe what racism is, living it open to interpretation of the courts[83].

The Law no. 7,716 of 1989 (Lei Caó) came, in theory, to regulate the constitutional crime of racism, but a veto in article 2 – which stated that all listed crimes would be imprescriptible and no-liable - ended up isolating the crime provided for in the Constitution from those of the Law 7,716. Previously, the Afonso Arinos Law (Law 1,390 of 1951) proscribed the acts of discrimination as minor offenses. The legislation from 1989 inserts in the penal sphere a series of acts described from the circumstances in which the discrimination is performed, including work, public services, consumption, leisure, but also of dissemination and diffusion of racist ideologies, including Nazism.

Even if the Law no. 7,716 inserted the practice of racial discrimination among the list of crimes, it is a misdemeanor, since the penalties provided for vary from 1 to 3 years, or from 2 to 5 years and, therefore, the defendant of a crime can benefit from the conditional suspension of the process (procedural sursis) [84] or the suspension of the sentence provided for Article 77 of the Criminal Procedure Code. The Brazilian penal code also provides for an aggravated form of slander when the practice targets "race, color, ethnicity, religion, origin or the condition of an elderly person or person with a disability" (Article 140, §3)[85] and prescribes imprisonment from one to three years and a fine. In a recent decision, the Superior Court of Appeal (STJ AgRg no AREsp 686.965/DF) equated racial

[83] The case Ellwanger (HC 82.424-2 RS, 2003) is landmark case on the interpretations of the constitutional crime of racism set the precedent on the legal understanding of race and racism. On a case of antisemitism, the court debated the meaning of race for the Brazilian reality, concluding that race is socially construct: "the existence of different races stems from a mere historical, political and social conception, and this that must be considered in the application of the law" (Correa, HC 82424/RS, full content, 568). Justice Correa concluded that antisemitism is a form of racism because in the Nazi doctrine Jews were constructed as races in a hierarchical position (ibid., 569).

[84] Provided in art. 89 of Law 9,099 / 95, the procedural suspension is a decriminalizing measure applicable, under certain conditions, in crimes of less offensive potential.

[85] Here constitutional semantics, as Hédio Silvia (2002) explains, applies 'race', 'color' and 'ethnicity', which despite not being a normative technique, corresponds to the language that in Brazil has historically been used to differentiate different racialized groups.

slander to the constitutional crime of racism making it imprescriptible and prohibiting bail[86].

Some scholars argue that recognizing racism as a crime was not a good methodological choice because what is criminalized is racial discrimination. By doing so, racism is conceptually reduced from its broader dimension, which cannot be sorted out by the criminal justice.

> I think we still have a concept that is not fully understood as a system of oppression that ranks people according to ethnic-racial belonging, that is, it is not always understood as a system of oppression. And, in fact, our law that typifies racism as a crime, even contributes negatively, because it talks about the crime of racism when in fact it is racial discrimination that is being talked about there, and all this is confused a lot, so there is a conceptual difficulty and there is also a general lack of knowledge of the entire regulatory framework, especially international regulations. (AB -3)[xxxviii]

Thus, one of the outcomes of placing racism within the legal field as a wrongdoing, so subject to the criminal law, is that it makes explicit its limitations to combat its systematic and enduring impact on Black people. As a crime, racism is reduced to a concrete action by one individual, to be controlled by the Penal State. This legal-political choice creates the expectation that racism is a severe and condemned practice, but this perception can distance the analysis from the necessary understanding of a complex and intricated system of oppression historically rooted.

Arguing that the concepts of racism and racial discrimination are distant from each other, one research participant concluded that even if all discriminatory practices were prohibited effectively, racism would still produce effects in Brazil - I would say that in Peru as well – because racism is not only discrimination but also a much deeper mechanism of interdiction to spaces of power. Therefore, differentiating racism from racial discrimination in legal theory is critical.

> Racism in Brazil does not have as its main manifestation cases of racial discrimination, I think that is the correct phrase, racism in Brazil has as its main expression successive and reiterated symbolic, political and economic mechanisms that deprive the humanity of black people, that is racism in Brazil. (...) Here in Brazil [discrimination] is not the main one, it is not. So, an anti-discrimination law is conceptually operating as a secondary variable, or rather, as a secondary symptom of a distinct social phenomenon... (AB – 9)[xxxix]

[86] One of Lula's new government first legislation act was to insert changes on the Law Caó to include amongst the crimes listed racial slander, but also practices of humor and in sport events, sanctioning the law 14.532 on 01/11/2023.

It is not by chance that in Brazil the social movements adopted a grammar of “racial equality” translated into State policy, discussed in Chapter 4 and 6. In Peru, on the other hand, racism and racial discrimination are mostly seen as equivalent for those I questioned, but in the official documents, racism is still reduced to an ideological belief that biological races exist[87]. As one research participant attested “here in Peru, there is no clear difference between what is racism and what is racial discrimination. (...) Because racism is all those opportunities in which we are left out because the system never set the conditions for us” (AP-27)[xl]. The apparent conceptual “confusing” in this case is that racism is not a legal concept, thus it is translated to the legal field as racial discrimination. As to say, antidiscrimination law is the legal translation of the fight against racism.

Nonetheless, looking at institutional racism is how we can access the challenges to denounce “racial discrimination” in both Brazil and Peru. From the moment a victim of racist discrimination wants to press charges the struggles begin. This research participant describes how the problem starts at the police stations. According to him, the intermediation of the police in a criminal charge of racial discrimination is crucial to its failure or success, because writing the police report is a vital part of the process. First, most people do not know what should be written in the police report, or that calling the police is not enough to start the investigation. Then, if this process starts without proper counseling, there is a great chance of failure. Besides, very few lawyers are trained in antiracist laws and regulations.

> Proving the crime of racism is always very painful and the victim suffers a lot, they already start to suffer at the police station, because if she/he does not have the assistance of a specialized lawyer on the subject, she/he will stay there and the police station will see it as a misdemeanor, the victim will have a Homeric waiting and, in the end, they will file a report without any important subsidy for her/him to take action. (AB -17)[xli]

The research participant exposed that the victims are going to suffer racism in the police station, which was also the experience in Peru, acknowledged in the governmental Platform Against Racism. According to the lawyer, dehumanization is evident when the situation is downplayed and the police report poorly written. In addition, victims are

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[87] In the new national policy for Afro-Peruvians (Política National del Pueblo Afrioperuano al 2030) approaved in 2022 (Decreto Supremo N° 005-2022-MC), racism is conceptualized as “Ideología basada en que los seres humanos podemos ser categorizados en razas. Esta categorización se fundamenta únicamente en características físicas y/o biológicas de los seres, y postula que dentro de ella existen algunas razas que son superiores a otras (Ministerio de Cultura, s.f.).” (Ministério de Cultura Perú 2021, 13)

going to be persuaded not to file the case as racism, but something else, less severe, such as slander, which was also the experience of Algendones:

> And I'm here specifically saying police districts, they treat the population like garbage, as if they don't have a functional obligation to listen to the citizen and record what the person is saying there, no, they write the police report their way, persuading the victim by saying "look, this isn't racism, if you want, I'll do it here as defamation, or slander, but this isn't racism"... and writes the report as they want. (...) this results in a poorly done proof, a badly done instruction, the prosecutor will not have subsidies, and they already have little sensitivity to deal with the subject, if something comes up that is a little lame for him/her, he/she will denounce it poorly, and this when they file the complaint at all. (AB -17)[xlii]

In Brazil, the various forms of racial discrimination described in law 7.716/89 are public offenses, which means the District Attorney's office can present the charges. If the investigation done by the police can be already flawless, as narrated by the research participant, the intermediation of the Public Attorney's office is another difficult filter. First, the attorney can decide if there is lack of evidence or motif for crime in the described situation, as mentioned by another antiracist lawyer: "it depends on the prosecutor to understand that there is just cause, that there is no lack of evidence, as this is usually the case, and to propose the archive which, unfortunately, also happens a lot, right..." (AB - 3)[xliii]. In addition, most of the professionals reflect the lack of legal knowledge on race or racism, being unfamiliar with the international regulation or even the national one. Being most persecutors white in Brazil, for this research participant, this racial privilege impacts directly on how they neglect racial discrimination as a major offense or disregard most situations as not likely to be framed as racism:

> The public entity that is there to file the complaint, which is the Public Attorney's Office, without any knowledge on the subject, because usually the prosecutors are not black either, he/she says, 'this is not racism, calling a black a monkey is not racism, it's an insult'. Did he/she ask the black man how did he feel? Did he/she question for the victim? And he/she doesn't have this dialogue, he/she offers the complaint without talking to the victim, he/she simply uses what the police station sent him/her and which is usually crap. (AB -17)[xliv]

The perversity of institutional racism in the Brazilian case can be illustrated by how fast advances in rights recognition or favorable jurisprudence are obstructed, as pointed by one research participant. One example is the choice of interpreting a situation of racial discrimination as racism, racial slander, or just slander. In the Brazilian penal code, racial slander is a singular crime, which the Superior Appealed Court recently understood as equal to the constitutional crime of racism, so imprescriptible. The lawyers interviewed

testified how this precedent, celebrated by the antiracist advocates, had a perverse outcome, now more cases are filed as slander, and as not racial slander in the police stations. As the case of Azucena showed, the long durations of those court cases lead to one common outcome: prescription. Thus, the dispute here is to avoid persecution for racial discrimination charges because they are imprescriptible in Brazil.

> For example, the Caó law, itself now considers racial slander itself as imprescriptible, non-bailable, because racism is so perfect that it creates mechanisms of obstruction of anti-racist public policies very quickly, for example, we had racism as a crime unbailable, imprescriptible, much tougher than racial slander, but then any case would happen and you get at the police station and no one was framed for racism, everyone was framed for racial slander. So now people are not framed for racial slander, people are only framed for slander, right? (AB-2)[xlv]

If we consider all the constraints to access justice in both Brazil and Peru, the possibilities to properly process a charge are reduced. Once again, access to justice depends on having the means to access proper counseling, which is not only a matter of having the financial resources because specialized professionals are also lacking. The interviews with Black lawyers working with racial discrimination also unveiled their own experience with everyday racism within the justice system. Black professionals must constantly prove to "belong" to this "white institution". As racism is normalized in both contexts, white judges few comfortable expressing their opinion, even when it is frontal against the law and an anticipation of his/her judgment:

> I remember some hearings in which I, as a lawyer, for example, had to call prerogative because the judge, in one of them, turned to me and said (…) "Doctor, I understand that in Brazil there is no racism". Before the hearing begins! Then he turned... looking at me, he said "we even have black lawyers", talking to me. I said "Your Honour, so you're declaring yourself suspect, you're going to declare yourself... you're already sentencing, right" , "no, that's not what I said", "no, that's exactly what you said, and also the fact that you say 'look, we even have black lawyers' you also want to reduce me... trying to put me in an inferior position to yours and here we are on an equal footing, the difference was that you took a public job and I didn't"... "no, it wasn't that", "it was yes, and I'm leaving the courtroom and I'm calling the prerogative of the OAB [Bar's Association]... (AB -17)[xlvi]

When the judge feels comfortable enough to say to a lawyer during a racial discrimination charge that "there is no racism", it is because he/she has an authorized discourse, and what he/she says does not have repercussions, it is naturalized. This is not only a result of his/her personal convictions or prejudices, but also learned at Law Schools, reproduced by white institutions, and legitimized by all the processes that allowed him/ her to sit in this power position as the representative of Justice. Racism is a crime, there are important

precedents at the Brazilian Constitutional Court that recognizes it as a structural phenomenon, but this judge can ignore it all unsanctioned. This behavior "against the law" has no consequence, the judge knows the narcissistic pact works for his/her protection.

According to one research participant, the hegemony of whiteness in academic knowledge production set the basis for the discontinuity of memory production on racism, particularly evident in Law schools. In his argument, this happens through two different processes: first, universities as institutions of memory production generate a monopoly through whiteness, which reproduces their history or their version of history, such as the "continued reconstruction of the idea of racial democracy within the legal space"[xlvii] (AB – 8). Secondly, there is a "non-institutionalization of critical knowledge about race and racism"[xlviii]. In this case, when Black academics have produced knowledge in the academic space, this production is non-institutional, meaning that it does not enter the legal field or the theoretical discussions, by generating mandatory disciples or chairs, for instance. The research participant also argues that, in the case of Brazil, the reduced number of Black professors or even theories on racism in Law are a result of the white narcissistic pact (Bento 2002), and then, it should be not seen as random, but a very well-adjusted academic routinization.

> The first thing that marks a debate on racism in Brazil is the eternal oblivion. (...) All the memory of segregation in Brazil that was built in the 50s, which was present there in the 50s, at the same time it was there in the United States, we had forms of spatial, racialized segregation, we had prohibition and open forms of racialization in the job market that were not just good looks, it was really race, they were there in the newspaper from the 50s, all this daily life is buried as if it didn't exist, we always go back to zero to discuss whether or not there was racism in Brazil, we had to be always discussing this thing. And I always ask myself 'what's that, huh? what is so different in Brazil and the United States?' and my answer is 'they are the institutions of memory production. (AB -8)[xlix]

Universities as the institutions of knowledge production reproduce whiteness, and whiteness is constructed as referential for what is universal, from morality, justice, and finally, humanity. Thus, legal theory and practice reproduce racism by reproducing the *status quo*. Studies have been debating the socio-political context when the Law schools were created in Brazil, as debated during the Constituent Assembly of 1823, and their direct relation with Portuguese universities (Neder 2000). Thula Pires explains that the target group of the "legal baccalaureate was formed by the dominant classes and rural

oligarchies, guaranteeing their privileged places in the bureaucratic structure" (2019, 72). For that, was necessary to exclude the non-white population from the process of legal production and the management of state justice, as the system was in place to protect the interests of the white landowners and enslavers. We can see that those political decisions and State funded public policies still produced effects, when 85,2% of the judges in Brazil are white[88].

In Peru, the work of Bazán Seminario presents a similar portrait of Law Schools in guaranteeing the colonial power and then, later, restricting the access to power to a small white elite (2019, 283). In the mid-XIX century, debates about the possibility of dismissing legal representation in court evidenced "the lawyers as a white, masculine and urban elite, which resists the proposal to eliminate the captive defense, through racist attacks against the parliamentarian who authored the bill, calling him a mulatto" (2019, 233 author's translation). Still according to Bazan, the opening of education markets in the 1990s changed the racial profile of Law Schools, with greater access to various sectors of the population. Nonetheless, this opening did not signify any changes in the liberal hegemony of Law Schools and their Eurocentric curricula, which is "impregnated with eurocentrism, racism, classism and sexism" (ibid., 239). His analysis on curricula leads to the conclusion that in Peru there is a tendency to form lawyers to the market while "law schools reinforce it by not addressing the issue [of racism] or denying it" (ibid., 204).

Another example brought by a research participant evidences a separate way of how the narcissistic pact of whiteness functions within the courtroom. This excerpt exemplifies the size of the challenges to fight institutional racism in the Brazilian case, where racial segregation in the institutions of the justice system is still remarkably high.

> there is a very present institutional racism, which needs to be discussed, in addition to institutional racism, also whiteness, because when I do hearings, I often notice that the official hearing starts after the hearing... that is, the hearing that will be valid starts after the official hearing. The last one I had, for example, the white judge and a white lawyer also from a plaintiff, a defendant in the case, in a case of racism, and this lawyer and judge super identifying themselves, from the point of view of trajectory, even attending the same club in I don't know which city and the hearing had already ended, but all this chat came up and I said "gosh, do we have a chance in this process of a conviction for racism?" That is, as long as we don't have more blacks in these spaces, but also the discussion already today of institutional racism and whiteness, how

[88] In Brazil, the official enquiry on the composition of the judiciary have evidenced that the judges are mainly white (85,2%), what is even higher in superior courts (91,1%) (CNJ 2018).

> the law can propose to do more of this, including from the point of view of doctrine, to have more production. (AB -3)[l]

The narcissist pact is also about being empathic with the situation one feels related to, and in the case of whites, they can solidarize with those charged by racism, because they can see themselves in a similar position, they have a high probability of sharing similar trajectories and world views, like the case mentioned. Recalling theoretical formulations relating to whiteness and rulership, Goldberg defines whiteness specific in those terms when he argues that it “is the manufactured outcome of cultural and legal definition, and political and economic identification with rulership and privilege” (Goldberg 2002b, 112). Regarding the justice system, Cheryl Harris (1993) argues that whiteness was constructed as a right through the expectation that whites’ interests should be protected by the legal regime. Lourenço Cardoso, in dialogue with Maria Aparecida Bento to reflect on the Brazilian reality, reasons that “there are people who, because of their class and race, want special treatment” (2020, 86). However, those same white classes that expect to be treated differently are the ones that “scream for equal treatment when certain groups demand specific public policies” (ibid). Cardoso and Bento conclude that “the white middle and upper class will use the discourse: ‘equal rights for all’, whenever they deem it appropriate to maintain their racial advantage” (2020, 86).

In the justice system, the fact that most of the judges are white in Brazil impacts how justice is perceived also through a process of self-identification or mirroring, in Cardoso’s argument. In the analysis of a particular mediatized case where a judge said the defendant did not look like a criminal because he was white, Cardoso discusses how the judge not only racially conceived criminals but also how “she felt anguish that a white man was capable of committing a crime” (2020, 89 author’s translation), as to say, she solidarized with the defendant. And Cardoso concludes, “at that moment, it doesn’t matter whether the ontology is social or metaphysical. The distress when a white person practices something that would be common to black people was revealed in this legal source” (2020, 89).

In the case of Peru, even though whites are in privileged positions, they are still a minority, and mestizos occupy key positions in the justice system. I could not find any research done in Peru looking at race and the composition of the judiciary, but such an inquiry could reveal interesting facts about how *mestizos* position themselves within the

narcissistic pact. The case of Paisana Jacinta provides us with some clues. According to one of the legal counsels collaborating with the Indigenous plaintiffs, the fact that the case was sentenced in Cuzco had a direct impact on the outcome. For him, if the case were to be analyzed in Lima, the result would be different. This observation links to the racial composition of the courts in Cuzco, for the research participant, the judges could identify with the demand:

> You read the votes of the court of appeal, you will realize that they themselves recognize the structural problem of racism, and that is why they take a step further. Because they themselves end up understanding the problem, it even seems to me that **they end up identifying with the plaintiffs**. That is why it is a very interesting case. Because they are judges of the Court of Appeal from a region like Cuzco, with all the cultural symbology of being the city that was the political center of the Inca Empire, the Tawantinsuyu. I think that there was a **certain level of empathy**, I think that the judges, if it was a court in Lima, would not have appropriated so much of the arguments of cultural identity, for example, which were also raised in the lawsuit because they were population indigenous, as they did in Cuzco, no. (AP-30, highlights from the author) [li]

Ardito Vega discusses that in Peru mestizos occupy a precarious position, for mestizos "prejudices vary depending on whether they can show whiter features or not" (2010, 46 author's translation). If the mestizo can be placed closer to whiteness, they can benefit in accessing some privileges, but still "mestizos, indigenous people, and Afro-descendants are perceived as inferior beings than whites or Peruvians of European descent" (Vega 2010, 45). Discussing racism and the justice system in Peru, Vega argues that "the attitude of the officials of these institutions towards citizens depends a lot on their social location, traits, surname or clothing" (ibid., 50). For him, "even in very serious cases, such as homicide or rape, the state response will be very weak if the victim belongs to the discriminated sectors" (ibid., 51). Ardito concludes that discriminatory practices are interiorized in those institutions that were supposed to fight against racial discrimination, such as the police, the District Attorney's office, and the Judicial System.

2.4. In Conclusion

Racism is naturalized within the routines of our institutions by a direct impact of anti-Black racism, but also the whites' pact that normalizes whites' expectations to be granted privileges. Anti-Black racism produces legal presumptions that inform the judge's conviction and the evidence assessment system. Besides, the recognition of racism as a phenomenon limited and restricted to racial discrimination - individualizing relationships

of racist violence and equating them with other forms of violence - limits the capacity of antiracism promoted by the State (legislation and instances of combat to discrimination) to challenge existing institutional/structural racism and thus does not promote changes or ruptures in (racial) power relations. These findings are not new, this is an old prediction of critical criminology that the system made to control and kill the Black body is not going to process its "suffering" (Flauzina 2006).

Going through the layers of institutional racism unveils deeper challenges to fight racism then only changing regulation or provide "capacity building" to public employees. The way the different professionals within the justice system deny racism - from the police station to the public attorney and the judiciary - have multiple causes. First, we see how raceless ideologies are reified in various moments and how the use of this vocabulary of denial is reproduced without constraints. For this, the *ideological control of the institutions* works also to naturalize denialist behaviors, and to keep the debates of race "out" of legal knowledge as much as possible by excluding scholarships and legal debates - such as international human rights law or antiracist laws -, from the curriculum of Law Schools. Then, it is possible to observe how the *performance of race* functions in the routines of Justice, being through the narcissist pact or placing Black lawyers constantly in uncomfortable positions.

Finally, the search for justice in claims for Black dignity are limited by how the legacy of racial enslavement reproduces Black inhumanity through fungibility and racialized morality. I started from the premise that racism mobilizes a set of legal presumptions historically constructed from racial enslavement that limits the scope of the category of the human and, therefore, of those who may be possessors of "human dignity". The case of Azucena Algendones gives us detailed accounts on how legal subjectivity is not recognized in the zones of non-being – conceived as fungible and in processes of dehumanization – so rights related to Black peoples' personhood are unprotected. The mobilization of racial stereotypes of Black criminality shows how racialized morality functions to relativize the principle of innocence, when she is fired on the false accusation of theft. Fungibility works to establish the limits of legal subjectivity (which dignity is inherent), removing from Black people rights related to *personhood*, such as honor, the control of their body, their image, and their name. Without subjectivity one has no right to a name, so can be called just "black" or "*negrita*"; there is no protected image (replaced

by a monkey) or physical integrity (work conditions deteriorated). Despite the overwhelming evidence of how she was humiliated, those facts remained largely normalized, with very few exceptions throughout the process.

Only by unmaking this legacy of racial enslavement in the justice system, the works of race can be fully understood in Latin American contexts, and how racism is reproduced by the normal functions of the various institutions of the justice system. As mentioned before, this case study gives us elements for an insightful analysis, a story that cannot be denied. However, as the *denial of racism* is hegemonic within the justice system, more investigation is needed, particularly in the Peruvian context, to better provide an account to the different layers of institutional racism.

Chapter 3. Black genocide and institutional racism on trial in Brazil: Black lives matter?

This chapter explores a legal case that became paradigmatic in Brazil for bringing the ongoing Black genocide and institutional racism to the judicial debate while questioning the violent outcomes of police operations in majority-Black neighborhoods in Rio de Janeiro. The constitutional class action ADPF 635 *PSB vs Rio de Janeiro State*, the so-called *ADPF das Favelas* (Slums ADPF) was developed collectively by various organizations of the Black movement, community-based and human rights organizations, and the Public Defenders' Office of Rio de Janeiro (DPERJ). It brings to the judicial front a long-lasting condition denounced by the Black movement as the Black genocide (Nascimento 1978).

To contextualize the development of the Brazilian jurisprudence on race and racism, I bring in the first section a brief discussion of the key precedents of the Constitutional Court that are relevant to the reading of the *ADPF das Favelas*. The case Ellwanger sets the precedent on the understanding of race to interpret the Constitutional command that criminalizes racism, in a case of antisemitism. Then, two class actions on the constitutionality of affirmative action policies for Black people are revealing to the judicial mobilization of mestizaje ideologies and multicultural vocabulary. Those legal cases can illustrate how the discussion go from a biological understanding of race to debating structural and institutional racism, without breaking with Brazilian exceptionalism of racial democracy.

This chapter is divided into four sections. First, I systematize the main controversies regarding the understanding of race and racism, by looking at the arguments presented in the case Ellwanger, and then, I discuss the central arguments of the case DEM vs UNB[89], which was the first court case that debated the constitutionality of affirmative action policies in public universities. Then, I contextualize the ADPF das Favelas, describing some antecedents before the proposition of constitutional class action. I also look at the

[89] ADPF 186-2 DF, published on DJe-205 on 20-10-2014.

complaint, reflecting on the different choices the Brazilian Socialist Party (PSB)[90] made to bring this case forward, showing the difference in the language choice with the *amicus curie* petitions of anti-racist, Black, and *Favelados* organizations. On the third section, I examine the Justices' opinions issued in the first decision on the precautionary measures. Finally, I concluded how legal reasoning perpetuates the regime of denial of racism despite the recognition of Black over victimization.

3.1 Judicial readings of race and racism in Brazil

As discussed previously, in Latin America racial affiliations were mostly absent as legal categories to provide for rights during the establishment of the Republican regimes. What Republic constitutions recognized was the anti-discrimination clause and criminalized racism, or discrimination based on race. The change in this pattern comes very recently when Brazil issued a series of legislations providing rights based on race, with the laws of affirmative action policies. This use of racial categories was widely contested and brought to juridical scrutiny in various court cases with the argument that assigning rights based on race was against the constitutional command of non-discrimination and against the country's multiracial reality.

In the Brazilian case, the Constitutional Court (*Supremo Tribunal Federal*) was confronted by a series of class actions, which set the precedent for the constitutional uses of racial categories, such as "Black", being two the most relevant cases: *DEM vs UNB* ADPF 186-2 DF and *CFOAB vs Presidency and National Congress* ADC 41-DF. Previously, one landmark case on the interpretations of the constitutional crime of racism set the precedent on the legal understanding of race and racism, which is the case Ellwanger (HC 82.424-2 RS). My purpose here is not to produce an in-depth analysis of those court cases, but rather to highlight the arguments that constitute the jurisprudence on race and racism in Brazil. First, I present the debates of the case Ellwanger, then I highlight the main arguments on both cases on affirmative action policies.

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[90] Only a few institutions can file constitutional cases directly to the Constitutional Court (STF), being one of them the political parties. That is the reason why most of the landmark cases on racism or antiracism were filed by political parties, such as the DEM vs UNB (the case that debates the constitutionality of affirmative actions).

The case Ellwanger started in 1991 when the publisher and writer Siegfried Ellwanger is charged with the crime of racism for having "edited and distributed systematically and repeatedly books with anti-Semitic content, thus urging readers to discriminate against 'people of Jewish origin'." (Pinheiro 2013, 18 author's translation). Ellwanger was acquitted in 1995 by the Porto Alegre Court based on freedom of expression and the historiographical character of the books written and edited by him. The District Attorney's Office that presented the complaint did not file an appeal, only the assistants to the prosecution. In 1996, at the Rio Grande do Sul Court of Justice, Ellwanger was convicted for practicing, inducing and inciting racism (Pinheiro 2013, 19). This time the defendant appealed to the Superior Court which confirmed the conviction. Then, a new appeal was filed, this time at the Constitutional Court, with quite interesting arguments.

The defendant's lawyers wanted to demote the charges from the constitutional crime of racism because it is imprescriptible. Considering that Ellwanger was sentenced to 2 years, the duration of the court case was already longer than that, so the crime would have been prescribed if not considered as racism, but only discrimination. Their main argument was that prejudice against the Jewish people was not racism, because Jews were not a race. According to them, "in the aftermath of World War II, the equating of Jews with a race met with strong repudiation in anthropology and in the Jewish community itself" (Pinheiro 2013, 20). Besides, the constitutional crime of racism in Brazil, looking at the historical debates of the Constitutional Assembly, was related to the discrimination suffered by the Black people in the country, not the Jews. These two arguments of the defendants raised important debates in the Constitutional Court: i. what race means and, ii. if race is socially constructed, in the case of Brazil, Black people would be the ones perceived as having a race.

The first Justice opinion, and rapporteur of the case, Justice Moreira Alves, followed the defendants' arguments to argue that the crime of racism in the Brazilian Constitution was intended to fight the racial differentiations existing in the country, and they were those between Blacks and whites. Quoting many constitutionalists to support his argument, Justice Alves argued that most of them interpreted the constitutional command as placing the "black race" as the one in real disadvantage in Brazil. Finally, his opinion stated that "since the Jews are not a race, the crime of discrimination for which the patient was

convicted cannot be classified as a crime of racism and, therefore, the punitive claim of the State is imprescriptible" (M. Alves, HC 82424/RS, full content, 544).

Justice Mauricio Correa opened the dissent in a long piece to argue that even if races do not exist from the scientific perspective, racism persists as a social phenomenon. According to him, "the existence of different races stems from a mere historical, political and social conception, and this that must be considered in the application of the law" (Correa, HC 82424/RS, full content, 568). Justice Correa concluded that antisemitism is a form of racism because in the Nazi doctrine Jews were constructed as races in a hierarchical position (ibid., 569). This opinion was followed by the majority, even though each Justice provided different arguments. Justice Gilmar Mendes argued that the concept of racism could not be derived from that of race because this is a "pseudo-scientific concept notoriously outdated" (Gilmar Mendes, HC 82424, full content, 648). Justice Carlos Veloso followed this thought, adding that "racism is not in the concept of race, even because there is only one race, the human species". (Veloso, HC 82424, full content, 683)

In this argument, the concept of racism is dissociated from that of race, since this one was superseded when it was proven by science that races do not exist. Being a decision from 2003, the outcomes of the human genome project were still resonating in the arguments that race does not exist, and the final scientific proof was then available. The fact that some Justices dissertated on the human genome and even quote biologists and researchers of natural science to deny the existence of race reveals its prevailing biological understanding. The argument places race as biological in its conception, then disproven, but the meaning of racism connected to the historical contexts, where differentiations understood as racial, created a series of harmful situations, including antisemitism. This argument places race in the past or belonging to scientific racism or extremist ideologies, which can deny its production in the present. This vague and loose definition of race that disregards racial subjugation led to problematic interpretations, such as the one of Justice Nelson Jobin, which was not properly rejected by the other members of the court.

Justice Jobin acknowledged the historicity of Black subjugation, only to argue that processes of "integration were in place" since abolition. Justice Jobin opinioned that despite the Black struggle behind the formulation of the Constitutional command, "this

does not mean that the constitutional norm, in a multiracial society, has left open its protection against discrimination against descendants of other peoples, such as the Germans, Jews, Italians, who have a marked presence in the history of Brazil's development" (ibid., 741). With this line of thought, race is about any social and cultural differentiation, so any possibly identified social group could be read as a "race" to claim the constitutional protection, even white Europeans. Race as a social product, based on cultural differentiation, was an interpretation that eliminated the historicity of racialization as racial subjugation in relation to white supremacy. This interpretation of race confirms Cardoso's (2014) thesis that, in dominant narrative about the Brazilian "nation"/society, there is an oblivion of the enslaver, but also of the White beneficiary of racism.

Regarding the differentiation of race and color in the Constitutional text, the rapporteur Moreira Alves argued that if the Constitution did not provide a concept of racism, the interpretation needed to be the most restricted one, as to say, the idea of race restricted to those "commonly understood" as "white, black, yellow and red" (M. Alves, HC 82424/RS, full content, 599). For him, race and color are different notions because the later could also refer to groups formed by miscegenation, such as "*pardos, mulatos, cafuzos, mamelucos*, which are not races whatever the meaning given to race" (ibid., 600). In this argument, which is not easy to follow, miscegenation is not as part of a racial project because "*mestiços*" are not races, even if the Justice resorts to the colonial racist vocabulary to name different mix-race categories.

In the end, the final decision understood that freedom of expression was not absolute, and in the context of a pluralist society, values such as equality and human dignity should be protected. Thus, acts of racial discrimination were not protected by the constitution. Three minority opinions (Moreira Alves, Ayres Britto and Marco Aurélio) have different arguments to acquit the defendant, but all of them argued that in the Brazilian context the crime of racism was intended to combat anti-Black racism. The first Justice did not consider the Jewish people as a race, so antisemitism was not racism. The second one, Justice Ayres Brito argued that "to exclude blackness from the range of applicability of the constitutional command prohibiting racism is to think of a reality that is not the Brazilian one" (Ayres Brito, HC 82424/RS, full content, 818). Quoting Gilberto Freyre, Castro Alves and Darcy Ribeiro, Justice Ayres Brito highlighted that reading their work

"drips the blood, sweat and tears of a people who, only for the jet of their skin, were treated as a thing" (ibid. 818). Despite this argumentation, justice Brito recognized that Brazil is a multiracial context where racist violence goes beyond skin color, so it does not mark only Black peoples, but also Roma (*ciganos*) and indigenous people (ibid., 820). The third opinion, from Justice Marco Aurélio, stated that the books edited by the defendant were not discriminatory because the result of the practice (to incite race hatred) should be read according to the Brazilian reality and, in Brazil, racial hatred was historically constructed as anti-Blackness.

Justice Marco Aurelio minority opinion is a bold one. He challenged European history as the universal one, arguing that Brazil is an anti-Black country and peoples, such as the Jews, were never persecuted in this context. According to him, "a simple analysis of history will reveal that, at no time in our past, was there any inclination on the part of Brazilian society to accept, in an ostensible and relevant way, prejudiced ideas against the Jewish people" (Aurelio, HC 82424/RS, full content, 891). Conversely, "a prejudiced book against blacks would be much more likely to represent a real threat to the dignity of that people, because in Brazil it would be difficult to find supporters for such thoughts" (ibid., 892). In his argument, in Europe, Germany or France, for instance, there is a historical justification to restrict the freedom of expression when in relation to antisemitism, which would be far from the Brazilian reality. Finally, Justice Marco Aurelio argued that "the 1988 Constitution is a Constitution of the Brazilian people, to be applied to the Brazilian people and aimed at solving our problems. (…) The 1988 Constitution is not a Constitution for the German, French, Italian, Polish, Austrian or European people in general" (ibid., 917). For all those reasons, the Justice concluded that the only possible interpretation for Article 5, XLII is that the constitutional command is limited to racial discrimination against Black people.

The argument of the historicity of race and racism in specific contexts is an interesting one. Even though the dissent votes seem to privilege the Black struggle to interpret those legal commands, there are some central flaws in those arguments that place "racial democracy" at the center of what is understood as the "Brazilian context". Justice Marco Aurelio, even recognizing racial enslavement as the primary phenomenon that created racial subjugation, quotes Gilberto Freyre to illustrate the dangerousness of censorship, according to him, Freyre was persecuted "because he preached miscegenation had made

the Brazilian people without a second example in the world and, instead of revealing weakness, it demonstrated the strength of our people" (Marco Aurelio, HC 82424/RS, full content, 901). In this sense, Brazil's exceptionalism defined by miscegenation, and the idea of a unique Brazilianness are reinforced. Additionally, the argument that Brazil's reality is so different from the German one can also reinforce the country's exceptionalism.

In the end, how the arguments explored the saga of Black people, even quoting poems (Slave Ship or *Navio Negreiro*, by Castro Alves) and describing the horrors of racial enslavement, have a twisted irony. There has never been a conviction under Article 5, XLII, in the various situation Black people are still dehumanized, but to deny antisemitism as racism their story was important to be told.

Discussing the constitutionality of affirmative action policies

Ten years later, in 2012, the Supreme Court issued a decision on the case DEM vs UNB. The class action was filed by the conservative political party DEM against the resolution of the University of Brasília to implement ethnic-racial criteria to grant access to undergraduate courses. Courts throughout the country had disparate decisions regarding the constitutionality of affirmative actions by federal state universities, and this trial came to set the precedent. The fact that most of the *amici curie*, including institutions of the justice system, such as the District Attorney General (*Procurador Geral da República*) and the General Public Lawyer (*Advogado Geral da União*) were pro-affirmative action policies revealed a different consensus around the debate. This is corroborated by the fact of the decision was unanimous, with only one Justice presenting arguments against racial quotas, but still voting against the plaintiffs' plaint for the unconstitutionality of the university resolution. For this reason, this case has been debated by different academic works (see Moreira 2017; Duarte et al 2020; Duarte and Scotti 2019; Radomysler 2013; Schneider and Tramontina 2015).

The main arguments of DEM's complaint were: a) creating public policies based on race would create a "racialized State" or "institutionalized racism", such as those once existing in South Africa, United States and Ruanda; b) racist public policies are not necessary in Brazil. There is a manipulation of data to include among Black people (*negros*) those who are brown (*pardos*), creating in the country the biracial system on the molds of the United

States, and not matching Brazilian reality, where miscegenation led to a multiracial society; c) in Brazil, nobody is excluded only because of being Black, but because of the socio-economic condition, meaning, poor people do not access quality education; d) quotas for Blacks offend the equality principle and promote discrimination against the white poor, favoring a Black middle class; e) UNB create a "racial tribunal" to say who is Black and who is not; f) the State cannot punish current generations for the mistakes of their ancestors, besides inequalities between whites and Blacks are due to the lucrative character of racial enslavement, and not because of the idea of race.

Even though some of the arguments sound quite "absurd", there were not completely dismissed by the Justices' opinions, whose defense of the UNB resolution focused on the constitutionality of positive discrimination in the current legal framework. In sum, the arguments to dismiss the plaint were: a) there is an acknowledgement that Black subjugation is directed related to the legacy of racial enslavement; b) there is an argument that in Brazil phenotype is relevant for discrimination; c) Justices acknowledged the direct link between "racial prejudice" and poverty of Blacks; d) there is a reification that liberal equality principle has evolved to understand that substantial equality means State actions to correct historical inequalities. Regarding the meaning of race and racism, most of the Justices recalled the case Ellwanger as the precedent for current understanding of race and racism by the court.

Some central elements and choices in Justices opinions' language/ vocabulary are relevant to highlight: a) there is a choice for the use of *ethnicity* and *racial prejudice*, instead of race or racism; b) some Justices justified quotas on the gains of *diversity* for the academic environment; c) the argument of *integration* of Black in society is often raised; d) there is a direct denial that affirmative action is a policy of *reparation*.

The winning opinion, issued by Justice Ricardo Lewandowski, understood affirmative actions as important to "the creation of leaders among these discriminated groups, capable of fighting for the defense of their rights, in addition to serving as *paradigms of integration* and social ascension" (Lewandowski, ADPF 186/DF, full content, 71, highlight from the author). Those measures could also result in a "change in the subjective attitude of the members of these groups, increasing self-esteem that prepares the ground for their *progressive and full social integration*" (ibid., 74). There is a long dissertation

about the inferiority consciousness of the subjugated group that could be positively affected by changes in representation. A second benefit of the affirmative actions, according to Justice Lewandowski, is for the university itself, to “build a public space open to the inclusion of the other, the social outsider” (ibid., 77). Then, university could encompass otherness and work for the “demystification of social prejudices towards the other and, therefore, for the construction of a plural and culturally heterogeneous collective consciousness” (ibid., 77).

The choice to use *ethnicity* instead of *race* is a constant in most of Justices’ vocabulary, which reinforces Ellwanger’s precedent that the idea of race is unscientific even though recognized as a historical social construct. Justice Fux dissertated that “in Brazil, poverty has color. Everywhere there is an abundance of data that show the huge chasm that separates the ethnic groups that form Brazilian society” (Fux, ADPF 186/DF, full content, 105). Additionally, “comprehensive policies were not able to promote an economic and social equality between *ethnicities*, requiring the use of positive discrimination, of a promotional nature, with a view to achieving the *model of society* desired and promised by the Constitution” (ibid., 110, highlight from the author). Justice Cesar Peluzo also used the same vocabulary so say that “it is this undisputed socio-historical fact, which I call the ‘educational and cultural deficit of the *black ethnicity*’” (Peluso, ADPF 186/DF, full content, 155); and “it is alleged that society does not distinguish by ethnic identification” (ibid., 161). Justice Mendes in similar note stated that affirmative actions “remedy historical inequalities between ethnic and social groups” (Mendes, ADPF 186/DF, full content, 178). On the other hand, Justice Ayres Britto focused on the skin color as the cause of discrimination in Brazil, arguing that the constitutional used the word race “in a colloquial sense, that is, historical-cultural, non-scientific, not natural science, and it used racism also in the colloquial, proverbial sense, according to our praxis, our customs, which disfavor blacks” (Brito, ADPF 186/DF, full content, 255). And he quoted Darcy Ribeiro to say that “the distinguishing feature of Brazilian racism is that it does not focus on people's racial origin, but on skin color” (ibid, 255).

Regarding the emphasis on the skin color to discrimination in Brazil, Piza Duarte and colleagues properly argued that Black people are not defined only by skin color, particularly taking into consideration the positive value of a “tanned skin” in a country of beach culture. Additionally, they question that “(I)it is curious that there is no social

training to observe the variations of the 'white color', but that there is a concern to demarcate the presence of 'color tones' that bring an individual closer to the marks identified with blacks and indigenous people" (Duarte, Bertúlio, and Queiroz 2020, 197 author's translation). The author's irony is relevant facing the recurrent the argument that most Brazilian have Black ancestors, but we do not elaborate a racial grammar to differently describe those supposedly "white mestiços" or skin tone variations among whites.

The word *racism* was also not a choice for Justices, linking affirmative actions with the need to fight *social prejudices* in Brazil. The word racism is used (62 times) only to refer the constitutional used of the word (to criminalize and the objective of the State). Only Justice Fux used the term institutional racism or structural racism, but when quoting a report from IPEA evidencing racial disadvantages in education. The word was also present in the complaint's argument that quotas would cause racism against Black, which was dismissed by most Justices. The word *prejudice* appeared 89 times, together with expressions such as "irrational root of all prejudice" (Peluso, ADPF 186/DF, full content, 161); "Prejudice is everywhere" (Mendes, p. 180); "in Brazil there was prejudice based on skin color" (ibid., 182); "Republic does not match with Prejudice" (Weber, 128); "University is the ideal space for the demystification of social prejudices" (Lewandowski, 77).

Justice Mendes, even though voting for the constitutionality of the affirmative actions, dedicated most of his opinion to dissertate against "racial quotas", confronting the choice of "racial tribunals", such as the commission installed by UNB to verify the validity of the racial self-declaration of the student. In his argument "a group of enlightened people was given this power that no one wants to have, to say who is white, who is black, in a highly mixed society" (Gilmar Mendes, ADPF 186/DF, full content, 169). For him, because of miscegenation it is not possible to distinguish who is white from who is Black in Brazil. Then, a pure racial criterion to the university admission was a distortion when the challenges to access higher education are related to access to quality education by the poor. Justice Mendes endorses the media argument to "keep the rhetoric of indeterminacy alive" (Duarte et al 2020, 178). According to the authors, there was still a strong argument on the public debate, that Justice Mendes incorporated, that "affirmation of black identity meant a rupture with the idea of the Brazilian community" (Duarte et al 2020, 179).

Considering poverty as the real cause of inequalities and endorsing the plaintiff's argument that racial quotas could be harmful to the equality principle, Justice Mendes asked: "with the widespread adoption of racial quota programs, what will be the situation of the white poor look like, from the point of view of the right to equality?" (ibid., 198).

One interesting argument presented during the case discussion but unfortunately not debated further, was brought by Justice Fux saying that after racial enslavement Brazil maintained a racial code. Despite resorting to similar arguments and sociological theory, the idea that a racial code survived racial enslavement could have innovated the argument on why affirmative actions were necessary, rather than reinforce arguments of integration:

> The abolition of the slave regime that took place at the end of the 19th century, although it formally suppressed the submission of black people, it did not erase the racial code that until today thrives covertly in the country's social relations. Its perpetuation was facilitated by the inexistence of any inclusive policy of Afro-descendant ethnicities soon after the end of captive labor. Prejudice and discrimination, although no longer ostensible or institutionalized since then, began to make victims in silence, camouflaged under the myth of "racial democracy", so propagated by the work of Gilberto Freyre. Sociologist Florestan Fernandes, in the 1960s, denounced the untruth of this idealized construction of racial relations in Brazil. (Luiz Fux, ADPF 186/DF, full content, 106)

At this point, one can grasp which academic work production influenced legal knowledge through the main references raised by the Justices. The academic canon mobilized is mostly of white man, apart from the work of Justice Joaquim Barbosa, quoted by the winning opinion. It is really a pity that Justice Barbosa decided not to present a written opinion. More than once, Florestan Fernandes is cited, together with Gilberto Freire, Oracy Nogueira, Darcy Ribeiro, Castro Alves, Caio Prado Junior. No single Black intellectual is quoted. I highlight this fact here because in the case ADPF *das Favelas* we see changes in the mobilization of literature, with much more reference to Black academics. As also pointed out by Duarte, Bertúlio and Queiroz: "the slide towards the theme of 'black identity' expresses the crisis of power relations that constituted the monopoly of discourses about the Other, which, until very recently, did not have black and indigenous interlocutors in the hegemonic public space." (2020, 178 author's). This is slowly changing, but how and which discourses are incorporated into the judicial one is what should be accessed.

The decision that comes on 2017, on the constitutionality of the law 12,990/2014 that provided for affirmative actions for Black people in federal public jobs (case ADC 41-DF) shows that the court confirmed the consensus on the non-discrimination character of the measures aiming to reach material equality and diminish inequalities among Blacks and Whites in the country. This time, the Justice Roberto Barroso, rapporteur of the class action, stated that those measures are *historical reparations* for the evils of racial enslavement that led a legacy of structural racism in the country. Nonetheless, despite mobilizing the historical burden of racial configurations in the country, the argument is still mostly connected to what Clovis Moura has called the "trauma of slavery", disregarding the legacy of a racial rule that still distinguishes those who benefit from rights and entitlements in the country. According to the author, "the legacy of slavery that many sociologists say is in the Black, contrarily, is in the ruling classes that create discriminatory values" (Moura 2019, 99). The legacy of racial enslavement for the institutions and the whites, the ones that continues to perpetuate the racial rule, is not recognized by the court decision. The Justices' discourses are mostly paternalistic, such as this passage of Barroso's opinion:

> There is a happy phrase from Eleanor Roosevelt, where she said: "no one can make you feel inferior without your help". Therefore, to resist prejudice, it is enough not to accept it. However, if people, due to life circumstances, attend the worst schools, perform the worst tasks and live in the worst places contaminated by crime, they often find it difficult to resist prejudice and simply not accept it. (Barroso, ADC 14/DF, full content, 14)

For the Justice, affirmative action policies act positively on the self-esteem of the Black people that can have role models and then, resist "prejudice". There are several passages similar to this one in the various Justices votes, besides personal anecdotes of whites' encounters with situations of humiliation, poverty and exclusion of Black people. Justice Barroso argues that Brazil did not need a Jim Crow law for segregation, because "here racism was so structurally ingrained that it already happened naturally, regardless of the law, as a consequence of marginalization and the very feeling of inferiority it created" (Barroso, ADC 14/DF, full content, 20). Once again, the narrative places the *de facto* segregation regime in place in Brazil for centuries as related to structural racism that affect the Black's possibility to change their inferior position, an assertion that denies Brazil's reality of the State control of the Black body, unsanctioned actions of segregation enforced throughout the country, and the fact that laws were in place (cf. local

regulations) stating a Jim Craw like regime, as studied by Tanya Hernández (2013, 60). In this sense, Hernández's thesis is confirmed in this court decision, that is, in Latin America racial innocence regarding racism is reproduced with the arguments that there was no legal racial regime in place.

At last, in those court cases the Supreme court sustained an understanding of race and racism which is coherent to the conclusion drown for the case *ADPF das Favelas*, even if based on different arguments and on distinct matters. The recognition of structural racism serves to deny institutional racism, or the active role of the various State institutions in exercising racial subjugation and the protection of the whites' interests. For that, it was relevant to distant from a racial-conscious vocabulary and employ a language of multiculturalism. Those strategies are going to be better analyzed on the Part II of the thesis.

3.2 The class action denouncing Black genocide: *ADPF das Favelas*

The analysis of the legal case ADPF 635 or *ADPF das Favelas* aims to understand how the judicial system acknowledges Black death but denies institutional racism. I investigate legal arguments and debates from the petitioners, *amicus curiae,* and the justices' opinions[91] in the first decision of the injunction relief, which confirmed the rapporteur's singular decision on August 18th, 2020. I choose to analyze this specific decision because it debates the case's *merit*, particularly on the argument that the Black population was disproportionally affected by the State of Rio de Janeiro's public security policy.

Considering the large number of documents in the electronic file, any choice would be incomplete. My intent is not to investigate in detail the various layers of bureaucracy of the public security policy under trial, or the role of the various institutions. The debate on public security in Rio de Janeiro and State violence[92] is broad and has a long tradition,

[91] Those of the injunction decision, available for the ADPF 635 *PSB v Rio de Janeiro State* [2020], STF DJe-267 09-11-2020.
[92] Data from the Brazilian Forum of Public Security shows that 55,5% of deaths caused by police intervention concentrate in 55 cities, being 15 of them in the State of Rio de Janeiro. From the 6.416 deaths by the police in 2020, 1.136 took place in the State of Rio (Bueno and Lima 2021, 64). However, the data shows that this number can be masked once Rio de Janeiro has the highest percentage of deaths accounted

that I have no means to engage with it here (see Freitas 2020). My goal is to unravel how, when, and by whom racism is mobilized, considering that the initial intent of the organizations behind the social mobilization for this class action was to place *institutional racism* in the center of the debate.

To explore the regimes of racism denial in the Justice System in Brazil through the analysis of this case requires sophistication, as suggested by Lélia Gonzalez (1988). I highlight two main reasons: first, the facts are not being denied: Black over victimization is recognized by institutions, often related to “structural racism”. Second, the central matter in the trial is a public policy involving various State institutions and layers of bureaucracy claimed to be colorblind.

The analysis of this legal case departs from distinct research questions posed for the Peruvian case (see Chapter 2), and, accordingly, it leads to a different methodology of analysis. Thus, I will not resort to *storytelling* to go through the process of denouncing the violence deployed by the State in order to “fight crime” in Black neighborhoods. Those narratives have been overused and, in the case of Brazil, the spetacularization of police violence in TV shows and the movie industry for the entertainment business has reinforced racial imaginaries associated with those spaces (see Carter 2017; J. A. Alves 2014b; Sales and Muniz 2020; Corrêa 2006). In this context, “mass media’s discursive dehumanization of Black males should be read as symbolic violence that legitimates and informs the state’s practices of domination” (J. A. Alves 2014b, 318).

The exploration of histories of violence and crime in *favelas* in the movies and television industry has served to reify a relationship between crime and poverty, or slums and violence, providing constant support for racist representations. Felipe Corrêa explores how movies, such as *City of God (Cidade de Deus)*[93], resort to realism to present the slum in Rio de Janeiro as a place of absolute otherness, “a territory of barbarism that has no contact with the outside world: it is the ‘idealization’ of a place where only terror has a voice” (Corrêa 2006, 54 author’s translation). In the end, according to Corrêa, the aim is to provide entertainment for those on the “outside”, exploring the curiosity of the white

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as “Violent Deaths of Undetermined Cause”, being 34.2% of deaths identified as “external causes” (Cerqueira et al 2021, 20).

[93] Cidade de Deus (2002) or City of God by Fernando Meirelles and Kátia Lund is a film that addresses violence in the slums of Rio de Janeiro, focusing on the drug trafficking.

middle-class "to know the underworld of the traffic and the periphery: the violence of the *favelado*" (ibid.).

The use of blatant violence against Black people's flesh and lives for entertainment is explored by Hartman as central to racial subjugation, where both pity and pleasure are part of the economy of enjoyment. Such as *City of God*, in the slavery melodramas, "the major issue explores is the relation between pleasure and violence – that is, the facility of blackness in the other's self-fashioning and the role of pleasure in securing the mechanisms of racial subjection" (Hartman 1997, 26). In Amparo Alves's argument, fictional representations of poverty and criminality reveal broader practices of racial domination in Brazil. The choices of narrative and images produce the "pathologization of favelas/shantytowns as places of criminality, danger and fear is a discursive ideological apparatus by which racial domination effectively takes place in urban Brazil" (J. A. Alves 2014b, 20).

I open this section with this reflection to assert that there is a thin line between the use of Black suffering to denounce racism and the abuse of those narratives that can lead to normalization or even serve the economy of enjoyment. Those familiar with the Brazilian reality know that the narratives of mothers who lost their sons in the Black genocide are powerful and have been central to confronting institutional racism and the naturalization of extra-judicial killing (see Wade and Moreno Figueroa 2021; J. Farias et al 2020). During fieldwork in Rio de Janeiro and São Paulo, I have listened to those stories a few times, and they are always shocking and moving. In one event in Rio de Janeiro though, called "Necropolics of Public Security"[94], organized by the Permanent Forum of Politics and Criminal Justice, a network composed of representatives from various institutions, from the DA's Office to the Public Defensor's Office and magistracy, the participation of mothers and the narration of their stories, once more, showed its perverse face. One mother, after giving testimony of the brutal assassination of her son and the injustice that followed, said to the crying audience "I am not here so you can cry with the sad story of a mother that had a son brutally executed, I am here because I want justice".

[94] Event held at the Superior School of Magistrate of Rio de Janeiro State (EMERJ) on the November 22nd 2019, more information about it available at <https://www.emerj.tjrj.jus.br/paginas/noticias_todas/2019/Debate-na-EMERJ-reune-magistrados-professores-e-operadores-do-Direito.html>, accessed on May 13th 2021.

The mother was telling the story to show the layers of institutional compliance with Black genocide, confronting the role of those institutions of the justice system to provide justice for the families victimized by extra-judicial killings. Nonetheless, listening to those narratives in that institutional space, seeing how "necropolitics" became a common terminology even for law petitioners, and then, concluding that institutions can still shield themselves by externalizing those consequences (as practices "outside" the law), showed the risk of overusing narratives of Black suffering in this context.

For those reasons, I did not undertake interviews with various participants in this class action and focused the analysis on the documentation available on the website of the *Supremo Tribunal Federal*, which was part of the lawsuit. My main goal is to explore the legal reasoning to assess how jurists engage with race and racism in this case, where Black genocide is at the center. Acknowledging the limits to make racism "intelligible" to legal language – that decodes as a practice placed outside legality –, the challenge to bring institutional racism – a practice normalized in the routines of institutions - as a legal argument was present onset in the complaint. Despite acknowledging this challenge, I critically look at the complaint that, to make racism intelligible to legal language and a white court, might have lost an opportunity to advance on legal theory on racism in Brazil.

Antecedents: denouncing police violence at Rio de Janeiro federal state's institutions

The violence of police operations in Rio de Janeiro State was first the object of one class action filed by the Rio de Janeiro Public Defender's Office in 2016 (DPERJ)[95] at the Rio de Janeiro State Court of Justice (*Tribunal de Justiça do Estado do Rio de Janeiro*). This lawsuit was focused on the denunciation of extreme use of force in police[96] operations at Maré, a neighborhood comprising 16 favelas, which had deadly outcomes. In the complaint, the DPERJ argued that there was a choice by the Public Security Department to use the police force in promoting *terror* in the communities. Besides, they argued there was a double standard in how the State calculated "collateral damage" in the use of force in a majority Black neighborhood in comparison to white ones. The complaint identified the impact of those police operations on the neighborhood:

[95] Case 0215700-68.2016.8.19.0001 *DPERJ v Rio de Janeiro State* [2016], TJRJ.
[96] State police comprise both military and civil police forces.

> frequent police operations with a high rate of lethality, **shootings triggered by incursions by armored vehicles ("caveirões") causing victims of "stray bullets" and the deaths of mainly young black men**. The intense shootings cause, in addition to the enormous risk to the life and physical integrity of people not involved in the armed clashes, a serious violation of citizens' rights to come and go, suspension of school activities, harming the training of children and adolescents, as well as preventing that residents go to their place of work or return to their homes, spreading a constant **terrifying climate**, far from the tranquility, peace, and security that citizens legitimately expect from the authorities and the State. (DPERJ, Case 0215700-68.2016.8.19.0001 DPERJ v Rio de Janeiro State [2016], TJRJ., 5)

In addition, the complaint exposed the layers of institutional failure to combat the common outcome of police operations - massive killings: "as a result of the tolerance of hierarchical superiors and control bodies (internal and external) and/or fragility of the mechanisms of transparency, accountability, and responsiveness (accountability)" (DPERJ, DPERJ v Rio de Janeiro State [2016], TJRJ., 6). The plaintiff's arguments were pragmatically oriented, focusing on reducing the damage of incursions at Maré during police operations. The motions for precautionary measures comprised: a plan to reduce police lethality; the mandatory presence of ambulances in all operations carried out at Complexo da Maré; making mandatory the installation of video and audio cameras and deploy the satellite location system (GPS) in armored (land and area) automotive vehicles of the Military and Civil Police; the guarantee that those images were monitored and their content shared with the DA's Office and the DPERJ; the proscription of search warrants to be executed during the night; and that anonymous tips could not be used to legitimize house arrest without a search warrant.

The central argument of the class action was that a "prominent proportion of the black population in the statistics of violent homicides points to racism as a structuring element of state policies for the protection or unprotection of life" (DPERJ, DPERJ v Rio de Janeiro State [2016], TJRJ, 14). DPERJ also argued that "this data is in direct correlation with the irrational performance of public security agencies in the geographic spaces occupied by blacks in Rio de Janeiro, such as favelas, peripheries, and housing estates" (ibid., 14). The argument of irrationality does not fit the *racial rationale* of the security forces practices. The piece brings to the fore that institutional racism was responsible for the ways the use of violence was differentiated according to citizens' race, which "materializes in all its spheres and each of its daily decisions, in a way that distinguishes the protection of life intended for citizens according to their color or ethnic origin" (ibid.,

15). Thus, the complaint exposed that racial violence was an underlying logic in the policy of "war on drugs" in the city of Rio de Janeiro.

The "tone" of the complaint caused a lot of discomforts, and the DPERJ was accused of politicizing the court case by bringing racism to the front (Muniz and Coelho 2021). The response of the Rio de Janeiro State Court of Justice was short and direct:

> It is up to the head of the executive branch to outline the management rules that they consider to be the most effective and appropriate according to their government project. Thus, each governor has been trying in one way or another to face the organized crime that, every day, has been spreading to all corners of this country and, especially, in the State of Rio de Janeiro. (...) Some may agree with the chosen techniques, others may disagree. However, what the Constitution of the Republic does not allow is the interference of one of the Powers in the competence attributed to another. (DPERJ v Rio de Janeiro State [2019] TJRJ Court Decision)

Under this argument, the federal-state judge fully rejected the plaintiff's case. There was neither appreciation of evidence nor any debate over the list of illegalities described by the complaint. The judge even "validated" the State of Rio de Janeiro's argument when, in the contestation procedure, the governor added pictures of "criminals" with guns, saying that there is not a racial war, but an organized crime's a war on security forces that, by the way, were also composed by a majority of Black people. The fact that the governor adds pictures of "criminals with guns" with the images of Black young men is evidence that the mobilization of racial imaginaries is fundamental in State policy choices.

This decision is currently under appeal. Nevertheless, the fact that this class action was dismissed despite the overwhelming evidence of a politics of extermination in Maré, pushed for a joint legal strategy outside the federal state judiciary[97]. This set of circumstances motivated the proposal of a constitutional class action directly at the Federal Supreme Court, the Brazilian Constitutional Court, now contesting the constitutionality of Rio de Janeiro State public security policy broadly.

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[97] The Rio de Janeiro State Court has been acting in accordance with various strategies of the public security policy such as the use of "collective search warrants" —a fundamental rights aberration to "legalize" police abuse during incursions in favelas but validated by the state court. This practice was contested in the Superior Court of Appeal, in the Case HC n° 435-934-AgR TJRJ v Cidadãos e Cidadãs Domiciliados nas Favelas do Jacarezinho e Conjunto Habitacional Morar Carioca [2019] STJ DJe 20.11.2019, 23.

It is important to include one piece of relevant information to understand the context of these legal actions. In Brazil, the *Defensorias Públicas* or Public Defenders' Office are State institutions known for being more progressive. They not only provide legal counseling to the poor in individual cases but also work on collective initiatives, through class actions. And because they are closer to civil society, some important changes in their structure came from a direct dialogue with various social movements, such as the creation of the external Ombudsperson, who is a person elected from the civil society organizations (Odeveza and Barbieri 2019). The result of this constant pressure is a more open debate about racism within their practices or how colorblind could affect the way the institution provides services mostly to Black people.

The Black movement has long pressured the Public Defender's Office to create specialized groups to fight racism, understanding that specialization is necessary to qualify the institutional work in the area. This process resulted in a series of initiatives in the different federal states Public Defenders' Offices, including the Rio de Janeiro one. The DPERJ created a Center for Combating Racism and Ethnic-Racial Discrimination (*Núcleo de Combate ao Racismo e à Discriminação Étnico-Racial - NUCORA*) in 2014, but in August 2020 it became a Coordination for the Promotion of Racial Equity (*Coordenadoria da Promoção da Equidade Racial - COOPERA*) (DPERJ, 2020). This restructuring was a result of research produced by the Black Women's Organization Criola and Forum Justice (2020), unveiling patterns of institutional racism within the Public Defenders' Offices nationwide and setting a series of recommendations, including the creation of specialized organs to fight racism within the institution. This class action targeting institutional racism in police operations is already a concrete result of a *race-conscious* performance of the specialized organ and a turn in how those "social problems" were previously framed. Nonetheless, other institutions, such as the DA's Office in Rio de Janeiro, publicly accused the DPERJ of being "political" by raising topics such as racism[98]. As discussed in an analysis of the State class action:

[98] The General Public Defender filed a complaint against the State Attorney for his declarations, saying that "These identity ideas: structural racism, racist police, genocide, kill young black people. All this psolist speech that we know. (...) As if the police clashed with criminals because they are eventually black and not because they are criminals" (author's translation). Available at https://g1.globo.com/rj/rio-de-janeiro/noticia/2021/07/02/defensor-publico-geral-do-rj-protocola-representacao-contra-procurador-por-falas-sobre-a-dprj.ghtml, accessed on 21/02/2022.

> In this context, using the argument of institutional racism in a complaint is read as politicization of the court case, since justice still operates according to formalist assumptions. The recognition that institutional racism affects the system results in contradicting its assumed neutrality. The same does not happen when one argues in terms of vulnerability and poverty, given that the justice system perceives socioeconomic conditions as objective, as opposed to race. (Muniz and Coelho 2021, 29)

Considering how the debate was politized within the Rio de Janeiro State, the strategy was to bring the case to the federal sphere. According to the Brazilian Constitution, only a few institutions can file constitutional cases, being one of them the political parties. For this joint action, at the end of 2019, the Brazilian Socialist Party (PSB) filed an ADPF (*Arguição de Descumprimento de Preceito Fundamental*), which is a writ that can be used when constitutional fundamental rights are being violated. The arguments are similar to those used in the state class action, but this time instead of being reduced to one neighborhood, this class action is targeting the State of Rio de Janeiro's public security policy at large. The mobilization around the class action is shown by the number of *amici curiae* that joined the petitioner, including the DPERJ, various organizations of the Black movement, community-based and human rights organizations, and representatives of institutions such as prosecutors and police chiefs' associations, the BAR association, and politicians, in a total of 27 requests so far.

Additionally, one important new outcome that impacted the debate at the Supreme Court was the condemnation of Brazil issued by the Inter-American Court of Human Rights (I/A Court H.R.) on the Case *Favela Nova Brasilia vs Brazil*, a decision issued in February 2017. The case reported the abuses and violations that resulted in a massacre of 26 people in Favela Nova Brasilia, in Rio de Janeiro, due to a police incursion in that community, with impunity of the various human rights violations described by victims and their families. The decision ordered the State of Rio de Janeiro to comply with many motions that are now brought to the class action, such as "adopt the necessary measures for the State of Rio de Janeiro to establish goals and policies to reduce lethality and police violence" (I/A Court H.R., 2017, par 17). It also clearly stated the need that "the investigation is delegated to an independent body other than the public force involved in the incident" (ibid., par. 16), directly implying the District Attorneys' Office (*Ministério Publico*). In February 2019 the I/A Court H.R issued a decision that Brazil was not complying with the I/A Court H.R. sentence, declaring the country to be in *mora*.

Despite the importance of this precedent for the discussion of public security policy in Brazil, this case did not bring institutional racism or racial profiling by police forces to the front.[99] The case reflects how police violence was mostly discussed in the regional system by organizations that do not discuss racism as key to understand State violence, and also how the I/A Court H.R. has little incorporated racism in its legal debate. This is the conclusion of a research participant, an OAS specialist working with the Rapporteurship on the Rights of Persons of African Descent and against Racial Discrimination:

> I think Nova Brasília is the most emblematic case I see and I can easily see that it was police violence in a favela context, almost all the black victims, then you had... there was police violence and... and excessive use of force, lethal use of force by the police, there is no better case to say what Brazil is today and this has not been explored, right. So, then you look at the decision and the condemnation of the State is super vague. So, the idea would be to use these cases in this way, it is the advocacy system to generate a precedent to change structurally, but it wasn't because it didn't have the profile, maybe in 2 or 5 years a new case like this will arrive, the approach is better because maybe it is recommended to create a specific law, maybe it is recommended to create a specific public policy, Nova Brasília in the end, in short, there was a massacre and in the end, they say, 'you train the police to use force', like that, complicated. (AB-01)[lii]

The petition itself did not explore institutional racism as central to argue a case against a pattern of human rights violations in Favela Nova Brasilia (Complexo do Alemão, Rio de Janeiro), even though most victims were Black. For this research participant, this is also linked to the difficulty the Black movement in Brazil faces in presenting cases directly at the I/A Court H.R. They often needed the intermediation of human rights organizations. Besides, as she argues, there is still a considerable monopoly of some institutions and organizations in the regional human rights system, being most of them led by white professionals, so race and racism are not factors fully explored or even part of those organizations' vocabulary:

> ... there is still a monopoly of the use of the system and mechanisms by large organizations, which are white organizations. So, I see the movement very well, but much more because of the political incidence that it generates than the cases themselves because I think that the arrival to the cases is still a path that will take a little longer... and I think that even for this to present petitions with an approach that interests the black movement, because the petitions are presented by white organizations with a white perspective, so even when it

[99] On August 2020, the I\A Court HR issued a decision on the case Acosta Martínez Y Otros Vs. Argentina on Racial profiling (see at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.corteidh.or.cr/docs/casos/articulos/seriec_410_esp.pdf).

> touches the racial issue it is very vague, the argumentation is very shallow. (AB-01)[liii]

We will see that the approach taken by the I/A Court H.R is going to influence the debates at the Constitutional Court in Brazil on how claims of racism are deviated. The Court's focus on procedural flows, institutions mandates, or due process, eschews racism: it is not part of the legal language and is largely undermined as a central part of the violation regarding police violence.

Building the court case ADPF 635

The ADPF 635 is a complex class action of overlapping petitions, informs and reports from various institutions, dozens of *amici curiae*, and several partial decisions. At this point, there are 535 electronic documents (eDocs) in the electronic file with public access, and a total of 27 requests to join the plaint as *amicus curiae*. At the time of writing this dissertation, there was no final sentence, but key debates have happened during those intermittent decisions. The overlapping of petitions came with the first injunction decision by the Rapporteur Justice Fachin on May 4, 2020, which provided only partially the precautionary measures requested by the PSB, postponing the discussion of the plaint, including the development of a plan to reduce police lethality. Because of that, the petitioner filed an extraordinary request to suspend police operations other than exceptional circumstances during the pandemic of Covid-19. This extraordinary motion was granted on June 6, 2020. The federal-state government appealed that decision.

The injunction relief was granted to reduce the number of police operations during COVID-pandemic to only exceptional cases, a decision that showed efficiency to lower them by 78% and reducing the number of deaths caused by State interventions from 148.8 lives per month to 46.5, between June and September of 2020 (PSB, eDoc 383, 5/17/2021, par 3). However, after a few months, the federal-state government stretched the understanding of "exceptional circumstances" and the number of operations went back to raise. On May 6, 2021, an incursion in *Jacarezinho* killed 28 people. The outcome of the decision and the disregard for its compliance by the federal-state institutions are illustrative of the constant dispute and political implications of this court case. Only on the 3rd of February 2022[100], the court decided on all precautionary measures, this time to

[100] DJE nº 108, 02/06/2022.

grant the motion to compel the development of a plan to reduce police lethality. I analyze here the decision on the first injunction relief, which confirmed the rapporteur's singular decision on August 18th, 2020. Thus, I first highlight some of the plaintiff's choices in both juridical arguments and motions. Then, I will bring some debates brought by the petitions filed by the *amici curiae* from organizations of the Black movement to underline some differences in legal argumentation.

The debates bought by the PSB in the ADPF 635 are broad, contesting the constitutionality of the public security policy of the State of Rio de Janeiro. The petition provides lots of concrete examples of when and what has been decided by the federal-state government to increase police lethality and how those choices disregard human lives, or rather Black lives, once Black people are disproportionally affected. The main facts that prove the argument are: i) the use of helicopters to fire weapons in police operations in *favelas* was a proof that civilian death was a risk assumed by the police; ii) the changes in the regulation of police carriers, excluding bonification for low lethality, was a proof of policy choices; iii) the lack of proper investigations on summary executions (negligence in managing the proofs, the low response of the DA's office in investigating homicides involving police officers, the fact that victims and their families were denied participation on the investigation, etc), implicated the entire justice system in double standards regarding justice and protection of life.

The main motions for precautionary measures (out of 17) were: to compel the Rio de Janeiro government to produce a plan to reduce police lethality within 90 days; to prohibit the use of helicopters to fire weapons; the prohibition of the use of collective search warrants; to declare the unconstitutionality of changes in regulations; to allow ambulances to reach the community during police operations; to prohibit police operations to happen close to schools, nurseries, hospital or health centers; to determine the suspension of secrecy of all police action protocols; to determine the Rio de Janeiro government to install GPS equipment and audio and video recording systems in police vehicles and the uniforms of security agents; to declare the illegality of the governor's use of hate speech. Other motions were related to the due process, meaning, that the various institutions of the judicial system must comply with their duty, particularly the District Attorney's office, responsible for the external control of police activity.

The complaint filed by *Partido Socialista Brasileiro* - PSB has 93 pages, presenting a consistent and well-grounded document. The unconstitutionality of the public security policy of the Rio de Janeiro federal state was argued in relation to central principles of the Constitution, being human dignity, right to life, equality, security, home inviolability, and child's rights. The right to life is highlighted, even though little is said that the charter created exceptions, such as self-defense and strict compliance with a legal duty, constantly mobilized by the police force to justify the high number of casualties. Additionally, the complaint does not mention Article 3, iv, and Article 4, viii, of the Constitution, which states that promoting the wellbeing of all without racial discrimination is an objective of the Republic and that the repudiation of racism is one of its principles.

There is a great emphasis on human dignity as the core fundament of the Republic "because they are endowed with dignity, all individuals must be conceived as subjects of law, never as objects at the mercy of the State or third parties" (PSB, eDoc 1, 11/19/2019, par. 61). The argument is that everyone is entitled to human dignity, so a public policy cannot instrumentalize human life to achieve other purposes. This line of thought is based on traditional philosophical constructions of *humanity*, quoting Kant in the argument that "people must be treated as ends in themselves, not as mere means to the achievement of others' ends or collective goals" (ibid.), or John Rawls *"each person possesses an inviolability founded on justice, which even the well-being of society as a whole cannot overcome"* (ibid., par. 62). There is a choice in making the arguments intelligible for the Justices, who are familiar with this line of thought, but it still assumes the universality of human dignity without questioning that the devaluation of lives in a racial regime places Black lives *in peril* (Hartman 1997). As to say, the policy choices are evidence that Black lives are deemed collateral in the "war on drugs", a risk assumed openly by the federal-state government. All the evidence brought to the case is illustrative that the lack of due process in this particular situation is directly connected to the *precarity of Black subjectivity*, as precarious subjects of law in a racial regime. The mobilization of human dignity should challenge how those specific policy choices placed Black people outside humanity, so stripped from this core constitutional principle, deprived of State protection as *subjects of law*.

In paragraphs 54 to 71, the petition explores public security as a fundamental right in the Brazilian Constitution. The argument, once again, explores the universality of this right, which should be accessed by everyone, missing the opportunity to raise the double standard of the public security policy. The racial bias is evident in the lives to be protected, and the lives to be protected from. The argument here was that "public security is not a war against the enemy to be exterminated. It is a fundamental right, to be attended through adequate public services, provided without discrimination against people due to their race, social class, or any other element" (eDoc 1, par. 66). Nonetheless, it could be better explored how some areas of Rio de Janeiro are not entitled to public safety but are constantly targeted by deadly public security policies because framed as "places of criminality".

The arguments on the complaint, while focusing on constitutional rights to argue about the unconstitutionality of the public security practices, lost the opportunity to deepen the analysis on how those described facts are guided by *racist presumptions* of Black criminality linking race and space. On the other hand, stating the high number of "innocent victims" as collateral could pass a wrong message that extrajudicial killings of "criminals" are acceptable, falling into the trap of blaming those neighborhoods for the city's insecurity.

> one cannot adopt a public security policy that inexorably manages the death of a large number of innocent people, as occurs in Rio de Janeiro. These deaths do not decrease crime in the state. And, even if they did, it would not be acceptable to tolerate the death of some, because of possible greater gain for the collective, since people can never be used as mere means. (eDoc 1, par. 62)

What is not argued in the petition is the need to reverse the burden of proof when one group is disproportionally affected by the State's actions. Considering that Rio de Janeiro federal state does not produce heavy weaponry or drugs, targeting *favelas* in the "war on drugs" should come with a sound justification with either statistics or intelligence data, otherwise, the double standards within the racial line are evident. The federal state government does not feel obliged to provide any information, but this is also not asked.

There is one section dedicated to discussing "black lives matter", from paragraphs 72 to 83, focusing on the relationship between structural racism and the choices in the public security policy. The section briefly targets the right to equality, mentions the legal recognition of indirect discrimination, and explains theories of structural racism.

Nonetheless, the text mostly repeats the statistics that Black people are most of the victims of violence in the country. Quoting Silvio Almeida in his book *Structural Racism* (2019), the petition links the legacy of racial enslavement to how racism "deeply penetrates our culture, economy and society, in order to legitimize and naturalize institutional practices that harm certain social groups due to the *skin color* of their members" (eDoc 1, par. 76, highlights from the author). Then, the compliant describes the number of Black victims, arguing that "Afro-descendants" are disproportionately impacted by the "lethal public security policy adopted by the Rio de Janeiro Executive Power":

> Therefore, it is clear that the lethal public security policy adopted by the Executive Power of Rio de Janeiro, although it has adverse effects on the entire population of the State of Rio de Janeiro, affects Afro-descendants in a particularly negative and perverse way, thus violating the right to equality, from the perspective of proscription of the disproportionate impact. (eDoc 1, par. 83)

The reflection on racism ends here. There is no further reflection beyond the numbers and statistical data on why more Black people die. There is no reflection on the justice system, or the relationship between racism and impunity. The plaint does not further explore institutional racism. The action of the executive power is only part of public security policy, some judges and prosecutors sign collective search warrants, and courts acquit police officers or file cases. The "naturalization" that in the *favelas* people are poor and live in a deplorable way, almost justifies the relationship with criminality. Even though much of the choices in a legal argument could be strategic, the complaint could go further on reflecting how the justice system is allowing the genocide to happen and even endorsing public policy strategies in majority Black communities.

Additionally, the arguments on racial bias or racial profiling could be better explored to place the burden of proof on the State of Rio de Janeiro to produce evidence that the public security choices are not only proportional and adequate but also not targeting particular groups. The fact is proved - the high lethality of State police and Black over victimization -, therefore, the argumentation should not allow for the contestation that later came from the federal state government that the allegation was not proved, raising the *lack of intentionality* and then, placing the burden of proof on the petitioner. And because it is a public policy on trial, the use of "indirect discrimination" was already enough to escape the intentionality trap, placing the burden of proof on the federal state government. Then, although the deaths of Black people are part of the argument, there is

not one motion that makes express reference to racism. This fact weakened the plaint, as the judges are only obliged to engage with all the pleas brought to the petition, but *not with all the arguments*.

Petitions filed by the Black movement shows a different mobilization of both numbers and known facts in order to foreground institutional racism. The *amicus curiae* from Educafro[101], for instance, built its argument on the Black genocide, linking the outcomes to *institutional racism*. They structured the argument by saying that the disproportional impact of State violence is characterized by three central elements: “(i) the intensification of police violence against the black population; (ii) the absence of adequate investigations into the police lethality that victimizes the black population; and (iii) the criminalization of territories occupied by predominantly black populations.” (eDoc 57, 12/27/2019, par. 41).

The petition started from the premise that structural racism is already recognized by the Constitutional Court in other legal precedents, so there is no need to explore this matter. So, the discussion presented was to further engage with the debate of *institutional racism*. The mention of numbers of deaths and various reports recognizing the lethality of Rio de Janeiro police was provided to fundament the argument that choices were made to raise police lethality in the last few years. For instance, between January and June of 2019, there were 1,148 police operations, an increase of 84% compared to the period of federal intervention in Rio de Janeiro from March to June of 2018, when there was already an increase of 218 to 403 operations (eDoc 57, 12/27/2019, par. 50). Besides, 78.4% of those killed as a result of police intervention were black or brown people, 342 victims out of a total of 436 deaths, in the first four months of 2019. In 2018, the rate was 71.5%, which reveals the growing trend of genocide in this part of the population, according to data from the *Instituto de Segurança Pública* (ibid, par. 52).

In this way, the statistics were used to foreground the legal debate on **genocide**, showing how the listed facts are all characterizing this gross human rights violation: “when analyzing the indicators of violence, it is clear that police action is much more violent in

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[101] Educafro is an organization focused on education of Black youth of impoverished areas with the aim to guarantee their access to higher education (see https://educafro.org.br/site/quem-somos/). Due to its work, the organization has played a vital role in the discussion for affirmative action policies in public universities in the country.

slum territories, (…) making the relationship between structural racism and police lethality even more intricate" (eDoc 57, par. 56). The plaint of Educafro also brought one precedent of the Constitutional Court in a case that a massacre of 12 Indigenous Yanomani was considered genocide (ibid. par. 59). So, looking at the numbers of Black assassinations, why is it so hard to bring the debate of genocide to the front? Why this argumentation is not on the plaintiff's complaint and, therefore, nowhere in the Justices' opinions? Why does the Judiciary not recognize the Black genocide?

Educafro's petition linked the raise of violence to the second element, which is the lack of investigation when Black people are murdered by the police. The data brought here should be central to the discussion: between 2010 and 2015, 98% of the cases of extra-judicial killings that occurred were terminated by request of the Public Attorney's Office or by the Rio de Janeiro State Court of Justice (eDoc 57, par. 68). Those numbers are outstanding. Then, the third element of the racial bias present in the petition is the criminalization of specific territories, the *favelas*, where most of the residents are Black. The most striking evidence is the practice in Rio de Janeiro justice system of issuing collective search warrants to cover entire communities.

Educafro's petition included the DA's office argument regarding collective search warrants. The argument considers that "it would be reasonable to mitigate the constitutional guarantee of home inviolability in cases related to the favelas of Rio de Janeiro, as there would be a greater objective to be achieved: the protection of residents of the region, with the cessation of the activities of drug traffickers." (eDoc 57, par. 73). Educafro concludes that according to this line of thought, for the DA's Office "all favela residents are suspected of committing crimes" (eDoc 57, par. 75). Due process of law or innocence until proven guilty are principles not guaranteed in the zones of nonbeing. The police and the entire justice system are acting to provide "security" to a part of the society, defending them from those presumably "dangerous ones", living in *favelas*.

Educafro developed a very important argumentation that critiques the ideological discourse brought by the federal-state government that framed the issue of "public security" as related to a situation of war between "criminals and the police force". In this context, one of the main arguments of the Rio de Janeiro government to deny racism in the public security policy is that a large contingent of the police force is also Black. So,

the *amicus curiae* brought lots of statistics to evidence how the choice of deadly police operations affects both physically and psychologically the police force as well. They intended to evidence that the disregard for Black lives is also demonstrated by how the "war on drugs" is fought with a great impact on Black police lives. The numbers are, again, shocking. Data from May 2018 revealed that "almost half (49.1%) of the Military Police of the State of Rio de Janeiro (PMERJ) are not on the streets, as they are on leave (on sick leave or vacation) or have been assigned to administrative functions in battalions" (eDoc 57, par. 88). Additionally, it showed the high number of police officers with psychological disorders related to post-traumatic stress and a rise of 42.5% in suicide rates (eDoc 57, par. 90). Nevertheless, this negative impact of the police force is not homogenous, it disproportionally affects Black people, which are the majority of officers on low ranks:

> In the case of PMERJ, indicators from 2017 reveal that about 45% of the total number of 44,487 police officers declared themselves to be black or brown and 2,370 did not inform their color. Despite the number of black or brown police officers reaching almost half of the total number, it should be noted that blacks are minorities in the highest ranks: a 2013 report shows that out of a total of 2,015 colonels, only 16 were black and out of a total of 1,250 majors, blacks were only 88. (eDoc 57, par. 97)

This is a battle that the Black movement in Brazil is strongly embracing in order to avoid falling into the arguments constantly brought by the federal-state government or by some sectors of the security forces, that there is "a war against the police". Or as the petition from a national association of prosecutors (*MP pró-sociedade*) stated that the "war" lived in Rio de Janeiro is the result of "historical complacency with crime, with idolatry of bandits, with the demonization of the Police" (eDoc 401, 2021, 24). The Black movement knows that arguments that polarize community vs police are not helpful, especially in a political environment where the far-right is rising strongly embracing 'law and order' ideologies (see J. A. Alves and Vargas 2020).

The main political discourse embraced by the federal state government associates the need to celebrate the police and impose law and order measures, meaning killing "criminals". In this context, there is an attempt to reach Black police officers to reflect on racism within the corporations and the disproportionate impact on them, despite the strength of corporation ideology that makes it difficult. As Felipe Freitas argues, "in the case of the police, the issue is manifested through the discursive concealment of the effects of racism and the mythical claim that what counts is the color of the uniform, not

the color of the skin" (2020, 143 author's translation). A more detailed account of the debate on public security and police violence surpasses the scope of this work. Nonetheless, unveiling how some discourses are mobilized, such as the polarization of police vs. criminals, shows the multifarious ways by which the State denies racism and criminalizes Black lives.

Finally, because institutional racism is not a legal category in Brazil, the Educafro petition also explored the concept of indirect discrimination, using comparative scholarship and jurisprudence. The argument here is important, because there is an existing legal application, with a set of criteria, to identify practices of indirect discrimination, and procedures that impact legal cases. Quoting the European Human Rights Court, they argued that the jurisprudence of that court has developed three elements to identify indirect discrimination "(i) discriminatory intent is waived; (ii) the discriminatory measures must result from an apparently neutral provision, criterion or practice, in the sense that it does not consist or is directly linked to criteria expressly legally prohibited; and (iii) produces significantly more negative effects on a protected group, which is generally demonstrated through statistical data." (eDoc 75, par. 124). If such a standard was to be taken in the analyzed case, there was not much need to be trapped in proving the racial bias, once the statistics are clear evidence of the disproportional impact on Black people. They also bring the example of the InterAmerican Human Rights Court's (I/A Court H.R.) jurisprudence in the case *Nadege Dorzema e outros v. República Dominican*, where the precedent "rejected the idea that respect for the principle of equality would prohibit only deliberately discriminatory policies and practices, also prohibiting those whose impact on certain categories of people would be discriminatory, regardless of proof of intent" (eDoc 57, par. 127).

The joined petition from various community-based organizations and organizations of Black movement from Rio de Janeiro (MNU, ISER, Coletivo Papo Reto, Movimento Mães de Manguinhos, Rede contra Violência, Fala Akari) Black genocide was central once more to the argument: "the numbers reinforce what has already been presented by the authors: a state policy of genocide of the black population by direct action and by omission" (eDoc 88, 2020, par. 40). They brought one important report from 2000, issued by the United Nations Special Rapporteur on summary executions (A/HRC/11/2/Add.2), that already pointed out that "the intentional misconduct of the investigations, which

would be covering up the murders" (ibid. par. 43). The report of Philip Alstom concluded that "the current system is a blank check for police killings" (par. 44). This is an example that the facts described by the plaintiffs are being denounced for decades in various human rights mechanisms with a great omission from the State in responding to their recommendations. To present the level of detailed information presented in the *amicus* petition is also relevant because Justice Fachin expressly mentioned that the petitioner, unfortunately, did not bring to the case the various existing complaints of police violence presented against the Brazilian State in international human rights fora (eDoc 253, 54).

I have presented those arguments in detail to highlight that the theories and arguments existing within the current legal theory on racism or racial discrimination were brought to the case, in well-grounded pieces. Nevertheless, as we see in the following section, the legal arguments brought by the *amici curiae* from the Black movement were not analyzed by the Justices to sustain their opinions and were not even considered. They did not feel obliged to answer to the evidence that a genocide is taking place, nor to advance in a precedent that the Court pronounces on criterion based on indirect discrimination. In the next section, I discuss the first injunction decision, looking which arguments and from which petitioners are mobilized and used.

3.3 The first Injunction decision

In the plenary section of the Supreme Court from 17.4.2020 to 24.4.2020, the precautionary measures demanded by the complaint were analyzed by the Justices. The plea included several precautionary measures, but I will focus on three main ones: the motion to compel the Rio de Janeiro government to develop a plan to reduce police lethality within 90 days; the motion to prohibit the use of helicopters as shooting base and promoting terror; and the motion to compel the District Attorney's Office to investigate deaths in police operations. Most of the other motions were understood as part of a necessary plan to reduce police lethality. The rapporteur of the ADPF 365 was Justice Edson Fachin, who issued his opinion granting partiality the motions but not providing for all precautionary measures. His opinion was confirmed by the majority at the court plenary. Due to the visibility of the case, other Justices also issued opinions. In the injunction relief, they decided, in short, not to grant the obligation to develop a police

lethality reduction plan at this point, to recognize partially the motion on the use of helicopters, and to reaffirm the District Attorney's Office's role as external control of the police activity.

The main argument against the class action was done by Governor Wilson Witson (eDoc 63, 01/7/2020) and the Office of the Attorney General (*Advocacia Geral da União*, AGU) (eDoc 43, 13/12/2019). They argued that the judiciary could not overrule an executive mandate, and to admit the case would be an unjustified federal intervention. The governor also stated that the petitioner did not explain what "public security policy means", being impossible to argue the unconstitutionality of a broad concept without any definition. As a result of the alleged undefined subject, the governor argued that the plaint lacked proof or detailed accounts of which are the various components of the public security policy where the federal state was acting unconstitutionally.

Justice Fachin rejected those arguments brought by the governor, arguing that in exceptional cases the Judiciary can decide on matters of public policy when the executive is in severe omission. The generalizing situation of human rights violation is considered proven by the various interactions with International Human Rights organisms and their reports on Brazil that confirmed the abuse of force and summary executions. Justice Fachin's decision is mostly based on the fact that the Brazilian State was condemned by the I/A Court H.R. on the case *Favela Nova Brasilia vs Brazil*, resorting mostly to arguments presented there. This choice of source for grounding the decision can have a limiting impact on the outcome, as the I/A Court H.R. case did not debate racism or the racial bias of the public policy.

The argument stating that the District Attorney's Office was fulfilling its constitutional duty was also not accepted by Justice Fachin, because the response from their representative admitted that the institution was not yet adjusted to the I/A Court H.R.'s decision, as to say, they were still omissive to the obligation to open an investigation when public officers are responsible for civilians' deaths. The injunction decision recognized that "the generalized violation is the consequence of the structural omission of the fulfillment of constitutional duties by all the powers and corresponds, in the constitutional scope, to the expression 'serious violation of human rights', contained in art. 109, § 5, of the CRFB [Brazilian Constitution]." (eDoc 253, 2020, 3). Thus, the court

accepted that there is a generalized human rights violation, with the *omission* of the Rio de Janeiro federal state powers. As mentioned, the obligation to provide for a plan to reduce police lethality was already a command from the I/A Court H.R., and Rio de Janeiro federal state failed to comply. The argument against the concession of this precautionary measure at this point was that the federal state should be allowed to fulfill the I/A Court H.R. decision. There was a doubt about the subsidiarity of the STF in this case and the necessity to issue a new command on the same matter.

The motion to stop using helicopters to fire weapons was partially provided, to grant a restrictive interpretation to the federal state regulation on the use of helicopters in police operations. The decision stated, "to restrict the use of helicopters in police operations only in cases of compliance with the strict need, proven through the production, at the end of the operation, of a detailed report." (eDoc 253, 81). Beyond that, the argument of separation of powers prevailed:

> Be that as it may, it is not up to the Judiciary to carefully examine all situations in which the use of a helicopter or the practice of onboard shooting may be justified. It is up to the Executive to justify, in light of strict necessity, on a case-by-case basis, the reason for using the equipment, not only when there is lethality, but also whenever a shot is fired. (eDoc 253, 80).

This argument that avoids judicial responsibility for decisions regarding the need to use the helicopters to shoot in highly dense communities, disregards the facts presented by the complaint illustrating the "collateral impact" on human lives. Here, the argument of institutional racism should have been brought up because those choices would never be made in other parts of the city. Not all lives would be treated as acceptable collateral damage of the "war on crime". Additionally, those choices also reveal the insufficiency of the argument of "generalized omission" by the federal state powers. There is a genocide in place, but this is not recognized by any Justice, and the arguments do not engage with this particular "human rights" violation. This "omission" in the argument justifies the procedimentalist choice in favor of issuing a recommendation of writing a report after operations on the use of helicopters.

Even though Justice Fachin answered to all the cautionary motions, the fact that racism was not the content of any particular plea led to a decision that does not mention it or the racist consequences of the police operations beyond the description of petitioners' arguments. The only opinion that engages directly with the arguments of racism was that

of Justice Gilmar Mendes, who expressly mentioned the racial bias on the use of helicopters:

> (…) police lethality in Brazil, therefore, has a color: **blacks are those who die** the most. (…) these cases demonstrate that the approach of the security forces in the city and the State of Rio de Janeiro follows **absolutely different patterns** depending on **the place, origin and skin color of its citizens**. It is practically **impossible for a helicopter** flyover or a police approach in the South Zone of Rio de Janeiro to result in cases such as those reported above". (eDoc 253, 168, highlights from the author)

Justice Mendes directly confronted choices made by the Rio de Janeiro government to increase police operations, and as a result, increase police lethality in the last few years, demonstrating that there are many studies indicating the lack of connection between high police lethality and the reduction of criminal activity. In his words, "scientifically, it is unfounded to argue that aggressive action, with greater lethality by the Police, leads to a reduction in crime" (eDoc 253, 171). With this argument, Mendes recognized as proven the "verification of the existence of an unconstitutional state of affairs in the public security policy of Rio de Janeiro, with regard to lethality and the abuses committed against the poor and black population of that state." (ibid., 183)

On the other hand, even though Justice Mendes recognized structural racism in the outcomes of the police operations, his conclusion exonerates the judicial system by saying that "such scenario clearly exposes flaws of the criminal justice system in its practical application, which is often completely out of the control of the Judiciary or the institutions" (eDoc 253, 168). Violence against Black people is recognized as historically rooted, but the Justice's argument does not relate this reality to specific institutional choices and practices, instead, he resorts to ideas, cultural patterns and individual choices. In his words, "the structural racism [present in the Brazilian] society is revealed to be potentiated in the deaths caused by police forces" (eDoc 253, 167). We can see in his argumentation a perverse interpretation of structural racism. If racism is everywhere, culturally embedded in social practice, it is not the result of actions of specific institutions. Differently is the concept of institutional racism, that unveil the historical relation between the State - its actions, regulations, structure-, towards Black people.

Additionally, Justice Mendes also individualized police practices by saying that "in people's real lives, the police have an enormous decision-making power to arrest, investigate and even kill" (ibid., 168). Framing the problem as a result of the impact of

individuals' actions related to structural conditions existing in society, his solution to police violence goes back to providing better training to the police force. Mendes proposed that should be developed "instruments for training, recycling and monitoring of police involved in armed conflicts, in order to avoid abusive, excessive and lethal approaches against the black and poor population of Rio de Janeiro" (eDoc 253, 185). Not so different from the solutions presented in the I/A Court H.R. sentence in the case *Favela Nova Brasília vs. Brazil*.

Many of the motions were not granted in this first injunction decision because, as mentioned, they were considered an essential part of a plan to reduce police lethality, which, in its end, was not granted at this point. Consequently, pleas regarding specific procedures during police operations were not analyzed, such as the need to have an ambulance to provide medical assistance, the need to save evidence, or to report to human rights institutions, and so on, this was all understood as part of a necessary protocol to guide police incursions. Other motions were granted, such as the strict exceptionality in carrying out police operations in perimeters of schools, daycare centers, hospitals, or health posts. In addition, it clears any doubt regarding the mandate of the District Attorney's Office (*Ministério Público*) in investigating "whenever there is a suspicion of involvement of agents of public security bodies in the commission of a criminal offense" (eDoc 253, 118).

Justices Dias Tofolli and Ricardo Lewandowski were also minority votes, providing the motion to develop the plan to reduce lethality, as well as Justice Gilmar Mendes, but they do not dissertate on the matter. On the other hand, Justice Alexandre de Moraes followed Justice Fachin's vote and issued an opinion mostly based on the public administration principle of efficiency. For him, the case brought a scenario where "the great Brazilian institutional challenge today is to evolve in the ways of combating criminality" (eDoc 253, 138), once the

> (…) breach of security is so serious that the Federal Constitution allows the declaration of the State of Defense to preserve or promptly restore, in restricted and determined places, public order or social peace, when threatened by serious and imminent institutional instability; including, with restriction of several fundamental rights. (ibid., 140)

Therefore, comprehending the provision of public security as one of the State's purposes, Justice Moraes' argument is that its *efficiency* needs to be guaranteed "aiming at the

adoption of all possible legal and moral means for the satisfaction of the common good" (ibid., 139). Thus, the high lethality of Rio de Janeiro's police is a matter of inefficiency of public service provision, and the solution rests on institutional improvement. There is no scope (or intention), with this line of thought, to respond to the Black movements' denunciation that *choices were made to promote the Black genocide*. Justice Moraes followed rapporteur Fachin's opinion to only grand partially the precautionary measures. His opinion does not even refer to racism or the racial bias of the public security policy, resolving everything in state powers cooperation and due process of law.

Ricardo Lewandowski granted the motion to produce a plan, but he did not engage in the denunciation of racism and the alarming numbers of the Black genocide. His short opinion defended that the Judiciary could act as a facilitator with institutions mostly immune to traditional and democratic means of social control, which seems to be the case of the public security of Rio de Janeiro (eDoc. 253, 158). He only framed those excluded from the deliberative process as "residents and representatives of groups systematically excluded and victimized by police violence, members of vulnerable and stigmatized minorities" (ibid.), *omitting* the racial aspect of the targeted violence.

In the 198 pages of the Constitutional Court injunction decision, it becomes evident how legal reasoning resorts to formalism and procedural arguments to avoid confrontation with substantive matters, such as *institutional racism*. This decision was an opportunity lost for the Court to manifest its opinion on patterns of racism, evidenced in negligence, choices of policies, and high lethality. The decision stated that the judiciary could not define the standards for the use of helicopters and that the convenience must be accessed by the executive. In the end, the recognized scenario of gross human rights violations and unconstitutional state of things is to be solved by implementing "accountability measures", including writing a detailed report after each operation. There was evidence that choices were made to increase police lethality, but this was not taken into consideration, and demanding a *post factum* report seems satisfactory, as well as framing the policy outcomes as related to a generalized omission by federal state institutions. The long trial also shows that what started with the denunciation of the Black genocide, ended up discussing mostly protocols and human rights standards to "fight crime", where Black over victimization is just a fact, but not the substantive matter on trial.

3.4 Racism denial whilst recognizing Black over victimization

When Black over victimization is recognized as a fact, race is taken only as *datum*, as to say, as a social fact (empirical matter) but not as a modality of modern power that, together with the others form a triad (colonial, racial and capital) are deeply implicated in one another (Da Silva 2019, 161). According to Denise da Silva, in order to overcome seeing race as *datum* we need to understand raciality as an arsenal, a set of knowledge devices that reproduce legal, symbolic, and everyday violence. In the judicial discourse the fact - Black over victimization – is not being denied, but it is repeated as a *datum*, in Silva's conception, so the work of race in producing death is not on trial.

The denial of racism, in this case, is also possible through the fragmentation of the concept of racism. By incorporating the concept of *structural racism* into the juridical narrative is possible to deny the Judiciary's responsibility by arguing that the phenomenon is out of institutional control. The perverse use of structural racism made possible the denial of institutional racism, which rejects the focus on individual intentionality but does not erase political responsibility (Hesse 2004; Maeso 2018). It was mobilized by many of the *amici curiae* from civil society, evidencing the active role of the Justice System in the Black genocide.

Black over victimization is then related to an "unconstitutional state of things" or to an inheritance of "structural racism", that leads to excess or illegalities that must be corrected by compliance with the proper procedure. Then, the juridical narrative is sterilized by a vocabulary of the rule of law, as if the "problem" here is to be resolved by adjusting the bureaucracy. Or worse, the "problem" acknowledged here is related to structural racism, by placing Black people into poverty and then into criminality. In the end, the judicial discourse does not deny racism *per se* but reduces it to something present in society in general. Nonetheless, recognizing Black over victimization is different from acknowledging Black genocide, falling into the logic of denial that "the narrative acknowledges that something happened, but refuses to accept the category of acts to which it is assigned" (Cohen 2001, 77).

We can also see old criminology theses resonating in many of the arguments when assuming that crimes in slums are a result of poverty. With this line of thought, the high number of police operations in Black neighborhoods is justified, so it is a matter of *how*

the operations must take place (respect human rights), and not whether they should be or not targeting selective areas. The *presumption of Black criminality*, for instance, serves to reverse the principle of innocence and justify both the constant surveillance of the Black body and the need for provisional arrest in cases where a Black person is a suspect. Dina Alves study on Black women's incarceration in Brazil corroborates the thesis of the multiple layers of institutional racism functions based on racist presumptions to build the "suspect individual":

> Considering overt vigilance and penal selectivity to which black women are subjected is very important here because law interpreters (be they police officers, prosecutors, judges, lawyers, legislators, administrators, public defenders, and other public servants of criminal justice) reproduce, disseminate and support a racial regime of "production of truth" (Foucault, 2004), which favors the production of evidence and police action aimed at expanding criminal power and mass incarceration of individuals considered "suspects". (D. Alves 2017, 108)

In Brazil, 64% of people currently in provisional arrest are Black (Rosa and Santos 2017), mostly for crimes where racial profiling is a common practice, such as drug trafficking (Duarte et al. 2014). Explored by various studies in different countries, policing Black neighborhood is a consequence of the racialization of spaces (see Gilmore 2002; Hattery and Smith 2021; Cashmore 2013; Duarte and Freitas 2019; Bates et al. 2018; Raposo et al. 2019). Legal presumption associated with drug traffic crimes[102] often places Black neighborhoods as "commonplace of criminal activity". Studies showed, for the case of Brazil, that a Black person carrying a small number of drugs is rarely filed as a consumer due to the judge's assessment of the place and circumstances this person is found being associated to criminality[103] (T. Pires and Freitas 2018).

At last, there is another aim of the police operations that is well explored by Raquel Barros de Oliveira, representative of *Fórum de Manguinhos* a community-based organization, in the public hearing on April 19, 2021: "in the calculation of this intelligence action was the risk of victimizing the children, was there the *terror* imposed on the people who were

[102] The Law n. 11.343/2006, article 28 leaves to the judge assessment to differentiate what is consumption or traffic regarding to the place the drug was found but also the social and personal conditions of the defendant. ("§ 2º Para determinar se a droga destinava-se a consumo pessoal, o juiz atenderá à natureza e à quantidade da substância apreendida, ao local e às condições em que se desenvolveu a ação, às circunstâncias sociais e pessoais, bem como à conduta e aos antecedentes do agente.")

[103] Research by an investigative journalism agency over more than 4.000 decision has demonstrated that black peoples are convicted even with lesser drugs in comparison to white people in similar situation. Available at <https://apublica.org/2019/05/negros-sao-mais-condenados-por-trafico-e-com-menos-drogas-em-sao-paulo/>, access on the 17.09.2020.

in the place, and also the *terror* that we had to go through hearing all these reports of despair?"[104] **Terror** is a word used often by those representatives of the communities to describe the police force interventions. The Black genocide described my mothers in their testimonies to the court encompassed not only the youth people executed but also mothers and relatives that sicken and passed away because of the health hazard imposed by the constant environment of terror and injustice. Unfortunately, most of those deaths are not accounted for, as described by Keisha Perry-Kan (2012) in her narrative of the impact of police violence on women in favelas. The use of representation of favelas as places outside humanity, places of criminality, was mobilized often by the Rio de Janeiro government, the District Attorney's Office, and police institutions. By resorting to this imaginary - so well constructed, sustained, and constantly reproduced by national media, political and institutional discourse -, the use of racial presumptions not only disregards the need to prove the association to criminality but also naturalized the production of *terror* and *death*.

The rights associated with humanity are not going to be automatically protected for Blacks because of *fungibility*. The idea of home/body/territory in peril, unprotected, is lived through the experience of constant deterritorialization and dispossession (McKittrick 2006) and Black genocide (Flauzina 2006). Similar use of racial legal presumption is behind the possibility of issuing a collective search warrant in the zones of non-being, a complete aberration of the fundamental right to home inviolability that was broadly used to legalize police operations in *favelas*. As mentioned above, the Rio de Janeiro Appeal Court was authorizing collective search with a generic command, allowing the invasion of homes by the police forces disregarding the need to specify or justify the reasons for violating someone's fundamental right. This common practice was the object of a class action filed by the Public Defender's Office in the Superior Court and declared "illegal"[105].

Even though this decision was celebrated, the reality of those communities shows that due process was never meant to apply in the zones of non-being. Entire communities are associated with criminality, thousands of people, a process possible by the racialization

[104] Available at <https://www.youtube.com/watch?v=2P-0DrCoG5M>, accessed on 12/04/2022.
[105] Case HC n° 435-934-AgR TJRJ v Cidadãos e Cidadãs Domiciliados nas Favelas do Jacarezinho e Conjunto Habitacional Morar Carioca [2019] STJ DJe 20.11.2019.

of space. These practices would be unimaginable in the *zones of being*, inhabited by white people and reproducing whiteness as a specific positionality and culture that presumes protection by State (of lives and property). As *human,* whites are *subjects of law*, for whom are granted legal protection. The *subject* has intrinsic value – human dignity - and its protection goes even beyond the subject's will. This double standard is recognized by Justice Mendes, even though he did not acknowledge the active role of the Judicial System in differently securing rights in those different zones.

There is a pragmatic dimension to a legal procedure that those who are practitioners can relate to. When dealing with a demand to reduce police lethality in a bureaucratic State, procedures can be one necessarily mean to reach this outcome. As told by a public defender from Rio de Janeiro State (AB-24), the aim of the constitutional class action was to set those parameters, so the human rights institutions and civil society can monitor the State's compliance with the due process. He even mentioned the creation of an observatory to monitor the fulfillment of the STF's decision. Nonetheless, the decision has mostly been founded on human rights standards and not on the need to setting procedures to fight institutional racism. Even recognizing that protocols can be important for those responsible to monitor security forces activities, the fact is that resuming the debate to procedimentalism is how the discussion is sterilized, "de-politicized", deviated from the dangerous accusations of *genocide* and *institutional racism*.

Even in the case of the DPERJ, this class action was not accompanied by COOPERA, but by the public defender in charge of human rights. This outcome reveals a loss of opportunity to set protocols, parameters, and standards to identify and combat institutional racism. As the research participant acknowledged, framing those federal state actions as racism is a highly controversial topic, which most of the institutions from Rio de Janeiro were against, and blamed the DPERJ for politicizing the debate. Consequently, there was also a compromise to advance on concrete commitments and, for that, was necessary to adjust the language to the more commonsensical lexicon of human rights.

With this scenario, how can we reduce to a series of follow-up of protocols a State action that results in massive assassinations, where most of them are not even accounted for? It seems that the "excessive" use of force is justifiable because "criminals" have access to

heavy machinery, then the due process here implies allowing ambulances to reach the scene and provide medical assistance, to finally write a proper report on the police operations, to inform the District Attorney's Office, and so one. The judicial matter, in the end, is only about how the operations must take place (respect human rights), and not whether racist violence is rooted in institutional choices and practices.

The analysis suggests that by recognizing Black over victimization as a result of a systemic practice that is outlaw or omissive (either individual choice, illegal activity of government officials, or omission to comply with duty), the neutrality of the judicial system is reinforced, and the issue is reduced to the efficiency of the external control of the police activity. Thus, the decision does not face arguments of institutional racism and Black genocide. Once more those who are placed outside humanity are not going to be subjects of gross human rights violations. Additionally, even the more legalistic concept of indirect discrimination is not applied. As Educafro *amicus curie* presented, the use of this more consensual concept could also set some precedent providing standards to identify when the normal functioning of the Justice System is causing disproportional negative outcomes to the Black population.

The case only confirms that in the racialized legal regime "black life remains in peril" (Hartman 2008, 13). Black lives within anti-black racism are fungible and antithetical to subjectivity, it is out of the reach of legal protection. As race creates ontological difference delimiting who is *subject of law* and who is *object of law*, the outcomes of this court case exemplify those distinctions in the legal regime of who is to be protected (the subject/ human/ white) and who should be protected from (the object/ non-human/ black). The numbers of Black genocide evidence that Black lives are always in peril, and the *normal* functioning of the justice system does not protect Black lives nor provide justice for their deaths. As Jaime Amparo argues "the negation of Black civil life defines and regulates the regime of rights, (…) the victims don't have rights if they are not considered fully human, and Blacks are not quite humans" (2014a, 3). Raising unsettling questions through his ethnographic work with mothers that were reclaiming their sons' dead bodies killed by the police for a proper burial, Alves questions: "what are the limits and possibilities of 'human rights' in dealing with racialized bodies that are deemed to be outlawed, abject, and non-human?" (ibid, 3). What this case confirms is that the concept of "human" in the racialized legal regime places Black people outside State rights'

protection. In the narrative of society's need for public security, Black lives are collateral of the "war on crime", permanent in peril, unprotected.

Finally, despite genocide being categorized as a gross human rights violation, Black genocide is not recognized by the Brazilian justice system. Fungibility also informs the inherent impossibility to have "crime against humanity" with the massive killing of Black bodies. To recognize the possibility of Black genocide is to recognize Black *humanity*. Is not by any chance that the first conviction for the constitutional crime of racism in Brazil was a case of antisemitism. This pattern shows that "the precedents denote a paradoxical tendency of the judiciary: there is racism, as long as it is not against blacks" (Garcia, et al 2021, 65, author's translation). When we look at the Black genocide, we can see a discourse attached to those killing often celebratory within a language of "war on drugs", where the assassination of the disposable body reassures the continuation of Brazilian (racial) democracy (J. A. Alves 2018). Fungibility works in normalizing Black death and, particularly, Black assassination. As Almeida explicates, racism allows a "positive relationship to be established with the death of the other" (2019, 115), that is, the individual security or freedom is felt when the "abnormal" is eliminated. The law here acts as a "post factum narrative", or a "rhetorical foundation of the murder" (2019, 121), rather than a limit of State power over bodies and territories as we learn to understand. Fungibility informs the legal reasoning to guarantee the post-factum narrative as the legitimacy of the Black death.

PART II – ANTIRACISM WITHIN THE RACIAL STATE

Chapter 4. De-politicizing Black resistance: race, ethnicity, and recognition of rights

No hay racismo viable sin un estado comprometido con las prácticas racistas
José Pepe Luciano, 1998

Não aceito o escapismo da 'humanidade sem cor'... advogada por aquelas ideias e ideais do supremacismo eurocentrista
Abdias do Nascimento, 1974

The struggle for rights, including international human rights advocacy, has been a tool the Black movement has strongly mobilized, particularly since the approval of the Convention on the Elimination of all Forms of Racial Discrimination (ICERD) in 1965 to face the regimes of denial of racism prevalent at domestic levels. Rights are articulated in the antiracist struggle because, indeed, the *humanity* of people is put into question. The analysis of the interrelation between rights discourse, peoples' struggles, and State regulation, must be aware of how the Racial State often encapsulated antiracist claims so the racial order prevails. Taking this into account, the analysis should not subsume Black people's struggles into rights struggles, even if part of the activism often incorporates the rights language while negotiating with the State. As proposed by Thula Pires, we need to re-think this dispute as political, and while rights are historically used to (des)humanize people, their constant re-signification is part of the *political* struggle (Pires, 2017).

The nature of law within liberal hegemony has often de-politicized struggles, as the idea of progression or expansion of rights remits to a naturalized process of peoples' development, then easily "power relations are obscured, and political claims are decontextualized and deradicalized" (Kapur 2006, 110). On the other hand, rights "enjoys a highly favourable reputation" (Campbell 2006, 3), being a discursive tool that has become popular on political and moral grounds. According to Campbell, the hegemony of the rights discourse is due to, among other reasons, its capacity for providing a simple answer to "difficult moral and political questions" (2006, 4), being efficient to reduce conflict as it contains a promise or an aspiration. It generates a sense of order, offering a security system that supposedly everyone can rely on as it also reaffirms formal equality for all. Universality, as in the case of human rights, aspires to a universal justice that all individuals share, despite race, religion, class, or gender (ibid). However, the liberal

discourse, by making human rights the standard, also “demarcates zones of exclusion” (Baxi 2006, 182). This is because the universality of human rights relies on a universal subject that “resembles the uncomplicated subject of liberal rights discourse” (Kapur 2006, 107).

In this chapter, I present the key debates on the recognition of Black people’s rights in Latin America since the late 1980s, the controversies around the use of ethnic-racial categories in legal texts, and how the “threat of race” has pushed for the ethnicization of both Indigenous and Black struggles. Then, I briefly introduce the trajectory of the Black movement since the 1950s to historicize the Black struggle in the region, and the State response in different phases, placing Brazil and Peru within the histories of *Améfrica* (Gonzalez 1988) or Black resistance within the racial order. Before looking into current policies for the Black people in Peru and Brazil and the process of their formulation is relevant to briefly present historical and theoretical background shared in the Latin American region. And because in *Amefrica* Indigenous and Black peoples’ struggles are interconnected (Gonzalez 1988), I discuss some of the Indigenous processes of rights recognition that impact Black peoples’ ones.

4.1 The limits of Latin American legal optimism

Latin America lived a period of legal optimism with innovative new democratic constitutions that recognized the rights of Indigenous and Black peoples from the late 1980s to the 2000s. Some constitutions have declared the pluri-nationality of the State, as in the case of Bolivia and Ecuador (Fernández 2017), and this process was called “neo-constitutionalism” or “new Latin American constitutionalism” (Garavito and Días 2015; Rahier 2019). Some authors consider that the proliferation of both anti-discrimination laws and the recognition of rights related to ethnic or racial identities in Latin America were part of the “multicultural turn” when countries adopted a language of multiculturalism (cf. Rahier 2019; Telles 2014b; Hale 2005; Wade 2010; Hooker 2005). According to those analyses, the re-democratization processes lived in many countries since the 1980s and a “combination of local and national indigenous and Afrodescendant political activism with international influences and interventions from Global North countries” and multilateral organizations (Rahier 2019, 220), led States to embrace multiculturalism or the recognition of the heterogeneity of their population reflecting in

official statements and regulations. Tianna Paschel also discusses how the "increasing adoption of multicultural policies in the last few decades links directly to the human rights revolution and the development of global policy norms around racial equality in the post–World War II period" (2016, 84). On a different take, Boaventura de Sousa Santos (1997, 11) problematizes how emancipatory projects (mostly using the language of socialism) ended up adopting the language of human rights to reinvent the language of emancipation, filling the void left by the fall of the Berlin Wall.

Critical analyses of the period place the multicultural/ intercultural solutions under State projects to restrain the ongoing Indigenous and Black upraising throughout Latin America strongly after the 80s (Montoya 2013, 59). Since the 1990s, the implementation of structural adjustment programs and other austerity policies for Latin America within the politics of the Washington Consensus, promoted neoliberal economic initiatives. Mobilizations to denounce the impacts on Indigenous territories forced governments to implement measures focusing on "ethnic rights" (Paschel 2016, 85). According to Tianna Paschel, "nearly every major development institution in the Western Hemisphere also turned their attention to ethnic rights" (ibid, 85). Consequently, neoliberalism became a "full-fledged political project" in Latin America (Hale 2005, 12). Charles Hale discusses how in order to promote an economic policy, it was necessary to reorganize the political society, and this meant dealing with Indigenous movements and their "radically distinct cultural-political logics, demands and notions of rights" (2005, 12). So, in Hale's argument, what sounded counterintuitive in a region that has built national identities upon the denial of racial differences, the promotion of interculturality or multiculturalism became a way to foster an ideology of "pacific coexistence" between different peoples and foster the neoliberal project.

Hale also highlights how "Latin American elites have moved from being vehement opponents to reluctant arbiters of rights grounded in cultural difference" to embracing them, in a controlled manner (2005, 13). In this context, cultural rights, when controlled and limited, "pose little challenge to the forward march of the neoliberal project but also induce the bearers of these rights to join in the march" (Hale 2005, 13). Additionally, the multicultural/intercultural narratives did not represent a threat to the racial State project since they concealed an important identity: whiteness. By avoiding naming race or racism, those who have benefited from the racial system were invisibilized. Alana Lentin

has also problematized the role of multiculturalism in promoting racelessness, saying that "multiculturalism can be seen as an institutional policy that, by replacing an analysis of the link between racism and capitalism with a focus on the importance of cultural identity, depoliticized the state-centred antiracism of the racialized in postcolonial societies" (Lentin 2005, 380).

The multi-actors and multi-scale dimensions of this process demand an analysis that do not over-simplify the diversity of political developments produced from different realities and their political contexts, even if globally linked. Therefore, it is important to understand why and how human rights language encapsulate social struggles, but also how the hegemonic (white) leftist readings of social mobilization (the proletarian revolution) have marginalized, and sometimes subsumed Indigenous and Black political projects in the region. One narrative that is quite illustrative is how Indigenous and Black struggles have been described as "*new* social movements" with "*new* claims" within debates on the "*new* constitutionalism". Despite the existing critique of the categorization as "new", this approach was common to differentiate Black and Indigenous movements from "the classic trade unions workers' protest of earlier decades" (Wade 2010, 113). In this sense, the mobilization of identity is considered the key element that differentiates these "new" struggles, that is, "identity *as an end in itself*, whether it is linked to material rights or not (and it almost always is), constitutes something of a new trend" (Wade 2010, 113). Nonetheless, in the case of social mobilization in Latin America, neither Black people nor Indigenous movements as such are "new trends". Peter Wade argues that despite its long-standing history, "this consciousness has intensified and spread more widely in recent decades" (2010, 114). The reasons why social mobilizations presented from an "identity place" acquired more space on political and academic scenes are more interesting questions to address.

Challenging the approach on the novelty of identity mobilization in the Black struggle, Dora Bertúlio - in a book published in Brazil on the topic of "new rights" - calls them "new old rights", showing the continuum of the racial rule in the Brazilian legal regime. The racial regime perpetuated within a great silence from both the left and right political spectrum, who even after the re-democratization process neglected the centrality of race to understand power relations in the country (Bertúlio 2012, 143). Bertúlio argues that the only "novelty" possible is the understanding of the impact of racism in the formation

of the “juridical idea of the subject of law” (ibid, 158) because the reading as “new actors” is intimately related to the construction of the “Black” and the “Indian” as non-subjects or subjects of rights in the liberal sense, as discussed in Chapter 1. A new language of emancipation, according to her, should challenge the system of privilege in place, where

> the reproduction of the current model of racially hierarchical privileges and gains is still strongly supported by the legal system, which, through impunity for perpetrators of racist actions (including the Judiciary itself) and the absence of renewal and/or reconstruction of its concepts, theory and practice maintain and reproduce the status quo. (Bertúlio 2012, 158 author’s translation)

There are two important critiques in Bertulio’s analysis. First, the critique of the role of cultural rights and human rights in neoliberal projects implemented in Latin America, which is explored by the debates around the multicultural turn. Second, the critique of how the fight against racism was increasingly “accommodated” within progressive scholarship and politics in different contexts. Black and Indigenous movements have demanded autonomy (self-determination), access to power (production of knowledge, wealth, political decisions, land), and reparations for the consequences of colonialism and enslavement, but in different moments they found resistance inside “progressive” alliances within the left. Black and Indigenous activists were often accused of being ethnocentric and even racist (cf. A. M. Pereira 2008; Nascimento 1980; Pastor 2008; Cruz 2019) because they had mobilized their historical experience of expropriation, genocide, and subjugation. This specific historical process has conformed differently their political existence and cannot be subsumed in the general and abstract idea of “working class” or “peasantry”.

Those theoretical and political challenges are not minor. They are present throughout Latin America and continue to marginalize Black and Indigenous political projects, particularly when antiracism can contest power positions. Consequently, how Latin American political challenges are framed also define the set of solutions offered. For example, Helio Gallardo’s critical theory for human rights in Latin American reproduced the idea that we have “failed” or “weak” States because of their impossibility to fully implement human rights standards for all (Gallardo 2010). If we are assessing the modern liberal project, we might argue, like Gallardo, that we have “failed” States. On the other hand, if we take the racial State’s objectives, or Ana Luiza Flauzina's (2006) genocidal State, we can conclude that the Latin American States were very effective in

implementing the racial order, guaranteeing rights for whites while sustaining racism denialism. Therefore, the measurement of the "success" of our States depends on which project we assess they aimed to undertake. Although Gallardo recognizes that we have fractured societies because of discrimination, he still sees the solution in the recognition of difference as part of humanity[106], that is, the production of a "*positive and generalized cultural sensitivity*" towards human rights. Gallardo's approach is illustrative of how the critical theory of human rights in Latin America has little dialogued with critical race theories, as Dora Bertúlio (2012) criticizes. Consequently, multicultural visions based on western humanist notions of cultural difference are often privileged within progressive scholarships[107].

4.2 Beyond the multicultural turn: the long history of Black resistance in Brazil and Peru

Facing the argument of novelty of the "new political actors" when talking about Black struggle in Brazil and Peru, I look at the 20th-century processes of Black mobilization and organization. This approach underscores the seeds of debates that are still present on the contemporary political dispute and their impact on public policies and legal recognition. In this context, it is also significant to unravel the barriers that antiracism has faced in different moments, to understand the political scenario that unfolds in those countries. The 1940s, 1950s, and 1960s are landmarks for the Black movement not only in Latin America but worldwide (Nascimento 1980). Global movements such as Pan-Africanism and *Negritude* have also influenced Black activism in Latin America, being Pan-Africanist conferences organized in the continent (Monteiro 2022). Even before, political movements around Black identities were active, as in the case of the Brazilian Black Front (*Frente Negra Brasileira*), which was prohibited to become a political party by Getulio Vargas dictatorship (1930-1945) (A. A. Pereira 2013). Those processes evidence how the Racial State in different moments subsumed some of the vocabulary of struggle to guarantee its survival, but without recognizing Black political subjectivity.

[106] According to Gallardo, "nadie puede ser negado como ser humano *por su diferencia específica* o situacional y en la medida que esta 'diferencia' se sigue de una producción humana" (2010, 76).

[107] Debates from critical legal theory in Latin America can encompass legal pluralism (see Wolkmer 2001; Fajardo 2006) and critical theories of human rights (see Gallardo 2010; Flores 2005; B. de S. Santos 1997; Wolkmer and Sánchez Rubio 2018), with focus on a critique to liberal law or cultural rights, but with little engagement with critical Black thought (Bertúlio 2012).

In Brazil, in 1944, the Experimental Black Theater (TEN) was created as a project focused on unveiling racial discrimination and empowering Black consciousness. Guerreiro Ramos described the TEN as "the most conscious and spectacular manifestation of the new phase, characterized by the fact that, at present, the black man refuses to serve as a mere theme of 'anthropological' dissertations, and starts to act to unmask the prejudices of color" (1954, 21 author's translation). TEN organized the I Black Congress in Brazil in 1950. Its final document proclaimed the need for a tradition of equality in the country, the inclusion of Blacks in political parties and the political power, the investment in education for the Black population, and the need to fight racial discrimination (Ramos 1954).

In Peru, Black peoples have also used arts, particularly theater, to transform representations and narratives about Black Peruvians. The first theater company was *Pancho Fierro* (1956-1958), directed by a white criollo with a culturalist focus, but opened venues to visibilize Afro-Peruvian popular tradition (Barrós 2017, 147). Later came *Cumananá* (1958-1962) directed by Nicomedes Santa Cruz and Victoria Santa Cruz, bringing a critical performance with an "empowered and critical view of the social condition of the Black" in Peru (Barrós 2017, 148). Since its first representation, they reconstructed foundational elements of the Afro-Peruvian identity, the need for social memory of practices of resistance, the various dimension of their marginality within society, and the urban locations they lived. The popularity of Black culture in Lima within the *criollo* tradition has a turning point with *Pancho Fierro* company when Nicomes Santa Cruz is hired in 1957 and changed the name to *Ritmos Negros del Perú* (Aguirre 2013, 146). Nicomedes' *decimas* gained spaces in radios and theater in Lima. His work reflected his engagement with the *negritude* transnational movement. Nonetheless, while the popularity of Black culture is occupying central spaces in Lima, in 1957 a mediatic campaign leads to the execution of Jorge Villanueva Torres, described by newspapers as the "Monstruo de Armendariz", a case I discussed in Chapter 1. Luis Carrera (2019) details the process of how Lima media created "the monster" through the mobilization of racist Black stereotypes, that led to Torres's conviction. The timing of those processes is revealing of how racial representations of the "Black" are dialectic constructed within the economy of enjoyment (Hartman 1997), being both vital to racial subjugation.

It was during the booming of the Black movement protest that the State issued the first legislation to criminalize racial discrimination in Brazil in 1951 (Law n. 1390, known as Afonso Arinos' Law). Even though the fight against racism remained on the political agenda since the debates for the new democratic constitution of 1946, and the Black movement was prominent in its mobilization,[108] it was a particular racist event involving a foreigner that triggered the legal solution. A Black dancer from the United States, Katherine Dunham, was discriminated in a fancy hotel in São Paulo and used the media attention at the opening of her spectacle to denounce racism, a fact that was highly mediatized.

The disputed narratives around the Dunham case were those of the Black movement – the event proved that racism in Brazil was a reality; and those of the political elites, demonstrating astonishment with the case, described as an isolated event in the country of racial democracy. Then, many authors see Afonso Arinos' Law as a form of social "pacification", as the deputy who proposed the bill, a white conservative politician, was not functioning as spokesperson of the Black movement. Grin and Maio suggest that the bill represented a rescue of "the genuine atmosphere of racial harmony present in the trajectory of racial relations in Brazil since abolition" (2013, 45). Then, criminalizing racial discrimination (even as a minor offense) "would mean the emptying of the potential conflict present in the racial question in the name of its moral normalization" (Grin and Maio 2013, 45). Relating racism to exceptional events was also convenient for avoiding debates on structural inequalities and the deep roots of the racial State, which were already at the Manifesto of the Black National Convention of 1945, expressly naming the social inequality between Black people and whites in Brazil.

In the 1970s the Black movement gained new momentum. In Brazil, Amauri Pereira conceptualizes this phase as a third impulse[109], when struggles were strongly directed to

[108] In 1950 the 1st Congress of the Black Brazilian took place, attended by several social scientists, among them: Darcy Ribeiro, Roger Bastide, Édison Carneiro, Charles Wagley, Alberto Guerreiro Ramos and Luiz de Aguiar Costa Pinto (Grin and Maio 2013). Earlier, in 1945 the TEN (the Black Experimental Theater) had organized the Black National Convention in which Statement demanded that racism has a constitutional place as a crime *lesa-patria*, or 'against the nation' (Grin and Maio 2013). In the 50's it has also started the UNESCO project to assess the 'racial relations' in Brazil, which first results were already contradicting the dominant narrative of racial democracy. (A. M. Pereira 2008)

[109] Amauri Pareira (2008) divides the mobilization of the black movements in Brazil in the 20th century in three impulses: in the 30's with the creation of the Brazilian Black Front (Frente Negra Brasileira - FNB);

dismantle the idea of racial democracy, facing upfront the racism by denegation (Gonzalez 1988). The "economic miracle" from the 1970s benefited the entrance of some Black people into the labor market, and this exposed racial democracy's contradictions. According to Pereira, "the blacks in social ascension, closer to the racist and conservative middle class emerged as the first groups radically anti-racist" (Pereira 2008, 44). It became evident to them that socio-economic inequality was not the answer to the countries' problems alone when a small Black middle class started to face closed doors. During this period, many Black activists became also aware that the left would hardly fully embrace the antiracist struggle. Pereira illustrates from his own experience, a sentence he listened to too often: "the coumarates are going to divide the proletariat" (ibid). Then, the organized left, struggling against the dictatorship regime, was also not a place for the Black movement to seek support[110] to denounce racism and construct a racial equality agenda.

Abdias do Nascimento was also called racist in an episode narrated in his book Quilombismo, when he and other Black activists were expelled from the National Student Union (*UNE – União Nacional dos Estudantes*) to defend the centrality of racism to liberation struggles during the Brazilian dictatorship. Nascimento heard that "dealing with the specific issue of black people was fascism, which would result in the division of the oppressed classes" (1980, 173). For Nascimento, "such kind of sabotage, treachery and white supremacism by the 'allies' of the black struggles has occurred in all the places and in all times where they try to open their own way, or maintain the integrity of their perspective of struggle" (1980, 174). In Peru, many Black intellectuals were left militants, such as Pepe Luciano and Cheche Campos, but they also found problems within the left to place the fight against racism as a priority. According to Cheche Campos, in an interview published by Humberto Pastor:

> the left never understood that in Peru there was a conflict between civilizations and cultures. (...) many of the leaders of the leftist groups had not resolved their identity problems either, coming from Creole elites who had historically managed the country. That is why it was very difficult for them to understand the *cholos* or the blacks, no matter how much they wanted to do so. That is

in the 40's the second impulse with the Teatro experimental do Negro and; in the 70s the third impulse with the Movimento Negro Unificado.

[110] Amauri Pereira mentions the financial fragility of the organization and the difficulties to participate in the international debate, giving the example when Abdias do Nascimento was cut off the Brazilian mission for the Black culture and art festival in Nigeria in 1977, as well as the two World conferences against racism (1978 and 1983) were not in the priority of the movement (2008, 54).

> why they had a feeling of guilt and did not recognize their position of privilege in which they had always lived. (Pastor 2008, 340 author's translation)

Nicomedes Santa Cruz had a similar experience with the Peruvian left in the 1960s and 1970s, where he saw the reproduction of the "invisibility and oppression of the Afro-descendent population" (Aguirre 2013, 155). The "military revolution" of 1968 promised structural transformations in the society and was supported by many left intellectuals, including Nicomedes, who worked for General Juan Velasco Alvarado as a folklorist during the government and also on TV and radio shows (Aguirre 2013, 161). The Constitution of 1979 was already a rupture with the old regime, promoting land reform and changing electoral rules, including everyone above 18 years old as voters[111]. The changes made by Velasco Alvarado's regime abolished the plantation as the *hacienda* and the *gamonal* system fomenting the organization of the *campesinos* into cooperatives. Black rural communities were also beneficiaries of the land reform, but they still struggle to recognize their right to communal land or ancestral territory.

Velasco Alvarado's reforms are particularly important to understanding how the State has managed and created political/cultural identities in Peruvian society. The Constitution of 1979 granted rights to *campesinos* and native peoples. Campesino was the identity that comes to suppress the Indigenous one, at least of the original peoples from the high lands, whereas *native* is related to the peoples of the Amazon region[112]. This Constitutional reform did not recognize Black people as subjects of specific rights. Despite the structural changes caused by the land reform, Raquel Fajardo (2006) argues that the Indigenous peoples' self-determination was denied, when rights were granted by an integrationist concept as *campesino*. The regime understood the need to fulfill the historical demand for land and certain autonomy to "pacify the masses" and control the "dangerousness" of indigenous movements' socialist radicalization (Cotler 2009). On the other hand, the nationalist tendency of the regime, which attacked the commitment of the elites with the international capital, signified a moment of hope for those engaged in progressive struggles (Aguirre 2013).

[111] Until then the illiterates could not vote, showing why the oligarchical power survived for so long as the legal impediments structured the exclusion of most of the population from the political system. That meant that previously the rural population was mainly dependent on the *gamonales* to access the State, creating a super representation of landowners on the political power and a dependency situation.

[112] Peoples from the Amazon region have been differentiated from other peoples from Peru since they are not considered heirs of the Incas and then, not 'evolved' as those from the Andes (Cadena 2004b, 38).

In Brazil, the dictatorship (1969 -1985) was careful to control challenges to the racial democracy myth, and during this period, to “incite racial hatred or racial discrimination” was considered a crime, which was interpreted as the prohibition to declare that racism existed in Brazil (A. A. Pereira 2013). The censorship of the media and the surveillance of Black movement organizations aimed to contain the debate on the existence of racism (A. A. Pereira 2013). The discourse that racism was a foreign idea made the trajectory of the antiracist struggle difficult, which was seen as an anti-nationalist or even anti-Brazilian struggle. Regardless of the regime’s position, in July 1978, a mass manifestation took place in São Paulo, leading to the creation of the *Movimento Negro Unificado - MNU*. Studies on the history of the Black movements in Brazil show the impact of the so-called “third impulse” of the movement with the creation of MNU (cf. A. M. Pereira 2008; A. A. Pereira 2013; Oliveira and Adão 2017).

Several events in subsequent decades are brought as landmarks for the Black struggle in Brazil: the 1988 celebration of the 100 years of the formal slavery abolition and the 1995 celebration of 300 years of Zumbi dos Palmares’ death. According to Oliveira (2017), the Black movement gained momentum in the 80s and this was reflected in the Constitution of 1988, which declared racism a severe crime (not possible to release on bail and imprescriptible) and recognized the right of *quilombolas* to their ancestors’ land. Another landmark refers to the great march organized in Brasilia on November 20th of 1995, with 30.000 people, which opened a channel of negotiation with the president Fernando Henrique Cardoso. As a result, in 1996, for the first time, the State recognized in its official discourse racism as a structural problem in the country (A. A. Pereira 2013). As argued by Oliveira and Adão, from the moment the State recognized racism as a structural problem, institutional spaces were opened for “thinking policies to combat racism” (Oliveira and Adão 2017, 16). According to Oliveira and Adão, this was an important moment because the Black movement could change the focus from *denouncing racism* to the claim for *policies for racial equality*. In the 2000s, a more collaborative effort between the Black movement and the national government started to think of and try to implement a series of antiracist policies at the national level.

In Peru, the 1980s was also an important decade for the Black movement, when organizations of Afro-Peruvians started to organize themselves nationally. First, the objective was to visibilize and valorize the Black contributions to the Peruvian history

and nation formation, but later the debate focused also on access to political power (Armas and Pavone 2002, 33). In 1983, José Carlos Luciano Huapaya and Jose "Cheche" Campos found the Institute of Afro-Peruvian research (*Instituto de Investigaciones Afroperuanas*- INAPE) to fulfill to need to build a Black philosophical thought that could think blackness in Peru (Luciano 2012, 21). In 1986, the National Movement Francisco Congo (*Movimiento Nacional Francisco Congo* - MNFC) is officialized, and in the same year, the government of Alan Garcia institutes the "Peruvian-African Friendship Day" (*Día de la Amistad Peruano-Africana*) on the 19th of October. This recognition is related to Luciano's capacity to dialogue and a result of Black intellectuals' mobilization after INAPE (Pastor 2008, 339).

In 1992, the first meeting of Black Communities was held in Huampaní (Lima), where representatives of the different communities participated and had the objective of promoting a national organization (Armas and Pavone 2002, 34). In 1995, the MNFC presented to the candidates in the national elections a document with the Political Proposals for the Progress of the Afro-Peruvian Community (*Propostas Políticas para el Progreso de la Comunidad Afroperuana*). Among the proposals, we see a claim for constitutional recognition of Afro-Peruvians; the creation of laws against racism, racial discrimination, and segregation; the titling of Black rural communities; a census of Black communities; changes in the curriculum to include the history of Afro-Peruvians and the recognition of Black cultural traditions (Pastor 2008, 438–40).

The crisis of the military government, leading to the fall of Velasco Alvarado and the raise of Morales Bermúdez, in 1975, marks a recrudescence of the regime and the persecution of left intellectuals, many of them forced to exile. In the 1980s, Peru lives a brief period of democracy (Fernando Belaúnde Terry 1980-1985 Acción Popular and Alan García Pérez 1985-1990, APRA), before Alberto Fujimori got into power in 1990 and undertook a self-coup (1992) leading the country to a dictatorship that lasted until 2000. The rise of a non-white populist as Fujimori in a racialized presidential campaign against Vargas Llosa (Cadena 2001), resulted in massive popular support. Nevertheless, Fujimori implemented a series of neoliberal policies, reflected in the current constitution of 1993 that opened the country to foreign investment and privatization (Rubio Correa 2017, 19). Fujimori's strategies to infiltrate social movements to control community

organizations impacted the Black movement Francisco Congo, broken apart by the political tensions resulting from some members' alliances with *fujimorismo* (AP-19).

This short historical account in Brazil and Peru puts into perspective the constant dialectics of the Black struggle and the various resistances to the antiracist claim. It also makes evident that certain policies and rights that came to be implemented/ recognized were already part of the movement's agenda since the early 20th century. This recognition is important for several reasons. First, it confronts the arguments common among Peruvian State officials that Afro-Peruvians organizations do not have a clear agenda, which I discuss in Chapter 6. In the case of Brazil, it acknowledges the protagonist role of Black mobilization to what later was implemented during the progressive government of the *Partido dos Trabalhadores, PT*. In both cases, the accounts also challenge the argument of Black mobilization are "new social claims" in the Latin American context. On the other hand, how the State becomes more open to this social claim after the 80s is related to international trends on how race and racism are subsumed within the "multicultural turn", but this is only part of the reasons considering the strong political mobilization of the Black movement that pushed for a State response.

4.3 The institutionalization of Black People's Rights

The 2000s is a landmark decade for the Black struggle and State rights recognition, particularly in Latin America. Adding to the processes described in the previous section, the process of the III World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001), known as Durban Conference, impacted Latin America like no other region (Lao-Montes 2009). Networks of Black organizations were provided with financial support to attend preparatory meetings and, later, to participate massively at the Durban Conference in South Africa. Activists acknowledged the impact of the Durban process to "reflect on internal conditions and racial discrimination in Peru" (CEDEMUNEP 2011) or even to open venues to wider the scope of debate on public policies, such as in the case of Brazil (Carneiro 2002). In the next chapter I explore Durban Conference's impact on the regional debates to create an InterAmerican Convention against racism.

From 2001, the region has witnessed domestic legal production to incorporate the Durban Declaration principles and action plan. Brazil draws several antiracist legislation and policies with a major influence from Black movements activism, with the creation of the National Secretariat for Policies for the Promotion of Racial Equality (Secretaria Nacional de Políticas de Promoção da Igualdade Racial, SEPPIR) in 2003. Peru has also incorporated anti-discrimination legislation and has been debating policies for the Black population in the first institutionalized Directorate for Policies for Afro-Peruvians (Dirección de Políticas para Población Afroperuana, DAF) at the Ministry of Culture in 2015. I briefly zoom in on both countries' policy approaches.

Brazilian racial equality policy

Since the re-democratization in 1985, Brazil lived a more optimistic period on the prospect of consolidating some of the historical struggles of the Black movement through rights recognition. The outcomes of the national constituent assembly were illustrative of how various demands of social movements could be fulfilled by recognizing and declaring specific rights in the context of the so-called "democratic transition". Despite the limitations of the constituent process (see N. N. da S. Santos 2015), the 1988 Constitution recognized cultural and territorial rights of Indigenous and Afro-Brazilians. This opened the possibility to design policies within the fields of culture, education, and land, with recognition of *quilombolas* right to territory. The challenge was to implement the constitutional commands, which were to be progressively done, with a specific regulation.

It became gradually evident that without a permanent institutionality to guarantee the 1988 Constitutional commands' implementation, the declaration of the rights would remain just that, a declaration. Consequently, the creation of SEPPIR in 2003 marks a turning point in the State's approach to antiracism in Brazil. Racism as a public issue was already officially recognized during Fernando Henrique Cardoso government (1995-2002), but his mandate undertook mostly symbolic or non-mandatory measures (S. A. dos Santos 2014). Before that, the Palmares Cultural Foundation was created as part of the Ministry of Culture in 1988, for the celebration of one hundred years of racial enslavement abolition. Thus, from 1988 to 2003, the "Black agenda" was within the scope of cultural policies (Jaccoud et al. 2009, 26), as the Palmares Foundation had "the purpose

of promoting the preservation of cultural, social and economic values resulting from black influence in the formation of Brazilian society" (Article 1, Law 7,668). In this context, changing the language from "cultural preservation" to "racial equality" was a paradigmatic turn.

In 2000, Congressman Paulo Paim presented the bill of the Racial Equality Statute (bill 3,198/2000) that aspired to institutionalize a racial equality policy, consolidating various existing bills on the topic (Jaccoud et al. 2009, 55). Yet, SEPPIR faced a series of conceptual and political challenges to produce an antiracist program inside the government, which are illustrated by the long and tortuous debate to the approval of the Racial Equality Statute in 2010, as the Law 12,288. The main defeat in the debates in the Brazilian Congress was the elimination of binding commands that set a permanent legal status for the racial equality policy provided for in the bill. For instance, the original proposition provided for the creation of a fund to finance the policy, and several affirmative actions, with the reservation of vacancies for Black people in the public service, in universities, and in the labor market, which were not approved. Equally racial representation in the general media should also be guaranteed. There were topics on right to land, health, housing, and access to justice. Regarding justice, the bill provided for the strict liability on crimes of racial discrimination and racism, and the reversal of the burden of proof. All those substantive and biding commands were removed or emptied in the approved text, to adopt a non-mandatory language (S. A. dos Santos et al 2011).

Despite emptying some important content of the Racial Equality Statute, the strength of the Black movement mobilization allowed for changes in the political scenario that became more favorable to the approval of affirmative actions, and then several bills were proposed separately. Many of the measures that comprised the racial equality policy were only possible because there was a State body with close and direct relation to the Black movement, such as SEPPIR. First came the approval of Law 10,639 in 2003, to include in the official curriculum, as mandatory, the teaching of "Afro-Brazilian History and Culture" and insert November 20th in the school calendar as the "Black Conscience Day", in memory of the death of *quilombola* leader Zumbi dos Palmares. Later, Law 12,711 was approved in 2012 and established quotas for Blacks and low-income people in public universities; and Law 12.990, approved in 2014, provides for 20 percent of public service vacancies for Blacks. SEPPIR had also to face various constitutional court cases against

affirmative actions. This legal battle slowed the achievement of some national goals and placed the Secretariat dependent on legal knowledge and the Justice System (Radomysler 2013).

On the other hand, more institutional aspects of the SEPPIR structure were regulated through decrees, which are precarious normative instruments. For instance, the decree 4,885/2003 created the National Council for the promotion of Racial Equality (Conselho Nacional de Promoção da Igualdade Racial, CNPIR), a participatory instance with the presence of different government sectors and civil society, and the decree 6,872/2009 approved the National Plan for the Promotion of Racial Equality (Plano Nacional de Promoção da Igualdade Racial, PLANAPIR). This fragility led to the dismantling of the racial equality policy by Bolsonaro's government[113]. SEPPIR was placed in a diminished position within the Minister of Women, Family and Human Rights. For this reason, Black activists I interviewed concluded that SEPPIR ended in 2016 with the coup d'état that withdrew Dilma Rousseff from the presidency[114].

Regardless of the political scenario from the last years, Brazil gained a leading role in the region in fighting racism (Paschel 2016). The scope of Brazil's institutionalization of a "racial equality agenda" can hardly be compared to any other initiatives in Latin America. Still, as discussed in Chapter 6, relating the Brazilian experience to the Peruvian one can reveal similar challenges when antiracism is placed within the Racial State.

Public policies for the Afroperuvian People

In Peru, after 2001, a series of regulations and plans started to be drawn, with more engagement of civil society in governmental spaces. In 2002 is issued the National Agreement (*Acuerdo Nacional*), a national strategic plan focused on poverty reduction and development, with the commitment to "combat discrimination based on inequity between men and women, ethnic origin, race, age, creed or disability" (República Del Perú, 2002). In 2005, the Human Rights National Plan listed among its objectives "to implement affirmative policies in favor of the most vulnerable sectors such as women,

[113] With one single act, the Decree 10,087 from November 2019, President Bolsonaro extinguished all participatory structures existing in the Federal Government which were regulated by non-binding instruments such as decrees or ordinances.
[114] The election of Lula in 2022 changed once more the scenario, with the creation of a Ministry of Racial Equality.

indigenous and Afro-Peruvian peoples". In 2006, Law 28761 declared the June 4th the "*Día de la Cultura Afroperuana*" - the Afroperuvian Culture Day and the Penal Code is altered to include in Article 323 the crime of discrimination. In 2009, the Ministry of Women and Social Development issues an official apology to Afro-Peruvian people, el "Perdón Histórico", for abuses, exclusion, and discrimination committed and recognizing the effort to affirm national identity. During Alan Garcia's government (2006-2011), symbolic measures were undertaken toward the visibility of Afroperuvians (López 2012, 198) under neoliberal multiculturalism. This policy approach was not so distanced from those implemented during Alejandro Toledo's government (2001-2006), despite his pro-indigenous discourse (Greene 2010, 114) and the creation of participatory spaces, such as the INDEPA (*Instituto Nacional de Desarrollo de los Pueblos Andinos, Amazónicos y Afroperuanos*), a structure associated to the Council of Ministries and the Presidency[115].

In 2010, intercultural policy approaches are institutionalized with the creation of the Ministry of Culture and its Vice Ministry of Interculturality[116] and replaced Indepa. Since 2011, a series of policies and plans are designed from participatory processes, creating a regulatory framework for the Vice-Ministry of Interculturality. A methodology encouraged by Ollanta Humala's "socially inclusive" government (2011-2016), who was elected with promises to govern for the "dispossessed" (Babb 2017, 244). In 2015, the Ministry of Culture ratified a broad framework enforcing the State's vision of interculturality, the "National Policy for Mainstreaming the Intercultural Approach". Shortly after, the General Directorate for Intercultural Citizenship is established, with three divisions: Directorate for the Rights of Indigenous Peoples (DGPI - *Dirección General de los Derechos de los Pueblos Indigenas*); Directorate for Policies for Afro-Peruvian Population (DAF - *Dirección De Políticas Para Población Afroperuana*); and Directorate for Cultural Diversity and Elimination of Racial Discrimination (*DEDR - Dirección de la Diversidad Cultural y Eliminación de la Discriminación Racial*).

During this period, the Vice-Ministry of Interculturality developed a plan focused on the Black population, approving in 2014 the "Guidelines for the Implementation of Public Policies for the Afro-Peruvian Population" (*Orientaciones para la implementación de*

[115] During Alan Garcia's government Indepa was extinctic and its functions transferred partially to the Minister of Women and Development (MINDES), in 2008.
[116] The Ministry of culture is created by the Law n.º 29565.

políticas públicas para población afroperuana - OIPPA) and in 2015 the "Specialized Study on the Afro-Peruvian Population" (*Estudio Especializado Sobre Población Afroperuana* - EEPA). Both documents aimed to subsidize the policy design of Plandepa (National Development Plan for the Afro-Peruvian Population)[117], finally approved in 2016. In 2016 participatory instances were also created to include civil society in the dialogue with DAF. The Working Group with Afro-Peruvian Population (*Grupo de Trabajo con Población Afroperuana*, GPTA) was formed by various organizations of the Black movement from various regions of Peru.

Plandepa's main goals were to remedy Afro-Peruvians' invisibility in the formation of the "Peruvian nation" and to promote their development, and it was organized around four strategic objectives. The first objective, statistical visibility, is translated into data collection, but the lack of ethnic-racial data on various sectoral areas (such as education, health, justice, etc) reflected the fragility of the stipulated goals, which ended being one of the plan's weaknesses. This was partially amended with the inclusion of a question on ethnic self-identification in the 2017 national census allowing for a breach in almost one century of statistical invisibility (Noles 2017). The second objective, equality and non-discrimination, involved activities such as educational and awareness campaigns or actions to incentive reporting discriminatory events (Ministério de Cultura 2016, 63). There is no direct action involving the Ministry of Justice to guarantee access to justice, which are real challenges, as debated in Chapter 2. The diagnosis presented in the Plan, based on the EEPA survey, led to the understanding that racism, once again, is a matter of education for intercultural citizenship:

> All the above shows the persistence of racial discrimination (symbolic and structural) as a negative element, while the need to build intercultural citizenship in which the people of different 'ethnic-cultural' groups interrelate with horizontality and mutual respect, valuing the existing diversity in the country. (Ministério de Cultura 2016, 40)

The third objective, the promotion of development, involved the most robust actions, such as affirmative actions and quotas for Black people in public employment and universities. The plan also provided for changes in the school curriculum to contemplate African history and culture. All of those are quite close to what SEPPIR has promoted in Brazil.

[117] The *Plan Nacional de Desarrollo para la Población Afroperuana* - Plandepa is approved by the Decree n. 003-2016-MC.

Nevertheless, the text is extremely generic, not saying how or when these goals are to be achieved, despite indicating the different sectors responsible for each strategic action associated with the objective. In the goals section, the problem of implementation is evidenced in the absence of data, so many goals have no baseline (Ministério de Cultura 2016, 67–70). The fourth objective, the strengthening of institutionality regarding Afro-Peruvian policies in the State structure, has also timid goals, such as the registration of Afro-Peruvian organizations and inclusion in regional electoral lists.

Plandepa's objectives had also a problem with compliance due to the lack of baseline, or a detailed account of the current situation of Afro-Peruvians in different areas so the percentages could be measured. The percentages foreseen for actions such as quotas in the public service or universities are unaware of the reality that already exists, once there is no data collection based on race/ethnicity in such sectors. The stipulated goals do not reflect the reality, and there is nothing in the Plandepa that recognizes this distortion. Even with all its fragility, the Plandepa is an important landmark for Afro-Peruvians¸ as the first State policy initiative. Until the last moment, there was no certainty if the Plan was going to become official. Even in its reduced version, it risked falling into oblivion. The Black movement had to organize a campaign for the current president Ollanta Humala to sign it, "*Ollanta firma ya*":

> We made a protest of seventy Black people, (...) it was a demonstration at the door of the Ombudsman's Office and while we were there, it was like seventy black people demanding the Plandepa to be signed and the next day Ollanta signed. And several of the organizations were like "our protest was a success" and I said "no". This has been like the game of this president, only wanting to "I'm not going to sign it until someone asks me to" and that's it (...). He was going to sign it but he wanted a little bit of *buya*, right? He wanted people to tell him... because the motto was also "Ollanta signs now", and it was like "Ollanta signs now" and Ollanta signed... so, of course, the movement was "what we achieved" and in my head it was like "no"… (AP-3)[liv]

If signing the Plandepa was challenging, its implementation proved to be a hard task and had to confront institutional racism. In 2020, the 5-year duration of the plan expired with few goals were implemented, most of them in the sphere of data production. The ephemeral character of the plan compelled DAF to push for a permanent instrument, a law. The conclusion among the staff was: "the attention to the Afro-Peruvian population must have a mandatory character and it should not happen because someone considers it or not, but simply because of the character of a law that has to be complied with" (AP-15)[lv]. This also proved to be important in the Brazilian case, as the affirmative actions are

all provided for in law, following governments cannot easily dismantled them. In the next section, I debate conceptual challenges faced by an antiracist agenda with the ethnicization of Black struggles in Latin America, linking to academic knowledge traditions and their impact on different readings and translations of the social claim.

4.4 Law, culture, and recognition of rights

The ethnicization of rights recognition has been pointed out as a key limitation of Latin-American legal reforms (cf. Walsh 2008; Garavito and Días 2015; Hale 2018). The study of Garavito and Dias (2015) demonstrated that the dominant modality of recognition was under the multicultural hegemony, "which consists in legally protecting ethnic-racial diversity as long as it does not imply economic redistribution in favor of indigenous and Afro-Latin Americans" (2015, 22). The use of ethno-racial categories, particularly the division between the "ethnic" and the "racial", impact differently Black and Indigenous peoples and the regulation of their social claim. Cultural rights become the frame for Indigenous peoples' claims in Latin America, impacting Black peoples' struggles concerning access to land and self-determination (Restrepo 2004). On the other hand, denounces of racism have been reduced to anti-discrimination and related as only belonging to the Black activism agenda. Despite the continuous attempt to differentiate those processes, they should not be taken in isolation.

In Brazil, for instance, aspects of African heritage (African ancestors' land – *quilombos* -, and African-based "religion" – *povo de santo*) needed to deal with the notion of culture to guarantee rights. The recognition of African culture or ancestry was within the scope of SEPPIR, adding layers of challenge under "racial equality" lenses to State policy adopted after 2003. For instance, the Decree 6.040/2007 created the National Policy for the Sustainable Development of Traditional Peoples and Communities, conceptualized in article 3 (1) as:

> Traditional Peoples and Communities: culturally differentiated groups that are recognized as such, that have their own forms of social organization, that occupy and use territories and natural resources as a condition for their cultural, social, religious, ancestral and economic reproduction, using

> knowledge, innovations and practices generated and transmitted by tradition.[118]

This broad definition of "peoples and traditional communities" has allowed for an encompassing recognition of rights to land according to its communal use, and it is also associated with the struggle around the right to prior and informed consent recognized by the International Labour Organization Indigenous and Tribal Peoples Convention n. 169 of 1989 (Calegare, Higuchi, and Bruno 2014). Additionally, this regulation recognized forms of Black organization granting them the status as *people* (*povo*). All those different forms of organizations were recognized as "Traditional African-based peoples and communities" (*Povos e comunidades tradicionais de matriz Africana*) with special attention by various sectors of government (Morais and Jayme 2017).

One research participant explained how changes in some groups' categorical affiliation, such as in the *Candomblé* tradition, have more to do with granting some level of State recognition than with internal processes of self-identification. Notions of "religion" or "religiosity" were troublesome to encompass traditional relations to the land in the *terreiros,* but those labels could grant some protection. Considering the historical process of persecution and criminalization of African forms of autonomous collectivity, the demands focused on granting some level of security.

> When Convention 169, Decree 6040, appears, another legal regime emerges that allows to expand the discussions a little more and encompass themes that the concept of religion did not allow, such as patrimonial succession, territoriality, in short, forms, modes of existence even. Candomblé has always understood itself as communities of life, as *família de Santo*... so, the people would even like to be recognized as a family, with the same rights as a biological family for the purpose of inheritance and so, in so many cases. And so, this starts to appear, sort of in parallel with the debate on structural racism. So, at the same time that there is a shift from religious intolerance to religious racism, structural racism, there is another shift that is from religiosity to traditionality, from Afro-Brazilian or African-based religion for peoples and communities of *terreiros*, peoples and communities of African origin. (AB - 20)[lvi]

On various occasions, all this complexity has approximated the *quilombolas* to the struggle of Indigenous peoples more than to the Black movement established within the contours of urban life and politics. In Brazil, some *quilombolas* leaders do not give up the

[118] Original text in Portuguese" Povos e Comunidades Tradicionais: grupos culturalmente diferenciados e que se reconhecem como tais, que possuem formas próprias de organização social, que ocupam e usam territórios e recursos naturais como condição para sua reprodução cultural, social, religiosa, ancestral e econômica, utilizando conhecimentos, inovações e práticas gerados e transmitidos pela tradição".

ethnic element of their identity, because it has granted access to land through "cultural rights". Nonetheless, they are aware that race is also important because it makes evident that racism has shaped their experience, "but I think it [ethnicity] cannot be said to be detached from the racial issue, it is race-ethnicity, it is not ethnicity and not race" (AB - 10)[lvii]. Yet, as the State grant rights in relation to identity, and the law regulates differently each people, conflicts emerged presenting challenges for alliances.

> This possibility of alliance only happens between peoples, but the State has a master's and doctorate in separation and creation of conflicts between peoples... between Indigenous peoples and Black people. This is very evident, it is very evident how the machine operates, and I say because I am from a quilombo that we are descendants of Indians too, I am also a descendant of the Atikum people and we lived until 1994 without any [...] problems like everyone else has, but without any sort of division. Today, it is less now, but you even had a campaign for the Indigenous people not to study in quilombola schools, so as not to lose their identity, look at this! Then it happens that there is a house that has 5 people, 2 define themselves as Indians and 3 as quilombolas, we are like that, I am the result of this strangulation that the State makes, the State is an expert at this, and why? (AB -10). [lviii]

As explored in Chapter 1, reinforcing differences between Black and Indigenous peoples was part of the colonial project. Even today regulating both peoples differently are the cause of conflicts that were not there before the State intervention to supposedly "implement rights"[119]. There is still a legal "blindness" regarding how those peoples' struggles are very intertwined in concrete territorial dynamics, as in the case of the research participant's community (AB-01).

In Peru, the use of culture to define the contours of the recognition of rights is broad and pressed Black activists and organizations to demonstrate the existence of an Afro-Peruvian cultural tradition and, most importantly, its contribution to the Peruvian national culture (cf. Valdivia 2013; N'gom 2011; Aguirre 2013; Greene 2010). Even so, there is still a strong denial of Black people's rights to land, so *palenques* are not recognized as ancestral land. In 2020, the Working Group of Experts on People of African Descent on its mission to Peru report the situation of complete negligence towards Afro-Peruvians and their right to land. The report (A/HRC/45/44/Add.2.) states that "land tenure and security are elusive for Afro-Peruvians. Although the presence of people of African descent in Peru dates back to the period of enslavement, their land titles have never been

[119] For more on the debate of conflicts in Brazil due to difference in regulation for Indigenous and Quilombolas refer to (Arruti 1997), for territorial conflicts produced by law refer to (Coelho 2021).

properly formalized" (§61). The report also pointed out how many Black communities were impacted by mega development projects but are never recognized the right to the consulted: "These projects were nonetheless approved without any consultation with or compensation for the Afro-Peruvian communities affected, regardless of the fact that they have lived on these lands for centuries" (§25). In the case of Peru, racial geographies impact social claims. Besides, on the part of the State authorities, an understanding that the Afro-Peruvian agenda is urban: "the agenda of Afro-Peruvians is absolutely urban" (AP -27)[lix]. This is also the result of how the movement itself is divided between urban and rural, and with more visibility of organizations that are in Lima, than others that are in rural contexts.

The denial by the State of Afro-Peruvians' right to territory does not mean that the claim for recognition does not exist. During fieldwork in 2018, I participated in a meeting of GTPA (*Grupo de Trabajo con Población Afroperuana)* when the group presented a document requesting the Ministry of Culture to recognize as people or "*pueblo*". There was a representative of the Vice-Ministry of Interculturality at that moment that said that the Ministry of Culture could only use the term population, because the State is legalist, and it must be supported by the norm. The political dispute over naming the "*población*" and the "*pueblo*" is evident, which could lead to claims for territory and the right to be subject under the ILO 169 convention.

Some bills tried to make a constitutional change for the recognition of the Afro-Peruvian people. The last one was Bill No. 02751/2017-CR that proposed the «change of article 43 of Chapter 1 "Of the State, the Nation and the Territory" for the recognition of the Afro-Peruvian People as a constitutive part of our nation». The project was shelved in 2021 for non-follow-up. In that same year, Law 31302/2021 was approved, which recognizes the value of the memory sites of the Afro-Peruvian people and their cultural heritage as a mechanism to combat racism and violation of ethnic rights. Within this framework, the Zaña district (Chiclayo province, Lambayeque region) was recognized "as the first Afro-Peruvian memory site identified by the Peruvian State." Despite the importance of this recognition, there is still no comprehensive policy for the recognition of collective territories and the rights associated with them. As earlier mentioned, the Constitution of 1993 only recognizes as subjects of cultural rights *comunidades campesinas y nativas*, which are concepts that do not include Afro-Peruvians *campesinos* or rural communities.

Most of the State's approaches to policies that target Afro-Peruvians are culture-related in a strict sense, such as the celebrations around June 4th, the Afro-Peruvian Culture Day, and June as the month of Afro-Peruvian Culture. Within the Ministry of Culture, policies for Black peoples have a strong cultural component, even if this research participant, Minister Official, argues this is not a traditional concept of culture:

> [we don't work with] the traditional concept of culture as a heritage expression, the artistic industries, but on the other side of culture: construction of identities, recognition of diversity, identification of contributions, more evidence that allows to have record of diversity and Afro-Peruvian presence within the construction of the country, more from that side. Which is more complex and difficult to show. (AP -27)[lx]

The recognition of cultural diversity is discursive, and the policies have no binding commands to promote structural changes. This is the example of the National Policy for the Mainstreaming Intercultural Approach, which commands the State to "recognize difference" as a positive element of the Peruvian society "for the generation of services with cultural relevance, the promotion of intercultural citizenship based on dialogue and differentiated attention to indigenous peoples and the Afro-Peruvian population" (Ministério de Cultura 2015). The policy also reaffirms that this historical process led to "cultural exchange" and "miscegenation" of various populations but considers the main problem to be addressed that cultural difference was not conceived as enriching, but rather denied or made invisible, and the task is to positively recognize cultural diversity as an "engine for development" (Ministério de Cultura 2015, 1).

Valuing Peruvian diversity is relevant within sectors of Afro-Peruvian activism, especially because of the historical invisibility of Black people in discourses on nation-building in Peru. They consider it part of the wider political process. According to this activist "the issues of diversity, of really valuing diversity, of really acknowledging diversity, I think it is still, let's say, if I were to think in the logics of the process, we are like in an initial stage… we have advanced"[lxi] (AP -23). The focus on "cultural identity" or cultural rights is connected to broader processes of international recognition of Indigenous rights under this conceptual umbrella. Thus, to better situate the pragmatic use of those concepts also by the Black movement, I briefly present the debates on the international human rights forums.

From self-determination to "cultural identity"

The "human right to culture" has been the principle behind land rights recognition for Indigenous peoples via legal cases at the Inter-American Court of Human Rights[120] (Engle 2018, 176). The translation of Indigenous peoples' battles for self-determination into the right to "cultural identity" has provided some level of legal protection and opened a precedent in Latin America to further engage with the cultural vocabulary. This has impacted the Black movement, which has also articulated culture and cultural identity for rights recognition (Garavito and Días 2015, 19) – that is, the "ethnicization of blackness" in Latin America (Restrepo 2004). Colombia is often considered a paradigmatic case with the Law 70 and the recognition of "rural black communities of the Pacific Coast as the legal territorial collective owners" (Rahier 2019, 224) but also the Brazilian State's recognition of *Quilombolas* ancestor's land (Garavito and Días 2015, 19). The segmentation of human rights that segregates Indigenous and Black struggles, pushed for those results. While debates over autonomy and land have been mostly recognized for Indigenous peoples, often excluding Black peoples, the ILO Indigenous and Tribal Peoples Convention n. 169 has been used to provide for collective rights for both groups (Garavito and Días 2015, 28). As a result, Black peoples in the Americas mobilize legal concepts mostly identified with the Indigenous struggles for autonomy in the international human rights arena, including the concepts of *people*, and *cultural identity*.

The Declaration on the Rights of Indigenous Peoples are often placed as a landmark to how "cultural rights" are institutionalized, replacing the language of self-determination, with a particular impact on the Indigenous movements. In 1982, the United Nations Working Group on Indigenous Populations was established. They proposed the first draft of the convention in 1994. During the 90s important Indigenous uprising were going on throughout Latin America, the "Levantamiento indígena" en Ecuador, the first "Marcha por la dignidad y el territorio" in the Amazon Bolivia, and in 1994 the creation of 'Ejército Zapatista de Liberación Nacional', EZLN, in Chiapas, México (Montoya 2013, 59). This is the context when international agencies, such as the World Bank, introduced some recognition of Indigenous claims labeled under interculturality.

[120] See case *Awas Tingni v Nicaragua* debated by Charles Hale (2005).

The debates on the draft of the Declaration on the Rights of Indigenous Peoples endured 13 years of intense discussions when the General Assembly of United Nations approved a compromised document in 2007. The main controversy during the long negotiation was around *the right to self-determination* declared in Article 3 of the draft[121], because it was seen as a threat to State sovereignty[122]. The compromise was reached when the text of the declaration limited the scope of self-determination to "domestic affairs". Article 46 of the Declaration was the condition to its approval, expressly limiting its interpretation to the possibility of groups to attempt against the territorial integrity of independent States. Besides, Article 46 (3) dictates that "provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith".

Karen Engle suggests that the need to expressly mention that the declaration was to be interpreted according to international human rights standards contributed to the limitations of its reach (2018, 169). It places the control of Indigenous' autonomy on institutions that monitor human rights, which are mostly State controlled, often Ministries of Justice or others within the judicial system. Another limitation of the convention pointed out by Engle is the recognition of individual rights alongside collective ones, showing the triumph of individual rights at the expense of a collective understanding demanded by Indigenous organizations. The author concludes that "the acceptance of the cultural rights framework by international institutions (…) fit very comfortably into – and perhaps was even facilitated by – neoliberal development models" (Engle 2018, 158 author's translation).

The use of *culture* for rights recognition is related to how knowledge production on Black and Indigenous peoples was categorized under ethnicity or race studies. In José Maurício

[121] The approved text says: "Article 3. Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

[122] The arguments against the recognition of self-determination were mainly two: one group of countries formed by United States, Canada, Australia and New Zeland argued that conceiving part of the population with rights to self-determination would be a threat to national unity and the stability of current States, which could also be discriminatory or conflicting with the majority population (Engle 2018, 164). The other group, formed by the African Union, argued that declaring self-determination of indigenous people could burst a new wave of struggles for self-determination in Africa, since most peoples of Africa are indigenous of the continent and "self- determination only apply for nations in struggle to break free from colonialism" (Engle 2018, 161).

Arruti's account, this division was "progressively institutionalized, disciplined and adapted to the divisive practices of academic discourse" (1997, 9), and in the case of Brazil, applied to "individuals of African descent the designation of blacks, linking them to the idea of race, as well as dedicating to those of American origin the designation of Indians, linking them to the idea of ethnicity" (ibid., 9). Not only the academic production fosters this division, but it was delimited to how the "national state produced different means of cultural and social control for each of these frames, generating different ways of dealing with the otherness represented by non-white individuals" (ibid. 1997, 9 author's translation). In the next section, I explore how this division is still present in both academic and State discourses, impacting social claims and policy production.

Race and ethnicity conforming anti-Black and anti-Indigenous racism

Regulating Black and Indigenous people differently was central to the establishment of white supremacy and to guarantee the racial order. Those reinforced divisions perpetuate the racial regime. This excerpt from an interview with a former high official of the Ministry of Culture in Peru illustrates how differences in the social claim are perceived as segmented:

> (…) for the indigenous peoples in Peru the concept of racism does not serve them, it is not a concept to which they appeal (...) Where do you hear the topic of racism? in Afro-Peruvian groups, but you don't listen to indigenous and Amazonian populations talk about racism... no... it's not part of their claim, it's not their problem, do you realize? In other words, nothing else is an issue of appropriation of political subjects, right? So the question is who is talking about racism? from which side? From the social actors the issue of racism is an Afro concept, claiming the concept, the concept of interculturality is claimed by the Andeans... (AP-21)[lxii]

The separation between race and ethnicity is also central to both anti-Blackness and anti-Indigeneity when Black people are perceived as "having race", whereas Indigenous people "have culture" (Greene 2010). Black people become "cultural groups" as *quilombolas* or in rural or traditional communities (Segato 2007), but in urban scenarios they are perceived as assimilated (Telles 2014b, 32). A similar situation happens to Indigenous people, portrayed as extinguished or exterminated, once communities are integrated into local economies (Arruti 1997) or when in urban centers they are depicted as losing their "authenticity" (Rivera Cusicanqui 2010).

In this discourse, by not having a "different culture", people are discriminated against because of their "skin color". Studies have explored skin color as an important factor for both discrimination and socioeconomic status in Latin America, which would include both Black and Indigenous populations (Telles 2014a). Nonetheless, the focus on skin color alone can dissociate the analysis from a more complex and interrelated process of class and race formation in the region, which is indissociable with how colonialism has regulated bodies, labor, rights, and space throughout racial lines. In addition, it can also reduce the understanding of "race" to phenotype, which limits the scope of analysis and the possibility to understand the phenomenon of racism beyond racial discrimination. Similar theoretical constructions, such as colorism, when emphasizing "color" differentiations ends reducing racism to personal interrelations, diminishing the role of institutions in defining and delimiting identities. Cheryl Harris problematized downplaying race to "skin color", arguing that "the assertion that race is color and color does not matter is, of course, essential to the norm of colorblindness" (Harris 1993, 1768). Additionally, as Silvia Maeso argues "race is not a concept for describing identities but a 'technique of governmentality'" (2018, 18). In studying race, this concept must be able to function as an analytical tool that can explain and underscore this reality.

I acknowledge, though, that identity becomes relevant in political and theoretical spheres when it is the basis of public policies' provision and rights assignation. Since the International Labour Organization (ILO) 169 Convention consolidated the methodology of ethno-racial self-identification to assign rights to specific groups, identity becomes a powerful political dispute. Nonetheless, the strategic political use of those categories by social movements should not be confused with their use by the racial State and the racial order, especially when we look at the transition to non-racialism, or the denial of race as producing *racial* subjugation. In Brazil and Peru, the use of race to assign rights to Black and Indigenous populations generated heated public debates concerning the challenges to identify the subjects of rights in mestizo societies. In Peru, this debate is reflected in the choices of the National Census from 2017, and in Brazil in the debates of the Racial Equality Statute (2001-2010). I discuss both processes to highlight how concepts are disputed in legal-political spheres.

In Peru, the choice of not placing race in the question of the 2017 National Census but about "ethnic belonging" formulated in terms of "your customs and your ancestors" (INEI

2017) confirms the political choice of *anti-racialism* – that has been predominant in Latin America, as I discussed in the Introduction. Together with other Latin American countries, Peru rejects race as a concept to produce demographic and social statistics because it would foster a belief that society is racially divided (Telles 2014b, 24). The focus is on cultural diversity to illustrate by statistics the gaps between "cultural groups". If "race does not exist", then measuring "differences" is the role of ethnicity, as proposed by UNESCO Statement on Race and Racial Prejudice (UNESCO, 1978). The elaboration of the census question was done by the technical committee (*Comité Tecnico Interinstitucional de Estatísticas de Etnicidad*) created to elaborate a methodological proposal to identify both Indigenous and Black populations (INEI 2013). Participated in the committee representatives of public institutions, Black and Indigenous organizations, and academics. The discussion within the committee showed a lack of consensus in "defining the boundaries of the ethnic or racial categories" among the different participants (Sultmont and Callirgos 2014, 148).

Yet, the choice of ethnicity did not reduce the tension in adding this question to the national census. Debates around the inclusion of an "ethnic belonging" question updated mestizaje ideologies, challenging the "raceless social context" produced historically (Moreno Figueroa 2010, 391) and emphasizing the argument that people do not recognize as racialized subjects. I listened many times in Peru that "racism is still taboo" so "people avoid this conversation". This argument was rationalized in several ways: "the topic is too complex"; "it affects us all, but we do not identify ourselves racially"; or "why do you want to create fractures in our mestizo country?" Those reactions to the census proposition exemplify that race and ethnicity are not such distant notions when we are dealing with a country in denial of race through mestizaje, which is itself a racial category.

In this context, Indigenous and Black organizations vehemently demanded the rejection of the inclusion of the category *mestizo* as one ethno-racial category, as we can see in a public hearing at IAHRC on racial discrimination against Indigenous and Afro-Peruvian populations held in 2017[123]. According to the representative of the *Instituto Internacional de Derecho y Sociedad*, the inclusion of an ethno-racial question in the Census is an old

[123] Institucionalidad de pueblos indígenas y afrodescendientes en Perú 162 Periodo Extraordinario de Sesiones en Buenos Aires Jueves 25 de mayo de 2017, Available at <https://www.youtube.com/watch?v=RFECZG3WyQI>, accessed on the 20th February 2018.

demand of Indigenous and Afro-Peruvian so to make them visible, but the inclusion of *mestizo* could have a negative effect on both groups visibilization. IARHC Commissioners were quite affirmative in recommending the Peruvian State to eliminate the category of *mestizo*, reinforcing that this is a problem throughout the region, and it is a highly invisibilizing category for persons of African descent.

The fact that people were not used to being asked this question and not necessarily identified within the available categories has created methodological problems, placing "mestizo" as a safe place to be[124]. On the other hand, anthropologists criticized the census question for being racialized, for including what they perceive as "racial categories": "the question was racialized because, for example, white, black, mestizo, indigenous" (AP - 26)[lxiii]. From this perspective, it was difficult to understand the need to identify whites, for instance, if they are not subjects of specific cultural rights. This is actually the recommendation of the Population Division of the UN's Economic Commission on Latin America and the Caribbean (CELADE), to "exhort countries to ask people only whether they are minority groups members" (Telles 2014b, 9). This argument exposes that a sound understanding of racism is highly absent from some milieus, particularly interested in mapping "cultural diversity". Moreover, the academic debate about race is often driven by challenges to set boundaries in racial identity in contexts of mestizaje – and the fact that identities are multiple and contextual - and little to do with the political agenda of Black or Indigenous movements for visibility of the unequal power distribution.

In Brazil, the Racial Equality Statute (Law 12,288/2010) was approved after 10 years of heated debates at the national congress, but also in society in general (Carneiro 2011)[125].

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[124] Few studies have showed that groups' identification to the *mestizo* category in the census did not always mean the denial of African ancestry but showed how mestizaje was naturalized, and ethno-racial categories are often not understood as politically relevant. Weaver and Bazán demonstrated in a study on a known african community en San Jose y San Plabo that "'afrodescendiente' no es la principal 'autoidentificación estética' de muchas personas, sino referenciada como parte de una identidad 'mestiza' más amplia y un aspecto de la mezcla cultural local que diferencia al valle del Ingenio de otras comunidades de la región. La mayoría de los ingenianos que han participado en nuestro proyecto, reconocen su ascendencia africana como una parte muy importante de su identidad y herencia mestiza, por lo cual, advertiríamos a cualquier persona que utilice los datos del censo, tener este dato presente para comprender la demografía en la diáspora africana. A menudo, estos documentos no capturan con precisión los entendimientos locales del patrimonio, la historia, o la experiencia vivida de raza. La memoria de la herencia africana es particularmente fuerte entre algunos miembros de la comunidad". (2020, 92)

[125] The documentary Race (*Raça*) directed by Joel Zito Araújo and Megan Mylan, launched in 2012, depicted this dispute. The film explores the various political and economic interests acting to restrain any language that could represent a threat to the Brazilian proclaimed racial democracy.

Throughout a lengthy process and after many amendments and substitutes, central changes in the language and propositions of the original bill (3.198/2000) evidenced how the dispute over certain concepts and, mostly, some policies, took place. The compromise to approve the bill encompassed making its language more palatable and less binding. Despite being the "Racial Equality Statute" and conceptualizing racial discrimination in Article 1 (i), the other articles opt for the use of "ethnicity", or "ethnic discrimination". This terminological choice is the result of a political compromise and corroborates the idea that ethnicity is a non-conflictual language preferred by State discourse as opposed to the word race. The use of race implies racism as the process that creates races, but the use of ethnicity, on the other hand, does not imply looking at any violent process. On the contrary, ethnicity appeals to people's diversity and culture, and it is a "positive" language that State praises. This research participant, a law professor, explained that the use of ethnicity allows the State to work from the perspective of multiculturalism, reducing Black and Indigenous claims to culturalist matters, solved by diversity management:

> It is because ethnicity, it allows you to work from the point of view of multiculturalism, apparently it is so, it seems that these are culturalist questions that are not really resolved with diversity. But race, no, race is a concept that is linked to a process of production of violence and death, it is not possible to classify people racially and this serve to anything good. (AB-19)[lxiv]

The existing State structure can hardly accommodate antiracism without challenging power balances. Consequently, one cannot talk about race or racialization and announce anything "positive", but if one talks about ethnicity, this is possible, as the research participant concluded. For instance, the difference between Article 4 of the bill and Article 3 of the definitive version of the Racial Equality Statute is an example of the conceptual battle during the negotiations. The bill stated that the statute was part of a policy of "reparation, compensation and inclusion" for the victims of "racial inequality". In the definitive version, the objectives of the law became "to value ethnic equality" and "to strengthen Brazilian national identity". This is an example of how non-conflictual language was the possible compromise, deviating from dangerous languages, such as racism or reparations. It also reveals the role of the State in re-centering "racial democracy" as the national ideology through the positive idea of diversity.

The debates on the Racial Equality Statue's bill took place along the implementation of affirmative actions for Black students by public universities[126], which was a heated public debate. According to Sueli Carneiro (2011), the disputes around affirmative actions were a pedagogical process because everybody positioned themselves. Surprisingly (or not) we witnessed an effusive defense of the racial democracy and a sudden concern for "the poor". An illustrative example given by the author is the open letter signed by 113 academics and activists in 2008, entitled "Antiracist Citizens Against Racial Laws", issued when the Constitutional court was to decide on the constitutionality of the affirmative actions. The letter presented several arguments against the constitutionality of the policy, including the definition of Brazil as a non-racist or even an antiracist country because "the Brazilian nation developed an identity based on the antiracist idea of miscegenation and produced laws that criminalize racism", besides giving "privileges" according to race "labels" would represent "a radical revision of our national identity and the renounce to the possible utopia of a universalized citizenship".[127]

In Peru, mestizaje and the controversy around racial or ethnic belonging was blocking propositions for public policies, such as affirmative actions. Nonetheless, mestizaje is also an issue for public policies in Brazil and the Peruvian research participants tended to be mostly unaware of the huge struggle that the Brazilian Black movement undertook to challenge racial democracy and miscegenation ideologies. The work of Lélia González and Carlos Hasenbalg (1982) solidified what the Black movements had already affirmed, the small difference in terms of socioeconomic status in the 1970s between those identified as "*pardos*" and "*pretos*", laying the foundations to consolidate a unified Black identity. Only this effort makes it possible to say that Brazil has a Black majority because according to the census the numbers are: 47.51% whites; 43.42% *pardos* and 7.52% *pretos* (IBGE, 2010).

Even today this is a sensitive issue in Brazil, particularly due in setting boundaries between Black and Brown [*pardos*] people, who are placed together as *negro*, or afro-

[126] The first universities to implement quotas for black were the University of the State of Rio de Janeiro (UERJ) and University of the State of Bahia (UNEB) the in 2000, followed by the University of Brasilia (UNB) in 2004. Many others have gradually created their own quota system until the national law regulated affirmative actions at federal level in 2012.

[127] The letter is available at <https://fundacaofhc.org.br/files/pdf/carta-cidadaos-anti-racistas-contra-as-leis-raciais.pdf,>, accessed on 26.03.2021. Original text in Portuguese, author's translation.

descendant. According to a paper published by a federal judge entitled "In the defense of racial democracy" in 2019, there is no scientific criterion to determine who is Black in Brazil, only an ideological one, which is the use of self-declaration. For him, to be Black or not has become a "matter of opinion" (A. N. Júnior 2019, 55). The judge continues that "none of this makes sense", after all, "the path is towards integration and not separation" and all of this is "racial populism at the lowest level" (ibid., 55). For him, there is a concrete impossibility to define "who is black or brown" in order to be a beneficiary of public policies and, in the pursuit of seeking a solution, there would be a risk of falling into methods as racist as those of the defenders of scientific racism. I bring this example to illustrate that the choice of using race for rights recognition in Brazil is far from consensual. Besides, being the author a federal judge, his arguments against a federal law can give an idea of the challenge to implement racial equality policies in the country.

In the case of Peru, anti-racialism is very much present in the technical-legal debate, so race is not incorporated into official texts. Anti-racialism has been a broader trend, such as in the case of European countries, where the debate tends to reduce the idea of race to biology and deny its political and social content (Maeso 2018). In this approach, race is often replaced by ethnicity, seen as neutral and unproblematic. A proposition resulted from UNESCO efforts to overcome racism by assigning human differences to culturalist explanations (Lentin 2005). According to this research participant, a law professor in Peru, the use of race by the government "*está así como algo Nazi*", and he explains:

> For us, within the academy, within what is the general discourse, races do not exist, they are a social construction, and have normally been used with the intention of discriminating. Therefore, talking about race is a dangerous option, which most people do not want to use, that is, there is a very negative view of the word. (...) The ethnic group does not have to do so much with its color, but the ethnic group has to do with its customs, with its cosmovisions, with its beliefs; race has to do with physical traits. So, when a person is discriminated against, it's usually because of their physical features, not so much… nobody knows their customs when they discriminate against you, so I don't know if that's the best way to see the issue, right? The issue of racism has to be analyzed in a way, showing why the person is discriminated against. I can say: "I have white customs", ok, but "I am discriminated against because my face is black", all their customs and beliefs can [be white]…but because of one's face, that is why they will be discriminated against… (AP – 28)[lxv]

Describing race only as "skin color" is an oversimplification of the historical process that led to the dehumanization of Black men and women in racial enslavement, as discussed

in Chapter 1. The same assumption that the research participant made to talk about a Black person with "white customs" could be used for the Indigenous people since the racialization processes that both suffered contains corporeal markers but associate them with a backward culture (Hesse 2007). Alana Lentin, expressing a similar concern, argues that the resources of differentiation such as "ethnic", "religious" or "nationality" could reinforce the idea that biological race does exist, and that is no longer conceivable. Additionally, the focus on individual perceptions of either race or cultural belonging places the State out of the reflections about racism, as to say, "slavery, colonialism, the Holocaust and contemporary discrimination against immigrants can only be interpreted as aberrations and not as political components of modern nation-states" (Lentin 2005, 388).

A *quilombola* activist explained, in a very illustrative way, the trap contained in the choice of ethnicity as a category replacing race. For her, it works as a comfortable place for academics who study the "other" and then, "ethnicity is not killing anyone, but racism is" (AB -10). The use of ethnicity avoids bi-directional discussions, those involving both the observer and the observed in the hierarchical structures of power in academic research. She narrates an episode when a white anthropologist wearing an indigenous adornment in a conference on Indigenous and *quilombolas* ancestral land stated she wishes to overcome the denunciation of the Black movement that only talks about racism. The anthropologist was disturbed by the *quilombola*'s reading that considered racism as a central problem in *quilombos* today, and this is also the case in Indigenous land:

> It is easy for racism to undergo this polishing of ethnicity, it exists, and it has to be said, but I think it cannot be said apart from the racial issue, it is race-ethnicity, it is not ethnicity and not race. We're going to get into a debate on biology, no, I don't think it's possible anymore, there's no more space for that, but at this point, you see the atrocities that happen to blacks and Indigenous peoples, and you say that you don't want to talk about racism because you want to discuss ethnicity? It's a lot of violence, a lot of violence! (AB -10) [lxvi]

The element of culture not only deviates from debates on racism, but can also place the control over the identity, and the associated rights, in the hands of the "experts" and then, in the hands of the State. The self-declaration principle is not easily accepted when political rights and rights to land are involved, so those "identities" need to be controlled. According to Harris, "white-dominated institutions control the legal meaning of group identity" to control the rights to be recognized (1993, 1761). In these contexts, the

mobilization of national ideologies such as *mestizaje* helps to control the scope of rights associated with the "ethnicization of difference", such in the case of *quilombolas* and Indigenous peoples. The racial rule tension becomes evident in the need to limit the scope of recognition. Harris problematized the double-use of identity within the racial State, saying that: "the law has recognized and codified racial group identity as an instrumentality of exclusion and exploitation; however, it has refused to recognize group identity when asserted by racially oppressed groups as a basis for affirming or claiming rights." (1993, 1761). Then, if antiracist policies guarantee rights to certain groups through identity, this "differentiation" is perceived as unjustified or even not real when the "racism by denegation" (Gonzalez 1988) is implied.

4.5 In conclusion: the threat of race and the ethnicity solution

Once the State recognizes Black people's claims based on *difference*, including the *ethnic identity* as a category of the *special or specific* - it denies race and racism. Social conflicts are subsumed into cultural differences and the need to promote intercultural dialogue. The concept of culture incorporated into those regulations "are taken as innocent or transparent" (Hale 2018, 507) and not embedded into the racial order. Charles Hale critically concludes that "cultural recognition ended up delivering so much less than it promised in relation to the legacies of anti-Black and anti-indigenous racism" (2018, 503) when it does not dialogue with race, institutional racism and does not promote a "deeper understandings of the work that racism does" (2018, 507).

In terms of legal reasoning, ethnicization has three main problems: first, it re-affirms the difference without necessarily de-constructing normality (Walsh 2008), or the universality of whiteness; second, when the "difference" is enunciated by the State, it is reduced and encapsulated by an imaginary (always limited) that the social group needs to correspond to, what can lead to folklorization and exclusion of those not "perfectly different" (placing racialized and impoverished urban populations in a blind spot); third, as the "different ones" have to prove to belong to the particular group to acquire State recognition, the violent processes of subjugation to "integrate" or "include" in the dominant society fall into convenient oblivion. Therefore, while celebrating the diversity of "cultures", the debate of racial hierarchies perpetuated by State practices is deviated or

denied. Agreeing with Emiko Saldívar, "mestizaje and ethnicity are central concepts in the racial project of the 20th century" (2012, 49).

Going back to my departure point, the idea of race - formulated in modernity to understand human differences in relation to Europeanness - results of ontological conditions of whiteness to rationality, in contrast to the "others of Europe" described as "savages" (Da Silva 2009; 1998). Race is then a result of "cultural and physical differences between Europeans and those inhabiting non-European spaces" (Da Silva 1998, 208) understood as ontological. The colonial difference, in the early debates of international rights based on natural rights, placed rationality – and, particularly, self-determination[128]- at the center of the idea of *raciality*, or racial difference. This ontological differentiation regarding the free will or self-determination survived the decay of scientific racism through ideas of societal development/ underdevelopment (Goldberg 2002b) or stages of human rights recognition and the rule of law (cf. Fitzpatrick 1990; Maeso 2018). Chakravartty and Denise da Silva add to that reflection that "raciality and historicity attribute to persons and places to determine their legitimacy as juridical, economic, and ethical entities" (Chakravartty and Da Silva 2012, 369). This debate updates the effects of *raciality* (racial differences), on what they call a "moral text" that continues to be underneath modern political-economic architecture of capacity (to thrive in the capitalist world) and the "necessary (self-inflicted) obliteration" (ibid, 371).

In this racial construction, peoples without self-determination can have "cultural rights" because as long as they remain "cultural subjects" they are subjected to State tutelage. "Not seeing" race but ethnicity in contexts shaped by political anti-racialism, is how the moral text thrive, as Chakravartty and Silva explained. If we link these reflections on the moral order to how both Black and Indigenous peoples have been framed as "the national problem" (cf. Drinot 2016; Moura 2019), for their "primitivism" or "aversion to development", we identify their continuity in their faming as "vulnerable populations". Their definition as "vulnerable", victims of past and present oppressions, their self-determination is once again postponed to a future when society embrace "differences" as

[128] Mikki Stelder (2021) explores Hugo Grotious work to demonstrate how the naturalization of enslavement was "the idea of voluntary subjection that is not simply based on free will, but on a particular rational faculty found in those deemed naturally inclined to give up their freedom. Becoming a slave is thus a question of free will". The rational ones (Christian, European Man) were unenslavable (Stelder 2021, 7).

positive. Race becomes a powerful concept in political struggles because is a constant reminder of all the violent processes that created the “Indian” and the “Black” and its legacies and contemporary reincarnations. Maya activist Aura Cumes provides the best conclusion:

> If they subject you because you are an "inferior race", if they take away what you have for that, and place you as an eternal servant, and when they ‘want to free you’ they tell you that it is because of your cultural characteristics, they will never compensate you, they will never return what they have taken from you, above all, they will not conceive of you as a political subject (2019 author’s translation).

Chapter 5. The Inter-American Convention Against Racism: between antiracist pride and racism denial

On 5th June 2013, the Organization of American States (OAS) General Assembly approved the "Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance" (Inter-American Convention), after almost 10 years of negotiation. This chapter examines the main controversies throughout the negotiation of this regional binding instrument, to identify the regimes of denial of racism that shaped the process, focusing on the leading role of Brazil but also the participation of Peru as member of the "Working Group to Prepare Draft Legally Binding Inter-American Instruments against Racism and Racial Discrimination and against All Forms of Discrimination and Intolerance" (WG). I re-constructed the negotiation process of the Inter-American Convention through document analysis as well as in-depth interviews with key participants from Brazil. The data were retrieved from documents produced for the debate at the OAS, with a focus on the WG, and sixteen semi-structured interviews with members of Black social movements, government officials from Brazil, and members of OAS staff[129].

The convention entered into force in 2017; however, only six of the 35 OAS Member States have ratified it. This low commitment to the instrument relates to the lack of consensus that led to more than 10 years of negotiations on the convention's terms. The major controversies in terms of language, concepts, or the need for a binding treaty with a narrower focus on racism, revealed the deep challenges associated with combating racism as a systemic form of oppression historically linked to the region's colonial past and legacy of the transatlantic slave trade. The analysis considers the "circulation of legal arguments, instruments, and decisions across national, regional, and global scales" (Medina 2016, 141), linking the regional debate to States' discourses and national practices, in the context of global efforts to advance standards to fight racism, particularly those established at the third World Conference against Racism, Racial Discrimination, in Durban, South Africa 2001, namely the Durban Declaration and Program of Action (DDPA).

[129] Documents and interviews were translated from Portuguese and Spanish to English by the author.

The building of the Inter-American Convention is directly related to the outcomes of the Durban Conference, where the Group of Latin America and the Caribbean (GRULAC) played an important role in the negotiations to guarantee some of the conference's advances (J. A. L. Alves 2003; Lennox 2009), with Brazil being a protagonist in pushing for an antiracist agenda internationally (J. A. L. Alves 2003; Lennox 2009; Paschel 2016; S. J. de A. e Silva 2008). Additionally, the regional mobilization and commitment reached at the Regional Conference for the Americas in Santiago, Chile (2000), known as the Santiago Conference, gave hope that the OAS could advance in international standards in the fight against racism and all forms of discrimination (S. Carneiro 2002; Lao-Montes 2009; S. J. de A. e Silva 2008; Paschel 2016). The literature that recognizes the positive outcomes of the Durban process links it to the massive participation of the civil society in the various forums across the national, regional and global scales, with great impact on and from the Afro-Latin American movement (Blackwell and Naber 2002; Lao-Montes 2009; Lennox 2009).

Nonetheless, the historical positioning of most countries in the region is marked by national ideologies of "racial democracies", shielding them as "racially innocent" (Hernández, 2013), as discussed throughout this work. For instance, Brazilian official documents justified the "country's legitimate right" in leading discussions in Durban as it was a "positive example of co-existence and tolerance among different groups" (S. J. de A. e Silva 2008, 104 author's translation), which shows an enduring need to hold onto the myth of racial democracy even in the context of challenging racism. In this manner, the State's discourse in international forums also makes evident the tensions between international declarations and the actual domestic commitment. As argued by Lennox, "norms against racism are firmly entrenched – no State wants to be called racist", however, "the ostensible international commitment to addressing racism" contrasts with the "little focus is put on efforts to monitor and improve State practice domestically" (2009, 193).

Consequently, the purposes of my analysis of the debates at OAS was twofold. First, how regimes of denial of racism perpetuate in the region, paying special attention to controversies around definitions, as the definition of concepts is central to controlling the limits of recognition. Second, how the Racial State copes with the denunciation of racism within State institutions (Goldberg 2002b, 34). As the organized Black activism grew its'

capacity to directly access the regional and international human rights system and to expose domestic flaws to denounce racism (Lao-Montes 2009; Dávila 2018), literal forms of denial were challenged and gave way to more sophisticated ones. Particularly, in countries such as Brazil, where a progressive political project was being implemented by the national government and negotiations with social movements were promoted through institutional spaces, the constant pressure from civil society was a source of tension (Ribeiro 2013). Thus, the chapter also aims to grasp the tensions and controversies around Brazil's leading role, at the same time the country had to cope with civil society's demands.

The chapter is divided into three sections. First, I describe the initial moments of the OAS debates and the main challenges facing the development of a binding legal instrument to fight racism in the region, relating to the international scale of the Durban Conference. In the second section, I explore the perpetuation of regimes of denial, identifying three main controversial issues that shaped the difficulties in arriving to a consensus about the Convention: (i) the scope of the Convention and the discourse "on multiple forms of discrimination"; (ii) the challenges in defining racism and avoidance of the "Durban language"; and (iii) the pervasiveness of old forms of denial, the recurrent references to national and regional ideologies of *mestizaje*, and its impact on more concrete propositions, such as affirmative actions and reparations. I conclude with a reflection on the continuities in regimes of denial in the region, relating to the links between the international and domestic scales.

5.1 Building an Inter-American Convention against Racism in a region in denial[130]

In 2005, the OAS General Assembly approved the creation of a working group (WG) for the elaboration of a draft of an Inter-American Convention against Racism and all forms of Discrimination and Intolerance (OAS General Assembly, 2005). The WG was composed of Brazil, Peru, Chile, Colombia, and Canada. Brazil took a leading role in the debates at OAS, as the initial chair of the WG and the country that proposed the first draft

[130] A previous version of this chapter was published in Xavier Pinto Coelho, Luana. 2023. "Building the Inter-American Convention against Racism: Between Antiracist Pride and Racism Denial." Journal of Human Rights Practice, February, huac066. doi:10.1093/jhuman/huac066.

of the Convention. The strength of the Brazilian Black movement, together with a commitment of the Brazilian government to an antiracist agenda at the time, contributed to the prominent role the country played in the discussions (Paschel, 2016). An interview with a Brazilian diplomat revealed that since 2000, the country was pushing for "the improvement of international and regional legal instruments capable of strengthening the fight against manifestations of racism, discrimination and intolerance in the world" (AB-22)[lxvii]. In 2000, a resolution to develop a Convention was approved at the OAS (OAS General Assembly, 2000), which led to a consultation with all member States and the elaboration of a legal opinion by the Inter-American Juridical Committee.

The regional antiracist efforts at the OAS are directly linked to the global debates that culminated in the 2001 Durban Conference (Dávila 2018). The Durban process is also related to a greater mobilization of victims, with a particular impact on afro-descendants (Lennox 2009). As argued by Lennox, "the outcome document of Santiago recognized a host of provisions for Afro-descendants not previously incorporated into any international standards and subsequently incorporated into the DDPA" (2009, 209). This group was strongly mobilized from Latin America, occupying key spaces of dialogue, participating in forums and preparatory conferences, and strengthening alliances throughout the Americas (Carneiro 2002; Lao-Montes 2009; Lennox 2009; S. J. de A. e Silva 2008).

As pointed out by scholars, no other region has been so impacted by Durban as Latin America, with particular emphasis on advances regarding the rights of people of African descent (Carneiro 2002; Lao-Montes 2009; Lennox 2009; S. J. de A. e Silva 2008b; Rahier 2019). For Sueli Carneiro (2002), the DDPA's recognition of the urgent need to implement public policies for the elimination of social constraints faced by Black people was a major victory. Carneiro relates those accomplishments directly with Brazil's implementation of affirmative action policies after 2002. Other countries were also impacted by the Durban experience and since 2001, the region has witnessed domestic legal production that incorporates the Durban Declaration principles and action plans, including anti-discrimination laws and the recognition of ethnic-racial rights (Garavito and Días 2015; Rahier 2019).

The commitment reached in Santiago "produced one of the most progressive and complete PrepCom documents" (Romany and Culliton 2002, 15) and gave hope that the

Americas could advance international standards in the fight against racism and all forms of discrimination by drafting a regional convention. Furthermore, an Americas convention could advance the Durban Declaration for two main reasons. First, the Durban Conference's greatest tensions that almost led to failure in the negotiations were not directly related to the GRULAC's position. On the contrary, the GRULAC acted as a mediator to find consensus both in Durban and in its review in 2009 (Lennox 2009; Paula 2010). Second, the main sources of tensions at Durban were "the issues of reparations for the slave trade and colonialism and the Israeli-Palestinian conflict" (Lennox 2009, 200), which caused grievances between States, particularly UE and the African Group, and the Organization of the Islamic Conference (OIC), US and Israel (Paula 2010, 48). Latin American diplomatic missions present at the Durban Conference celebrated the fact that the negotiations on the "legacy of the past, slavery, and colonialism"; a very polemical topic, could find a compromise at the DDPA (S. J. de A. e Silva 2008) because of the GRULAC's mediation.

On the other hand, the behavior of Canada and the United States followed a pattern in the World Conferences Against Racism, which was repeated in the Durban Review Conference (DRC) in 2009, when the countries dropped out (Paula 2010, 49). Their disagreement with key issues of the DDPA also transposed to their behavior at the OAS negotiations. According to US Black feminist activists present in Durban, the opposition of the United States to certain issues placed a discursive dispute over representation and the power to define at the heart of the Durban Conference (Blackwell and Naber 2002, 191). The United States, for instance, was against the uses of the term "affirmative action" in the DDPA and was ultimately successful in eliminating this language from the document (J. A. L. Alves 2003, 372). Both Canada and the United States also opposed any commitment to reparations for the "slave trade" (Lennox 2009, 222), which was an agenda strongly pushed by the Black movement from the Americas.

This last issue is precisely what both GRULAC representatives and Black activists recognize as advances made at the 2001 Durban Conference, compared with the previous conferences. The two first World Conferences against Racism were held in Geneva in 1978 and 1983 and "were dominated by acrimonious inter-State debates focused overwhelmingly on Israel, Palestine and South Africa, providing little space for civil society engagement nor any genuine review of State practice domestically" (Lennox

2009, 192). In contrast, the DDPA of 2001 recognized slavery and the transatlantic slave trade as a *crime against humanity,* stating that "[colonialism and] especially the transatlantic slave trade are among the major sources and manifestations of racism, racial discrimination, xenophobia, and related intolerance" particularly towards "Africans and people of African descent" (UN, 2001, § 13). This represented a turning point in how racism is addressed in international human rights, allowing for the inclusion of a historical review of the contemporary forms of racism that was "particularly unpleasant to former colonial powers" (J. A. L. Alves 2003, 366). Therefore, challenging the concept of racism as only related to authoritarian regimes or a deviation from western democracy (Hesse 2004).

The articulation of the Afro-Latin American movement also provided an opportunity to push for a binding instrument in the Interamerican Human Rights System, as they joined forces to consistently demand this at every hearing and meeting of the OAS since 2000. According to one research participant, the organized movement was active at OAS General Assembly: "I participated in some of the thematic hearings at the Inter-American Commission within the OAS, in all of them we made as a recommendation, both the creation of the specific rapporteur for Afro-descendants, as well as the debate and the creation of a specific WG to debate the issue of the Convention" (AB-17)[lxviii].

In 2005, a second demand of the Afro-Latin American movement was approved: the creation of the Rapporteur on the Rights of People of African Descent and Against Racial Discrimination[131]. The previous refusals to comply with the demand for a special rapporteur had financial reasons, "the OAS has no money for more permanent structures" (AB-17). At this time, the fact that Brazil had a Ministry for racial equality (The National Secretariat for Policies for the Promotion of Racial Equality, SEPPIR) made a difference, because the Secretariat could directly invest in strengthening human rights structures. SEPPIR had a department dedicated to following the international agenda, with a focus on occupying international spaces and promoting the antiracist agenda both regionally and internationally (Santos and Souza, 2016). As a result, the Afro-Latin American movement went directly to SEPPIR to ask the Brazilian government to finance a series of structures and activities (AB-17), one of them being the special rapporteur. This

[131] Available at <http://www.oas.org/es/cidh/afrodescendientes/default.asp>, accessed on the 22nd February 2018.

interview with a SEPPIR official, responsible for the international agenda, confirms this effort:

> Brazil was the only [country] that created a structure at the level of the Ministry, even though we were weak, you know, within the total structure, it was a structure of a Ministry, so we had more space to speak. Brazil was the only one that did this, the other [countries] had even smaller structures of Human Rights, things were small. So, it's obvious that our strength, the space we had, started to be bigger and bigger, so it's true that we articulated things and pulled the rest, right? (...) Another thing that we did and that I think is important is this rapporteur on Afro-descendants at the OAS, that is, we paid for this. The first thing we paid for… "we want it because we want it, ok, ok, ok, pay", we paid and then it came out... (...) We paid literally because there was no money, there was no structure. (AB-14)[lxix]

Regardless of these advances, the convention negotiations faced the strong opposition from the United States regarding the need for a binding document in the region, who argued that the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was already sufficient. This view was supported by the legal opinion issued by the Inter-American Juridical Committee, strengthening the USA's position against the convention (OAS Report of the Inter-American Juridical Committee, 2002). Most of the arguments in the discussion dealt with the constant opposition to the need for a regional document at all. According to one research participant, the United States, followed by Canada, "sought to transport to the OAS the politicized and purposefully contaminated environment of the South African Conference" (AB-22)[lxx]. The activists participating in the debate could attest to the influence the USA had on other countries,

> … because it has economic power, then it [USA] had, always had, an important political influence. Canada at times followed this greater opening of the document and then it took Mexico, some countries in the English Caribbean that have a very different Afro reality from Hispanic countries, so we were working this country by country basically (AB-17).[lxxi]

Brazil, followed by Colombia and Uruguay, proposed a convention with a narrower focus, which means, to cover racism and racial discrimination and not all grounds of discrimination. A coordinated grassroots advocacy movement supported this proposal; activists meticulously went door-to-door in country missions to seek support for a more targeted Inter-American Convention. As described by this research participant (AB-22), there were three main arguments in favor of a more specific convention: 1) the 1965 ICERD was built on specific historical circumstances: Nazism, the Apartheid regime, and the racial segregation rules in the United States, known as Jim Crow; 2) ICERD had

limitations in its ability to fight against multiple and aggravated forms of discrimination, concerning gender, age, social class, national origin, religion, sexual orientation, disabilities, and fails to address the "technological revolution", the dissemination of information through the internet, and hate speech; 3) only seven from the thirty-five OAS States had ratified the ICERD, accepting the CERD jurisdiction for an individual petition (Brazil, Chile, Costa Rica, México, Peru, Uruguay and Venezuela).

In the end, the lack of consensus was a source of great tension, causing an impasse of almost ten years of negotiations before the final text was approved in 2013. The choices made in terms of definitions and the issues under debate evidenced how the regimes of denial of racism manifested in the process. In the following section, I explore the three main forms of racism denial that were perpetuated during the negotiations, evidencing how the "Durban language" was perceived as dangerous and needed to be avoided. First, the greatest sources of dissent in the negotiations related to the focus on multiple forms of discriminations and the "new victims", reducing the centrality on race and racism. Secondly, the definition of racism had to be distant from Durban's commitments that recognizes the links to historical processes of colonialism and racial enslavement. Third, I explore how old forms of denial in the region - mestizaje or racial democracy - are still very vivid and obstructed negotiations of reparations as affirmative actions.

5.2 The Multiple discriminations approach: "there is no hierarchy of oppression"

The debates during the drafting of the Inter-American convention highlighted several difficulties. An overriding problem was that the countries started to argue for a broader scope for the instrument, to include all existing and potential grounds of discrimination. When the consolidated draft came out in 2008 (OAS Committee on Juridical and Political Affairs, 2008), the proposal already included twenty-eight different forms of discrimination, without a consistent reflection on the connection between their historical and political roots and the necessary measures to address them. According to documents prepared by the University of Texas Human Rights Clinic and the University of the Andes Racial Discrimination Observatory, the decision to expand the scope of the convention beyond racial discrimination led to a dilution of the issue. In order to identify elements

common to the different forms of discrimination, the text would have to stick to the "minimum common denominator" (Kamienska-hodge and Lajzer 2009, 6). The authors also argued that the option for multiple discriminations would pose concrete obstacle in the development of measures and actions for the application of the convention by the countries. Besides, the methodology of the regional system has been to elaborate conventions with a narrower focus[132]. Finally, it would be coherent for the new convention to sustain agreements made at the Santiago Conference, which recognized that racism in the Americas is the result of a historic process of colonization and enslavement of millions of people. This is certainly a central point that was not embraced by the majority of countries during the negotiations.

For those who defended the need for a binding instrument for the region, one of the central arguments was based on the progressive nature of human rights and, thus, on the need for normative adaptation to changes that are specific to societies. In this sense, a new convention would only be justified if it included contemporary forms of discriminations not foreseen in the 1965 ICERD. In this argument, the emphasis was placed on a long list of discriminations, making the specific focus on race to seem outdated or even consensual. For example, the Colombian opinion directly indicated that "the fight against discrimination is integral and is not limited to issues of race" (OAS Committee on Juridical and Political Affairs, 2005a, 4). Canada even warned of the danger of creating hierarchies about the multiple or intersectional character of discrimination "when addressing intersectional and multiple discrimination, what should be avoided is the tendency to create hierarchies of forms of discrimination" (OAS Committee on Juridical and Political Affairs, 2005b, 4).

Brazil, in turn, argued that forms of discrimination evolve because they "respond to the development and expansion of the political will of societies" (OAS Committee on Juridical and Political Affairs, 2005c, 3) reinforcing the argument of evolution to broaden the scope of the convention. This already represented a change in the country's initial

[132] The Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women (Convention of Belém do Pará) developed in 1994 already brings the intersectionality, as multiple forms of discrimination, for example, to make visible the situation of black women, for example. Similarly, the 1999 Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities, allows for an adequate response to the causes and structures that generate the various forms of violence experienced by this group.

proposal, affected by the USA's position against the binding instrument. In the case of Mexico, the list of grounds of discrimination presented in the document did not even mention race, referencing only ethnicity (OAS Committee on Juridical and Political Affairs, 2005d, 3). The Peruvian document expressed the understanding that differentiating populations by race implied a violation of the principle of non-discrimination (OAS Committee on Juridical and Political Affairs, 2005e), demonstrating their preference for legalistic arguments, such as anti-racialism (Maeso 2018).

It is important to foreground the fact that the debate on aggravated or multiple discrimination was pushed forward by Black women at Durban, but within the framework of intersectionality, "or the multiple discriminations that women suffer as a result of their multiple identities, for example, as Black and indigenous women" (Romany and Culliton 2002, 14). Disregarding how Black women at the Durban Conference raised this claim, at the OAS, multiple discriminations were often mobilized to take race "out" of the equation. Black women were always concerned that race was central to this debate. Patricia Hill Collins, in a critique of the misuse of intersectionality, said that this concept was "lost in translation". For her, when Black women developed the idea of intersectionality, the claim was that liberty is indivisible. Then, to reach social justice for women was imperative to understand race, gender, class, and sexuality as mutual constructions of a system of power (Collins 2017, 11). As the term is absorbed by neoliberal agendas, its potential for change is removed, dissociating intersectionality from ideas of liberty, equity, and social justice, which are central to Black feminism.

Mollett critically analyzes some approaches to intersectionality that downplay racial difference, its "production was not located outside the field of race and gender power but was an active and direct engagement with issues and dynamics that embodied such power" (Mollett 2017, 4). Black feminists in Brazil also understand multiple discriminations as relating to racism, and believe it should not be dealt with in isolation, as this activist that participated in Durban Conference testifies:

> This idea of aggravated discrimination is very important because it does not say that being LGBT, being a woman, being indigenous, being an 'x' identity or 'x' ethnicity or something similar is the problem. The problem is when racism produces a deleterious effect on someone added to those discriminations arising from the condition of gender, sexuality, gender, gender identity, age, marital status and it all adds up, right, everything that was already

> the list of discriminations that are considered an aggravation to racism. (AB-13)[lxxii]

In the end, Brazil's consensual position is evident in the country's document that supported the innovative character of the International Convention of 1965. It affirmed that the regional instrument should reaffirm the "consecrated legal architecture at the international level" (OAS Committee on Juridical and Political Affairs, 2005c, 1). Later, Brazil also pushed for a broader convention with great support from LGBTI activists, which relied on the country's historical commitment to their agenda at the United Nations (Rosenberg 2009) in order to reach the first international biding instrument specifically covering LGBTI rights. This effort proved a major source of controversy during the negotiations, as the Caribbean countries blocked any language that could include gender orientation or sexuality.

The solution for the impasse came from the Caribbean countries when Antigua and Barbuda suggested creating one convention focused on racism and racial discrimination, and a separate, optional protocol on all forms of discrimination (OAS General Assembly, 2010). Despite this solution, in the same year, "the Canadian delegation shamefully announced its formal withdrawal from the negotiation process of the draft Inter-American convention on the basis that a new convention would 'confuse or weaken' existing international standards" (Raoof 2013). Canada argued that a new binding treaty was not necessary and could represent a threat to freedom of speech and expression. Similar concerns raised by the United States (ibid.).

The emphasis on new forms of discrimination also opened up a space to debate the inclusion of "new victims". Even though naming the victims of racism was an important outcome of the 2001 Durban Conference, as in the case of the afro-descendants (Lennox 2009, 207), at the OAS, the strategy was to downplay the relationship between some proclaimed "new victims" and the work of racism in the region. For instance, the Colombian document (OAS Committee on Juridical and Political Affairs, 2005a) included migrants and internally displaced persons (IDPs) as "new victims", devaluing the relationship between structural racism and how certain structural processes differently affect certain social/ racial groups. In the case of forced displacement and immigration, the discrimination suffered by these groups cannot be analyzed in isolation. As Colombia's document shows, their condition is aggravated by "cultural prejudices that

hinder the integration of the displaced" (ibid., 4), and the same is mentioned in the case of migrants. Nonetheless, the idea of "cultural prejudices" must be problematized, as should the underlying argument for "integration", as proposed in the document.

Available data indicates that internal displacement is a national phenomenon in Colombia that does not affect the population indiscriminately. For example, the data indicates that Black communities in the Pacific were disproportionately affected (Espinosa Bonilla 2014). Santiago Quiñonez denounces what he calls "categorical fabrication" or the use of terms like "displaced" or "refugee" as labels that "describe the itinerary of the dispossessed, reissuing racist concealment and concealing the underlying causes" (2016, 80) when addressing conflicts, they neglect the historical exclusion of Indigenous and Black people in Colombia. Thus, says the author, the "territorial racialization of the armed conflict, the material basis of it, is presented without its socio-historical sedimentation" (Quiñonez, 2016, 80).

A different approach to "other victims" relates to the need to include socioeconomic discrimination. Argentina presented three main causal axes of discrimination "racism, poverty and social exclusion and how the relationship between the State and society is established and reformulated" (OAS Committee on Juridical and Political Affairs, 2005f: 5). In the case of Colombia, this discrimination should be conceptualized, to cover "certain reasons such as […] national or social origin, economic position or any other social condition" (OAS Committee on Juridical and Political Affairs, 2005a, 16). Without disregarding the fact that poverty leads to discrimination, naming "people in poverty" as "other victims" in the Latin American context is a perverse argument that certainly represents an erasure of the relationship between racism and poverty. The argument, however, is consistent with discourses that posit poverty, not racism, as the major problem in the region, which are commonly present in countries such as Argentina (Sutton, 2008). According to the regional report of the Economic Commission for Latin America and the Caribbean (ECLAC), Afro-descendent and Indigenous peoples make up the majority of those in the lowest positions of socioeconomic indicators, leading to the conclusion that "poverty and indigence are marked by substantial ethnic and racial divides" (Abramo 2016, 27). A fact that is aggravated when considering gender, "the figures show that there are also large gender gaps within each of these population groups manifested by much

higher levels of poverty and indigence among indigenous and Afro-descendent women." (ibid.)

The discussion of a multiple discriminations approach became the most perverse way of evading the topic of racism in the negotiation process of the convention. The listing of twenty-eight grounds of discrimination in the first consolidated draft of the convention showed how the debate was taken to a moral sphere, making it difficult to contest. The final resolution that led to the approval of two separate conventions was the result of the articulation of different organized civil society groups and social movements, because it was convenient for everyone that the issues would be dealt with in specific forums to avoid reducing everything to a minimum common denominator. As one member of a Brazilian Black organization reported (AB-17), the agreement between the Black movement and the LGBTI movement made it possible to maintain a convention against racism and opened the possibility of drafting another convention with a broader scope on discriminations. The advocacy towards this solution guaranteed the development of two binding instruments, unlike the Caribbean proposal for additional protocols. In a decision at the General Assembly in 2011, the WG began working on the proposal for two different instruments (OAS General Assembly 2011).

After almost ten years of negotiations, two conventions were approved: the 'Inter-American Convention against all Forms of Discrimination and Intolerance' and the 'Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance'. A follow-up on States' ratification processes of the conventions can be an interesting way to assess their political choices. As of the writing of this chapter, out of thirty-five OAS countries, only six had ratified the Convention against Racism (Antigua and Barbuda, Brazil, Costa Rica, Ecuador, Mexico and Uruguay)[133] and only two (Mexico and Uruguay)[134] had ratified the Convention on all forms of Discrimination.

[133] Available at <https://www.oas.org/en/sla/dil/inter_american_treaties_A-68_racism_signatories.asp>, accessed on 19.04.2022.
[134] Available at <https://www.oas.org/en/sla/dil/inter_american_treaties_a-69_discrimination_intolerance_signatories.asp>, accessed on 19.04.2022.

5.3 Defining racism: "this is not a sociological problem, is a legal one"

The definition of racism was another source of great dissent in the negotiations at OAS. According to one research participant, "the negotiation stalled precisely because there was no consensus on the definition of racism, almost two years, clearly, to be able to define racism" (AP-29)[lxxiii] . To overcome the dissent, the way out was to resort to consensual language already existing in international documents, such as the UNESCO declarations on race. According to the OAS official, "if you put the issue of slavery and colonialism in a Convention, it would generate... in a definition, it would generate controversies" (AP-29)[lxxiv]. This impossibility to use "Durban language" at the OAS during the negotiations reveals how the definition of racism is controlled, contained, and limited, particularly to avoid State responsibility. The consensus is reached by compromise, "using less the Durban the language, but that relationship between slavery and colonialism is in the Plan of Action for Afro-descendants of the OAS" (AP-29)[lxxv]. The concept of racism that remained in the final text of the convention places racism as an ideology, an intentional affiliation to a doctrine, evading the connection made in Durban with historical processes. Described in Article 1, 4:

> Racism consists of any theory, doctrine, ideology, or sets of ideas that assert a causal link between the phenotypic or genotypic characteristics of individuals or groups and their intellectual, cultural, and personality traits, including the false concept of racial superiority. (OAS General Assembly 2013).

The concept of racism discussed in the consolidated document of 2009 included its structural dimension, with no reference to ideologies or false conceptions of racial supremacy. Part of the proposed definition described structural racism, as "a system in which public policies, institutional practices, cultural representations, and other norms, in general, reinforce inequality between different racial groups" (OAS Committee on Juridical and Political Affairs 2009: 9). The final, approved draft originated from a change in the Brazilian position, abdicating from the controversial concept of "structural racism" that could encompass "institutional practices" brought in the first draft. Instead, the substitutive text presents a more consolidated definition in international law to deal with the institutional dimension of racism, which is "indirect racial discrimination" (Article 1, 2) to contemplate practices from the State (or from the public life sphere) that can "cause a particular disadvantage" (OAS General Assembly 2013).

For the diplomat leading the discussion, negotiations can be blocked by certain concepts and opportunities can be lost. For him, in defining racism "the concern was not sociological but pragmatic from the diplomatic and legal point of view" (AB-22)[lxxvi] . After all, he concludes, the concept of racism is "always a topic of enormous political sensitivity" (ibid.) [lxxvii] . The political choice was to bring the concept from the "Declaration on Race and Racial Prejudice, 27 November 1978, adopted by acclamation by the General Conference of UNESCO" (AB-22)[lxxviii]. In defense of the Brazilian strategy, the research participant explained that the choice to use consensual language was necessary to avoid a dangerous consequence "that racism, as an analytical category, no longer exists" (AB-22)[lxxix] . In his argument, this conclusion would ignore the fact that the definitions of racism must be analyzed, constructed and, therefore, delegitimized, within specific historical contexts. Then, outside of this context, any definition tends to have its meaning diluted:

> And this concern is present both in the definition contained in the UNESCO Declaration of 1967 and implicitly in the one of 1978. Underlying the two aforementioned definitions is the notion that the concept of racism must refer rather to the function than to the content of discourses. In other words, the focus of the definition should not be centered on a particular ideological content, but the intention or consequence of any deterministic assertion about differences between groups of people. I believe that this was preserved in the definition of racism present in the Inter-American Convention. (AB-22)[lxxx]

The argument that there is an "ideological content of racism" reveals that more advanced propositions are seen as "ideological", whereas those existing in international documents, such as UNESCO, are not. Studies have shown the ideological intents behind the UNESCO declarations seems particularly interested in moving into anti-racialism (Araújo and Maeso 2016, 114). It is ironic that racism is defined as an ideology, whilst it is ideological to defy racism in a "certain way". This shows how the use of legal reasoning presupposes the neutrality of law and legal arguments that guarantee the "innocence of the law" regarding racism (Fitzpatrick, 1990). Moreover, resorting to legal language is a way to evade complex political issues and justify the country's positions as technical, in a highly politicized debate (Campbell 2006, 4).

One can wonder if a conventional text could do otherwise. What would be the impact of having the concept of structural racism (encompassing a institutional dimension) in the text? Moreover, what would be the consequence of recognizing the historical process of dehumanization of peoples in the Americas to the current rights struggle against racism?

The OAS official said that the first draft presented by the Brazilian mission contained a language that was proper to the "Brazilian academia" and not shared by other countries. However, the draft was vocalizing some propositions built historically by the Black movement, which are shared by Black intellectuals and activists in other parts of the Americas. The concept of institutional racism, for instance, was first forwarded by Ture and Hamilton in their book *Black Power: the Politics of Liberation* in 1967, in order to precisely confront the dominant idea that racism was only reproduced by those intentionally or manifestly racist individuals (Ture and Hamilton, 1992, 5). Additionally, Black studies and critical race studies widely argued on the intrinsically relationship between racism and the legacy of racial enslavement in the region (cf. Da Silva 2016; Flauzina 2008; Hartman 1997; Vargas 2018; Weheliye 2014).

On the other hand, this research participant exposed Brazil's contradictions, when the country changed strategy and withdraw polemic paragraphs, and so being also responsible for some setbacks at the OAS:

> Now and I am going to tell you something in confidence [laughter], there is a country in the region that led the process, that made those proposals as institutional racism or like… that the burden of proof lies with the racist and not the victim, that country was the one who asked to withdraw those proposals, you must already imagine what country it is [laughs] and the only thing that changed. (...) There are a lot of double talks there... it's not easy. That's why I'm telling you, that is, the same political party, who leads the process, who led the process in Durban, who handles the concepts of structural racism, reverse burden of proof, at the time of the negotiation, the government changes, but the same political party follows and changes and withdraws texts proposed by the same country, there is something wrong! (AP-29)[lxxxi]

The changes in the Brazilian discourse go hand in hand with the Diplomat's testimony that some compromise was necessary in order to avoid losing the opportunity of having the Convention altogether. Most activists I interviewed saw the definition of racism finally approved in the Convention as a defeat, "it is bad, a very incomplete concept" (AB-3)[lxxxii]. The subsumption of the definition to an ideology was seen as highly problematic and preventing the analysis of its concrete effects on peoples' lives; "[racism] is an ideology for sure... for sure, but there is an institutionalized praxis there, a praxis in the process of accessing goods and services" (AB-13)[lxxxiii]. For this professor, the conventional definition only evidences how jurists insist on conforming racism as related to individual behavior, "as an addictive, pathological, illicit manifestation..." (AB-

19)[lxxxiv]. One activist criticized the concept for its lack of materiality and insistence on reducing it to an idea, in opposition to the notion of institutional racism:

> Ideas don't stay in the domain of ideas, if they did there would be no problem because the racist person would stay there poisoning himself with his own neurosis, right? But this is metabolized into actions and that interferes with the dynamics of black and non-black people because for black people it generates an effect and for non-black people it generates the opposite effect, so that's it, the concept of institutional racism will also say that it has a conceptual dimension and that it has a practical dimension, that it produces effects, so above all, taking it out of the field of action and materiality is another loss that needs to be reviewed, needs to be replaced. (AB-02)[lxxxv]

For most of the people I interviewed, the inclusion of indirect discrimination cannot be seen as equivalent to the notion of institutional racism entering the convention. Those two concepts generate quite different effects on the demand for change within institutional spaces and practices. "That is not a small difference, it is a big difference because indirect discrimination is not institutional racism, it is not, conceptually, here it is not a fight for the word" (AB-09)[lxxxvi].

Ultimately, to include concepts of institutional or structural racism in conventional texts would open the possibility of holding States accountable for institutionalized practices that have the effect of creating inequalities and privileges through racial lines. "So the more you dilute the concept, the harder it becomes to label the State as racist" (AB-17)[lxxxvii]. For this Black activist, the Black movement has improved its capacity to directly present demands at the international human rights level, and if the convention had provided for institutional racism, the organizations would be ready to present a demand:

> We didn't have this training a few years ago, today we can do that, and if you put an article in this Convention that specifically talks about institutional racism, we have basically everything there to demand Brazil, for example, under all situations of the daily life of Afro-Brazilians (AB-17)[lxxxviii].

For some lawyers, despite not incorporating institutional racism, the fact that the convention contained the concept of indirect discrimination is an opportunity, and it is an improvement on what was there before. From a pragmatic perspective, even if does not represent the best option, if indirect discrimination helps avoid the intentionality trap, then it can be a useful tool to evidence racism within public policies, practices, and routines. As this research participant argues:

> the concept of indirect discrimination can be useful as a tool for diagnosing public policies that are supposedly 'neutral' from a racial point of view, but

> whose result generates or reproduces racial inequalities. (…) it is strategic for the design of public and private policy instruments capable of fostering the promotion of racial equality (AB-21)[lxxxix].

In the case of Brazilian domestic legislation, there is no legal concept that enables focus on the State or its structures, which is also true for other countries in the region. Thus, the convention brings innovation for domestic law, which gives room to overcome challenges around the judicialization of racial discrimination and the proof of intentionality commonly presented as limiting in how racism and racial discrimination cases are processed in Latin American countries (Hernández 2019).

5.4 An old regional denial: "we are all mestizos"

Racial democracy and mestizaje ideology have been widely contested as racism denial by Black and Indigenous movements in Latin America (Wade 2010). According to this ideology, "there is really only one race in our societies (the mestizo race), then it would follow that any disparities between populations and groups could never be explained by a person's race" (Dulitzky 2001, 93), rather than other conditions, such as socioeconomic inequalities. Therefore, resorting to this argument constitutes an interpretative form of racism denial (idem 2001, 92), which is still recurrent in countries' discourse. For example, Peru's first response to the consultation expressly raised mestizaje as an exceptionality of Latin America: "In the American hemisphere there is a great socio-cultural diversity that reflects the historical journey of our continent in the face of the processes of colonization, migration and miscegenation" (OAS Subsecretaría de Asuntos Jurídicos 2001, 11-12).

According to one research participant who attended the debates (AB-22), Peru's contribution was problematic, since in its opening document affirmed that Latin America was a continent where mestizaje prevails: "*América Latina es un continente en el que prima el mestizaje*". (OAS Committee on Juridical and Political Affairs, 2005e, 1).

> Peru's document was the least complete of all those presented so far to the Chair of the Working Group. Its content would largely reflect the positions defended later by the representative of Peru during the Group's meetings in 2005-2006. On several occasions, the Peruvian representative sought to relativize the seriousness of the problem of discrimination in his country, highlighted in a study presented by the Justice Studies Center of the Americas (CEJA) (carried out at the express request of a resolution of a Brazilian

> initiative approved at the XXXIII General Assembly of the OAS, held in Santiago) and in interventions by representatives of civil society. (AB-22) [xc]

For another research participant, the differences in countries' perception of the problem were related to problems with the language of the convention's first draft, as presented by Brazil, which brought in discussions that other countries in Latin America were not familiar with. He argued that in other contexts, racial democracy has not been questioned as broadly as in Brazil, therefore "in negotiation issues, sometimes it is better to be more pragmatic and let some things pass so that the substantive issues pass" (AP-29)[xci]. Giving the example of Peru, he stated

> When one begins with the Brazilian academy and the other countries, it is especially at that level that the other countries did not arrive, so eh… there was not the level of questioning, of racial democracy as they call it in Brazil, the issue of miscegenation as a form of assimilation like other countries in the region, like Peru, that is, to say that we are not racists we have the classic miscegenation, we are all mestizos, we all have from all sides, "the one who does not have Inga, has Mandinga", we are the melting pot, eh... and this... Latin American in general is very much in the subconscious... (AP -29)[xcii]

This generalized *mestizaje* ideology in the region was a real roadblock to discussing the provision of affirmative action in the convention. For many countries, this topic was taboo, as the Brazilian diplomat testifies; "for various reasons, this [affirmative action] was a taboo topic for many governments in the region. The most common claim by those who rejected the incorporation of special measures in our future convention was that this was an agenda that was already beginning to be contested 'even in the USA'" (AB-22)[xciii]. Despite the US position against the term "affirmative action" at the 2001 Durban Conference, this argument also shows how critical scholarships on the issue have been used in a distorted way. The most critical work on the model of affirmative actions in the United States highlights the limitations of a narrow "inclusion" perspective, when little is done to challenge the "logics of obliteration" that confront the machinery that still pushes Black populations into poverty, precarity and premature death, as Denise Ferreira da Silva (2016) argues. An analysis that does not preclude the use of affirmative action policies.

For this research participant, sticking to with the legal language was a way to advance on the debate, when facing the regimes of denial of racism through *mestizaje*, or the denial altogether of any biding instrument by the US. Thus, the Brazilian argument was that affirmative action was a legacy of the ICERD, and not a novelty:

> I argued that we should include special affirmative action measures in the text of the Convention as obligations of States Parties. These obligations would serve to guide the domestic legal norm, making it more effective in promoting racial equality. I believe that we managed to convince the majority of States that this obligation would in no way compromise the principle of isonomy and equality of all before the law, rather they improved it. The Itamaraty [Brazilian Foreign Affairs Ministry] position was fully supported by SEPPIR. We understood that affirmative action measures constituted an effective instrument for overcoming the social exclusion in which millions of victims of racism and racial discrimination in the Americas found themselves. Colombia and Mexico supported us from the very beginning. (AB-22)[xciv]

Those efforts resulted in the text of Article 1 (5) confirming the non-discriminatory status of affirmative action measures. In addition, Article 5 states that:

> The States Parties undertake to adopt the special policies and affirmative actions needed to ensure the enjoyment or exercise of rights and fundamental freedoms of persons or groups that are subject to racism, racial discrimination, and related forms of intolerance for the purpose of promoting equitable conditions for equal opportunity, inclusion, and progress for such persons or groups. Such measures or policies shall not be considered discriminatory or incompatible with the purpose or intent of this Convention, shall not lead to maintaining separate rights for different groups, and shall not be continued beyond a reasonable period or after that objective has been achieved. (OAS General Assembly 2013)

Affirmative action was one form of reparations strongly defended by the Brazilian mission, but also by Afro-Latin American movements, in contrast with other understanding of reparations that were debated in the Durban Conference, which included individual and inter-State financial compensation (see J. A. L. Alves 2003; Lennox 2009). In general, the Latin American position opposed the understanding of reparations as financial compensation, as evidenced in the Santiago Conference, which even the Black activists saw as an unproductive debate. According to one Brazilian activist, “this debate was fought heavily because even some African countries did not understand it as an important thing to be debating public policy but saw the reparation process as an individual reparation” (AB-10)[xcv]. A former SEPPIR official reinforces the view that reparations are about looking at what has not been done since the abolition of racial enslavement, and not financial compensation at an individual level:

> But then, as I think the reparation that the State has no way to quantify it, I think it is incalculable, in monetary terms it is incalculable, and it is also difficult because of the mixed-race of the people, you know. (...) The State must have a policy for our people, a policy of valuing the population in all its dimensions, economic, cultural, and educational, which will enable a situation of social well-being for everyone. I think that's what reparation is, it's doing what hasn't been done since the abolition of slavery... (AB -6) [xcvi]

Nonetheless, reparations demand the identification of its beneficiaries - Indigenous and Black peoples – and mestizaje ideologies work to deny the limits of racial identities (Paschel 2016, 223). Brazil had a peculiar position in the debates on reparations, which has stretched the tension between SEPPIR and the Foreign Affairs Ministry. On the one hand, it was the country that embraced antiracism (Hernández 2017), whilst on the other hand, there was a concern that Brazil could be a debtor of reparations as claimed by the African countries, as it practiced racial enslavement after its independence from Portugal. This is one of the reasons why *Itamaraty* was against the use of language that could implicate Brazil internationally. According to one research participant who worked at SEPPIR, the control of language regarding legal commitment was strong:

> (…) they [Itamaraty] are against international reparation movements, this international reparation struggle is normally led by Nigeria plus some African Union countries. It's just that Brazil practiced slavery as a free country, approximately for 40 years, Brazil after independence continued to practice slavery. Brazil instead of being a beneficiary of reparation struggles would be a debtor, right, for indemnifying African countries. (AB-18)[xcvii]

In Peru, the limits to include racial enslavement in the debates of reparation result from the predominant use of this mechanism by the transitional justice in cases of human rights violations during the internal armed conflict (1980-2000). A Ministry of Culture official highlighted this context and the view of the State:

> There is a policy for all the victims of the armed conflict, of the violence, let's say, that occurred at that time. Yes, there is a state policy on the subject and indeed there is one of the readings of the Truth Commission is that it is a question, let's say, racial and... there are reparation mechanisms, but it is important to point out that there are, that they have been raised mechanisms including scholarships for the children of people who have been murdered, right? But institutionally, as a country, our institutions, including educational ones, at the level of higher education do not have the conditions to generate discourses favorable to cultural diversity. (AP-8) [xcviii]

In this context, there is little debate on reparation for racial enslavement, or in relation to an "ethnicity agenda", as one former Minister of Culture official states "there is no issue of reparation, it is not an issue seen here, that is, there is no reparation understood as an issue on an ethnic agenda, right?" (AP-21)[xcix]. Additionally, when the topic is reparation as promoting affirmative actions from Afro-Peruvians, for instance, there is a resistance to the need for such a narrow focus, and the arguments of Peru's demography as a majority composed of racialized people are raised: "it would have to include the descendants of slaves, but also the descendants of indigenous people who suffered all

that. And that's almost 70% of the population. It would have to come to that" (AP-28).[c] Even if this argument is true, and Indigenous people could not be excluded from reparations policies, this argument should not be impeditive to reflecting on Afro-Peruvians needs in that context.

In the fields of history and education, we find some initiatives to make visible reparations in the history of Peru. There is a critique from part of the Black movement that reparations of racial enslavement have been understood in a limited way, as the inclusions of "Black heroes" and "slave histories", but without questioning the national history. The result could be that some Black figures are "integrated" into history, but the narrative remains uncontested:

> It is that the appearance of black characters changes history, that is, it is important, yes, but if we do not reread history and we do not rewrite history, it will be the enslaved black characters who continue to be enslaved, without any other agency, or they will continue to be the cooks, the athletes, recent athletes, right? (...) So, what good is it for me that all the patriotic Afro-Peruvian characters are here if the teacher is always going to return me to be enslaved, to be stupid, to call me to dance in the act of July 28 for national holidays, if you are going to tell me that it is better for my mom to bring a dessert because she cooks delicious, right? that she no longer dedicate myself to studying but that it is better not to dedicate myself to soccer because I can be good, right? So, the debate is not just about what goes in the text, it's that you have a vertical and openly racist background and that when you tell public officials this is racism, it's like "no, no, they're exaggerating." (AP -3)[ci]

This testimony is critical to how reparations in education have been taken from an integrationist perspective while living untouched patterns of dehumanization within the school system. Racial stereotypes are reinforced in schools' routines and affected the present and future of Black kids, who are the target of more control and discipline and less supported to undertake more "intellectual" professions. Intercultural education has failed to improve the lives of Afro-Peruvians because it prevents the educational system to debate racism and the racial formation of the country (Valdiviezo 2012). Once again, symbolic forms of reparations or regrets over the past are not what was claimed during Durban Conference by the Black movement but often are how the State is going to incorporate that same claim.

As we can see, the debate on reparations is not consensual. The Caribbean countries also held a position that included financial claims. The Caribbean Reparation Commission (CARICOM) targets the "moral, ethical and legal case for the payment of Reparations"

by colonized powers "for the Crimes against Humanity of Native Genocide, the Trans-Atlantic Slave Trade and a racialized system of chattel Slavery" (CARICOM n.d.). Those differences in claims regarding reparations are the result of different colonizing processes, which draw different racial regimes and histories throughout the Americas. Even though I do not aim to look in-depth into the broad subject of reparations, which requires more contextualized investigation, it was important to highlight these different understandings because of their impact on the fight against racism. In particular, when racism is understood as a result of concrete socio-historical processes, such as colonialism and racial enslavement, *mestizaje* ideologies are used to weaken the adoption of concrete measures because of supposedly "blurry racial identities" in the Latin American context.

5.5 In Conclusion: two binding documents struggling to come to life

The links between the different scales – national, regional and global – were particularly evident when the Afro-Latin American movement articulated their demands at the 2001 Durban Conference; to open up new regional spaces dedicated to the fight against racism at the OAS and to advance on racial equality policies at the domestic level. This is exemplified by the fact that SEPPIR paid for the creation of the Rapporteur on the Rights of People of African Descent and Against Racial Discrimination, complying with a historical demand of the Afro-Latin American movement, which, at the same time, cannot be dissociated from the Santiago commitments and Durban advances. Nonetheless, the use of "Durban Language" in the negotiations at the OAS was considered problematic or ideological. The conventional language ended up being hijacked by technocratic legal knowledge to sterilize the discussion, evidencing the political role of race and racism in the region. What these controversies have shown, underlined by the two years spent debating the concept of racism, is that the denial of racism is still a vivid and active practice.

One concrete result of the negotiations cannot be disregarded; any OAS binding instrument expands the regional human rights system. A key difference from the ICERD, or even the CERD (that provides recommendations), in the regional system, is that under the Convention the countries can go on trial. In most countries, the ratification of a human

rights convention also means a direct responsibility to apply the text as national law. For those reasons, the adoption of the Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance by the OAS General Assembly was celebrated by those interviewed on this research. Despite the disappointment of activists regarding how advanced the document could have been if taking into consideration the breakthrough after the Santiago Conference, some of the directives included are perceived as positive outcomes of this entire process. The Convention also approaches highly unregulated issues, such as the use of the internet or other means of mass communication for racial discrimination, as in the case of hate crimes.

Furthermore, having a narrowly focused convention against racism is also relevant politically; according to one OAS official (AB-1), even if any petition could be already filed alleging discrimination based on the American Convention on human rights grounds alone, those processes allow for petitioners to strengthen the complaint based on racism. The interviewed provided an internal account of the OAS system and related the impact of previous conventions on how the jurisprudence changed, as in the case of the Belém Convention and the 'gender turn':

> (…) it is recent, several States already had ratifications, they had already ratified specifically and I saw the moment when someone said 'it is time to adopt' [the Belém Convention], so I think that this political turn will happen for some issues now, in the next few years, we hope, but it is slow, it is slow and, in short, we are very late... (AB -1)[cii].

The time shall prove if the mobilization against racism through the system will push for a different comprehension, despite the setbacks of key concepts, as presented in this chapter. The analysis of the regional debates to develop a binding instrument against racism has demonstrated that the agreements reached in Durban remain as a paradigmatic moment, where the discourse on racism allows us to look at the historical process that shaped Latin-American reality. However, the potentiality of the 2001 Durban Conference debate was eluded at the OAS, because different strategies that aimed at evading a focus on racism were deployed; after all, "new" forms of discrimination exist and need to be tackled.

Drawing from the various forms of denial presented by Dulitzky's work (2001), what we can conclude is that certain continuities remain. Interpretative denial, for example, is present when "new victims" are listed, as if phenomena such as poverty, migration, and

forced displacement were unrelated to racial lines in the region. Arguments of the region’s exceptionality based on ideologies of mestizaje are still vivid, blocking the advancements of concrete measures to fight racism. The State's racist structure, its normativity, practice, and institutionality, inherited from the colonial process and enslavement regime, remains mostly silenced.

Chapter 6. Claims in the cracks of the Racial State: (im)possibilities of antiracist struggle

This chapter explores the tension within the Racial State when antiracism becomes a visible claim and a pressing demand to be incorporated in the State's agenda. I examine the conceptual approaches of State initiatives for either fighting racism or promoting the rights of Black people in Peru and Brazil. More specifically, I looked at the framework in the policies debated/ implemented at the Directorate for Policies for the Afro-Peruvian Population (DAF) within the Ministry of Culture (2009-2020); and the policies developed within the National Secretariat for Policies for the Promotion of Racial Equality, SEPPIR (2003-2016). Being the Racial State also about the tension between sustaining the racial condition and its denial (Goldberg 2002b), complex arrangements develop when antiracism is institutionalized. I worked with the hypothesis that controlling the meaning of racism translated into public policy and discourse is a mechanism of the regimes of denial. Consequently, I identify how racism is denied in documents, manuals, and materials promoted by the State within "antiracists" efforts.

The naturalization of "the racialized regime of legality in postcolonial Latin American societies" (J. A. Alves 2016, 231) is a consequence of the various strategies – discursive, legal, ideological, and institutional practice -, in place to forge the nation-States without altering the racial order. One recurrent argument to deny racism is to say that the State is nothing more than the people working there and then, those people "bring their prejudices" and reproduce racist assumptions, an argument that deviates from institutional responsibility. David Goldberg argues that "in penetrating the everyday the Racial State was destinated to 'survive' its institutional forms" since the "State as institutional governance depends for its functionalities on the embodiment and reiteration in everyday practice" (2002b, 108). In post-colonial contexts of a racialized regime of legality, racial lines are always drawing the limits of rulership and subjection. A research participant problematizes that the State is not made of/for "all people":

> What is the State itself? Do you know how to answer? That's it for me: it's a set of norms, a normative design made by some and for some, and in this some, we, blacks, women are not included, right? But the State was not made for everyone, why wasn't it made for everyone? Because it was made in a single way and with a single model, with a single rule. (…) but I would also like to

> say that sometimes they don't always have the vision of those who are there, sometimes [the person in the government can be] even well-intentioned, but they are culture-bound, epistemologically distorted. (AB -10)[ciii]

This participant's definition of the State brings an essential element to understand how racism is reproduced beyond people's *intent* or *good intentions*: racism is reproduced because we are culture-bound and epistemologically shaped by raciality. Those cultural and epistemological constraints are revealing of how knowledge production affects the way we perceive the world and how theories and models are incorporated into State practice, always in relation to broader transnational trends. In the cases under analysis, there are context-specific approaches, but they are related to globalized theories and policy models. The language adopted in official discourses is often appropriated from activists and social movements, and sometimes is the other way around, with major influence of international instances and organisms, as debated in Chapter 4 and 5. In this chapter, I zoom in Peru and Brazil's policy choices to access contextual challenges of each approach in fighting anti-Black racism: promoting interculturality and racial equality.

The chapter is divided into three sections. In the first section, I present the Peruvian Intercultural policy approach, briefly debating the Alert Against Racism Platform *(Plataforma de Alerta Contra el Racismo)* to question certain conceptual-political choices. Then, I focus on the debate on interculturality to problematize the (no)place of Afro-Peruvians in this political choice. In the second section, I present the Brazilian experience, focusing on the challenges of the racial equality approach regarding the impossibility to address the Black genocide within the racial State. In the third section, I present a relational analysis of the bureaucracies of denial, providing a systematization of the challenges of policy approaches in Brazil and Peru. Finally, I conclude highlighting how, at the end, racism is a "bad word" that needs to be in constant control.

6.1. 'Managing diversity' in Peru: interculturality and anti-Black racism

As a political and academic debate[135], interculturality has a long tradition in the Peruvian context, but one particular event has pushed for the current consolidation of institutional

[135] Various authors in Peru engage with interculturality, particularly within the scope of education. Philosopher Fidel Tubino is one of them, and a reference for many other (Walsh 2008; Flores 2015b; Ansion 2007; Vega 2009).

spaces dedicated to strengthening the “intercultural management capacity” of the Peruvian State (Ministério de Cultura 2015, 13): the *Baguazo* bloodshed and its outcomes. Research participants agreed that the creation of the Ministry of Culture and the urge to improve the intercultural institutionality was triggered by an environmental/political conflict known as *el Baguazo* or the Bagua massacre.

Next to the city of Bagua, in the Utcubamba province of the Department of Amazonas, in June 2009, the State management of an Indigenous protest against oil extractives exploitation ended in hundreds of arrests and dozens of deaths. The protesters camped at “*Curva del Diablo*” and were violently evicted by the police. The eviction triggered a larger revolt among the Indigenous communities that invaded the PetroPerú headquarters, which caused a war-like response from the State, resulting in bloodshed. Whereas the number of police officers’ deaths was properly established, the number of Indigenous murdered was never fully acknowledged, as narrated by the special report in *la Lupa* magazine, where Juan José Quispe Capacychi, a lawyer of IDL - *Instituto de Defensa Legal,* provides an update on the current situation of the “justice administration” on the case.[136]

This violent outcome of a business prospect for petrol in the Amazon region forced the State to create means to “avoid conflicts” and smoother the process of private companies' exploitation on Indigenous land, encouraged by the State since 2007 Alan García’s government (Palacios 2016). His defense of corporate extractivist projects on Indigenous land became notorious in García’s published texts, such as “*El síndrome del perro del hortelano*”[137], blaming the Indigenous peoples for Peru’s “underdevelopment”. Drinot’s analysis of García’s discourse reflects on how racism is based on the irreconciled idea of progress and Indigeneity in Peru (2016, 286). As “development” becomes a new hegemony, the struggle against the oil and mineral exploitation in Indigenous land becomes more challenging throughout Latin America, and the right to ‘Prior and Informed Consent’ is a legal and ideological battle. Thus, *el Baguazo* becomes the

[136] La Lupa. Informe especial: Impunidad a 10 años del Baguazo. Junio 2019. p. 3-9.
[137] Text published at “EL COMERCIO”. El síndrome del perro del hortelano. Por Alan García Pérez. Presidente de la República. Domingo, 28 de octubre de 2007. Available at <https://indigenasdelperu.files.wordpress.com/2015/09/26539211-alan-garcia-perez-y-el-perro-del-hortelano.pdf>, accessed on the 09.03.2020.

landmark for the creation of a series of intercultural regulations, procedures, and institutions:

> We have just spent the 5th of this month, the 5th of June, commemorating ten years of events that I think have made our country not the same, they are the events of Bagua, many call it the Baguazo, (...) that marks a milestone in the history of our country, an unfortunate milestone and that in these ten years, after these events in Bagua, I think they have demanded that the State precisely consolidate the work linked to Indigenous peoples in a particular way. (AP-25)[civ]

El Baguazo forced the establishment of two policy paths for the last ten years: the creation of the Vice-Ministry of Interculturality and its agenda turned to "ethnic peoples"; and of Intercultural Justice within the Ministry of Justice. The National Policy for Mainstreaming the Intercultural Approach is responsible to guide other sectors of the State, which functions as a mediator promoting "an intercultural citizenship based on dialogue" (Ministerio de Cultura, 2015), where the "intercultural dialogue" works as a methodology to put the different interests to debate. The national policy sees interculturality as the means to guarantee peaceful coexistence in Peru. This language erases racial tensions and dilutes contrasting interests and power positions by equalizing the various "interest groups" in a conflict such as *El Baguazo*[138]. As Maya activist Aura Cumes properly argues, "interculturality will not have liberating results if what is being sought is simply a peaceful coexistence within a system of domination" (Cumes 2019). In the end, the State hardly incorporates different conceptions of development, as the policy predicts, because racism has historically built indigenous ways of living as a threat to the country's progress, inherently antithetical to development, equalized as economic growth[139].

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[138] In 2011, the right to prior and informed consent was regulated by law (known as *Ley de Consulta Previa*) during Ollanta's government, a president that brought the "social inclusion" agenda to the center. This Law and its regulation have limited the scope of the consultation process in comparison to the ILO Convention n. 169, particularly relieving the obligation on cases of infrastructure projects for "public services", which usually have great impact on indigenous communities. The main work of the DGPI is to function as intermediators between extractive companies and indigenous communities, carrying on the procedures of the informed consent. Nevertheless, as questions Roger Merino, "el proceso completo está diseñado como un mecanismo para informar y convencer a los pueblos indígenas de una decisión ya tomada; el dialogo intercultural solo aparece si los pueblos indígenas no son persuadidos" (Merino 2018, 119).

[139] Rodrigo Montoya problematizes the use of interculturality in a racist society such as the Peruvian, asking "what negotiation could be possible between racists who believe and feel superior because they are white or descended from white and the so-called Indians or blacks, who they see as individuals closer to animals than to human beings?" (Montoya 2013, 61). A recent polemic involving the presidency vacancy in Peru, one of so many, is quite illustrative of his argument: one congressman in line of succession for

"Indigenous people are still seen as incapable" (AP-26)[cv], is how an activist from a human rights organization describes the ideology prevalent in the Ministry of Culture. According to her, most of the government officials still work on an integrationist paradigm for Indigenous peoples, "then the State has to take it a little by the hand and that means the invasion of their territories, which means the idea of modernization as a civilizational idea of development" (AP- 26)[cvi]. She is critical of the role played by the Ministry of Culture, which ends up facilitating the advance of extractive companies into Indigenous land.

The acknowledgment that *El Baguazo* is the referent to the State's intercultural approach is central to understanding why Afro-Peruvians do not have the same "attention" as Indigenous peoples in the governmental structure. As a former official at the Ministry said, Afro-Peruvians "do not generate much conflict for anyone" (AP -21)[cvii]. "Conflict", particularly land conflicts, draws the State's attention - not necessarily for the protection of Indigenous people's lives - because the Indigenous peoples are in territories of interest. Afro-Peruvians are not perceived as a people with demands for territory/ land and, therefore, they are not seen as 'in conflict' to be mediated by the State interculturality. Black people's claim for land and right to territory is highly invisibilized in Peru, and this is in direct relation to how indigenous claims also impact Afro-Peruvians' possibilities to articulate similarly, as discussed in Chapter 4.

In current policy frame, the choices for interculturality confined State "antiracism" to a limited scope of capacity building and citizenship education. The methodological choice to create three different directorates within the General Directorate for Intercultural Citizenship - one for the Indigenous people and another for Black people, both separated from the one specifically tackling racial discrimination – is an institutional model that guarantees the control of the "antiracist agenda" within the State. The fight against racism, or racial discrimination, is the mandate of the Directorate for Cultural Diversity and Elimination of Racial Discrimination (*DEDR - Dirección de la Diversidad Cultural y Eliminación de la Discriminación Racial*). Afro-Peruvians are included in the State structure in the Directorate for Policies for Afro-Peruvian Population (DAF - *Dirección*

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presidency was (in)famous for a racist quote "*las llamas y las vicuñas no pueden opinar*" (lamas and vicunas cannot comment), referring to conflict involving indigenous communities and extractive companies.

De Políticas Para Población Afroperuana). One of the reasons behind this choice was the idea that racial discrimination is a broad issue: "But it is true that racism in Peru, even though it has two important groups, is not only the Afro-Peruvian or Indigenous population, right?" (AP -4)[cviii]. We cannot deny the validity of this statement, but this choice limits the scope of DAF's engagement with antiracism.

This research participant also highlighted the need to have a separate directorate to guarantee the "promotion of an intercultural citizenship" that could allow for the future generations to overcome racism: "So that system had to be guaranteed and it had its challenges, but it was also necessary to work on making citizens stop being racist or the new generations understand racism as a defect that has been overcome" (AP-4)[cix]. This meant that while those two directorates were destinated to work with "ethnic groups", another institutional space worked with "antiracism", focusing on the population in general. Intercultural citizenship conceptualized, as the research participant said, as a goal of the State to overcome the "defect" of racism, an aberrational behavior that can be targeted by educational campaigns.

This segmentation limits the DAF's scope of actions, and functions as context control to "allow or prohibit specific speech acts, monitor the agenda, set and change topics or regulate turn-taking" (van Dijk 1993, 260) when racism is addressed. I witnessed this tension during fieldwork, when a landmark bill on Afro-Peruvians' rights was debated in October 2018. A draft proposal presented by an expert was discussed in two different meetings and I attended both: one meeting with the civil society (organizations of the Black movement); and the other with "experts" (professionals from various fields). The bill's draft covered concepts and general guidelines for policies but rarely touched on racism as the cause of inequalities that needed specific measures. I enquired the DAF staff about the reason for not addressing racism on that bill. A policymaker told me that this was a matter within the DEDR's mandate, and that another draft of a broader anti-discrimination legislation[140] was being discussed. He also explained that there was a lack of understanding about the need to make a law for Afro-Peruvians if there was already a

[140] The bill of an antidiscrimination law was sent to congress on 2018, the 3793/2018-PE. The law is broad, mostly conceptual.

bill against racial discrimination. Later, the DEDR project "incorporated" DAF's one. According to a DAF official, much was lost on the way:

> When [the bill] went through the filters it had to go through - and I am speaking from the Senior Management right here [Ministry of Culture] and I am thinking of the advisory cabinet -, (...) they did not understand the public need what was trying to be addressed with this proposal, right? He [the minister] tells me that he received comments such as "the problem foreseen for this law, like you want to put everyone in jail, eh! It seems to me that the law is very strong, and I don't understand". Things in that tone, right? And when the reading would have to be rather in another sense, probably, to go to the question finally even more technical of a proposal of this type, but the situations were, in general, that the project, the document, the bill had the volume very high and you had to lower it a few tones, right? with all that it was turned around… (AP -15)[cx]

While civil society propositions for the bill were considered to have a "high tone", the research participant explained that the Ministry of Culture had a key interest in the "antiracist agenda" due to its visibility in the media and the growing public debate: "issues against racism have perhaps always been a little more marketable because every time there is a situation of racism that is made public, such as an event in a bank, in a supermarket etc., takes on a little more media character, then it becomes an issue on which the Ministry raises its voice more clearly, gives it more weight" (AP -15)[cxi]. Nonetheless, what public debates, or even the bill, addressed was a broad fight against discriminations. The focus on interpersonal cases of discrimination in consumption or public service[141] directs the solutions for the prohibition of non-discriminatory practice, which led the different municipalities to approve their local ordinances against discrimination (Ardito 2009b).

Equalizing the fight against racism to the fight against (inter-personal) racial discrimination is one way the State controls the scope of public policies. Additionally, keeping Indigenous and Black people's agendas outside the public body that addresses racial discrimination is also a way to narrow down "antiracism". This is coherent with the Ministry of Culture's mission: "[to] promote and manage cultural diversity with an intercultural and rights approach efficiently for the benefit of citizens"[142]. This becomes evident in the mandate of DEDR, which I explore in the following section.

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[141] See more in the campaigns against racism available at the Plataforma Alerta Contra el Racismo, available at <https://alertacontraelracismo.pe/>.
[142] Available at <https://www.gob.pe/666-ministerio-de-cultura-que-hacemos>, accessed on 05.01.2021.

Plataforma Alerta contra el Racismo[143]

The Directorate for Cultural Diversity and Elimination of Racial Discrimination (DEDR) works on two fronts, "in the prevention, the sanction of racial discrimination, but also in the positive assessment of cultures, cultural diversity in the country" (AP-8)[cxii]. On one front, the Directorate elaborated an anti-discrimination bill, currently under Congress analysis. On the other front, DEDR works on raising awareness of racism in Peru by promoting various campaigns. The main policy overseen by DEDR is the online platform #Alertacontraelracismo. The website contains key concepts, documents, bibliography, campaigns, and statistics on racial discrimination in Peru. It also offers a possibility for anyone to report a case of racial discrimination, which serves to provide statistics to the government, but without leading to an investigation. There is an emphasis on racial discrimination in sports competitions, and a national campaign targeting soccer[144]. According to the director in charge at the time[145]:

> What the Ministry has sought for several years is to make this [racism] visible as a public problem, which is something that was not known, and in this framework a kind of visibility mechanism is created, through the dissemination of content and orientation to citizenship called "Alert against Racism". The idea of this is to make visible, on the one hand, this as a public problem, but also to generate a common sense of rejection of racial discrimination, precisely because of the high tolerance that exists. (AP-8).[cxiii]

Yet, according to this research participant, Peru is tolerant with racism because it is naturalized, so it was important to generate data,: "at the end of 2017 a national survey on perceptions [was implemented] (…) we are a country…we ourselves consider that we are racist, but that does not necessarily lead to an awareness, let us say, individual, of that racism" (AP -8)[cxiv]. The survey also showed that in more than 40% of the cases, people are discriminated against in public services, such as hospitals, policy stations, or city halls, a fact that directly implicated the State. Despite this data, "raising awareness" or

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[143] The analysis of the Platform's content was done initially on August 15th, 2018. After that, changes in the Directorate have resulted in various changes in the Platform, including how some concepts were presented. I indicate the date of access to evidence which content I am exploring in each page accessed in different dates.

[144] "En resolución emitida en febrero de 2013, la Federación Peruana de Fútbol pide a la Asociación Deportiva de Fútbol Profesional (ADFP) que antes del inicio del partido el locutor del estadio deberá informar de las medidas preventivas para evitar manifestaciones racistas, xenófobas y/o intolerantes. En caso de que se dé algún acto racista, el árbitro y el comisario del encuentro tendrán la obligación de avisar al encargado de la megafonía advertir que cesen estos hechos. De no haber respuesta positiva, se suspenderá el partido." (Plataforma Alerta Contra el Racismo)

[145] Staff turnover is very high and more than four people have occupied this position since the beginning of the research. I was able to interview two of them.

working on "intercultural citizenship" are the primary official actions against racism. The naturalization of racism is recognized as a broad problem, but, as it is seen through the lens of inter-personal relations, the improvement of individual awareness remains the preferred solution:

> This is an issue…very difficult to deal with in the country because it is tolerated, there is no reflection and then, when we work with public servants we even have to start building personal narratives, because many of us have been victims, our families, our relatives and from these processes is that you can start working even on the issue of interculturality and engage, let's say, with everything that is the construction of tailored services. If there is not that predisposition and that reflection, it is difficult to reach the other. (AP-8)[cxv]

The fact that a high rank policymaker recognized that "the problem of racism in Peru is a historical problem, it is a structural problem, and it is current and highly normalized" (AP -8)[cxvi] does not lead to reflections on the structure of the State that perpetuates this condition. In sum, there is a lack of "a better understanding of the institutional structure, of the normalized ideas or behaviors that make up Peruvian society, and of the way in which such standardization affects the functioning of organizations" (Drinot 2006, 15 author's translation). Drinot argues that racism in Peru is "institutional, hegemonic, legitimizing and normalized" (2006, 24).

The use of structural racism by policymakers within the Ministry of Culture serves to legitimize the denial of State responsibility, after all, racism is "deeply rooted in social practices" (Dulitzky 2001, 96). It works as a legitimizing argument where the role of the State is to invest in changes in behavioral patterns, thus, tackling an individual and pathological phenomenon. This approach allies with an understanding that "there would be no racist societies or institutions, more racist individuals, who would be isolated or in a group" (Almeida 2019, 36 author's translation). On this basis, the Platform serves the purpose of raising individual awareness. Nonetheless, being a public policy that enunciates "racism" as a problem is seen as an advancement by the government official involved in elaborating the instrument, even though still mobilizing the pathology vocabulary:

> It was the first time that a Ministry was in charge of this and the discourse that we defended was that the problem of racism was like any disease that you do not want to recognize, right? That until you name it and feel that it is actually there all the time, every day..., if we can't even state it ourselves, I said, what are we talking about? What are you going to tell people to do? What are you going to ask to be questioned, if we cannot question ourselves? (App -4)[cxvii]

This table below, taken from the platform, summarizes how the problem of racism is enunciated and the viable solutions presented. As I have already mentioned, the platform's focus is twofold: the denouncement of racial discrimination and awareness campaigns. Drawing on the liberal approach to anti-discrimination, the language adopted does not dialogue with international debates on reparations or put any emphasis on historically social-economic disparities between distinct groups.

¿Qué estamos haciendo desde el Ministerio de Cultura?	EL PROBLEMA	¿Qué podemos hacer como ciudadanos(as)?
Difusión de campañas de sensibilización dirigida a ciudadanos(as), entidades públicas y privadas.	**Normalización de actitudes racistas que afectan las relaciones interpersonales, el acceso a oportunidades y el ejercicio pleno de derechos de ciertas poblaciones.**	Participar en la discusión sobre el tema, reportarlo, denunciar actos de discriminación étnico-racial. Exigir la garantía de nuestros derechos y sancionar socialmente el racismo.
Información sobre el problema y orientación a la ciudadanía sobre cómo combatirlo, a través de la plataforma digital de Alerta Contra el Racismo.	**Falta de información sobre este problema y cómo enfrentarlo.**	Buscar información sobre el problema, y los mecanismos existentes para combatirlo.
Análisis crítico sobre cómo los medios de comunicación representan a ciertos grupos, a través del Observatorio de Radio y Televisión.	**Medios de comunicación que refuerzan estereotipos racistas.**	Ser más críticos en la selección de los contenidos que consumimos en medios de comunicación, y actuar frente a las representaciones negativas que refuercen el racismo.
Asistencia técnica a Municipalidades, entidades del Poder Ejecutivo, instituciones del fútbol y empresas privadas.	**Mecanismos de prevención y atención débiles para actuar frente a casos de discriminación étnico-racial, tanto en entidades públicas como privadas.**	Exigir a las entidades públicas y privadas que actúen adecuada y oportunamente ante el racismo y la discriminación étnico-racial.

Figure 2 Source: Plataforma Alerta contra el Racismo. Available online from < https://alertacontraelracismo.pe/>, accessed on August 15th 2018

The platform also provides concepts and explanations to serve as informative tools for citizenship "education". In the section "frequently asked questions", some definitions are interesting to highlight (Ministerio de Cultura n.d.). For instance, when asked about the difference between racism and discrimination, racism is defined as "an ideology based on the fact that human beings belong to different races, whose classification is based on physical and/or biological characteristics" (ibid.). As we can see, the platform presents a purely ideological definition of racism, based on incorrect and unscientific beliefs about

the existence of (biological) races, re-enforcing the a-historicity of the phenomenon[146]. And this conceptual choice is explained by the next question, the difference between race and ethnicity: "the criteria to differentiate a person by race is based on physical characteristics, such as skin color, features, hair color, among others. Unlike ethnic differentiation criteria, which consider customs, social practices, clothing, ways of life, language, among others, and are considered of lesser value." Even if there is a recognition that those two concepts are in a relation, there is an obvious choice to separate race (phonotype, biology) from ethnicity (culture), reducing the scope of *race* in a society marked by cultural discourses of differentiation. It is not by chance that Marisol de la Cadena (2004) works with the concept of "cultural racism" to dialogue with the Peruvian context, or Paulo Drinot's argument that in Peru there is a "racialization of culture and a culturalization of race (by mutually reinforcing ideas of cultural and racial superiority/inferiority)" (2006, 24).

Maybe the most problematic "answer" in the Alert Against Racism Platform is to the question of whether "reverse racism" exists, the answer is that "discrimination and racism do not have a direction", but "there are groups of people who have historically been discriminated against and for whom there are specific protection measures due to the situation of vulnerability in which they find themselves."[147]. The first sentence destroys the possibility to give consequence to the acknowledgment that comes later. It fails to recognize the historicity of race construction that has produced racialization and white supremacy as realities that have created some fixation, like the impossibility to equalize the whites and "the rest". To admit the possibility of reverse racism is a dangerous statement, reinforcing the biological understanding of race and downplaying racial violence.

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[146] More recent content of the Platform changed the concept of racism, which has been replaced by "there are different definitions of racism. Some emphasize the ideological dimension, which is based on the conception that there are people inferior to others because they have certain physical or cultural characteristics. Others emphasize the historical and political dimension of the phenomenon, arguing that racism is a mechanism of power to the extent that it exacerbates the human tendency to differentiate ourselves and limits the recognition of cultural diversity, based on different arguments (biological, cultural, economic and / or ethnic, etc.) with the aim of developing a specific political, economic and social project", available at https://alertacontraelracismo.pe/preguntas-frecuentes accessed on 09.04.2021. As we can see, this definition still naturalized as ontological human condition to differentiate peoples into racial groups. So, despite announcing that differences can be cultural and even economic, the concept is still reduced to human nature, grating fixity as a "human tendence" to differentiate.

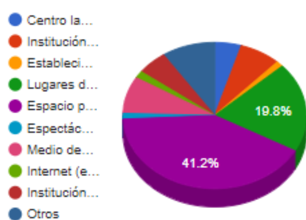
[147] Retrieved from https://alertacontraelracismo.pe/preguntas-frecuentes, accessed on 15th August, 2018. A new search on 09.04.2021 shows that this text has remained the same.

In the section “Statistics”, the website provides data on all “alerts”, or reports on racial discrimination made through the Platform, being a total of 185 (on 20/01/2021). The data is disaggregated by the scope of the incident (the place where it occurred), by reason (if skin color, clothing, etc.), the place (city), and the date. Most reported cases occurred in Lima; other entries are not available to see more detailed information.

Motivos de discriminación

Tipos de discriminación

Ámbito en que ocurrió el hecho



Sexo

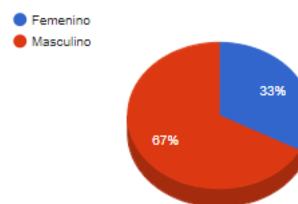


Figure 3 Estadísticas de Reportes retrieved from <https://alertacontraelracismo.pe/index.php/estadisticas>, accessed on 20.01.2021

The separation of the “types of discrimination” in “skin color”, “clothing”, “language” shows the choice to dilute or disperse racism in various forms of discrimination, treated as disconnected or unrelated. The choice of using those euphemisms cannot hide the centrality of Indigenous peoples in the Peruvian context, that is, language, clothing, and costumes are all assignations that mark Indigenous peoples. Those choices can also be explained by the need to accommodate the troubled mestizo identity. People can be discriminated against, but do not self-recognized as Indigenous. On the other hand, whiteness continues to be a phantom, an unspoken presence in official discourses, masked and normalized.

The choices of language and definitions on the Platform illustrates how the Peruvian State invests in the intercultural approach that focuses on cultural "differences", while reads race as limited to "skin color" and "phenotype". The culture/race divide impacts how Afro-Peruvians are perceived, understood, and then, regulated. I explore in the following section the threat Afro-Peruvians pose to the Intercultural State.

"The culture nobody understands": Afro-Peruvians' threat to interculturality

Afro-Peruvians pose a real challenge to intercultural politics in Peru for two main reasons: first, if the focus is on cultural *translation*, *dialogue,* and *promotion*, but the State does not recognize them as being "cultural subjects" as the Indigenous peoples, then Afro-Peruvians remain an illegible people; second, if Afro-Peruvians talk about racism and this is a "bad word" in Peruvian politics (Manrique 2014), then, their demands are uncomfortable. The general perception that "the issue of racism is an Afro concept, claiming the concept, the concept of interculturality is claimed by the Andeans..." (AP-21)[cxviii], reveals the existing distance between interculturality and the fight against racism. Both agendas had no point of contact: "the concept of Interculturality still does not meet the concept of racism, that is, they do not have bridges, right? And they appear as two disruptive concepts, they appear, let's say, in the discussion of public policy still in a very low tune" (AP – 21)[cxix]. Besides, according to the research participant interculturality is accommodated into State bureaucracy's vocabularies to refer to Indigenous peoples and, more recently to Black people: "[interculturality] has become the language of the public official who... they know it, they appeal to it, let's say, when they see that someone is different, they talk about Interculturality, but nothing more" (AP-21)[cxx].

Another research participant, who was a Ministry of Culture official, described the challenge as follows: "(...) the Afro-Peruvian issue is the most complex issue because it is not as easy as language issues, let's say, or as the capacity building initiatives, for training citizens in their own language, it is more complex and because of that you probably have to go into more detail." (AP-25).[cxxi] This excerpt exemplifies how the intercultural approach is limiting, including towards Indigenous peoples, with a great focus on language. The interviews showed that intercultural policies have meant little

beyond the educational approach to languages[148] and the management of the ILO 169 Convention. Interculturality becomes part of the “competencies” that officials must have, translated into “capacity building”:

> (...) from this instance [Directorate of Intercultural Citizenship], they are beginning to adjust the competencies that public officials should have, in terms of interculturality. How from the State we manage to have clarity in these intercultural competencies, how we demand these intercultural competencies in our officials, and how we achieve that this interculturality finally is translated into spaces of direct attention to citizens with cultural belonging. (AP-25). [cxxii]

Dealing with “citizens with cultural belonging” presupposes knowing them, their culture and how they are different from “us”. In the case of Afro-Peruvians, their claim to tailored public policies were mostly blocked by the lack of “understanding” that there is a “Black culture” to be protected. Denial and invisibility are markers of anti-Black racism in Peru. The testimony of this research participant is quite revealing of how the invisibility of the Afro-Peruvians impacts the possibility of building a concrete rights agenda. Overseeing intercultural policies for quite some time, the fact that she still could not “understand” the Afro-Peruvian demands illustrates the functioning of anti-Black racism in Peru:

> I think that Afro organizations here [in Peru] are also very weak, small, fragmented, right? (...) they [the Afro-Peruvian organizations] also told me 'but why are indigenous issues bigger, it eats up 90% of the entire Vice Ministry, and Afro issues so little'...because, in reality, it is (...) we didn't know where to grab it, no we had somewhere to look at it (...). I look at it after all these years and say: 'Yes, well, I didn't understand it clearly either, right? I didn't know how to do it. (...) So, the Afro issue, what I think is that it needs to be thought about beyond the political, social vindication that is exhausted in a page, that is, it needs to be thought about, recovered and I think that we did not have that. (AP-21)[cxxiii]

Within the intercultural ideology, the “lack of knowledge about the other” is recurrent in the justification for not promoting public policies for these groups, after all, we must “know them” first (Maeso and Pardo 2014). The knowledge referred to here is the one produced by those authorized to speak, the experts on “others”. Even if we assume that the argument of lack of knowledge was valid, this should be understood as how racism impacts the academic lack of interest in studies produced by Black people (Coelho and Silva 2020). Nevertheless, this was not the conclusion, as according to the research

[148] There is a strong critique to interculturality in the way it was introduced to State policies to “pacify” the political indigenous movements arising in the region since the 90s (Rojas 2013b, 59). From then, according to Montoya, the World Bank incorporate interculturality in its projects for those countries, with great emphasis on intercultural bilingual education.

participant it was necessary to produce knowledge about Afro-Peruvians from "people who think", since the content of their organizations' claims was "poor":

> The political agenda in the organizations was very poor, it is very vindictive, but it is poor in content, so you are left with nothing, and this means a public servant who is poor in content, so he has two lines and he no longer knows what to say to you: 'and why do you do that? Oh, because it's good… and what else? no, because it's good...'. You realize? I mean, they [public servants] don't read, they have no idea, so we were trying to… it has helped me a lot that I have a little foot in the academy too, so, I pulled my (academic?) environment and my network inside too, right? and I also knew the people who do, who think and who write… (AP – 21)[cxxiv]

It was in this context, for example, that Paulo Drinot's (2016) book was translated into Spanish and published by the Ministry of Culture (and the Instituto de Estudios Peruanos), as well as a debate on racism between Drinot, Guillermo Rochabrún, and Nelson Manrique (Rochabrún et al. 2014) was promoted and published, as explained by the research participant (AP-21). I am not saying that those works are not relevant or that these researchers have not produced important knowledge, because they did. However, the Ministry of Culture's approach reveals dominant ideas about the "people who think". The preference for publishing the works of "people who think" outside the existing production of Black organizations and Black intellectuals in Peru, corroborates the conclusion on how anti-black racism constructs the idea of "black incompetence" (Moura 2019), resonating in State bureaucracy while white and mestizo intellectual work is legitimatized. All the studies produced by the Institute of Afro-Peruvian Studies, those published by CEDET, or conducted by different researchers who participated in these debates for decades[149] are not perceived as valid.

On the other hand, the information that seems relevant for the intercultural policy is the anthropological one, which exotically describes part of the population and only indicates ways about how we still "don't know them", placing the racialized "in a perpetual state

[149] Most of the knowledge produced on racism with a focus on the Black Peruvians' experience was done by the black peoples themselves outside institutionalized academia, from the early efforts by Nicomedes Santa Cruz (Arboleda Quiñonez 2017; Aguirre 2013) to the efforts of black academics for the creation of the *Instituto de Investigaciones Afroperuanas* in 1983, founded by Luciano Pepe and José Campos Cheche (Luciano 2012a, 21), Susana Matute, Glória Gonzalez, among others. Black organizations were also archiving and documenting knowledge, as the example of *Centro de Desarrollo Etnico*, CEDET, an organization founded to provide support to the black movement Francisco Congo and responsible for the publishing of an extensive list of books and reports. Nevertheless, this does not mean that blacks were invisible in the academic thinking in general terms, but as argued by Julca (2010, 83), most of the studies produced were historical analysis focusing on the black presence in Peru during slavery or about abolition and colonial society.

of diagnosis" (Maeso and Alves 2021, 177). The rule that "if we know each other there will be no racism", still resonates in the intercultural approach to State policy. The data shows that the lack of information is one more excuse, as the Ministry officials did not believe the Afro-Peruvian agenda was important, compared to the Indigenous one: "In the Ministry itself, there are people who defend the issues of indigenous peoples [who] are not convinced that Afro-descendant issues are important" (AP- 20).[cxxv]

This state of constant diagnosis is problematic, leading to a dangerous ethnicization that risks falling into homogenization of the group, with the denial of subjectivity that leads, in the end, to racialization. Hortense Spillers (1987) problematized the danger of ethnicization when debating the case of Black women's assessment on the Moynihan Report[150]. The author demonstrates how the description of the group's situation as both naturalized and homogenous served for pathologizing what is identified as a "sub-culture", using ethnicity to generalize behaviors, described in an immutable way. According to Spillers, "'ethnicity' in this case freezes in meaning, takes on constancy, assumes the look and the affects of the Eternal". Its use can lead to "dangerous and fatal effects" when "under its hegemony, the human body becomes a defenseless target for rape and veneration, and the body, in its material and abstract phase, a resource for metaphor". (Spillers 1987, 66)

Drawing on her analysis, an analogous situation is reproduced by the Ministry of Culture's use of ethnicity in its approach toward Afro-Peruvians from an "intercultural perspective". The examples provided during the interview with a high government official resort to similar problematic generalizations, reinforcing Black women's racist stereotypes:

> For this area of Yapatera[151], there is a theme that has also come up, in one of these last trips that we have had, the theme of the voice. For example, women, when they are going to have a subject of direct attention, due to an issue of violence (be it physical, family), then, the voice is an element that prevents Afro-Peruvian women from going: they do not accept them because they feel

[150] Known by Moynihan Report after its author, the American sociologist Daniel Patrick Moynihan, the report produced on black families called "The Negro Family: The Case For National Action Office of Policy Planning and Research", of the United States Department of Labor, published in March 1965. Many works by black feminists criticize the report for its stigmatizing content, such as the work of Hortencia Spillers (1987).

[151] Yapatera is a city in the Piúra region historically identified with the Afro-descendant population. According to the 2017 Census, 8.9% of the population of the department of Piúra self-identifies as Afro-Peruvian, in relation to 3.6 of the national average. (INEI, 2017, 221)

> they have a very strong voice and so they don't want other people, for example, other operators to listen to them, so spaces must be prepared for attention to Afro-Peruvian women (...). Those are elements of interculturality that must be incorporated, so I think that there, in these spaces... in Yapatera, we still have a lot to learn there, to see what elements we are going to incorporate as part of the focus on women, men, the Afro-Peruvian population, right? (AP-25)[cxxvi]

This example is illustrative of how the system of differentiation is rooted in engendered-racial stereotypes. It also shows how a biological perception of race is still in place. Racialization translates into the institutional practice as management and categorization of people and then, individuals are treated as part of a group, which is homogeneous and acts similarly. What is read as an "intercultural trait" is an old stereotype of the "angry black woman", who is seen as loud and troublemaker (Gonzalez 1984). These characteristics are mapped by the "scientific investigation" on anthropological reports, which feed the "differentiated" policies for the population, as in the case of Moynihan's report. In this process, the person in front of the public servant is not entitled to subjectivity, a personal trajectory, that is, humanity. The dehumanization occurs when he or she becomes only "*la negrita*" or "the black". Then, instead of understanding how racism conforms this individual trajectory and that this violence can be a source of illness[152], the "scientific knowledge" dismisses the person's subjectivity because his/her history is already drafted in policy reports, where categorized and standardized solutions forged in racial stereotypes are designed.

The Black women's movement in Peru is denouncing how the use of those stereotypes by public services provision, especially the one of the "strong Black women", impacts their experience when denouncing domestic violence. Racism causes re-victimization of those women in public health centers or police stations:

> … several of the studies that are made, what they more or less reveal is that denouncing acts of violence for a woman ends up being a re-victimization and exposure to possible new acts of violence. (...) there is an investigation on violence against Black women in Peru and those who go to the Women's Emergency Centers and of course, the biggest problem is for them to believe the victims. They take the complaint, that is, really, it's like this dialogue of 'but they've hit you?', 'you who are so strong, so loud, powerful, corpulent, have you been hit?' It's what I'm going to find, and I don't even get to report it. (AP -3)[cxxvii]

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[152] In Brazil the construction of the National Policy for the Health of the Black Population took into account that a major cause of death and illness was structural racism. Access to data made it possible for the Black movement, especially the movement of Black women, to prove that in detail how racism impacted the lives of women.

Debates on violence against women in Peru refused to incorporate racism as a cause of gender violence when Black women participated in policy debates at the Ministry of Women and Vulnerable Populations (AP-02). Additionally, as debated in Chapter 4, the replacement of race with ethnicity also produces the erasure of historically rooted forms of contextual violence. An Afro-Peruvian activist explained to me how the existing representations of Black women and men continue to reproduce absolutely the same stereotypes and prejudices of racial enslavement system (AP-23). This has concrete impacts on Black lives, on their dehumanization, but also on the dangerousness of looking at the "different other" without considering that most of the stereotypes were produced by a violent racial regime. The resistance to seeing racism as a historically rooted oppression in Peru, blocks the understanding of anti-Black racism as a legacy of this system of dehumanization derived from racial enslavement and its continuum. The policy choice for interculturality, in the absence of a serious engagement with antiracism, has perversive impacts on people's lives, where ethnicization promotes dehumanization:

> While Afro-descendant women, in the slave period, dedicated themselves to the most undervalued, discredited tasks (selling, cleaning... the sale of animals means killing them, it means disemboweling them and all that and, obviously, they do not do that in an operating room, let's say, in the conditions in which you are, in the dirt) and these elements that are assigned today to people of African descent have as their starting point this entire framework of productive activity that was confined to men and women of African descent. And I believe that many of the representations that exist have not problematized these elements that were assigned to the enslaved black population. (...) How does the State relate to the Afro-descendant population within the framework of culture, how? How does the State measure Afro-descendant culture? Because when it comes to raising culture, you end up doing these food shows, right? "Typical dishes" they say, this... and you start to reproduce all this, right? Also, without a clear reading, let's say, because if you want to do it, it seems fine to me, but the question is how do you place it? where do you put it from? How do you enhance it so as not to end up subscribing to the stereotype, but rather to dismantle what has become a representation of the Afro and give it a different logic? And there I think there are serious errors, there are serious errors, that is, this type of practice that needs to be rethought and reassessed is not finished being problematized. (AP-23) [cxxviii]

The limitations of the intercultural approach are more evident when Black people pose demands to the State. Interculturality, as the only analytical and political lens through which the State knows how to approach "cultural differences", leads to misleading questions. Debates on interculturality deviate from revealing the various mechanisms of power that continue to dehumanize some groups for the privilege of others. To speak of racism is to speak of power, its reproduction, and how each person participates in that process. Consequently, the State deviates through its intercultural approach to listening

to racism as a claim of Black people. The arguments about the "complexity of Peruvian racism" or "here we cannot differentiate who discriminates from who is discriminated" are convenient to empty its meaning in such a way that it loses its potential for rupture, as a destabilizer of the *status quo*.

6.2. The Brazilian challenge: racial equality or fight against racism

The period of analysis of the Brazilian racial equality policies (2003-2016) provides a different range of material available since much academic work has been published assessing distinct aspects of the policy. Additionally, Jair Bolsonaro's government (2019-2022) by ending the State's antiracist endeavor, led former officials to be more openly critical of the challenges faced to implement antiracist policies. They were not talking about their current position as policymakers, which was mostly the case in Peru. SEPPIR published two reports presenting an assessment of its activities, describing the policies, and presenting interviews with all former ministers. One publication provides an analysis of the 15 years of racial equality policies (D. S. Alves et al. 2018), and another offers an overview of all policies implemented (K. R. da C. Santos and Souza 2016). Some of the former ministers are professors and have published papers and theses on their experience, such as the case of the Ph.D. thesis of Matilde Ribeiro (2013), who was the first Minister of SEPPIR; and Nilma Lino Gomes, who was the last minister during PT's government[153] (Gomes 2011; 2018).

Taking that into account, I am not describing the entire process of those 13 years, which has been more properly done by Mathilde Ribeiro in her Ph.D. thesis (2013). My aim is twofold: i) to look at the experience of Black people inside the government, the challenges, barriers, and limitations of antiracism within the Racial State, and ii) to analyze the arguments, both political and legal, that operate in the regimes of denial of racism, focusing on the main weakness of SEPPIR's work: the fight against the Black

[153] Nilma Lino Gomes was not formally SEPPIR's Minister, because during her mandate SEPPIR lost Ministry status and was merged with Human Rights, Youth and Women's ministries, during the political crisis at Dilma Roussef's government that led to her destitution of the office. So, formally she was the minister of the joint ministry, and Ronaldo Crispim was the National Secretary of SEPPIR during this period.

genocide. Some policy description is necessary for context purposes, but not to assess their impact.

SEPPIR had the status of a Ministry until 2016, when a political crisis in Dilma Rousseff's government led to the creation of a joint Ministry of Women, Racial Equality, Youth and Human Rights[154], and SEPPIR become one of many departments. In that same year, a coup d'état withdrew Dilma Rousseff from the presidency, and that Ministry was extinguished[155]. The Bolsonaro's government (2018-2022) kept an institutional space with the same name, as a secretariat within the Ministry of Women, Family, and Human Rights, mostly responsible for monitoring the implementation of affirmative actions[156]. The State Minister had an indigenist agenda (read missionary-assimilationist), and she symbolically nominated an Indigenous woman as head of SEPPIR, as well as approached other groups such as the Roma, denouncing PT's government bias towards the Black population[157].

For most of my interviewees, SEPPIR ended in 2016, and that is why I am looking at what has been done and discussed before the coup d'état. I agree with their perspective that SEPPIR - as a Ministry and a State antiracist structure - ended in 2016. Furthermore, despite the limitations to State antiracism that I address in this section, I acknowledge that what SEPPIR accomplished was remarkable when we look at the pillage and backlash of the past few years. SEPPIR worked on many fronts and its work represents a paradigmatic experience within the Brazilian racist state of things:

> this scenario of Bolsonaro shows the importance of SEPPIR, right? From the setbacks that we are experiencing in Brazil, it shows the importance of having a secretariat like SEPPIR, which left a very interesting legacy, in the

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[154] The Law no. 13,266, from 05.04.2016 creates the "Ministério das Mulheres, da Igualdade Racial, da Juventude e dos Direitos Humanos".

[155] The Law no. 13,341, of 29.09.2016 extinguishes the "Ministério das Mulheres, da Igualdade Racial e dos Direitos Humanos", transferring some of its competences to the Ministry of Justice.

[156] The Decree no. 10.174, of 13th December of 2019 approved the structure of the Ministry and its competences.

[157] The Minister Damares in her public appearances emphasizes the "new approach" towards the visibilization of the Roma, in antagonism to other racialized groups. "Então eu me lembro que na altura Nilma [Lino Gomes] disse que tinha algumas coisas que ela foi lá discutir que foram discussões duras, tinha uma coisa dos ciganos fortíssima, os ciganos não se sentiam representados nem no Conselho, tanto que agora Damares fez no Encontro com as altas autoridades do Mercosul de Direitos Humanos, (...) ela fez falas a favor do governo, os evangélicos e os ciganos, e os ciganos falaram que se sentem representados nesse governo, estão alinhados, que finalmente estão representados dentro do governo, esse era um segmento que se sentia recusado e rejeitado sequencialmente dentro dessa área da discussão racial..." (AB -7)

> instrumentalization of the government in public policies with a racial approach, it was the only one with a racial approach. The issue of quotas was really important in this process, Law 10639, the issue of the health of the black population and also the beginning of the discussion of violence against black youth, which is the result of a discussion by SEPPIR taken to the presidency of the Republic. So, I think the little that has been done is quite significant, but there is still a lot to be done to reach an acceptable level in the condition of the black population in Brazil... (AB -6) [cxxix]

The National Plan for the Promotion of Racial Equality (Planapir) divided the objectives of the racial equality policy into twelve main areas of intervention[158]. The ministers themselves have identified in published interviews mainly four axes of actual work, being: 1. affirmative actions; 2. policies for *quilombolas* and traditional communities; 3. health policy for the Black population and, 4. internationalization of SEPPIR (K. R. da C. Santos and Souza 2016). Each minister's mandate imprinted different priorities within the various goals for the sector. The Planapir revealed the maturation of the racial equality process inside the government, particularly in comparison to the Racial Equality Statue, negotiated outside the Executive. On the other hand, the Plan was not focused only on Black people, it already included "black, indigenous, Roma population and other discriminated groups" (Decree no. 6872, annex, axe 2, I). The broad target group posed a constant tension.

Racial equality as the conceptual policy choice opened the scope of action for all racialized peoples, and not only for the Black people. This tension ended up widening the Secretariat's mandate to include other racialized communities. Since 2005, as we can see in the report of the First National Conference of the sector, the approved policy guidelines already encompassed rights related to religious communities and peoples, such as Muslims, Jewish and Afro-Brazilian religions, but also Roma and Indigenous peoples (SEPPIR 2005). Organizations representing all those groups participated in the CNPIR (*Conselho Nacional de Promoção da Igualdade Racial*), that had a constant complaint that SEPPIR had a bias toward the Black population.

The fragmented and sectorized government structure allow for the constant dispute among the distinct groups for the few resources available, which in Peru was also visible.

[158] Eixo 1: Trabalho e Desenvolvimento Econômico; Eixo 2: Educação; Eixo 3: Saúde; Eixo 4: Diversidade Cultural; Eixo 5: Direitos Humanos e Segurança Pública; Eixo 6: Comunidades Remanescentes de Quilombos; Eixo 7: Povos Indígenas; Eixo 8: Comunidades Tradicionais de Terreiro; Eixo 9: Política Internacional; Eixo 10: Desenvolvimento Social e Segurança Alimentar; Eixo 11: Infraestrutura; Eixo 12: Juventude.

Highlighting this tension helps deviate from the most pressing problems. By equalizing all struggles - because they are indeed important, but should be differently addressed -, this denial strategy perpetuates an atmosphere of mistrust that difficult antiracist alliances. It also creates enough noise to "blame the victim" and deny State responsibility, as to say, "if you cannot agree among yourselves, it is not my problem". The dispute over the few resources available helps perpetuate white supremacy, as whiteness interests are not at stake. This excerpt of the interview with a former government official illustrates this State strategy: "the structure of public policy conditions the institutional disputes of the representations of the movements because those who already have a good structure will fight to maintain it, they will not want the other to have it too. Those who don't have it will try to enter exclusively, they won't want to share with another, it's not an option, and so, it's the State itself..." (AB -7)[cxxx]

SEPPIR faced challenges to implement a broad policy with quite a small and precarious structure. Despite enjoying the "status" of a Ministry, its structure was not even close to one. Even so, the Secretariat was able to produce various policies for different groups, such as the Program "Brasil Quilombola" (2004); the National Policy for Integral Health of the Black Population (2009)[159]; the Alive Youth Program (*Programa Juventude Viva*) (2013); the National Plan for Sustainable Development of Traditional African Peoples and Communities[160] (2013); just to mention a few as described in the reports produced by the Secretariat (K. R. da C. Santos and Souza 2016; D. S. Alves et al. 2018).

Regardless of the wide range of initiatives, affirmative action policies, such as quotas for Blacks and other racialized peoples, became the face of racial equality policy. Their impact was more visible due to the reach accomplished through the enforcement of national laws. The racial equality approach is not reduced to quotas and even less is the fight against racism, and this focus was a motif of criticism by activists: "[SEPPIR] was originally supposed to be an executive branch of the presidency for State antiracism, and in antiracism the production of racial equality policy was one of the elements. That's why I'm saying that SEPPIR was never what it should have been. It has already entered late,

[159] In 2009, the Ministry of Health instituted the National Policy for Comprehensive Health of the Black Population (PNSIPN), through Ordinance GM/MS No. 992, of May 13, 2009.
[160] Plano Nacional de Desenvolvimento Sustentável dos Povos e Comunidades Tradicionais de Matriz Africana.

(...) already without condition, already lowered, in its lowered mission, that is, antiracism returns, but it returns as a term there, but not as an action." (AB -12)[cxxxi]

The political tension involving SEPPIR was there from the beginning. Many people from the Black moment were PT party members and helped building the plan for Lula da Silva's candidacy. When Lula is elected, the proposed antiracist institutionality is not installed immediately, as Matilde Ribeiro narrates: "Overnight the design was changed and we received information from the media that the Lula government would be composed of such and such ministries and that SEPPIR — or the organ that was planned, focused on the racial issue — was not a part."[cxxxii] (D. S. Alves et al. 2018, 28) SEPPIR is announced 3 months later. For the Black moment, this was a sign that the government's commitment to antiracism was weak.

Additionally, one recurrent criticism of SEPPIR's work was the over-emphasis on education while little was done to face the pressing reality of racial violence: the Black genocide. The first National Conference had already mapped this as a priority (SEPPIR 2005, 89), but only in 2013 it is translated into a governmental program. It became more evident within the years that affirmative actions were punctual regarding the entire Black population experience, and the rise in numbers of Black people assassinations was pushing for more structural measures. Activists were critical of the lack of efforts toward the prevention of the Black genocide:

> We need to take steps forward to face problems that have chronically been ravaging the community like death. So, you have to guarantee access to quotas in universities, health and education policies, but you also have to make this wheel stop turning because it is destructive. So, if you can't incorporate the debate on genocide, you know, which is a real genocide (...). The impact of the action of the police and the armed forces on the black population was already there, you know? (AB -13)[cxxxiii]

Edson Santos, former minister of SEPPIR acknowledges this limitation of the policy approach in one of his published interviews: "we should have given even greater emphasis to the issue of youth in large urban centers, especially with regard to violence against young black people in large cities, with the construction of policies and a greater awareness of young black people in the slums and periphery of large urban centers about their rights."[cxxxiv] (K. R. da C. Santos and Souza 2016, 72)

Conceptual turn: the fight against racism and Black genocide

Luiza Bairros' mandate (2011-2015) undertook a conceptual turn to include the fight against racism back into the agenda. As a result, the pluriannual governmental plan, that guides the public budget, included a section as "Plan to Combat Racism and Promote Racial Equality". According to the research participant who worked with Barrios during this period, the idea was to act directly on the public budget to include various actions, such as the one called "reversal of negative representations about Black population" (AB-09). The goal was to invest in policies that "could alter the traditional representations of Black people and produce, in this point of view, a shift in social relations based on government actions, inducing from government actions alteration of social relations that was able to face racism or collaborate with the fight against racism" (AB – 09)[cxxxv]. According to him, this conceptual turn was into place, but "I found objective problems, right, which were the government's own difficulty in understanding this, of course" (AB – 09)[cxxxvi]. The challenge was to deal with the constant tension derived from exposing the mechanisms inside the government that was also reproducing racism. As one Black activist says, "even our progressive left still needs to understand race" (AB -15)[cxxxvii]. Additionally, with a very reduced structure, the prioritization had to be sharp.

In 2013, the program Youth Alive (*Juventude Viva*) was created in articulation with 15 ministries, coordinated by the Secretariat for the Youth and SEPPIR[161]. The policy guidelines mention an alarming number of Black youth assassinations and the major role of the police in extrajudicial killings (Secretaria Nacional de Juventude 2014). The focus was to decentralize State action to act closer to the territory, in a multi-scale approach (local, regional, and national). The policy encompassed: local diagnosis, the creation of local plans, and participatory monitoring bodies composed of civil society organizations. According to this SEPPIR official:

> So we thought that territorial focus, concentration on the racial issue and focus on young males could produce some effective action both in what we called social policies to [...] produce what we called "corridors of safe life" for this young person, that is, that we could, through social policy, create a space in the life of this young person, a space in a double sense, both territorial space and life space, right? Space in life for this young person to be able to protect himself from violence in its various forms. And on the other hand, what we

[161] Federal Management Committee of the Juventude Viva Plan – CGJuV (Comitê Gestor Federal do Plano Juventude Viva – CGJuV) was formally established through Interministerial Ordinance No. 29, of May 22, 2013.

> called "institutional improvement", which is an action to combat racism more directly, to make police violence accountable. (AB -9) [cxxxviii]

The policy's first axis - "to deconstruct the culture of violence"- recognized that "violent actions against black youth were historically naturalized" and the objectives were addressed to change those patterns. The means enumerated as part of the government actions were mostly symbolic ones, and they did not commit to any structural change. As explored in Chapter 3, Black genocide implicated all State powers and institutions. The policy document resorts to an old formula of "capacity building" and "raising awareness in the police force", which the case study in Chapter 3 also revealed as the judicial solution for police violence. The program stipulated that "achieving these goals can be done in several ways, including public utility campaigns in the media, raising awareness and educating institutional agents, mobilizing social actors to promote the rights of black youth, among others." (Secretaria Nacional de Juventude 2014, 8).

The policy approach to racism and violence encompassed the recognition of institutional racism as indirect discrimination -as we also saw in the case ADPF *das favelas* in Chapter 3: "it is important to identify in the daily actions of public bodies the situations through which prejudice and direct and indirect racial discrimination are manifested" (Secretaria Nacional de Juventude 2014, 8). Nevertheless, the actions to confront institutional racism continued to focus on "capacity building", that is, training activities, as if racism is reproduced because individuals who are part of those institutions are not educated or aware enough of topics such as human rights. The only goal that deviates from this narrative is to "strength monitoring organs", which in the case of the police in Brazil is the Public Attorney's Office (*Ministério Público*), an institution that cannot complain of lack of infrastructure but has been negligent towards police massive killings[162]. According to the policy document: "training processes, training, and qualifications, sensitization of state agents, strengthening of external control bodies, as well as specific guidelines for police forces, are essential actions of this axis." (Secretaria Nacional de Juventude 2014, 10)

The policy document does not use the word genocide, which is not surprising considering how the Racial State controls the use of certain notions and narratives. There is also no

[162] The case at the IAHRC Brazil vs Favela Nova Brasilia has identified the inefficiency of the *Ministerio Publico* in cases of police killings.

mention of a direct articulation with the Ministry of Justice, and its Secretariat of Public Security, which would be mandatory when the diagnosis placed the police lethally as one major problem. As this research participant, working at SEPPIR, testifies: "numerous scientific documents were produced showing the police lethality rate on the part of the State, but it seems to me that this narrative had difficulty entering the justice system is... the need to enter the public security system and now much worse". (AB -18)[cxxxix]

For those inside SEPPIR became clearer that the Ministry of Justice was shielded from "political claims" brought by the Black movement, and the legal logic was put into place to deny institutional racism or State responsibility. There was a constant control of the language, which SEPPIR officials being mostly from the Black movement themselves, had to comprise with. To talk about genocide was not an acceptable language:

> There was a fear in Itamaraty [Ministry of Foreign Affairs], (...) in the genocide discourse that Brazil could be condemned internationally because the laws in the case against genocide are heavy convictions. So, they don't like this narrative to come out that in Brazil there is genocide because of the Nuremberg Commission, so they make a very big effort to prevent this image of Brazil that produces genocide against Indigenous people and against Black people from getting out. (AB -18).[cxl]

The State's resistance to the discourse of genocide and reparations was immense, precisely because their incorporation could bring concrete repercussions and the government could be hold accountable. The Itamaraty (Brazilian Foreign Affairs Ministry) was always controlling the use of language so to guarantee that no term that could commit the State to international obligations was used, as explored in Chapter 5. The denial of racism when facing facts and statistics is possible because those facts need interpretation, and "the common-sense meanings of terms such as 'genocide', 'political killings' and 'torture' have all been superseded by the legal definitions on which international standards and prohibitions are based" (Cohen 2001, 106). Stanley Cohen suggests that those concepts are not politically neutral, on the contrary, "such international prohibitions are always subject to the politics of definition", hence, the "interest of government to apply the most restrictive formal definition is self-evident" (2001, 106).

It is not by any chance that, during SEPPIR's entire mandate, the government sent just one report to CERD in 2003 (CERD, 2003). It was hard to conciliate the goals of

promoting Brazil's image as a reference for antiracism[163] and, at the same time, open to the international arena the data of racist violence. The tension between an antiracist structure within the government and all the other structures of the State that work to deny racism (such as the Ministry of Foreign Affairs and Ministry of Justice) was constant within the work of SEPPIR. This research participant, responsible for the international agenda of SEPPIR, had a similar experience: "...but within the Ministry [foreign affairs] impossible, you go to talk, and the person says 'no, no, you talk too much', that's how it works, (...). In other words, you can't, it's very difficult for you to break through a certain definite thought that these things are not important." (AB -14)[cxli]

Brazil was investing time and money to be the international reference for antiracist governmental policy and one of the main goals of SEPPIR was to be a "face" of the government in South-South cooperation, particularly with the African continent. As this former Minister narrates: "I went to Africa many times, visiting countries, establishing relationships that were not always as effective as the Minister of Industry and Commerce or Foreign Affairs… but as there is an identity in the Brazilian population with the African population, it was important to establish these ties and the Lula government understood the need to prioritize the south-south relations" (AB -6)[cxlii]. Matilde Ribeiro, who accompanied Lula on all official visits to Africa during her mandate, testified that African countries were not particularly interested SEPPIR's policies, so there was not a clear reason why SEPPIR was involved in those international relations, beyond guaranteeing representativeness:

> The Africans also did not have any effective proposal for working jointly with SEPPIR, there was not exactly an agenda on the racial issue. What they had was a very interesting insight. They asked: "Where are the blacks of Brazil? Why are Brazilian delegations in general white, are men and whites?". They say that Brazil is the second country in terms of the number of black people outside Africa, and where are they?" (K. R. da C. Santos and Souza 2016, 32)[cxliii]

This testimony is only one more example of how whiteness still prevails in power spaces within the government at large, while SEPPIR, as the "Black department", hold sometimes representational roles. In the end, the impossibility of properly addressing the Black genocide during SEPPIR's lifetime illustrates how deep racism is rooted in State

[163] As Matilde Ribeiro explained in "2006, constatou-se que em 16 países já havia órgãos da mesma natureza que tiveram a SEPPIR como parâmetro para a sua criação" (K. R. da C. Santos and Souza 2016, 31)

structures, ideologies, and routines. The election of a president whose campaign symbol was a gun, with great support from the Army, police forces (federal and member-states), and members of the public security system is revealing of such trend. In 2016, an inquiry commission in the Senate concluded that there is an ongoing genocide in Brazil, attesting that "the Commission, from the beginning, was faced with a cruel and undeniable reality: the Brazilian State, directly or indirectly, provokes the genocide of the young and black population" (Farias 2016, 145). The commission presented outstanding statistics to support the case of genocide, and set a series of recommendations, including changes in the militarized police structure[164]. Despite those efforts, the naturalization of Black death is the biggest challenge. In the racial order, as fungible Black lives have no value, and this is deeply imprinted that even the fact that Brazil holds 10% of the world's violent deaths does not move the political set, on the contrary, an openly pro-violence candidate is elected. As Vargas and Alves (2020) conclude, Brazil's turn to the far-right has a close relation to its inherent anti-blackness. This Black activist provided a similar reflection:

> I always remember that the last genocide formally recognized on European territory was during the Bosnian war, there were about 8500 thousand Bosnian Muslims murdered in 1995 in an episode of the war [in former Yugoslavia]; the International Criminal Court recognized it. We have more than triple that number of Black men murdered annually in Brazil, but why the country doesn't discuss this? (…) Because this life has less value and that comes from the racism that ranks the value of lives. So, I mean, at the end of the day, everything in Brazil is prioritized instead of Black lives. I mean, this project of inequality in the country, I think that in law, unfortunately, if we look at it in a non-fragmented way, we will see that it is a reflection of all the other areas that look at this issue of discrimination, inequality and then the more you dilute it, the less you actually deal with the issue of racism. (AB -3)[cxliv]

Even though the aim of my research is not to look at public security policies, it is not possible to address racism in Brazil without confronting the most pressing agenda: Black lives. Future studies should necessarily look at how policies implemented have impacted the process of making Black lives fungible. As the government official pointed out, changing patterns of representation is a challenge for a country that was built on Black blood, where racism is a result of this socialization imbricated in State institutions as the

[164] The recommendations where mostly towards reform of security forces, being capacity building in human rights; the unification of the career; the demilitarization; the production of disaggregated data on race, gender and age of homicide victims; the problems were mainly associated with the "war on drugs", the living conditions of the slum population; poverty in association with racism; the imaginary of the "enemy" and the society support for police lethality. The constant relation to poverty can reify the "criminalization of poverty" or race as secondary, as black is the majority in poverty; so the solutions are still be for "inclusion" or access to education or better living conditions, which does not dialogue to racism as the structural system of oppression.

legacy of racial enslavement. The conclusions of this research participant who worked with the Youth Alive program help us to reflect on the open questions:

> For me, this was one of the great strategic mistakes of my generation, not having foreseen, as it was the case in the American scenario, that the penal system was going to be the way to disorganize the black community in the Brazilian society. It was not realized that it was not possible to put all the efforts, during these decades, into affirmative actions without facing the authoritarianism of the State, without facing the racism of the corporations, because all this was in a very timid dialogue, right? We only found a more powerful voice now with the social movements of mothers, of people who were directly affected by this racist violence. But it is the first time in Brazilian history (...) that there is a generation of young people who are already disenchanted, (...) "we come to the university, and we are searched at the university's door and we are searched I don't know how many times at the university gate". So, a generation that had already figured out that you can do whatever affirmative action you want, but the place of being black will be determined as long as this repressive force is not discussed, is not rethought. (…) I don't think this is the result of affirmative action, I think it is the result of the reaction of the racist system, which seeks new strategies and I think that we are not able to give an answer. I think the 1988 constitution was extremely timid in institutional reforms in relation to the armed forces and the police and that is what we are experiencing today, right? (AB-9)[cxlv]

The current political scenario adds layers to the challenge, but the fungibility of Black life is a constant reality in democratic and even progressive governments. Changing the pattern of Black dehumanization is a long-term goal, which has no simple answer or universalized formulas. In the end, "we produce [policies] and then we come across the easiest answers, I would say. What are the easiest answers? Urgent, necessary, but easier? Quotas, implementation of the law 10,639, for example" (AB -9)[cxlvi]. This former SEPPIR official places those policies as the "easy ones" because they work with the paradigm of "inclusion" or "integration", and do not necessarily question the foundation of power structures as white. Even though the impacts of the various affirmative actions in Brazil are to be fully grasped and cannot be oversimplified or downplayed, particularly their impact on knowledge production, what this research participant enquires about is their potential to provide rupture from the Racial State paradigm. Denise Ferreira da Silva's key critique of affirmative actions is their limit to face the Black genocide:

> Whereas the pervasiveness of the *logic of exclusion,* through the thesis of discrimination, allows for a celebration of social inclusion measures to mark States' commitment to equality of opportunity, the *logic of obliteration* continues to perform a decisive role, as the unacknowledged justification for a security apparatus designed to curb political and social unrest that expose the modalities of economic expropriation—namely, elimination of social provisions, poor quality of social services, and expropriation of land and resources— characterizing global capitalism. (Da Silva 2016, 185)

The "logic of obliteration" keeps working in reproducing Black dead bodies despite advances in the antiracist agenda in Brazil. The permitted agendas, those that were just not "possible now" or "still are not the priority" illustrates how "antiracism" is reduced to the "logic of inclusion/ exclusion" translated into affirmative actions. The choices of which agendas to put forward from Planapir, for instance, left behind priorities such as those described in the public security (axis 5); economic development (axis 1), and infrastructure (axis 11); or even made invisible other agendas that are in the Statute of Racial Equality, such as the right to land, housing, and access to justice.

6.3 Relating Brazil and Peru antiracist policy making in regimes of denial

In this section, I relate Peru and Brazil to assess how ideas and practices surpass the State's borders evidencing the "interactive relation between repressive racial ideas and exclusionary or humiliating racist practices across place and time" (Goldberg 2014, 1274). I also explore when and how the various forms of denial of racism are mobilized. Resorting mainly to the testimonies of those "outsiders within" (Collins 2000), or Black activists working as governmental officials, I am looking to the limitations they faced, paying "special attention to those forms of context control", meaning how the analyzed events and processes were formatted, taking in consideration, for instance, the control of infrastructural and discursive conditions (van Dijk 1993, 260). Even though working with testimonies can individualize the collective experience, the constant dehumanization, dislocation, and untranslatability of the Black claim are illustrative of how racism is exercised, updated, and denied.

I am also attentive to the ways State structures, in a racialized legal regime, promote the stability of expectations by racializing rights and normalizing the distribution of privileges. As such, even when Black oppression is recognized, the claim for reparations can be read as an unfair "burden to innocent whites who were not involved in acts of discrimination" (Harris 1993, 1767). This interpretation can push for universal approaches to policies that can also benefit the "white poor", mobilizing class as a universal category regardless of race or the intersection of race and class (Hall 1996). In many times, policy colorblindness is evidenced in the choice of other vocabularies that avoid the use of race altogether or reduce it to "color". So, by not facing the history of

oppression and white domination, colorblindness is a form of race subordination (Gotanda 2013). The denial of the racist conditions in daily routines requires the control of the "threat of race" (Goldberg 2009), more specifically, the control of internal tensions when antiracism becomes part of the racial State.

I conclude this chapter exploring the key challenges of placing antiracism within the Racial State, systematized as: i. institutional isolation, the limits in accessing power; ii. "we are proudly antiracist, but you need no money", the structure and size of governmental spaces; iii. lack of data, the perfect excuse.

The limits in accessing power

In both contexts, most of the government officials in charge of policies for the Black people came from Black movements' activism and occupied governmental positions for the first time, most of them Black women. Those few Black people occupying those positions bear the challenge to make feasible an antiracist agenda in the Racial State. The isolation of those structures reflects the burden put on those within, whereas there is none or little permeability of other sectors to an antiracist agenda. Those spaces are racialized as the "black department", serving also as an excuse for other sectors not to deal with the agenda or even not to hire Black people, as "they have their own department" (AB – 9). The burden to mainstream antiracism, to provide "awareness" or "capacity building" also falls on those few Black people within a majority of mestizo or white structures.

Luiza Bairros, former minister of SEPPIR, exposed the challenges in implementing the racial equality agenda in a State where Black people are not represented in other powers, such as the National Congress, the Executive Power, the Judiciary and regional and local governments. For Bairros, the accomplishments of SEPPIR are meritorious because "we still operate within a very high level of political isolation" (K. R. da C. Santos and Souza 2016, 87). Still according to Bairros, "it is not for a particular minister to think about whether or not he/she will work to reduce or eliminate the differences between whites and blacks in a given area; that shouldn't even be a cause for doubt for any ministry, and yet it still is." (2016, 85 author's translation)

The understanding that mainstreaming the antiracist agenda was voluntary, was also the case with the National Plan for the Development of the Afro-Peruvian Population

(Plandepa) in Peru. Only 8 from the 19 sectors of the national government signed their commitment to the plan. Interviews with members of the Directorate for Policies for Afro-Peruvian Population (DAF) manifest the difficulty to persuade other sectors to undertake actions for the benefit of the Black people:

> Obviously when the plan started, it was very ambitious. We wanted to mainstream everything, we wanted to incorporate everything, but on the road, the plan changes because of course, to draw up a plan you must agree with all sectors and there is also a negotiation, right? What can it accomplish? What cannot it accomplish? I can, I can't. (AP- 23).[cxlvii]

This negotiation is permeated by technical and political choices, where racism is never evident. Nonetheless, sectors rejected Plandepa even when the proposal was technically valid, showing the little value given to the Black people's agenda guiding political choices. From the initial proposal concerted with the civil society (the OIPPA) to the approved plan, much was lost. Yet, even the reduced plan was dismissed by most sectors. As explained by one research participant: "moving from the scenario of the guidelines, that are suggestions and proposals, to the plan, there was an entire formulation process, first technical, and then political. And in the political [sphere], people do not always truly accept… even things that are technically valid, among the sectors that participated in the plan" (AP -27)[cxlviii].

The fragmentation of the State into different areas supports specialization into universal portfolios and "particularities". This rejection of adhering to policies with a focus on certain populations is also a reflection of how certain sectors were built on a technocratic idea of neutrality, which is also colorblind. Areas such as economics, public budget, or justice, are perceived as racially neutral. Besides, the perception of neutrality comes also from the "impossibility" to identify them as predominantly white or mestizo domains, as one research participant questioned in the Brazilian context. According to this research participant, racial issues did not concern the Ministry of Justice but only SEPPIR, the racially marked department.

> (…) some Ministries saw themselves as neutral, and when they saw themselves as neutral they did not see themselves as white, I think that the Ministry of Justice was one, that it was technical, neutral and then it was not white, so whatever produced at the Ministry would have an intrinsic view of justice, there was no need to discuss other issues (AB -7)[cxlix].

Whiteness is taken as the default or the neutral (Frankenberg 2004), and this has concrete consequences when policies are also perceived as "neutral". Colorblindness avoids

placing the question of Ministries' commitment to whiteness and, by doing so, naturalizes the rejection of "technical" sectors to adhere to antiracist goals or policies for a particular group. As testified by this research participant, involving the different sectors, such as the Ministry of Industry or Economy, in a dialogue with SEPPIR was quite challenging: "I was told '- look, the Minister says he still doesn't understand why, what does the racial issue have to do with this? Why do you [from SEPPIR] call us?'" (AB-14)[cl]. In this context, institutional racism allows for the differentiation of what is "technical" from what is being produced in those departments of "Black people".

Colorblindness in public policy is still largely seen as non-problematic, even in a country like Brazil, which has produced a great amount of statistical data proving racial inequalities in service provision. For instance, the (no) relation between SEPPIR and the Ministry of Justice - in charge of public security policies – is illustrative of the fallacy of colorblindness approaches considering the current situation of Black genocide. As this research participant confirmed: "I do not think that they considered the secretariat from a place of intelligence and knowledge production valid to discuss at their [the Ministry of Justice] level for legislative production" (AB -9)[cli]. Still, according to the interviews, the colorblindness of public security policies guided the total invisibility of SEPPIR as a governmental sector primarily interested in joining debates concerning massive incarceration and Black genocide:

> (…) these laws that are done in the Ministry of Justice, from the intelligence of the Ministry of Justice, I would like to hear (...) the extent to which they were really coordinated with a production considered equal with these departments, there's no way, they didn't call, they didn't even remember that the secretariat [SEPPIR] existed (AB -7)[clii].

In both, SEPPIR and DAF, the interaction with other sectors was never "welcoming". Matilde Ribeiro, a former SEPPIR minister, said that "all the articulations referring to these areas considered specific or even mainstreaming are carried out based on convincing [people in charge]" (K. R. da C. Santos and Souza 2016, 63). Regardless of the existing regulations and a presidential directive for the State to "fight racism", personal persistence was an extenuating process. Ribeiro concluded, "I understand mainstreaming as an important, theoretical, conceptual path, which only materializes with the existence of a budget" (2016, 63). In practice, ministries such as SEPPIR were perceived as an "articulation" ministry but not executant of public policies, what was the

perfect excuse for not allocating budget, seen as not necessary: "the way out was for you to get the Ministry to approximate with some policy or to be able to articulate at a very effective level, but you couldn't because the level of racism on the government was immense" (AB -7)[cliii].

In Peru, the process of convincing the different policy areas was also challenging, since the sectors were sometimes against "differentiation", because "the sectors have to homogenize, there is no differentiated attention" (AP-27)[cliv]. This argument was sustained on the basis that "we are all equal", resorting to the general anti-discrimination clause, as the DAF official often listened. For her, this is "the premise of the function of the State – 'we are all equal' – therefore, if we are all equal there are no differentiated needs" (AP-27)[clv]. In the end, this argument was an excuse for not including Black people or even the approved plan in another sector's budget. Thus, "no one has ever included provisions for attention to the Afro-descendants, in any sector, in its budgetary structure, to care for the Afro-Peruvian population, except in the case of culture and education, which consider it in their regulations as sectors, no one else has it" (AP-27)[clvi].

This need for constantly persuading other areas to mainstream an antiracist agenda was personally painful and violent for Black people in government, because they need to "convince" others about policies that are going to affect their own lives and their communities. As this interviewee from Peru argued, this was a pedagogical work:

> (…) unfortunately, that other person with whom you can dialogue is probably who is going to make a decision regarding your life, your opportunities, your expectations, then you have to do pedagogical work. And there we have a complex problem in this country, complex, very complex ... we have not worked on the issue of racism at all, absolutely nothing. (AP-23)[clvii]

The lack of representation was also often raised as a problem. The absence of Black people or activists in the various sectors made the process of "convincing" people even harder. The white or white-mestizo in Peru tended to "not understand" the agenda. This Black activist reveals her frustration with the lack of representation in various governmental instances:

> It is central for me, I would like to have more people there in the Ministry where decisions are made, technicians, activists, that were Black (…) because we need to have Black people so that you can generate some policies because if the people who are there are technically aware and know they live in a multi-ethnic, multi-cultural country, they have to apply to all groups, but why is this group included and this group is not? (AP -10)[clviii]

Experiences of suffering and sickening within the State were often narrated to me. Many Black people left the government in exhaustion and illness, in both Peru and Brazil. It is known that "long-term psychological harms of racial labeling, the stresses of racial abuse may have physical consequences" (Delgado 2013, 181). This was particularly evident with Black women who suffer the double burden of racism and sexism. As Hill Collins pointed out, their substantial contributions as agents of knowledge within those institutional spaces "rarely do so without substantial personal cost" (2000, 268). A research participant, who was working with quilombolas' rights in Brazil, testified the challenges to navigate in a structure that cannot grasp the double pressure one feels to be the representative of an entire people and the need to be accountable for:

> An extremely masculine, white, racist, Zionist organ [INCRA][165] and at the same time building a policy from the inside was an exercise that is very difficult to describe (...). I will not be able to tell you and much less will you be able to understand because you are not in my place of belonging, (...) when I tried to put forward something and it didn't work, I got very upset, and this colleague said like 'I understand you perfectly because I go home and I don't have others, I don't have my people around to look and tell them that it didn't work and you do, so your pain I understand, I imagine your pain is much greater because I get upset, but you don't, you get upset and directly affected'. (AB -10)[clix]

For this government official and activist, to be in the government in such conditions was "at the same time a battlefield, [a site] of resistance and dispute" (AB -10)[clx]. To place antiracism within the State also places every single one within the racial power structure, so it affects individually and collectively the groups historically in power and those who were never there. Consequently, raising the issue of racism also pushes everyone to reflect on their positionality within the racial order. It also presents a call to those privileged groups to give up power positions, which few are willing to do. One Peruvian government official corroborates this reflection:

> We have not done much to shorten asymmetries that are structural in how racism has operated in the Afro-descendant population. So, you are faced with a scenario where the one who makes a decision is a subject who is also impregnated with a set of elements that place him or her in a power structure, so thinking about racism means thinking about your own discourse and your own practice and, at the same time, thinking about it is not enough but you have to problematize it to realize when a right is affected and I don't know how many people are willing to do it. (AP-23)[clxi]

[165] The INCRA (National Institute of Colonization and Agrarian Reforms) is responsible to titling the quilombolas ancestors land and was working with SEPPIR in implementing those policies.

In addition, spaces such as SEPPIR or DAF are inaugural in the State structures of both countries. Black people, in general, have not occupied governmental spaces: "we were never in power, we never negotiated these things, so it was a learning experience" (AB-14)[clxii]. The challenge was not only to understand how the State machinery operates but also how to conceptualize and place the antiracist agenda within a State in denial of racism. If we consider how whiteness is reproduced, it entails having generations of families occupying power spaces and passing on political traditions (Bento, 2002), differently from the Black people's experience with power spaces.

> (...) we came from civil society, we did not come only from the academy (…), we did not come from the public career, no, no... we came from civil society. I came from my fight in civil society as an Afro feminist and doing research. So, at that time we had to think about how to translate what had been our agenda within the framework of a state logic, which obviously has another dynamic… another dynamic! Civil society is one thing, and the State is quite another, it has its times, its bureaucracy, its… its names, its rules, its forms and we had to learn everything as we went along, right? (AP-23)[clxiii]

Budgeting the structure and size of governmental spaces for Black people

The outspoken relevance of the antiracist or racial equality agenda within governments is inversely proportional to the size of the structure made available to execute the necessary initiatives. Reduced staff, low budget, reduced power, and high staff turnover are a few indicators of the precarity within the administrative infrastructure. Yet, creating governmental structures to comply with international signed agreements and commitments, such as the Durban Action Plan or the goals provided by the International Decade for People of African Descent, contributed to providing a positive image.

A presentation by the Peruvian DAF in 2019 in an event organized by the Centro de Desarrollo Étnico - CEDET in Lima showed the irrelevant place of the directorate in the Ministry of Culture budgetary structure. In 2016, DAF's budget represented 0,08 percent of the Ministry's total budget; in 2017 it was 0,06 percent; and in 2018 0,14 percent. Those were the years when the Development Plan for Afro-Peruvian population was supposed to be implemented, as the five-year duration ended in 2020. In the case of SEPPIR, in Brazil, former minister Luiza Bairros realized that the only way to truly mainstream the

agenda was by disputing the public budget. Her mandate centered on guaranteeing money allocation for racial equality in different areas of the budget: "having introduced the issue of racism in the PPA [pluriannual plan] was extremely important because it gave the government an idea of the umbrella under which we were all standing. This was the path we sought in the intervention we made in the Pluriannual Plan." (K. R. da C. Santos and Souza 2016, 84). Matilde Ribeiro also affirmed that "without a budget, you don't execute public policies. You can do seminars, debates, reflections ... but you don't make changes at the end" (2016, 63).

The idea that the racial equality objective was to be mainstreamed in all sectors also meant sharing money. Therefore, there was the need to build within each sector their internal structure to deal with racism and racial equality. "To be able to policy mainstreaming, you need to have structures in other Ministries so that you can do policies because, if not, the staff thinks you are getting your hands on their money" (AB-18)[clxiv], concluded one research participant. In both cases, there is also a dispute over every single infrastructural item with other similar secretariats or directorates. In the case of Peru, where three directorates were created simultaneously, DAF was the one with the smallest infrastructure:

> We were a department of four people, three and a half even because we shared the secretary with another department (...). The salaries of our Directorate were the lowest compared to the other specialists of the other Directorates even though the profiles were the same. And in general, for such simple things, like when you want to present a document in society, a public event and you want the minister or whoever was on duty [to attend and they] cannot, you did not notify him with enough time, he does not consider the event to be such a seller, in the sense that it is something attractive to present, do you understand? It is then that one begins to have that feeling that, well, suddenly this Directorate is more than a concession, saying well, yes, I am doing my homework, I have this, right? (AP-15)[clxv]

In Brazil, the policies developed by SEPPIR had to be mainstreamed within the government, through the different powers (Executive, Legislative and Judiciary) and also throughout the federation units (its twenty-six federal states and 5,570 municipalities). The national system provided for the creation of racial equality secretariats in federal states and city governments to be supported by SEPPIR. This was challenging: "so you have a board with three people, with two people, an affirmative action board, a Secretariat with ten people, eight people, to make policy for the whole country? It is something very difficult..." (AB-18)[clxvi]. The task to implement policies on a national scale was

incompatible with the structure available in terms of budget and staff. According to a study on the profile of the FIPIR[166] staff, only 22,5% were in permanent positions (Rosso et al 2007, 16). Additionally, in the case of Brazil, the staff is allocated from the civil servant career, which means that anyone can fulfill the administrative places. Thus, promoting capacity-building was also a demand and a handicap with all the pressing needs. In this regard, research participants pointed out that "lack of knowledge" or interest in the "Black people's agenda" was noted among the staff. There were even cases where assigned people refused to work for the "Black department":

> One thing is to reach the government, another thing is to govern. So, you train technicians that either don't understand or disagree with and don't engage. So, I had two cases, there was one that refused, even at SEPPIR, to be guided by Black people, so he asked to leave... he couldn't stand it... he was part of the staff, and he couldn't stand it. And another, very serious (...) was trying to tell me that he didn't understand racial equality deeply, he was a technical analyst and would like to be trained (...). So, for you to have an idea of the difficulty of reaching the government and having qualified people with some level of commitment to this type of project. (AB-18)[clxvii]

This excerpt is illustrative of the depth of the challenges to State antiracism. It reveals the multi-layer of everyday racism that can block the development of routine activities. Once more, it places the burden of "teaching" on the Black officials, which is evidence of how those technicians' previous formation was deficient and distant from racial equality policy and regulations.

Another symptom of political and economic precarity is the fragility of the policies they produced. Most policies could not be enforced because they were not binding, indicating the lack of political will with the agenda, at the same time assuring the State with the necessary "antiracist certification". The policies produced by DAF could not be enforced in the different sectors. As mentioned, the Plandepa was a 5-year plan that the sectors could adhere to or not, besides, it was ephemeral:

> With the implementation of the PLANDEPA we are realizing, once again, that there is this lack of [political] weight, this lack of where to hold on, it is still the international decade [International Decade for People of African Descent (2015-2024)], but what? Then, how do we do? how do we do to strengthen more, for a mandatory nature that the attention of the Afro-Peruvian population must have and that it does not happen because someone considers it or not, but simply [because it] has the character of law that must be fulfilled. (AP - 15)[clxviii]

[166] The Fipir (Fórum Intergovernamental de Promoção da Igualdade Racial) was the intergovernmental Forum for the Promotion of Racial Equality, a network of federal, State and municipal governments to implements the SINAPIR and the PLANAPIR.

The policies from the General Directorate for Intercultural Citizenship have a similar framing, being mostly "incentives" to various levels of the State (regional and local) to voluntarily adhere. One example is the national "good practices" contest launched to map successful "intercultural practices" in public management to be granted to regional and local governments (AP- 8). The Directorate is also implementing a certification system through the "intercultural stamp". The fact that there is a national policy for mainstreaming the intercultural approach should be enough to regard those initiatives as mandatory, but as this stamp initiative demonstrates, adhering to the national policy is a choice:

> The intercultural stamp is this tool that will help us to continue promoting this intercultural approach and it is beginning in six regions in the country, one of them is Piura, for example, Yapatera, where we see that there is a large Afro-Peruvian population there and other regions of the Andean and Amazonian zone. So, it is interesting how the intercultural issue is taking shape in the country, it is consolidating (...), I think that if they ask me, what level are we at? The framework that will allow us to do this work and, in that line, and the issue of racial discrimination also as part of this intercultural proposal. (AP-25) [clxix]

Similarly, with SEPPIR the adherence to the program "Juventude Viva" or the National System of Racial Equality, was voluntary. One activist in Brazil questioned, "how can a policy to combat a genocide be optional?" (AB-12). The political choice of non-enforceability of antiracist policies underscores how the Racial State controls or prevents structural changes in the racial order. As in the case of the Alive Youth program, the question is rhetorical, "What is the adherence that needs to be asked to invite people to join something to prevent so many young people from being killed? (AB-12).[clxx]

Another structural political choice that represented impacts on the antiracist agenda was the constant negotiation with civil society through participatory consultative councils: the CNPIR and the GTPA[167]. In this format, the organized Black movement brought their demands to the State through this channel. As both DAF and SEPPIR were seen as the "Black departments", they were also functioning as intermediaries of the civil society within governments. This way, the different sectors (education, economy, justice, etc) did not have to deal with "race questions" nor with the pressure from antiracist activism

[167] In the case of Brazil, as SEPPIR was a secretariat not exclusively for the black people, the council had a mixed composition, with representations of the Jewish community, Roma community, indigenous people. In the case of Peru the Directorate is only for Afro-Peruvians, so the GTPA is formed only of organizations of the Black movement.

because this was the role of those “Black departments”. One government official from SEPPIR criticized the negative impact of this strategy, saying that white people in the different sectors were shielded, as they did not have to answer to the civil society claims directly:

> It is very unlikely that a leader of the Black movement will meet with the Secretary of Education of the State, but he meets with the Secretary of Racial Equality. Then the Secretary of Racial Equality becomes the public expression that is criticized and this shields white people in the spaces of power and prevents Black people who are in government from producing their own agenda because their agenda is to represent them, as an auxiliary line that supports the Department of Education, which supports the Department of Health, which supports the Department of Culture, but we do not create our own agenda that is capable of defining what racial equality is. (AB-9)[clxxi]

According to this research participant, the intensity of the social conflict is reduced when the “Black department” becomes intermediaries of the social movement, “when, in fact, the role that I think an organ of racial equality must have is to create the conditions for more sophisticated conflicts to happen” (AB-9)[clxxii]. Framing those departments as participatory gives the illusion that the decisions are concerted with civil society when, in both national cases, they held consultative status. The choice of format channels the tension and pressure from civil society to be supported by those Black themselves, who are placed in those positions with no sufficient infrastructure to answer to the demands.

The civil society participants in those consultive participatory spaces became skeptical about the potential of impacting the State’s political choices. Having more space within the State was seen as a sign of political will towards effective change: “the State interested in Afro development? No… the State does not care about you, I always say: if the State were our ally, we would not be in the situation we are in nor would we have a GTPA, you would have Ministry on *Negritudes*…(AP-3)” [clxxiii].

This structure design of sectorial participation only illustrates the isolation of antiracism also regarding the access of the Black movement's representatives to the various state power structures. Those activists had to duplicate their efforts to participate in other sectorial instances if they wanted to be heard by other Ministries. In the case of Brazil, for instance, making visible the pressing needs of the Black population regarding health was one of the historical battles of the Black women’s movement. Their participation in this area led to the approval of a specific plan, the National Policy for Integral Health of the Black Population. Nonetheless, this example only shows the challenge to mainstream

the antiracism agenda and the burden placed on the Black movements, which do not often have the conditions (financial or infrastructural) to occupy all those institutionalized spaces.

Lack of data: the perfect excuse

For many decades Black intellectuals and activists have dedicated to producing data and information to prove that racism exists, that racial democracy was a fallacy, and to identify the concrete effects of racism in the lives of Black people. And this was necessary for facing a situation of literal denial of racism. The lack of data in this scenario is the perfect strategy to guarantee invisibility and to downside the reality of racism (Dulitzky 2001). Ironically, the State is the institution with the resources and means to produce the data on a scale to support the decision-making process for nationwide policy design. Since its creation, DAF's team understood that the first step to consolidate an antiracist agenda was to produce data on the current situation of Afro-Peruvians:

> It was clear that information was central, no information was almost the perfect excuse for not doing. (...) The absence of number[s] does not stop you from being responsible for not doing, that is, you do not need the number to know that there is a problem, there are problems that are seen, right? So we managed, with a lot of effort, to carry out the Specialized Study for the Afro-Peruvian population, which I think was key, that was key because it allowed us to raise a demand that had been systematic for the last twenty or thirty years of civil society, put a number. (AP-23)[clxxiv]

In the case of Peru, the importance of the study EEPA (Abanto et al. 2015) was precisely to demonstrate the location of Black people in the numbers of inequality, what the 2017 national census came to confirm. This study gave the possibility for the Black movement to negotiate with the State, even if it was only the first step in confronting this long ladder of denial strategies. Despite the EEPA, one recurrent excuse used by different sectors to not adhere to Plandepa, for instance, was precisely the lack of data to create a baseline to draw the concrete goals (AP – 27). The impact of the census in challenging this denial strategy was relevant:

> But here it is very difficult, it is not an easy task, if you look at education, health, Mindis, how difficult it is for them to think of people of African descent. I believe that the census presents them with a different panorama, that today they have to think about it when they say "why *the Afro* issue?, there is no data", today that is no longer an excuse, but I think that the challenge for them is: "so, how do we do it? how do we do this? and who does it? We know that most officials are unaware of the reality of the Afro-descendant population, why? Because there is insufficient information on the Afro-descendant population, then how are they going to do it? (AP-23)[clxxv]

Some consider that when raw data is available, then the next challenge is to deal with the question "how do we produce a public policy for the Black population?" The issue here is not only because those sectors "do not know" about the reality of Afro-Peruvians, but also because there is no interest to make it happen. The answer to "how to do things" is often expected from the Black people themselves, even if there are few resources in their hands. Like the case of Brazil, political will was missing to guarantee more effective results from the work of SEPPIR:

> Because any government can get and say "hey, I'm going to eradicate hunger", then gather intelligence and say "that's the objective, let's do it", (...). So he [Lula's presidency] got the public intelligence and say "let's do it", understand? So, it seems like a compliment, but it's not, it's a certificate of incompetence, isn't it? Attested of being uncommit, that in fact, the government did not do what it should have done, it let to our own doing... (AP -12)[clxxvi]

As the activist exemplifies, many goals that the Brazilian government announced were also innovations, such as eradicating hunger, but they were central to the government, and then, resources were made available for those goals to materialize: studies were financed, experts hired, and so on. One government official also argued that the State normally uses the knowledge already available, so whoever has the means to produce knowledge manages to impact State policies[168]. Her argument is interesting because it goes back to our reflection on the role of the university as the legitimized place of knowledge production and as an institution that reproduces whiteness. The tools made available to analyze the data – concepts, theories, methodologies – can also be limited to challenge whiteness. In both contexts, the prevalence of the class argument as an equalizer for poverty, for example, is the result of what the academic "intelligence" has produced for decades, as to say, the argument that policies need to tackle socio-economic disparities has been reproduced like a mantra.

In the end, when negotiating with the political power numbers are crucial. In the case of Peru, the fact that Black people represent 3,6% of the Peruvian population is seen as insufficient to justify the investment in policies: "what I feel is that there is no political

[168] "O Estado não produz conhecimento, o Estado pega o conhecimento que está pronto e transforma quando quer, de forma distorcida, numa política, às vezes numa política do mal e às vezes numa política menos do mal, mas é isso, a explicação nesse sentido para mim ela é muito nítida, transparente, o Estado não produz informação, o Estado pega informação de alguém que produziu, quem produz mais tem mais, os quilombolas nunca foram pra o censo... sabe porque o censo não existe? porque é desorganizado, entendeu? Então uma briga que nós temos enfrentado com o IBGE pra colocar..." (AP -10)

awareness of the issue, right? Even the fact of saying ‘but you are less than 3% right?, that is, ‘is a policy for the Afro-Peruvian population justified?’ ” (AP-24)[clxxvii]. In the case of Brazil, the numbers were pushing the antiracist agenda forward, with the argument that Black population was the majority: “Dilma internalized a lot the discourse that more than 50% of the population was Black (...), so she wanted numbers, so many people entered the university, so many people were contemplated by... she wanted numbers like that, she wanted quantitative numbers... ” (AB -7).[clxxviii]

On the other hand, despite decades of contestation, national narratives such as mestizaje or racial democracy are often mobilized to deny the need for tailored policies for the Black people. The denial of racism using mestizaje arguments is also a direct and personal confrontation for those outsiders-within, which results in denying the person’s own identity. A research participant explained that mestizaje ideology is still one of the biggest challenges in Peru:

> (...) but the Plandepa for being a national plan, and a plan should be agreed upon with other sectors, with officials who do not understand, that on the one hand the theory of public policy and the need to generate public value in public policies, and that intersect with their own dynamics, their own beliefs about what an Afro-Peruvian is, which is intermingled with that myth of equality through mestizaje, in which I also have something of Afro because my grandmother, great-great-grandmother was ..., and in which we all have a little bit of everything, we are all equal. That becomes a challenge. (AP-20)[clxxix]

The idea that “we are all equal” could go hand-in-hand with the practice of personalizing the racist experience as an individual psychological trauma, as if the problem is that those raising the issue of anti-Black racism are perceiving themselves as different when in fact, they live in an equalitarian society, so get over it:

> You are going to run into people in the spaces where decisions are made who are going to tell you: ‘do you really need a specific plan for the Afro population? Why? For what? If all Peruvians are the same, there is no reason for that. 'Don't you think that's because you yourselves feel different? That you have to get over that thing now.’ You are going to hear those things in your face, and you don't know, when confronted with that, if you cry, if you run away or recharge the battery and continue in the fight… (AP-23)[clxxx].

The need for a pedagogical work of convincing others that racism is a real problem was constant. In various situations, the interactions resulted not only in racism denial but also in the direct denial of the person’s own life experience. “Once a President of the Republic told me: ‘have you needed a little support to be where you are?’ I told him: ‘I am an

exceptional case. My situation does not mean that it is the situation of all Afro-Peruvians'" (AP-20).[clxxxi]

In the case of Brazil, racial democracy is still deeply embedded in the national identity despite the greater presence of racism in the public debate. Within the State, there is a constant mobilization of this discourse to deny people's places or rights attached to identity. "In relation to the concept of racism, there is still a great belief in racial democracy. (...) Within the State, it is... it is not only alive, it is very alive, this within the State is something impressive, impressive as it is alive, very alive, you know?" (AB-10)[clxxxii]

Racial democracy or mestizaje ideologies are powerful tools to sustain whiteness, as they work on the denial of racism. The role of "culture" to project those ideologies is a consequence of long-term State investment on the ethnicization of Black and Indigenous lives, as discussed in Chapter 4. The State investment choices in spectacles of dance, music, celebrating festivals, and restoring folklore are part of the constant reproduction of racial democracy ideology. In this way, the anti-Black racism is lived through the ambiguous but consistent regime of domination that "devaluates Black lives through continuous subjugation to death but rabidly promotes Blackness through Carnival, samba, and football" (J. A. Alves 2014a, 3). In Peru, there is a similar dynamic, when Afro-Peruvian music, food, and dance are promoted and celebrated, but Black lives are daily devaluated. This excerpt from an interview with a member of the Ministry of Justice is illustrative:

> "(…) because they [Afro-Peruvians] have assimilated so much into our culture because almost the entire Peruvian community is Afro, all Peruvian dances from Puno and from the area of Bolivia, around Potosí, are Black dances, that is, Black culture has entered in Peru… it is huge, that is, it is the strongest, more [influential] than Spanish [culture] is the black culture in Peru, everything that is art, music, the *cajon* is black, all the music and food then, we... the main soccer heroes are Black, that is, we don't see Black people, like in other places, we don't see them so badly. That there must be when you, for example, pass through an area and see a Black man, you know what you have to do, but they also rob you, then many of them have turned to crime, but that was the case before, now no, it has been shrinking quite a bit." (AP-11)[clxxxiii]

The excerpt above is quite illustrative of anti-Black racism is Peru. It also exemplifies the challenges to the State approach to interculturality to deal with the "different ones" within mestizaje ideologies, which denotes Black people supposed "assimilation". This testimony was given by a governmental official responsible for a sector of the

intercultural justice. He had a very sound understanding of racism towards Indigenous people and raised his voice against the justice system racist structure. However, when I asked about Black people's place in the intercultural justice's agenda, he reproduces the "lack of knowledge" about Black people struggle in relation to access to justice using arguments of the *mestizaje* ideology. As argued before, this "lack" is a concrete consequence of anti-Black racism.

Another strategy of denial articulated within the racial democracy ideology is the argument that poverty is the cause of inequalities and violence, so people would be discriminated against because they are poor (Dulitzky 2001). The denial of racism is possible in this case because, even when the fact (people are discriminated against) is recognized, a different signification is assigned to it (Cohen 2001, 105). In this perspective, the State must intervene to create universal policies to alleviate poverty, not racism. Moreover, there is a belief that universal policies can reach different groups equally, and then benefit all without the need to differentiate. In other words, even if there is a recognition that Black people are the majority in poverty, there is still a conviction that tackling poverty is the right way to improve Black people's lives. According to one research participant, what a universal approach does is naturalize difference as related to personal merit, so it is not racist to promote general policies in a community of a Black majority, as in the case of Brazil. In the end, this political choice reinforces the idea that opportunities are there for all, so if you are not benefiting from the universal policies, is an individual option (AB-4).

In the Brazilian case, this was a compelling argument, as the eradication of poverty was the main agenda of PT's government. As some of my interviewees from SEPPIR attested, most of the beneficiaries of policies to alleviate poverty were Black, in social housing or basic services programs[169][clxxxiv]. Yet, those policies can do little to the consequences of racism that works on structural levels, being those that deny or reduce the opportunities of the Black population to live equality - not to mention the role of violence and Black

[169] According to one research participant: "As the issue of race and class in the social formation of Brazil is very intertwined, poor populations are confused, articulated, intertwined with the racial issue, so that is why 72% of the women who benefited from the "Bolsa Família" are black women or the 86% of women who received the program "Minha Casa Minha Vida" or "Água para Todos", or "Luz para Todos", the percentages always gravitate between 72% of the presence of the black population in these so-called directed policies, which is why which is true when you talk about public policy to correct a historical deficit you benefited the black population (...). (AB -18)

death to sustain white supremacy in countries like Brazil (J. A. Alves 2014a, 12). While equalizing the experience of all poor people - including white poor -, this discourse works on the denial of antiblack racism as historically produced outcomes of political choices - racial enslavement, whitening policies, etc -, as “the rejection of the ongoing presence of the past” (Harris 1993, 1761). Additionally, whites can agree with poverty alleviation measures because to some degree they can relate to them, as “White empathy is based on the valuation of White humanity and the calculated risk of White bodies” (J. A. Alves 2014a, 8).

Those political choices unveil, once more, the impossibility to see how racism, sexism, and capitalism differently impact on distinct groups. There is a denial about the mechanisms that create the differentiation by equalizing the experiences. This research participant problematizes universal policies, by articulating the need for an intersectional approach: “you can offer a minimum income revenue to Black and white women and white women will be able to advance and Black women will not; you can provide maternal health for both of you, in quotes, and Black women keep dying. Institutional racism explains the day-to-day actions of a given institution, but policies also promote them” (AB-13).[clxxxv] In those policy debates, the role of racism is downplayed because, as Alves suggests, “it is the White subject’s tacit denial of its complicity with the structure of privilege that grants power over racialized bodies, and its understanding of racism solely as interpersonal attitudes that allows for the reproduction of Whiteness in our presumed post-racial moment.” (J. A. Alves 2014a, 8)

Some Black intellectuals see the current challenge of the Black movement as placing the antiracist struggle at the center of the “anti-capitalist political agenda”, since “racism is not a deformation of behavior but a processual mechanism of capitalism” (Oliveira and Adão 2017, 35). Those accounts reinforce the importance of seeing inequality in Latin America as a historically rooted outcome of interrelated long-lasting processes: colonialism, racism, and capitalism (Da Silva 2019).

6.4 In conclusion: racism is “a bad word”

The denial of racism is also about distorting its meaning, diluting its scope, and opening to various forms of interpretation. Challenging the regimes of denial is also about

disputing the meanings and the restrictive interpretations that deviate us from understanding racism as a regime of oppression that causes both death and life/wealth. Concepts are important for the legal-political dispute but concepts are political options. To sustain power balance, there is an "expectation of white-controlled institutions in the continued right to determine meaning" (Harris 1993, 1762). This lawyer and activist follow this conclusion: "you choose one term over another is a political option, and then we think: what is the instrumentality of this political option? Is it to face racism or to allow it to continue to perpetuate?" (AB-2)[clxxxvi].

One research participant called the attention to the dangerousness of diluting the concept or, rather, as he says, sterilizing it. For him, it should warn us of a problem when we are too comfortable addressing racism because it has sounds, and it sounds like pain, and it has a smell, and it smells blood, if we are distancing from this flesh, deadly effects of racism, we are not talking about racism at all:

> [there is a] conceptual war that keeps us away from the smell, the color, the sound that racism has, racism has sound, it has a smell, it has color, it has... it has... noise. Racism noise is a noise of pain, the smell of racism is a smell of people's blood, that's it! If the discussion of racism is bringing us closer to that, then we are talking about racism, when we can get too comfortable and we are no longer hearing noise, smelling, tasting, then you can't talk about racism, because we're no longer talking about a phenomenon that kills people, we're no longer talking about a phenomenon that... cuts people off, we're not talking about [. ..] we're talking about something else, so this is a point that worries me a lot. (AB -9) [clxxxvii]

In the end, for the Racial State racism is "a bad word". To talk about race and racism involves talking about violence, inequality, and disputes for power. Accordingly, changing this "high tone" into a language of culture, diversity, ethnicity or interculturality allows for a language that is both "positive" and "non-conflictive". Governments want to promote their actions on a positive note.

In defining the name of the antiracist platform in Peru, the use of the word racism was a discomfort "at that time I felt that, really, it was difficult for us to say that it is racism because yes, because it is an evil from a hundred years ago, so yes, it is difficult for us to feel that flaw, but I did feel a lot of resistance because there is also a…like feeling that the State always has to be proactive (AP – 4)"[clxxxviii]. In Brazil, the government was concerned with having a number to show how positively people's lives has changed and talking about racism does not give a good image: "At that time, also because of the

political crisis, there was a very big discussion about how to create positive agendas for the government, and then we were called to say what could be said to (...) talk about positive agendas for the Black population when arriving [November].” (AB -7) [clxxxix]

The control of the scope of where/when/how “racism” is recognized by State “antiracism” is central to the reproduction of the Racial State without ruptures. It happens when policies approximate the meaning of racism to racial discrimination, focusing on interpersonal conflicts or providing solutions to a problem of “people’s mind”, such as capacity building or education. This constant control and surveillance of the language were quite evident in the testimonies of those Black people within DAF and SEPPIR. According to this research participant, this tension is accounted for, and it is alive, as well as the dispute between challenging the racist structure and sustaining it:

> How to conduct this state action that collides with the counter-state, it is a very difficult thing, that is, how do you have factions of the government that operate against government action? As the government's own Ombudsman or as at the same time... and that in both directions because if, on the one hand, we were, along with other fractions of the government, a part of the governments that were operating to dismantle the racist architecture of the government, there were also on the other side, from various sides, people operating to maintain these structures and this tension active, it is active in governments, it is not passive, it is not by omission, it is by action, it is by political action, for power struggles within governments. (AB-9) [cxc]

Confronting the regimes of denial is challenging, and designing policies presupposes an understanding that racist mechanisms have not been fully unpacked. To de-construct ideologies such as *mestizaje* or the benefits of universal policies involves a double effort together with the production of knowledge on how racism affects the different populations. Being the promotion of diversity or the search for material equality, the focus on a “target group” limits the reach of antiracist policies as necessary to change the racist structure. The challenge, as pointed out by a law professor, is that “policies made for the different [people] can only change if it is to act on the difference, this is an issue that I think is relevant because the problem is not the ‘different’, but the difference understood as a certain structure that always shapes and transforms people into something that is far from normal” (AB -19)[cxci]. He continues:

> policies can do little if they cannot interfere in the politics, the organization of power, the way it is exercised, in the economy, in the production of regulations and norms in general and the processes that constitute subjectivity, education, ideology, communication, but also how the imaginary is built, so it needs to

> work on forms of expression, literature, art, knowledge construction, all this… (AB -19)[cxcii]

In the end, whiteness remains largely absent and unquestioned in State structures to fight racism, as well as how white privilege is conceived and protected by the State. The limits imposed on antiracist policies in Brazil and Peru dismissed the legacy of oppression and censored claims for reparations that could go beyond symbolic measures or "integrationist" frameworks. The silencing of Black voices has been active and violent within the State structure, sickening and expelling out those committed to antiracism. Whether using technical arguments or the emptying of categories mobilized by activism, the denial of Black lives is perpetuated as a daily and ingrained practice.

Conclusion

This thesis has aimed to unveil the regimes of denial of racism by exploring two tensions of the Racial State in relation to antiracism: the tension between racial subjection and claims for humanity within the legal system; and the tensions that arise when antiracism is part of the State agenda. If we take into consideration that Black struggle for freedom, Black insurgency and Black liberation were always part of Latin American social history, to understand how racial subjection persists we must look deeper into the functioning of the mechanism informing the racialized regime.

The outcomes of each case study analysis, evidencing the limits of "justice" through an anti-Black judicial system or the limits of antiracism within the Racial State do not erase the ***political*** importance of confronting State institutions to expose such contradictions. As several research participants affirmed, denouncing racism has also the potential to cause disruption, to provoke the instability on the foundations of our institutions, its logics and power relations hierarchies.

For most Black activists I interviewed, the State must be confronted by racism denouncement. According to one of them, who is part of the Black Coalition for Rights in Brazil (*Coalizão Negra por Direitos*), "there is not a belief in the justice system" but the idea that "we built this society and that we have the right to enjoy the goods we produce. [The struggle] concerns a historical demand for reparation, reparation for our people, [it] concerns the struggle for humanity" (AB-05)[cxciii]. The testimonies also exposed the need to confront the State, to use the State against the State, to create the mechanisms that could provoke such instability. In the words of one research participant: "the task of this generation [in the 60 and 70 years-old] was to move the State from within, create mechanisms, create instability. (…) So, the relationship with the judiciary is more in that sense, one must dispute, one must create instability, to expose the contradiction…" (AB-12).[cxciv]

For another research participant, "this privilege of refusing the State is a right of those who have a lot of State. Or who has more powerful ways than the State itself to resolve their conflicts [such as big corporations] (AB-09)." [cxcv] His reflection meets Patricia Williams argument regarding the concrete consequences of rights recognition for Black

people’s lives. What the cases studies have also illustrated is that the sentiment of injustice pushes for using the existing mechanisms of “justice provision” because it is imperative to break the silent in front of racial violence in contexts of racism denial. For victims, this is particularly significant, even if there is no naivety that the system functions to protect their dignity. On the other hand, Black activism mobilizes the rights vocabulary because there is the need to grant some level of protection from State persecution and violence.

Taking that into consideration, throughout this research it was possible to identify four mechanisms that sustain the perpetuation of a racialized regime within the legal field and in State institutions. I systematized those mechanisms as following: 1) the ideological control of institutions; 2) the normalization of the performance of race; 3) the functioning of the narcissistic pact; 4) the state of permanent denial of race.

The ***ideological control of institutions*** happens through numerous ways, as demonstrated throughout this work. Institutions reproduce and update the idea of race through the power to conceptualize, to delimit, to measure, to demarcate, to accumulate, to differentiate, in different daily actions, such as legal production and interpretation, service provision, production of data or reports on different populations, to mention a few. I also explored throughout the thesis the role of scientific knowledge in silencing Black thinking to reproduce only the history and ontologies of whiteness. The presumption of White peoples as the agents of development and progress, intellectually prepared and morally capable (so innocent until proven otherwise) is a social-legal construct/technique.

The role of legitimate knowledge production to racial subjugation has been subject of various studies (see Castro-Gómez 2007, Da Silva 2009). David Goldberg describes how: “science and literature, scripture and law, culture and political rhetoric all worked in subtle and blunt ways to establish the presumption of white supremacy, to naturalize the status of white entitlement and black disenfranchisement” (Goldberg 2009, par. 136). Silvia Maeso argues that when the white subject is reproduced as universal, so it is its history, memory, and values (Maeso 2018). Consequently, State institutions play a significant role in securing the dialectics of racism within the zones of being and the zones of non-being. The racist construction of Blackness is also a result of centuries of investment in dehumanizing knowledge production (Da Silva 2009).

As discussed in detailed in Chapter 4, the role of language control, whether to use race or ethnicity, or to look at “social diversity” and not “antiracism”, adopting multiculturalist paradigm, are examples of how the ideological control of institutions is assured. The analysis of policy design processes in Chapter 6 and the InterAmerican Convention debates in Chapter 5 revealed how certain approaches of racism as perceived as “ideological” and even dangerous, and how the vocabulary is constantly shifted to either multiculturism or anti-discrimination, distancing from the historical roots of anti-Blac racism on racial enslavement. In the case of Latin American countries, particularly Brazil and Peru, this control is also present in the possibilities (or the lack of them) of racialized groups to define their own identity or political agenda, together with the constant mobilization of mestizaje ideologies.

I also explored how legal knowledge production has enabled the innocence of law (Fitzpatrick 1990) in relation to racism, and how racism is still evaded from the legal field despite the rise of antiracism in the public debate. The analyses of the legal cases in Chapter 2 and 3 evidenced how the choices of legal theories on race and racism (or racial discrimination) reflect on the discussions, such as the constant update of the Black problem on how the “legacy of slavery” is announced, perpetuating the oblivion of the oppressor, as Cardoso (2014) suggested. Additionally, the choices in using the notion of *structural racism* as the preferred concept to recognize inequalities guarantees the innocence of the Law placing the racist violence outside institutional control because it is endemic to society.

The normalization of the performance of race happens through the unsanctioned and normalized racist behavior, securing privileged position in society and institutional spaces. Racial insult, racist jokes, the reproduction of racist stereotypes, images, movies – that is, the economy of enjoyment (Hartman 1997) - and the public torture and killing of Black bodies are part of the performance of race.

The performance of race, sometimes seen as innocent or “just a joke”, exercised in various forms of sociability, became evident in the case of Azucena Algendones, where the violence she suffered was not seen as against the law in various spheres of the State. As theorized by Adilson Moreira, racist humor, for instance, “aims to guarantee the preservation of a social structure based on racial privilege, which requires the constant

circulation of stigmas about blacks" (Moreira 2019, 58, author's translation). Those racial representations are "an essential requirement for the maintenance of the various forms of privilege associated with belonging to the dominant racial group", working as "an investment in white identity, a social place that allows privileged social integration" (ibid.). In Peru, racial slurs are common practice, as well as stereotypical representations of Black people that can be illustrated by the comic show "Negro Mama", where the comedian resort to black face and negative stereotypes of Blacks in a grotesque figure (Pineda 2020). Those practices function to reify racial construction of Blackness in the Peruvian society.

The performativity of the offense, or racial insult, particularly in public places, are also a relevant part of the racial normalization, limiting the boundaries of permitted/ prohibited behavior and bodies, in an exercise of racial segregation. A study elaborated by Marcia Lima and colleagues looking at legal cases of racial discrimination in Brazil (mostly reduced to slander) concluded that legal decisions have underestimated the performativity of racial insult to "reinforce the representation of the social place of these individuals" (2016, 21). The study also demonstrated that treated in isolation, the racial insult is not taken as a continuous and permanent practice of racial subjugation that a Black person bears throughout a lifetime. This conclusion meets the analysis of the Algendones case discussed in Chapter 2. The performance of race was also present in the testimony of the *outsiders-within*, which I discussed in Chapter 6, and the lawyers' experience I foreground in Chapter 2. In both situations, whites feel comfortable in racializing Black people over and over again, either to deny their experience with racism or to place them in a subaltern position even when they occupy places within the State institutions.

The case discussed in Chapter 3, *ADPF das Favelas*, illustrates how the segregation of the zone of being and the zone of non-being is perpetuated through the routine performance of race. The apparatus of policing Black neighborhoods and surveilling the Black body, together with the spectacle of law and order performed by police forces reify the boundaries of the zone of non-being. The white body, not surveilled and protected, benefits from the performance of race that reifies the positive aspects of white identity and guarantees its positionality at the top of the racial hierarchy. Katrine McKittrick (2006) proposed that the exposure of the Black body, its violation, extermination, has always been central to our society, and not marginal; as exercises of racial subjugation.

If we take McKittrick's analogy to look at Brazilian and Peruvian cities, we see that *pelourinho*[170] or the gallows occupied central places in the colonial cities, as discussed in Chapter 1. Those monuments did not occupy the center of colonial cities by chance, the torture of the non-submissive Black bodies had to be public. The performance of racial violence was/is a message about the place of Black people in society, central to the racial hierarchies of power. We can assess how our *pelourinho* is updated with executions in public space, such as the execution of Marielle Franco, who is shot in the face in the city center of Rio de Janeiro[171]; or Maria Helena Moyano, Afro-Peruvian activist and politician brutally killed in a public space in Peru (Moyano et al 2000).

The functioning of the narcissistic pact, as theorized by Maria Aparecida Bento (2002), is crucial for assessing the benefits of whiteness in the racialized legal regime. In Part I, I discussed how institutional racism within the justice system happens also through the narcissistic pact. The testimonies of Black lawyers who work as counsels in cases of racial discrimination were full of everyday experience of being both single-out and alienated from those power spaces. The narcissist pact is also in relation to the ideological control of the institutions, when Black knowledge production is reduced to the "specific" or invisible for policymakers or does not find permanent spaces at the universities. On the other hand, as discussed in Chapter 6, the reproduction of "racial democracy" or "mestizaje" ideologies is activated through the narcissistic pact in order to erase race from important political spaces.

A public confrontation between those perceived as "above the law" and members of security forces – composed mostly of racialized people in the lower ranks – commonly starts with the question: "*Who do think you are talking to*?" We could expect this to happen only when high-level authorities confront low ranks, but this is not the case. The case of *ADPF das Favelas,* and the impact on the police force (mostly Black people at

[170] *Pelourinho* is the name of torture artifact common in Brazilian colonial cities, a stone column placed in a public place in a city or town where criminals were punished.
[171] Marielle Franco was elected in 2016 for a seat on the City Council of Rio de Janeiro with five times the number of votes of her nearest competitor. Being a black woman from Maré, a slum in Rio de Janeiro, her election was a historical event in majority white-male political environment. Franco was critical to the police violence, and she was assassinated in 2018 by two former police officers. Her assassins are already in custody, but until today no answer has been given on who's behalf they were acting on (see more at <'Caso Marielle e Anderson: PM reformado e ex-PM são presos suspeitos do crime' (*G1*) <https://g1.globo.com/rj/rio-de-janeiro/noticia/2019/03/12/policia-prende-suspeitos-pelos-assassinatos-da-vereadora-marielle-franco-e-anderson-gomes.ghtml> accessed 17 June 2021.).

law ranks) of the violence of the public security policies, also illustrate this process. Those situations are known in those contexts where white people expect to be "above the law" by activating the narcissistic pact not to be accountable within a system meant to control "other bodies", not theirs.

In countries such as Brazil and Peru, the *narcissistic pact* sustains the system of white privilege with the endorsement of the legal-juridical regime. Even if we consider that in Peru the Justice System is not composed mostly by white people as in the case of Brazil, mestizos can sustain whiteness by reproducing racial presumptions. Whiteness is also enhanced when critical approaches to race and racism are silenced in legal scholarship. The option for reproducing only liberal theories that frame racism as aberrant to the Liberal State and as an ideology of racial supremacy works to shield the legal system and the historical rooted racial regime that benefits whiteness, its values, histories and entitlements.

Finally, ***the state of permanent denial of race*** is crucial to maintaining the racial order. The denial of race is imperative to sustain the racialized legal regime also because while race is not a valid legal category to assign rights and entitlements, racialized constructions of subjectivity are not recognized, and legal neutrality prevails. Racelessness guarantees the perpetuation of the racial order because the system of privileges becomes the normal functioning of society, which distributes rights and entitlements according to rightfulness (the respect of the legal order), which is objective and colorblind. Seeing race means unveiling the racial State, and the racialized legal regime (privilege and subjection; humanization and dehumanization).

The analysis developed in Chapter 6, exploring the tension within the Racial State when antiracism becomes part of the State's agenda, reveals various mechanisms of denial. The relational analysis of negotiations of policy design in Brazil and Peru made evident the mechanisms of racism denial within the institutionality. Through the testimonies of those *outsiders-within* it was possible to identify how institutional racism affects the choices made in policymaking, the size of the budget allocated to implement them, the format and content of regulations, and the permitted and prohibited terms and discourse. This constant control and surveillance of the language and the scope of police implementation were quite evident in the testimonies of those Black people within DAF and SEPPIR, but

also in the debates for an Interamerican Convention against racism at the OAS. In the case described in Chapter 5, the use of "Durban Language", as to say, the recognition that racism is directly related to historical circumstances – colonialism and racial enslavement - was political sensitive and must be abandoned. What the controversies have shown is that denial of racism is a vivid and active practice. The *control* of the scope of where/when/how the State recognizes racism is central to the reproduction of the Racial State without ruptures.

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The case studies reveal how the denial of race, the ideological control of the institutions, the constant performance of race, and the functioning of the narcissistic pact, all sustain Black subjugation and white supremacy. In contexts where race is not considered a valid legal category, efforts to analyze race, law, and whiteness are no easy task. In contexts in denial of racism, we must unveil how it perpetuates in the legal reasoning despite racelessness, and that is why theorizing the unfolding of the legacy of the racial enslavement – *fungibility* - in legal thinking can contribute to better exposing the functioning of the racialized legal regime. The legacy of racial enslavement still works to draw the limits of humanity, placing Black subjectivity as precarious within the institutions of the Racial State.

Further research is needed to assess how law has regulated bodies through racial lines. This research is challenging in Brazil and Peru, and I would say in Latin America, as legislation is dispersed and mostly local rules are not available online, which implies going through archives, where they are accessible. This was also Tanya Hernandez's conclusion in her book *Racial subordination in Latin America* (2013), where she evidences how costumery law regulate acts of segregation or the denial of basic citizenship rights. Written law was also defining segregation rules, particularly local regulation that covert mostly the permitted and prohibited behavior in the urban or local scales. Dora Bertúlio (2019) reached similar conclusion in her analysis of some local regulations to evidence the racial rule. Nonetheless, this endeavor needs a long investment in this line of research.

Additionally, historical accounts on legislation of specific field, such as education, health, leisure, or property rights, could give a more detailed picture of the enforcement of the

racialized legal regime. Studies on jurisprudence to investigate the role of whiteness or how rights and entitlements are protected according to racial lines are also needed. This is equally challenging. In countries like Peru researchers cannot access legal cases as they are not available online, and in Brazil, jurisprudence is available online only for Appeal Courts, and not for singular decisions, which might account for most of the story.

In Peru, scholarship on law and race has not been widely developed. Even with the rise in complaints of anti-Black racism presented by activists and Afro-Peruvian organizations, little impact is perceived on legal structures or academic production. Racism is not a topic for the legal-juridical field that renders institutional racist practices such as racial profiling, police violence, or institutional racism within the judicial system highly invisible. How institutional racism is performed daily is an experience shared by those living in some areas of the cities perceived as Black neighborhoods, because traditionally associated with Black residents, such as La Victoria or Callao. Those places still hold a negative imaginary associated with criminality. In both countries, *space* is rarely taken as an important analytical tool to understand race, missing studies that accounts for the racialization of space, and race as spatially construct.

One lived situation narrated by a Black activist during her work at La Victoria illustrates the violent racial dynamics that are largely invisible in the analysis of anti-Black racism in Peru.[172] As the excerpt from the interview speaks for itself:

> It is no coincidence that in this neighborhood [La Victoria] the police entered with both doors open, two people with weapons at each door and shooting (...) for Peru it will be that they killed a criminal who had to be killed. (...) El Callao, La Victoria are possibly the two neighborhoods that are also historically black. (AP-3)[cxcvi]

Nevertheless, in Peru, the Black movement does not present a strong demand against Black criminalization, for distinct reasons. One of them is the fear that pointing out the over-representation of Black people in prisons could serve to reinforce the association of Black people with criminality and not the oppositive, to evidence the criminalization. On 19 May 2021, the POLITICS project organized a workshop called "Thinking racism in the justice system and citizen security policies in Peru" (*Pensar el racismo en el sistema*

[172] The project POLITICS is investigating police brutality, racial profiling and Black over-incarceration in Peru, questioning the racist roots of the "delinquent" discourse, se more at https://politics.ces.uc.pt/.

de justicia y las políticas de seguridad ciudadana en el Perú) with the participation of young Black activists. The participants had an interest in the topic but explained why in that context is not simple to denounce police violence, recalling the historical process of violence in communities in Lima[173]. One week after the workshop one of the participants was accused of robbing a shop in Lima. She was with her son, and they were taken to the police headquarters. She denounced being victim of racial profiling, being criminalized for being a Black woman, and got lots of media attention. Cases like that are becoming more publicized, and racial profiling is a topic that young Black activists are interested on raising.

On a different note, this work has also shown that more debate is still needed to understand the intricated relation between race and class, and more empirical work to demonstrate how race has impacted the class formation in Latin America. Black intellectuals, such as Denis de Oliveira, see the current challenge of the Black movement to place the antiracist struggle at the center of the "anti-capitalist political agenda", since "racism is not a deformation of behavior but a processual mechanism of capitalism". Even though I did not engage with the debates of racial capitalism on this work, this scholarship has provided useful and urgent insights to understanding class formation; Black feminism has also theorized on the impossibility of isolating race, class, and gender (Broeck 2017; Davis 2011; Collins 2000).

Denise Ferreira da Silva engaged in debates around capital accumulation while dissertating about the "Unpayable Debt" (2019), arguing that the moral text sustaining *ratiality* is updated when the colonial is placed as prior to capital. For her, by placing in the past the violent practices and methods of appropriation of Indigenous lands and Black labor values' hides the economic importance of the colonial (Da Silva 2019, 165). Those accounts reinforce the importance of seeing inequality in Latin America as a historically rooted outcome of processes - the colonial, the racial and the capital, are the triad Denise da Silva (2019) explores -, which were not challenged, and this includes how capitalism has been theorized and understood.

[173] The internal armed conflict had a particular impact on the control and surveillance of communities, with violent outcomes. See more at the report of the Truth Commission (Cf. Comissión de la Verdad y Reconciliación – CVR, 2004).

At last, these reflections push the need for more academic effort to unveil the legacy of racial enslavement in current socio-legal theory in Latin America. This legacy persists in differentiating the weight of “justice” through racial lines, but also spatializing socio-economic inequalities and privileges. It also sustains discourses over development and progress which are anti-Black and, in different accounts, anti-Indigenous. The recognition of racism and the confrontation of the existing regimes of denial of racism in the region are not enough if one does not try to reconstruct the past in order to question current forms of racist violence (Hartman 2008, 13), and how they are legitimated by racialized legal regimes.

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c. List of interviews

code	country	Date of the interview	category	description
AP-1	Peru	26/10/2018	case part	Black woman, plaintiff in a racial discrimination case
AP-2	Peru	16/10/2018	activist	Black woman, activist in a Black women's organization
AP-3	Peru	10/05/2019	activist	Black woman, activist in a Black women's organization
AP-4	Peru	11/06/2019	government official	Ministry of Culture - DEDR
AP-5	Peru	28/05/2019	activist	Black woman, politician and activist
AP-6	Peru	03/06/2019	lawyer	legal counsel in a racial discrimination case
AP-7	Peru	22/10/2018	government official	Ministry of Justice - CONACOD
AP-8	Peru	07/05/2019	government official	Ministry of Culture - DEDR
AP-9	Peru	14/06/2019	activist	Indigenous movement
AP-10	Peru	27/06/2019	activist	black woman, activist in an Afro-Peruvian organization
AP-11	Peru	10/06/2019	government official	Justice System
AP-12	Peru	29/05/2019	academia	white woman, law professor
AP-13	Peru	28/06/2019	activist	Black woman, antiracist activist and law professor
AP-14	Peru	14/06/2019	activist	Black woman and politician
AP-15	Peru	22/05/2019	government official	Ministry of Culture - DAF
AP-16	Peru	17/10/2018	activist	Black man, activist in an Afro-Peruvian organization
AP-17	Peru	09/10/2018	activist	Black woman, activist in a black women's organization
AP-18	Peru	11/06/2019	academia	Research institute
AP-19	Peru	02/10/2018	activist	Black man, activist in an Afro-Peruvian organization
AP-20	Peru	11/05/2019	government official	Black man, activist and official at the Ministry of Culture - DAF
AP-21	Peru	01/06/2019	government official	Ministry of Culture
AP-22	Peru	23/05/2019	government official	Justice System
AP-23	Peru	17/05/2019	government official	Black woman, activist and official at the Ministry of Culture
AP-24	Peru	22/05/2019	activist	Black woman and activist
AP-25	Peru	07/05/2019	government official	Ministry of Culture
AP-26	Peru	27/06/2019	activist	Human Rights Organization

AP-27	Peru	18/10/2018	government official	Black woman, activist and official at the Ministry of Culture - DAF
AP-28	Peru	01/05/2019	academia	antiracist activist and law professor
AP -29	Peru	13/11/2019	OAS official	Black man, lawyer and activist
AP -30	Peru	17/02/2021	lawyer	Human Rights Organization
AB-1	Brazil	20/11/2019	OAS official	Black woman, lawyer
AB-2	Brazil	11/12/2019	activist	Black woman activist and lawyer
AB-3	Brazil	23/10/2019	activist	Black man lawyer and activist in a Black movement organization
AB-4	Brazil	27/11/2019	academia	Black woman, law professor
AB-5	Brazil	29/10/2019	activist	Black man, activist in a Black movement organization
AB-6	Brazil	18/12/2019	government official	Black man and official at SEPPIR
AB-7	Brazil	04/12/2019	government official	official at the Ministry with Women, Racial Equality, Youth and Human Rights
AB-8	Brazil	17/12/2019	academia	Law professor
AB-9	Brazil	04/11/2019	government official	Black man, lawyer and official at SEPPIR
AB-10	Brazil	04/10/2019	government official	Black woman, activist and official at SEPPIR
AB-11	Brazil	11/12/2019	activist	Black man, activist and lawyer
AB-12	Brazil	04/11/2019	activist	Black woman, activist at a human rights organization
AB-13	Brazil	02/10/2019	activist	Black woman, activist in a Black women's organization
AB-14	Brazil	05/11/2019	government official	Black woman, official at SEPPIR
AB-15	Brazil	24/10/2019	activist	Black woman, lawyer and activist at a black women's organization
AB-16	Brazil	29/11/2019	government official	Justice System
AB-17	Brazil	18/10/2019	activist	Black man, lawyer and activist at a black women's organization
AB-18	Brazil	09/12/2019	government official/ activist	Black man, activist and official at SEPPIR
AB-19	Brazil	22/10/2019	academia	Black man and law professor
AB-20	Brazil	29/11/2019	academia	Law professor
AB-21	Brazil	03/11/2019	academia	Black man and law professor
AB-22	Brazil	31/10/2019	government official	Diplomacy
AB-23	Brazil	07/09/2020	government official	Black woman and official at the Ministry with Women, Racial Equality, Youth and Human Rights
AB-24	Brazil	15/03/2022	Government official	Justice System

d. Endnotes: Quoted interviews in the original language

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[i] (...) incluso llegó una persona del Estado y me dijo "qué vas a hacer con una resolución? (…) para que la cuelgues en la sala?" Entonces me pareció, (…) si estás en un camino de lucha ya has perdido todo, yo no concebía que alguien me diga "¿para qué quiere una resolución del poder judicial? Para colgarla…" No concebía porque yo creo que ella tuvo que ver que lo que yo luchaba era mi dignidad como ser humano, ¡no la resolución!

[ii] "Por racismo no sé, por eso te decía que hay una línea de investigación que hay que hacer en el Poder Judicial, hay que rescatar sentencias que, aunque no digan eso, en la lectura uno tiene que identificar si es posible decir a no, acá hay una cuota de racismo del juez, no sé, pero es investigación, lecturas, una serie de cosas… entonces no es sencillo creo yo…" (AP – 22)

[iii] "eu acho que as pesquisas têm que estar relacionadas com as pautas que o movimento tá se propondo fazer, eu não quero mais participar de pesquisa que seja do interesse do pesquisador exclusivamente, não quero mais, literalmente não quero mais. Eu só dou entrevista hoje se eu achar que aquilo que eu vou falar tem algum nexo com a luta do meu povo em qualquer lugar do mundo, se não me desculpa, mas não vou (…) Mas às vezes eu digo para meus amigos que eu estou cansada né, digo "ah tô cansada", exatamente para colocar isso... da ideia de que é preciso que a gente use esse espaço da academia para alavancar com projetos mais ... mais vivos, entende? Que tenham relação com a vida daquele sujeito dos quais você está falando e não apenas com os interesses que eu, com a cabeça já formada, vou pra lá debater né e tentar enxergar e quando não enxergo aquilo que eu materializei na minha cabeça 'não, eu fui, mas eles não eram bem índio direito, não estavam organizados, os quilombolas lá não estavam bem organizados e tal por isso mudei minha pesquisa para outro quilombo porque lá sim eles são bem organizados e tal'. Bom, primeiro a gente tem que discutir que conceito é esse de organização? Porque se é um grupo que está lá a mais de 300 anos e ainda está lá, você vai dizer que esse grupo não é organizado? Como assim? Baseado em que que você vai falar? Então acho que esse é um dos nossos desafios."

[iv] "a nivel administrativo también se solucionan casos de discriminación, no, Indecopi tiene casos los que he sancionado instituciones por discriminar personas con discapacidad intelectual, a personas de la población LGBTI, y ahora está procesando a la empresa que nosotros trajimos para que explique su publicidad aquí a la Conacod, no. Entonces, si, que hay medidas que son un poco más eficaces, si las municipalidades locales o provinciales, distritales o provinciales, mejor dicho, tuviesen una ordenanza contra la discriminación, un procedimiento específico, digamos, hay mecanismos más inmediatos y menos gravosos que una sanción penal que, finalmente, no es efectiva." (AP -7)

[v] "no direito do consumidor você tem a inversão do ônus da prova e alegando a hipossuficiência (...) , então e aí a questão da verossimilhança ela é suficiente, não precisa dessa coisa do direito penal, do processo penal da busca da verdade, não sei o que, que é muito mais absoluta do que no civil, de quem tem mais verossimilhança deve ganhar, então quer dizer, se os outros músicos entraram pela porta e entraram com seus instrumentos, não precisa comprovar a intenção de nenhuma pessoa, a culpa, nem nada, então a responsabilidade objetiva do shopping e por uma questão de atributo racial como ficou reconhecido, então foi isso, a bendita da prova quando você vai pra o civil ela é menos onerosa pra o autor e a gente consegue comprovar melhor também por isso..." (AB -3)

[vi] "A jurisdição cível apresenta um crescente número de condenações (ínfimos em termos numéricos, se considerarmos a alta taxa de incidência do racismo no cotidiano) especialmente por meio de indenizações na justiça civil comum e na justiça do trabalho. A jurisdição criminal é sem dúvida mais resistente à aplicação da lei penal antirracista porque parte-se da falaciosa premissa de que tratar-se-ia de delito de pequeno ou nenhum potencial ofensivo. Desconsidera-se o efeito traumático e danoso que a experiência de discriminação racial provoca em suas vítimas". (AB -21)

[vii] "El mencionado programa, al presentar a la mujer indígena andina como una persona vulgar, sucia, violenta, torpe, tosca, primitiva y de escasa capacidad intelectual, genera un estereotipo que únicamente ocasiona, promueve y refuerza la discriminación por origen étnico y cultural contra estas, antes que fomentar el pleno respeto a su identidad cultural, así como su integración plena a la Nación." (00798-2014-0-1001-JM-CI-01, complaint, p. 1).

[viii] "te gritaban y nadie a veces se quería meter porque nadie quiere perder el trabajo pues, nadie quiere perder el trabajo tampoco, todo el mundo ve lo que te pasa y dice "hay no, pobrecita lo que está pasando", pero en verdad guardar el trabajo y así se suscitó…".(AP-01)

[ix] "me crearon una falta de robo, un dinero que nunca vi, un dinero que nunca agarré" (AP-01)

[x] "incluso una funcionaria me insultaba, me llegaba a decir, de eso tengo evidencia de papel, 'negra rabatonera', cosas así, no?".

[xi] "porque mayormente quien te comete discriminación o te maltrata por tu raza es la persona que tiene poder pues, siempre mayormente es así, la persona que tiene poder y estas personas lo tenían". (AP-01)

[xii] "yo sufrí un año de maltrato porque piensas que todo va a terminar, que se van a cansar, que ya no te van a fastidiar, o sea, pero te das cuenta de que se va agudizando, agudizando y que no hay… y en fin, llegó un momento que a mí no me dejaron entrar a la empresa, increíble! Ese ha sido el detonante para la denuncia y ya…" (AP-1)

[xiii] entonces es un buen aliado, pero no puede hacer mucho tampoco desde la posición… (AP -2)

[xiv] "yo llegue a un momento que dije si yo aparezco muerta en el baño, lo único que tendría que decir es 'no es competencia de nadie', o sea, llegue a un momento en que tenía hasta temor, decía cómo puede ser? De repente estos me pueden hacer algo en el baño, me pueden mandar a golpear, o sea, tienes temor, ¡llega un momento que tienes temor!" (AP -1)

[xv] "hicieron esfuerzos sobrehumanos para poder pues ver la forma de poder entablar, pero sus parámetros normativos no les permitía, o sea, yo veía que ellos hacían renovados esfuerzos, pero que tenían limitantes para poder…" (AP-01)

[xvi] "pero mi gran objetivo era tener un sistema eficiente de denuncia. Que la denuncia por racismo comience a ser trabajada porque en la mayoría de casos, aun cuando es un delito y una falta administrativa, la discriminación, es decir, hay varios mecanismos de sanción, no se aplican y no se aplicaban. (…) la gente tenía los tramites de denuncias contra racismo como queja y no es una queja pues, porque es un delito, no? Entonces pasa como […] se achica el problema y lo que buscó la plataforma era justamente hacer que eso comience a cambiar y fue lo más difícil porque hacer que todo el sistema […] sólo hacer que las denuncias puedan llegar de una institución a otra ya era como un problema casi que teníamos que resolver con la NASA, era como ¿no puede ser tan difícil? Pero sí era bien difícil la interoperabilidad de los sistemas, o sea, yo siempre he hablado de hay toda una burocracia alrededor de la implementación de la garantía de un derecho que es alucinante porque en verdad entorpece mucho que le puedas dar facilidades al ciudadano cuando en realidad es tu deber, no?" (AP – 4)

[xvii] "después es como que entiendes y dices "ah, por eso la gente no denunciaba, por evitar este trago amargo", ese trago, esa pesadilla que se convierte tu vida después de denunciar, no?" (AP-01)

[xviii] "entonces tú haces la denuncia y eso le permite a las personas hacer contigo lo que mejor les da la gana, sobre todo cuando es un ámbito laboral donde ellos tienen el poder, no? El poder de poder hacer contigo lo que mejor creen conveniente. Entonces, en ese sentido es algo que le falta a nuestro sistema, le falta a nuestro sistema y sobre todo la celeridad, la demora".(AP-01)

[xix] "también creo que lo que me fortaleció a que yo siga con la denuncia es que sabía que si la dejaba yo no sobrevivía, con eso te digo todo! Yo tomé en un momento consciencia también que no podía dejar el proceso porque yo llegué a […] sí que hay emocionalmente cansancio, me cansé mucho, física y emocionalmente. Me destrozaron el alma […]"(AP-01)

[xx] "lo hizo suyo en humanidad, o sea, como ser humano él no podía concebir que hubiera racismo y lo hizo suyo, pero no todos, como le digo, tenemos esa bendición de encontrar un abogado que luche tantos años junto a ti, no?" (AP- 1)

[xxi] “no te imaginas, hizo propio, hizo suyo el caso, tocaba toda puerta habida y por haber, toda puerta habida y por haber” (AB -1)

[xxii] “te reconforta ver que hay una persona que te está apoyando para que esto no quede impune, eso era lo que ella hacia conmigo, me ayudaba, me tocaba las puertas y decía ‘esto no puede quedar impune, después de tanto’, pero también aquí había un problema con el poder judicial, demoraba tanto, y hasta ahorita no salió la sentencia…” (AP- 01)

[xxiii] “no teníamos la experiencia de tener un caso, entonces [Geledés] y otros compañeros más en la región nos ayudaron. Entonces, por ejemplo, nos decían que teníamos que generar un tema de protección para las víctimas, para que no se les acose, para que no se les cree más faltas. (..) No hay ninguna institución, a pesar que podemos decir que hay instituciones de Derechos Humanos Afroperuanas, pero no hay ninguna institución afroperuana que sea expertise en ese tema, no? nosotras como CEDEMUNEP tuvimos que aprender como que a la carrera, desde lo que podíamos y apoyamos Azucena desde los ámbitos que podíamos, no? más que todo sobre la incidencia, buscar recomendaciones, hablar con la gente de OEA que teníamos, con la gente del Instituto de qué era lo que debíamos hacer, darles las fortalezas a Azucena porque ella fue muy fuertemente maltratada, o sea, muy, muy fuertemente maltratada.” (AP -2)

[xxiv] “fue muy complicado porque el racismo como tal estaba tipificado dentro de los delitos de Lesa Humanidad, entonces nos faltaba, ahora no lo recuerdo, pero nos faltaba un elemento para confirmar que efectivamente era discriminación racial” (AP -2)

[xxv] “si tuviésemos que encarcelar a todos los discriminadores en el país, o sea, además ese es una cuestión estructural, todos tenemos algo de racista en el país, es digamos, es fuerte la situación, y las 3/4 parte de país tuvieran que pagar prisión por algún ato de discriminación.” (AP -7)

[xxvi] “Porque si tenemos un proceso, primero el proceso nunca se inicia, y si se inicia puede demorar en el poder judicial este... 6 años, 5 años, entonces, ya, como que se va perdiendo digamos, el sentido de la norma, ya ni se previene ni se sanciona, tiene que haber otro tipo de medidas que nos permitan ir combatiendo la discriminación en el país, que venga desde la prevención y temas también vinculados a educación.” (AP 7)

[xxvii] “la gente no le gusta denunciar casos de racismo, por eso este tema mismo que termina uno revictimizándose” (AP-02)

[xxviii] “entonces fue bastante complicado porque cuando comenzamos a buscar apoyo, incluyendo el Ministerio de Cultura, no lo encontramos porque, o sea, ninguna institución era competente para el caso, ninguna! Ninguna!” (AP -2)

[xxix] “como le decía al presidente del poder judicial “porque les tiembla la mano poner que es racismo, si o no, si con todo su nombre? le digo”, se queda callado, pero ahora yo creo que ya se va a dar eso, [dice] “bueno, sí, no, le pusieron la figura del mono, tiene todas las connotacione1s raciales, pero hay que incluirle esto y esto”, te das cuenta?”.(AP-01)

[xxx] “Es que no aceptaban el racismo, no lo aceptaban, (…) pero yo como le digo al juez, porque no llamamos las cosas por su nombre? O no? o no? entonces de ahí ya partía, yo me di cuenta como que para ellos era muy difícil que acepten que existe racismo, como que lo hemos normalizado tanto, no?” (AP-01).

[xxxi] “… entonces este hay buena constatación policial, hay una declaración del vigilante, hay un video incluso que la permiten ingresar ni como ciudadana, ni como usuaria, ni como trabajadora y es una institución pública donde ninguna persona puede restringir el ingreso a nadie y uno de los vigilantes es el que señala que el jefe de recursos humanos es el que dio la orden, entonces a esto se suma otros actos que le ponen la cara de un mono en el marcado de tarjetas, o sea, situaciones que han conllevado a que se genere pues el acto de discriminación.” (AP- 6)

[xxxii] “y se consiguió al final a través de una sentencia que lamentablemente fue revocada por la sala superior bajo un criterio, desde mi punto de vista profesional, no meritaba las pruebas con las cuales se había cometido el delito” (AP-6)

[xxxiii] "'mamita está bien, acá no te vamos a dar la razón, pero tienes otra instancia'… esa fue la única respuesta del juez, porque justo eran tres jueces, así fue… porque no era pues, no era, no habían valorado la figura del mono, como que no existía…" (AP –1).

[xxxiv] "yo llegaba con mis lágrimas en los ojos a decir, o sea, porque la gente… incluso llegó una persona del Estado y me dijo 'qué vas a hacer con una resolución?' (…) yo no concebía que alguien me diga "para qué quiere una resolución del poder judicial? (…) yo creo que ella tuvo que ver que lo que yo luchaba era mi dignidad como ser humano, no la resolución!" (AP -1).
[xxxv] "Que se me diera la justicia como ser humano que soy, porque merezco respeto, como lo meren todos los seres humanos sobre la tierra" (AP -1).

[xxxvi] "cuando hemos estado en estos conversatorios con las poblaciones afroperuanas esa era la palabra, no? que se empleaba, racismo, los jueces, los secretarios, la policía son racistas contra nosotros, siempre nos trata, decían, de mala manera, eh… negrito, negrita, entonces es menoscabar a la persona al momento de relacionarse, no se le da un trato igualitario, entonces eso ellos han dejado clarísimo en los conversatorios que hubieron, no?" (AP – 22).

[xxxvii] "los propios jueces es que no son tan abiertos pues a tener un trato diferenciado, les cuesta demasiado, ese es básicamente creo el gran problema al momento de pensar en implementar cosas favorables a grupos con derechos diferenciados…" (AP -22).

[xxxviii] "...eu acho que ainda temos um conceito que não é totalmente compreendido como um sistema de opressão que hierarquiza pessoas de acordo com pertencimento étnico racial, quer dizer, não é sempre compreendido como sistema de opressão e, na verdade, a nossa lei que tipifica o racismo como crime inclusive contribui negativamente, porque fala assim de crime de racismo quando na verdade é discriminação racial que se está falando ali, e se confunde muito isso tudo, então tem uma dificuldade conceitual e tem também um desconhecimento em geral do arcabouço normativo todo, especialmente a normativa internacional." (AB -3)

[xxxix] "o racismo no Brasil não tem como sua principal manifestação os casos de discriminação racial, acho que essa é a frase correta, o racismo no Brasil tem como sua principal expressão sucessivos e reiterados mecanismos simbólicos, políticos e econômicos que destituem a humanidade das pessoas negras, isso que é o racismo no Brasil. (...) Aqui no Brasil [a discriminação] não é a principal, não é. Então um direito antidiscriminatório está operando conceitualmente como uma variável secundária, ou melhor dizendo, como um sintoma secundário de um fenômeno social distinto..." (AB – 9)

[xl] "aquí en el Perú, no hay una diferencia meridiana entre lo que es racismo y lo que es discriminación racial. (…) Porque el racismo son todas esas oportunidades en la que nos quedamos fuera porque el sistema nunca nos lineo las condiciones para que toda la población afroperuana pudiera decir talvez sus derechos." (AP -27)

[xli] "provar o crime de racismo sempre é muito penoso e a vítima sofre muito, já começa a sofrer na delegacia, porque se ela não tem o acompanhamento de um advogado especializado sobre o tema ela vai ficar lá e a delegacia vai ver aquilo como crime de menor potencial lesivo, vai tomar um chá de cadeira homérico nela e vai lavrar um boletim de ocorrência sem qualquer subsidio importante pra que ele tome providência." (AB -17)

[xlii] "E eu estou aqui dizendo especificamente distritos policiais, tratam a população como um lixo, como se eles não tivessem a obrigação funcional de ouvir o cidadão e a cidadã e registrar o que a pessoa está dizendo aí, não eles lavram o boletim de ocorrência da maneira deles, persuadindo a vítima dizendo "olha, isso não é racismo, se você quer, eu faço aqui como difamação, por injúria, por calúnia, mas isso não é racismo"... e lavra o boletim como ele quer. (...) Porque dali resulta uma prova mal feita, uma instrução mal feita, o promotor não vai ter subsídio, ele já não tem sensibilidade pra lidar com o tema, se chega algo lá meio capenga pra ele, ele vai denunciar de qualquer maneira, isso quando oferta a denúncia." (AB -17)

[xliii] "depende do promotor entender que há justa causa, que não há falta de provas, como normalmente é esse o caso e propor o arquivamento que também, infelizmente, isso acontece muito né..." (AB -3)

[xliv] “O ente público que está lá pra ofertar a denúncia, que é o Ministério Público, sem conhecimento nenhum sobre o tema, porque geralmente os promotores também não são negros, ele fala ‘isso aqui não é racismo, chamar um negro de macaco não é racismo é injuria’, pergunta pra o negro como é que ele se sentiu? Pergunta para a vítima? E ele não faz esse diálogo, ele oferta a denúncia sem conversar com a vítima, ele se pauta simplesmente daquilo que a delegacia enviou para ele e que geralmente é uma porcaria”. (AB -17)

[xlv] “Por exemplo, a lei Caó, a própria agora considera a própria injuria racial como imprescritível, inafiançável, porque assim o racismo ele é tão perfeito que ele cria mecanismos de obstrução das políticas públicas antirracistas muito rápido, por exemplo, nós tínhamos o racismo como crime inafiançável, imprescritível, muito mais duro do que a injúria racial, mas aí acontecia qualquer caso e você chegava na delegacia e ninguém era enquadrado em racismo, todo mundo era enquadrado em injuria racial. Aí agora as pessoas não são enquadradas em injúria racial, as pessoas são enquadradas só na injuria, né?” (AB -2)

[xlvi] “Eu me lembro de algumas audiências em que eu como advogado, por exemplo, tive que chamar prerrogativa porque o juiz, numa delas virou pra mim e disse, na audiência de tentativa de conciliação, nós não tínhamos nem entrado “doutor, eu entendo que no Brasil não há racismo”. Antes de começar a audiência! Aí virou... olhando pra mim falou “nós temos até advogados negros”, falando pra mim, eu falei “excelência então o senhor está se dando por suspeito né, o senhor vai se declarar ... o senhor já está sentenciando né”, “não, não foi isso que eu disse”, “não, foi exatamente isso que o senhor disse, e outra e o fato do senhor dizer ‘olha nós temos até advogados negros’ o senhor quer também me diminuir... o senhor está me colocando... tentando me colocar numa posição inferior a sua e aqui nós estamos em pé de igualdade, a diferença foi que o senhor prestou um concurso público e eu não”... “não, não foi isso”, “foi isso sim e eu estou saindo da sala de audiência e estou chamando a prerrogativa da OAB...” (AB -17)

[xlvii] “(...) reconstrução contínua da ideia de democracia racial dentro do espaço jurídico” (AB-8).
[xlviii] “(...) então eu acho que essa descontinuidade provocada pela não institucionalização dos saberes críticos sobre raça no Brasil e o racismo, e isso é o primeiro marco da teoria jurídica no Brasil” (AB-8).

[xlix] “a primeira coisa que marca um debate sobre racismo no Brasil é o eterno esquecimento. (...) Toda a memória da segregação do Brasil que foi construída nos anos ’50, que estava lá presente nos anos ’50, ao mesmo momento estava lá nos Estados Unidos, nós tínhamos formas de segregação espacial, racializada, nós tínhamos proibição e formas de racialização no mercado de trabalho abertas que não era só boa aparência, era raça mesmo, estavam lá no jornal da década de ’50, todo esse cotidiano ele é enterrado como se ele não existisse, a gente volta sempre a zero a discutir se havia ou não havia racismo no Brasil, tinha que estar sempre discutindo esse negócio. E eu sempre me pergunto ‘o quê que isso, né? o que que é tão diferente no Brasil e nos Estados Unidos?’ e a minha resposta é ‘são as instituições de produção da memória’”. (AB -8)

[l] “tem um racismo institucional bastante presente, que precisa discutir pra além do racismo institucional também branquitude, porque eu fazendo audiências muitas vezes percebo que a audiência oficial ela se inicia depois da audiência... quer dizer, a audiência que vai valer se inicia depois da audiência oficial. Uma última que eu tive, por exemplo, a juíza branca e uma advogada branca também de um autor, de réu no caso, em caso de racismo, e essa advogada e juíza super se identificando, do ponto de vista de trajetória, até de frequentar o mesmo clube em não sei que cidade e já tinha acabado a audiência, mas surgiu todo esse papo e eu falei “putz, será que temos chance nesse processo de uma condenação por racismo?” Quer dizer, enquanto não tivermos mais negros nesses espaços, mas também a discussão já hoje do racismo institucional e da branquitude, como o direito pode se propor a fazer mais isso, inclusive do ponto de vista da doutrina, de ter mais produção.” (AB -3)

[li] “tu le los votos de la sala de la segunda instancia, te vas te dar cuenta que ellos mismos reconocen el problema estructural del racismo, y por eso que dan un paso mas alla. Porque ellos mismos terminan entendiendo el problema, incluso me parece que terminan identificándose con las demandantes. Por eso es un proceso muy interesante. Porque son jueces de segunda instancia, de una región como a de Cuzco, con toda la simbología cultural que tiene ser la ciudad que fue centro político del incanato, el Tawantinsuyu. Creo que ahí ha tenido un cierto nivel de empatía, yo creo que el juez, se fuera un tribual en Lima, no se hubiera apropiado tanto de los argumentos de identidad cultural, por ejemplo, lo que también se plantearon en la demanda porque eran población indígena, como lo hicieron en Cuzco, no.” (AP -30)

[lii] "eu acho que Nova Brasília é o mais emblemático que eu vejo e eu vejo com facilidade que foi violência policial em contexto de favela, quase todas as vítimas negras, aí você tinha... tinha violência policial e... e uso excessivo da força, uso letal da força pela polícia, não tem caso melhor para dizer o que é o Brasil hoje e não se explorou isso né, então assim ai você olha para a decisão e a condenação do Estado é super vaga. Então a ideia seria usar esses casos dessa forma, é o sistema de advocacy gerar um precedente para mudar estruturalmente, mas não foi porque não tinha o perfil, talvez daqui a 2 anos ou 5 anos chegue um novo caso desse, a abordagem seja melhor porque talvez se recomende que se crie uma lei específica, talvez se recomende que se crie uma política pública específica, Nova Brasília no final, enfim, teve uma chacina e no final eles dizem, 'você treina a polícia para utilizar a força', desse jeito, complicado." (AB -1)

[liii] "... ainda existe o monopólio do pensionato do sistema e dos mecanismos por grandes organizações, que são organizações brancas. Então assim eu vejo o movimento muito bem, mas muito mais pela incidência política que gera do que os casos em si, porque eu acho que a chegada até os casos ainda é um caminho que vai demorar um pouco mais é... e eu acho que até para isso para apresentar petições com abordagem que interessa ao movimento negro, porque as petições são apresentadas por organizações brancas com perspectiva branca, então assim, ainda quando toca a questão racial é muito vago, é muito raso a argumentação." (AB-1)

[liv] "Hicimos un plantón de setenta personas negras, (…) fue una manifestación en la puerta de Defensoría del Pueblo y mientras estuvimos ahí, fue como setenta negros reclamando firme el PLANDEPA y al día siguiente Ollanta firmó. Y varias de las organizaciones era como que nuestro plantón fue un éxito y yo decía no, esto ha sido como el juego de este presidente sólo con ganas de "no lo voy a firmar hasta que alguien me lo pida" y ya, (…). É lo iba a firmar sólo que quería un poquitito de buya, no? Quería que la gente le diga… porque además el lema era "Ollanta firma ya", y fue así como "Ollanta firma ya" y Ollanta firmó… entonces, claro, el movimiento era "lo que logramos" y en mi cabeza era como "no"…" (AP -3)

[lv] "Cómo hacemos para robustecer más, pues el carácter mandatorio que tiene que tener la atención a la población afroperuana y que no pase porque alguien considere o no, sino que simplemente tenga un carácter de ley que se tenga que cumplir." (AP – 15)

[lvi] "No momento em que surge a Convenção 169, o decreto 6040, surge outro regime jurídico que permite ampliar um pouco mais as discussões e abarcar temas que o conceito de religião não permitia, como sucessão patrimonial, territorialidade, enfim, formas, modos de existência mesmo. O Candomblé sempre se entendeu assim como comunidades de vida, como famílias de santo, a categoria é família de santo... então o povo gostaria até de ser reconhecido como família, nos mesmos direitos de família biológica para fins de sucessão né e tal, em muitos casos. E então isso começa a aparecer meio que em paralelo ao debate de racismo estrutural- Então ao mesmo tempo que tem o deslocamento é... discursivo de intolerância religiosa para racismo religioso, racismo estrutural, tem outro deslocamento que é de religiosidade para tradicionalidade, de religião afro-brasileira ou de matriz africana para povos e comunidades de terreiros, povos e comunidades de matriz africana". (AB -20)

[lvii] "mas eu acho que ela [etnia] não pode ser dita descolada da questão racial, é raça-etnia, não é etnia e não raça" (AB-10).

[lviii] "Essa possibilidade de aliança só acontece entre os povos, mas o Estado tem mestrado e doutorado em separação e criação de conflitos entre povos ... entre povos indígenas e negros. Isso é muito evidente, é muito evidenciado como a máquina opera e eu digo por que eu sou de um quilombo que nós somos descendentes de índio também, também sou descendente do povo Atikum e a gente viveu até 1994 sem qualquer [...] com problemas como todo mundo tem, mas sem qualquer tipo de divisão. Hoje, agora está menos, mas você chegou a ter campanha para que os indígenas não estudassem nas escolas quilombolas, para não perder sua identidade, olha isso! Aí acontece que tem uma casa que tem 5 pessoas, 2 se autodefinem como índio e 3 como quilombolas, nós somos assim, eu sou fruto desse estrangulamento que o Estado faz, o Estado é crack nisso, e é por quê?" (AB -10).

[lix] "Nosotros no, la agenda de los afroperuanos es absolutamente urbana." (AP-27).

[lx] "no en concepto tradicional de cultura como expresión patrimonial, o industrias artísticas, si no, más bien, el otro lado de cultura: de construcción de las identidades, de reconocimiento de la diversidad, de

identificación de aportes, más bien de evidencias que permitan tener registro de la diversidad y de presencia afroperuana dentro de la construcción del país, más desde ese lado. Que es más complejo y difícil de evidenciar". (AP - 27)

[lxi] "los temas de diversidad, de realmente poner en valor da diversidad, de realmente reconocer la diversidad, creo que es todavía, digamos, si pensara en lógica de proceso, estamos como en un primer momento…hemos avanzado" (AP -23).

[lxii] "primero la agenda intercultural y la agenda antirracismo es una agenda que en el Perú, como te digo, no es un tema que está en la prioridad de la política pública, ni en la de ciudadanos y ciudadanas, salvo dentro de determinados grupos, por ejemplo, para los pueblos indígenas en el Perú el concepto racismo no les sirve, no es un concepto al que apelen (…) ¿Dónde escuchas el tema del racismo? en los grupos afroperuanos, pero tú no escuchas a poblaciones indígenas y amazónicas hablar de racismo… no… no está dentro de su reivindicación, no es su problema, ¿te das cuenta? O sea, ahí nada más es un tema de apropiación de los sujetos políticos, ¿no? entonces la pregunta es ¿quién habla de racismo? ¿desde qué lado? Desde los actores sociales el tema del racismo es un concepto afro, reivindicando el concepto, el concepto de interculturalidad es reivindicado por los andinos…" (AP- 21)

[lxiii] "se racializó la pregunta porque, por ejemplo, blanco, negro, mestizo, indígena" (AP-26).

[lxiv] "é porque etnicidade, ela permite que você trabalhe desde o ponto de vista de multiculturalismo, aparentemente é isso, então parece que são questões culturalistas que na verdade tudo se resolve com diversidade. É que raça, não, a raça já é um conceito que se liga a um processo de produção de violência e de morte, não tem como você classificar as pessoas racialmente e ser uma coisa boa." (AB -19)

[lxv] "Para nosotros, dentro de la academia, dentro de lo que dice en general, las razas no existen, son una construcción social, y que normalmente ha sido usada con la intención de discriminar. Por lo tanto, hablar de raza es una opción peligrosa, que la mayoría de gente no quiere usar, o sea, hay una visión muy negativa de la palabra. (…) la etnia no tiene que ver tanto con su color, si non la etnia tiene que ver con sus costumbres, con sus cosmovisiones, con sus creencias; la raza tiene que ver con los rasgos físicos. Entonces, cuando a una persona lo discriminan, suele ser por sus rasgos físicos, no tanto… nadie sabe sus costumbres cuando te discriminan, entonces yo no sé si esa es la mejor forma de ver el tema, ¿no? El tema del racismo tiene que ser analizado de una manera, evidenciando por qué la persona es discriminada. Yo puedo decir: "yo tengo costumbres de blanco", pero ya, pero te discriminan porque tu cara es de negro, todos sus costumbres y creencias pueden… pero por su cara, por eso te van a discriminar…" (AP – 28)

[lxvi] "é fácil pra o racismo sofrer esse polimento do verniz da etnia, ela existe e ela tem que ser dita, mas eu acho que ela não pode ser dita descolada da questão racial, é raça-etnia, não é etnia e não raça. A gente vai entrar num debate da biologia, não né, acho que não dá mais, não tem mais espaço pra isso, mas você a essa altura do campeonato você vê as atrocidades que acontecem com os negros e com os índios e você diz que não vai falar de racismo porque você quer discutir etnia? É muita violência, muita violência!" (AB - 10)

[lxvii] "ao aperfeiçoamento de instrumentos jurídicos internacionais e regionais capazes de reforçar a luta contra as manifestações de racismo, discriminação e intolerância no mundo" (AB -22)

[lxviii] "eu participei de algumas das audiências temáticas na Comissão Interamericana no âmbito da OEA, onde em todas elas nós fazíamos como recomendação, tanto a criação da relatoria específica pra Afrodescendentes, quanto o debate e a criação de um GT específico pra debater a questão da Convenção" (AB-17).

[lxix] "O Brasil foi o único que criou uma estrutura a nível de Ministério, mesmo a gente sendo fraquinho né, dentro da estrutura total é uma estrutura de Ministério, então você tinha mais espaço para poder falar. O Brasil foi o único que fez isso, os outros [países] que eram pequenas instâncias mesmo de Direitos Humanos, as coisas eram pequenas. Então é obvio que a nossa força, o espaço que a gente tinha, passou a ser cada vez maior, então é verdade que a gente articulava as coisas e puxava o resto, né? (...) Uma outra coisa que a gente fez e que eu acho importante é essa relatoria sobre afrodescendentes na OEA, quer dizer, isso a gente pagou, a primeira a gente pagou, foi "nós queremos porque nós queremos, tá, tá, tá, paga", nós pagamos e aí saiu... (...) Pagamos literalmente porque não tinha dinheiro, não tinha estrutura." (AB-14)

[lxx] "buscavam transportar para a OEA o ambiente politizado e propositalmente contaminado da Conferência da África do Sul" (AB- 22).

[lxxi] "mas pelo fato de ter poder econômico então ele [USA] tinha, sempre teve, um papel importante de incidência. Canadá em alguns momentos acompanhava essa maior abertura do documento e aí puxava México, puxava alí alguns países do Caribe inglês que tem uma realidade afro bem distinta dos países hispanos né, então a gente foi trabalhando isso país por país basicamente" (AB-17)

[lxxii] "eles chamam de discriminação agravada, então a discriminação agravada é racismo mais sexismo, racismo mais LGBTfobia. Essa ideia da discriminação agravada é muito importante porque ela não diz que ser LGBT, ser mulher, ser índio, ser identidade 'x' ou etnia 'x' ou coisa parecida é o problema, o problema é quando o racismo produz um efeito deletério em alguém somada aquelas discriminações oriundas da condição de gênero, sexualidade, gênero, identidade de gênero, idade, condição civil e vai somando aquilo tudo né, tudo que já era o rol de discriminações que passam ser como consideradas um agravo ao racismo." (AB-13)

[lxxiii] "la negociación se estancó precisamente porque no había un consenso en la definición de racismo, casi dos años, claramente, para poder definir racismo." (AP-29).

[lxxiv] "si tú ponías el tema de esclavitud y colonialismo en una Convención iba a generar… en una definición, iba a generar controversias." (AP -29)

[lxxv] "utiliza poco el lenguaje de Durban, pero esa relación más de esclavitud y de colonialismo está en el Plan de Acción de Afrodescendientes de la OEA". (AP -29)

[lxxvi] "não era sociológica a preocupação, mas pragmática do ponto de vista diplomático e jurídico." (AB -22)

[lxxvii] "sempre um tema de enorme sensibilidade política." (AB-22).

[lxxviii] "Declaração sobre a Raça e o Preconceito Racial, de 27 de novembro de 1978, aprovado por aclamação pela Conferência Geral da UNESCO".

[lxxix] "a de que racismo, como categoria analítica, não mais existe" (AB-22)

[lxxx] "E essa preocupação está presente tanto na definição contida na Declaração da UNESCO de 1967 como implicitamente na de 1978. Subjacente às duas citadas definições está a noção de que o conceito de racismo deve referir-se antes à função do que ao conteúdo dos discursos. Em outras palavras, o foco da definição não deve estar centrado num conteúdo ideológico particular, mas na intenção ou consequência de qualquer assertiva determinista sobre diferenças entre grupos de pessoas. Creio que isso se preservou na definição de racismo presente na Convenção Interamericana". (AB -22)

[lxxxi] "ya y te voy a decir algo en infidencia, hay un país de la región que lideró el proceso, que hizo esas propuestas como racismo institucional o como eh que la carga de la prueba la tenga el racista y no la víctima, que ese país fue quien pidió retirar esas propuestas, tu ya te debes imaginar cuál país es [risas] y lo único que cambió. (…) Hay mucho doble discurso ahí… no es fácil por eso te digo, o sea, el mismo partido, quien lidera el proceso, quien lideró el proceso en Durban, quien maneja los conceptos de racismo estructural, carga inversa de la prueba, al momento de la negociación cambia el gobierno, pero sigue el mismo partido y te cambia y te retira textos propuestos por el mismo país, ¡ahí hay algo que está fallando!" (AB -29)

[lxxxii] "fica ruim, um conceito muito incompleto (AB-3)"

[lxxxiii] "que é uma ideologia com certeza... com certeza, mas tem aí uma práxis institucionalizada, uma práxis no processo de acesso a bens e serviços" (AB-13)

[lxxxiv] "como uma manifestação viciante, patológica, ilícita..." (AB -19)

[lxxxv] "as ideias não ficam no campo das ideias, se ficassem não teria problema nenhum porque a pessoa racista ficaria lá se envenenando com a própria neurose, né? Mas isso é metabolizado em ações e que interfere nas dinâmicas das pessoas negras e não negras, porque para as pessoas negras gera um efeito e para as pessoas não negras gera o efeito contrário, então pronto, o conceito de racismo institucional também vai dizer que tem uma dimensão conceitual e que tem uma dimensão prática, que ela produz efeitos, então sobretudo tirar do campo da ação e da materialidade é uma outra perda que precisa ser revista, precisa ser recolocada" (AB-2)

[lxxxvi] "Que não é diferençazinha, é diferença grande porque discriminação indireta não é racismo institucional, não é, conceitualmente, aqui não é uma briga pela palavra, (…), discriminação indireta e racismo não." (AB -9)

[lxxxvii] "Então o quanto mais você diluiu o conceito, mais difícil fica de tachar o Estado como racista" (AB -17)

[lxxxviii] "nós não tínhamos essa capacitação há alguns anos atrás, hoje a gente já consegue fazer isso, e se você emplaca um artigo nessa Convenção que fale especificamente do racismo institucional, nós temos basicamente tudo aí pra demandar o Brasil, por exemplo, sob todas as situações do cotidiano do afro-brasileiro." (AB-17)

[lxxxix] "o conceito de discriminação indireta pode ser útil como ferramenta para o diagnóstico de políticas públicas supostamente 'neutras' do ponto de vista racial, mas cujo resultado gera ou reproduz desigualdades raciais. (…) é estratégico para o desenho dos instrumentos de políticas públicas e privadas capazes de impulsionar a promoção da igualdade racial." (AB-21)

[xc] "O documento do Peru era o menos completo de todos os apresentados até o momento à presidência do Grupo de Trabalho. Seu conteúdo refletiria em boa medida as posições defendidas posteriormente pelo representante do Peru durante as reuniões do Grupo em 2005-2006. Em diversas ocasiões, o representante peruano buscou relativizar a gravidade do problema da discriminação em seu país, apontada em estudo apresentado pelo Centro de Estudos de Justiça das Américas (CEJA) (efetuado por solicitação expressa de resolução de iniciativa brasileira aprovada na XXXIII Assembléia Geral da OEA, realizada em Santiago) e em intervenções de representantes da sociedade civil." (AB-22)

[xci] "en temas de negociación a veces es mejor ser más pragmático y dejar pasar algunas cosas para que los temas de fondo pasen" (AP – 29)

[xcii] "cuando uno empieza con la academia brasilera y los otros países es especialmente a ese nivel los otros países no llegaron, entonces eh… no hubo el nivel de cuestionamiento, de democracia racial como le llaman en Brasil, el tema del mestizaje como una forma de asimilación como otros países de la región, como Perú, o sea, para decir que no somos racistas tenemos la clásica del mestizaje, todos somos mestizos, todos tenemos de todo lado, "el que no tiene inga, tiene de mandinga", somos el crisol de razas, eh… y está muy en el subconsciente este… latinoamericano en general…" (AP -29)

[xciii] "por várias razões, esse [ações afirmativas] era um tema tabu para muitos governos da região. A alegação mais comum dos que rechaçavam a incorporação das medidas especiais em nossa futura convenção era de que essa era uma pauta que já começava a ser contestada 'até nos EUA' (AB-22).

[xciv] "Eu defendia que deveríamos inserir no texto da Convenção as medidas especiais de ação afirmativa como obrigações dos Estados Partes. Essas obrigações serviriam para orientar a norma jurídica doméstica, tornando-a mais efetiva na promoção da igualdade racial. Creio que conseguimos convencer a maioria dos Estados de que essa obrigação em nada comprometeria o princípio da isonomia e da igualdade de todos perante a lei, antes o aperfeiçoavam. A posição do Itamaraty era apoiada integralmente pela SEPPIR. Entendíamos que as medidas de ação afirmativa constituíam um instrumento efetivo para a superação da exclusão social em que se encontravam milhões de vítimas de racismo e discriminação racial nas Américas. Colômbia e México nos apoiaram desde o primeiro momento." (AB -22)

[xcv] “Esse debate foi enfrentado muito pesadamente, porque inclusive alguns países africanos não entendiam isso como uma coisa legal de você estar debatendo política, mas assim o processo de reparação é uma reparação individual, então a gente tinha conflito ali, a gente vence isso em Durban” (AB-10)

[xcvi] “mas aí como eu acho que a reparação que o Estado não tem como quantificar isso, acho que é incalculável, em termos monetários é incalculável, e é difícil também por conta do caráter miscigenado do povo, né. (...) Então eu acho que o Estado ele tem que ter política não só de... eu acho que inclusão é uma coisa assim que lembra muito a minoria. O Estado tem que ter política para nosso povo, política de valorização da população em todas suas dimensões, econômica, cultural, educacional que vai possibilitar uma situação de bem-estar social para todo mundo. Eu acho que a reparação é isso, é fazer o que não foi feito desde a abolição da escravidão...” (AB -6)

[xcvii] “os movimentos de reparação internacional, eles [Itamaraty] são contrários, essa luta internacional de reparação, normalmente é capitaneado pela Nigéria mais alguns países da União Africana. É que o Brasil praticou a escravidão como país livre, aproximadamente por 40 anos, o Brasil depois de independente continuou praticando a escravidão. O Brasil ao invés de ser beneficiário das lutas de reparação ele seria credor né, por indenizar os países africanos, por conta desse período do Brasil, enquanto Estado independente, continuou praticando ações durante a escravidão. Eles [diplomatas] tinham muito receio dessa discussão, eles não tinham muito condições de ancorar determinadas lutas internacionais.” (AB -18)

[xcviii] “hay una política para todas las personas víctimas del conflicto armado, de la violencia, digamos, que hubo en ese momento. Sí hay una política estatal en torno al tema y efectivamente hay una de las lecturas de la Comisión de la Verdad es que es una cuestión, digamos, racial y… hay mecanismos de reparación, pero sí es importante señalar que hay, que sí se han planteado mecanismos incluso becas para los hijos de personas que han sido asesinadas, ¿no? Pero institucionalmente, como país, nuestras instituciones, incluso educativas, a nivel de educación superior no tienen las condiciones para generar discursos favorables a la diversidad cultural”. (AP – 8)

[xcix] “No hay tema de reparación, no es un tema visto acá, o sea, no hay como una reparación entendida como un tema de una agenda étnica, no?” (AP -21).

[c] “tendría que incluir a los descendientes de esclavos, pero también a los descendientes de indígenas que sufrieron todo eso. Y ese es cuasi 70% de la población. Habría que llegar a eso.” (AP -28)

[ci] “Es que aparecer los personajes negros cambie la historia, o sea, es importante si, pero si no releemos historia y no reescribimos historia van a ser los personajes negros esclavizados que siguen siendo esclavizados, sin ninguna otra agencia o seguirán siendo las cocineras, las deportistas, los deportistas recientes, no? (…)Entonces, de qué me sirve que estén todos los personajes afroperuanos patriotas si es que el profesor me va a regresar siempre a ser esclavizado, a ser tonto, a llamarme para que baile en el acto de 28 de julio por fiestas patrias, si me va a decir que mejor que mi mamá traiga un postre porque cocina rico, no? que ya no me dedique a estudiar sino que mejor no me dedique al futbol porque puedo ser bueno, no? entonces, el debate no está solo en qué va en el texto, es que tienes una formación vertical y racista abiertamente y que además cuando les dices a los funcionarios públicos esto es racismo, es como “no, no, están exagerando”. (AP -3)

[cii] “é recente, vários Estados já tinham ratificações, já tinham ratificado especificamente e eu vi o momento em que alguém falou “está na hora de adotar” [a Convenção de Belém], então assim eu acho que essa virada política vai acontecer para algumas questões raciais agora, nos próximos anos, a gente espera, mas é lento, é lento e, enfim, a gente está muito atrasado...” (AB -1)

[ciii] “O que é o Estado mesmo? Você sabe responder? Para mim é isso, é um conjunto de normas, um desenho normativo feito por uns e para uns, e nesse para uns, nós, negros, mulheres não somos uns, né? Mas o Estado não foi feito para todos, por que não foi feito para todos? Porque feito de um único jeito e com um único modelo, com um único regramento é obvio que esses todos são muito iguais e nós não somos ou os desiguais, os diferentes vão ficar porque vai prevalecer o pensamento de quem fez e para quem se fez e aí não é às vezes, é sempre na discriminação, isso é um fato, mas eu queria também dizer que às vezes nem sempre tem a visão de quem está ali, às vezes [a pessoa no governo pode ser] até bem intencionado, mas está culturalmente amarrado, epistemologicamente distorcido.” (AB -10)

[civ] “Acabamos de pasar el 5 de este mes, el 5 de junio, de conmemorar diez años de unos sucesos que creo que han hecho que nuestro país no sea el mismo, son los sucesos de Bagua, muchos le llaman el Baguazo, (…) que marca un hito en la historia de nuestro país, un hito lamentable y que en estos diez años, después de estos hechos de Bagua, creo que han exigido que el Estado vaya justamente consolidando el trabajo vinculado a los pueblos indígenas de manera particular.” (AP – 25)

[cv] “Todavía el indígena es visto como incapaz” (AP- 26)

[cvi] “entonces el Estado tiene que un poco llevarlo de la mano y eso significa la invasión de sus territorios, eso significa que la idea de la modernización como una idea civilizatoria del desarrollo” (AP - 26)

[cvii] “no le genera mucho conflicto a nadie” (AP- 21)

[cviii] “Pero sí es cierto que el racismo en el Perú, aun cuando tiene dos grupos importantes, no es únicamente a población afroperuana o indígena, no?” (AP -4).

[cix] “Entonces había que garantizar ese sistema y ahí había sus retos, pero también había que trabajar en que la ciudadanía deje de ser racista o las nuevas generaciones entiendan el racismo como una tara que se ha ido superando.” (AP- 4).

[cx] “sin duda… sin duda! Y la pierde no sólo para el tema de población afroperuana, sino que…si es que se revisara la primera versión que se tuvo de esta ley y se pusiera en [una] parte los aportes que brindaron las organizaciones desde sociedad civil, tanto indígena como afroperuana y [en otra] lo que terminó saliendo es un documento al que también le podaron un montón de cosas, no? (…) Cuando pasó por los filtros por los que tuvo que pasar - y estoy hablando desde la Alta Dirección de acá mismo [Ministerio de Cultura] y estoy pensando en el gabinete de asesores -, (…) no llegaban a comprender la necesidad pública que se estaba tratando de atender con esta propuesta, no? Me comenta que recibió comentarios como “el problema previsto para esta ley, como que quieres meter preso a todo el mundo ¡eh!, me parece que la ley está muy fuerte y no entiendo”. Cosas en ese tono, no? Y cuando la lectura tendría que ser más bien de otro sentido, probablemente, de ir a la cuestión finalmente hasta más técnica de una propuesta de ese tipo, pero las situaciones fueron, en general, como de que el proyecto, el documento, la propuesta tenía el volumen muy alto y que había que bajarlo unos cuantos tonos, no? con todo eso se dio vuelta…” (AP -15)

[cxi] “los temas contra el racismo tal vez siempre han sido un poco más vendibles porque cada vez que hay una situación de racismo que se hace pública, como un hecho en un banco, en un supermercado, etc., cobra un poco más de carácter mediático, entonces se convierte en un tema sobre el cual el Ministerio alza la voz con más claridad, le da más peso” (AP -15)

[cxii] “en la prevención, la sanción de la discriminación racial, pero también en la valoración positiva de las culturas, la diversidad cultural en el país” (AP-8)

[cxiii] “lo que ha buscado el Ministerio desde hace varios años es visibilizar esto [el racismo] como un problema público, que es algo que no se sabía y en ese marco se crea una suerte de mecanismo de visibilización, a través de la difusión de contenidos y de orientación a la ciudadanía que se llama “Alerta contra el Racismo”. La idea de esto es visibilizar, por una parte, esto como un problema público, pero también generar como un sentido común de rechazo a la discriminación racial, precisamente por esa alta tolerancia que existe.” (AP -8).

[cxiv] “a fines de 2017 una encuesta nacional de percepciones, primero, y la percepción es que… bueno, ustedes deben haber visto las cifras, ¿no? Somos un país… nosotros mismos consideramos que somos racistas, pero no necesariamente eso lleva a una conciencia digamos, individual, de ese racismo” (AP -8)

[cxv] “Este es un tema…muy difícil de tratar en el país porque se tolera, no hay una reflexión y entonces, cuando trabajamos con servidores públicos tenemos que empezar a incluso construir narrativas personales, porque muchos hemos sido víctimas, nuestras familias, nuestros familiares y a partir de esos procesos es que se puede entrar a trabajar incluso el tema de la interculturalidad y enganchar, digamos, con todo lo que es la construcción de servicios pertinentes. Si no hay esa predisposición y esa reflexión difícilmente se llega a lo otro.” (AP-8)

[cxvi] "la problemática del racismo en el Perú es una problemática histórica, es una problemática estructural y es vigente y altamente normalizada" (AP -8)

[cxvii] "Era la primera vez que un Ministerio se encargaba de esto y el discurso que defendíamos nosotros era que el problema del racismo era como cualquier enfermedad que no quieras reconocer, ¿no? Que hasta que la nombres y sientas que en realidad está ahí presente todo el tiempo, todos los días…, si no lo podemos ni siquiera enunciar nosotros, decía yo, ya ¿de qué estamos hablando? Qué le vas a decir a la gente que haga? ¿Qué vas a pedir que se interpele, si nosotros mismos no nos podemos interpelar?" (Ap -4)

[cxviii] "desde los actores sociales, el tema del racismo es un concepto afro, reivindicando el concepto, el concepto de interculturalidad es reivindicado por los andinos…" (AP- 21).

[cxix] "yo creo que, por ejemplo, todavía el concepto de Interculturalidad no se encuentra con el concepto de racismo, o sea, no tienen como puentes, no? Y aparecen como dos conceptos disruptivos, aparecen, digamos, en la discusión de la política pública todavía en una sintonía muy baja" (AP – 21).

[cxx] "[la interculturalidad] se ha ido convirtiendo en el lenguaje del funcionario público que… lo saben, lo apelan, digamos, cuando ven que alguien es diferente habla de Interculturalidad, pero nada más." (AP – 21).

[cxxi] "(…) El tema afroperuano es el tema más complejo porque no es tan fácil como la lengua digamos o como los espacios de capacitación, de formación de la ciudadanía en su propia lengua, es más complejo por eso porque hay que ir más en detalle probablemente." (AP - 25).

[cxxii] "(…) cómo desde esta instancia están empezando a ajustar las competencias que deben tener los funcionarios y funcionarias públicas para, en términos de interculturalidad. Cómo desde el Estado logramos tener claridad en estas competencias interculturales, cómo exigimos estás competencias interculturales en nuestros funcionarios y nuestras funcionarias y cómo logramos que esta interculturalidad finalmente se traduzca en espacios de atención directo a la ciudadanía con pertenencia cultural." (AP – 25).

[cxxiii] "Yo creo que acá las organizaciones afro además son muy débiles, chiquitas, fragmentadas, ¿no? (…) a mí también me decían 'pero por qué lo indígena es más grande, te come el 90% de todo el Viceministerio y lo afro es tan poquito'…porque, en realidad, es (…) no sabíamos dónde agarrarlo, no teníamos como por dónde mirarlo (…). Yo misma lo miro después de años y digo: 'sí, pues, no lo entendí tampoco yo con claridad, ¿no? no sabía cómo hacerlo'. (…) Entonces, el tema afro, yo lo que creo es que requiere ser pensado más allá de la reivindicación política, social que se agota en una hoja, o sea, necesita ser pensado, recuperado y yo creo que eso no lo teníamos". (AP – 21)

[cxxiv] "La agenda política en las organizaciones era muy pobre, es muy reivindicativa, pero es pobre… pobre… pobre en contenido, entonces te quedas sin nada y que es un funcionario pobre en contenidos, entonces tiene dos líneas y ya no sabe más qué decirte: 'y porqué usted hace eso? Ah y porque es bueno… ¿y por qué más? no, porque es bueno…'. ¿Te das cuenta? o sea, no leen, no tienen idea, entonces nosotros que tratábamos de… a mí me ha ayudado mucho que yo tengo un piecito puesto en la academia también, entonces, jalaba a mi entorno y a mi red también adentro, no? y conocía además a la gente que hace, que piensa y que escribe…" (AP – 21)

[cxxv] "en el propio Ministerio, hay personas que defienden los temas de los pueblos indígenas [que] no están convencidos que los temas afrodescendientes son importantes." (AP- 20)

[cxxvi] "Para esta zona de Yapatera, ahí un tema que también ha salido, en uno de estos últimos viajes que hemos tenido, el tema de la voz. Por ejemplo, las mujeres, cuando van a tener un tema de atención directa, por un tema de violencia (sea física, familiar), entonces, la voz es un elemento que impide que las mujeres afroperuanas vayan: no las aceptan porque sienten que tienen una voz muy fuerte y entonces no quieren que otras personas, por ejemplo, otros operadores las escuchen, entonces hay que tener espacios preparados para la atención a la mujer afroperuana (…). Esos son elementos de interculturalidad que deben incorporarse, entonces yo creo que ahí, en estos espacios…en Yapatera, ahí todavía tenemos mucho que aprender, para ver qué cosas son, qué elementos vamos a ir incorporando como parte de la atención que deben tener mujeres, hombres, población afroperuana, no?" (AP – 25)

[cxxvii] "… varios de los estudios de los que se hacen, lo que más o menos revelan es que denunciar para una mujer actos de violencia termina siendo una revictimización y una exposición a posibles nuevos actos de violencia. (…) tiene una investigación sobre la violencia hacia las mujeres negras en el Perú y de las que van a los Centros de Emergencia Mujer y claro, el mayor problema es que les crean, que les tomen la denuncia, o sea, de verdad, es como este dialogo de 'pero a ti te han pegado?', 'ustedes que son tan fuertes, tan reclamonas, empoderadas, corpulentas, te han pegado?' Entonces, claro, no voy a ir a denunciar, o sea, si esto es lo que me voy a encontrar ya ni siquiera llego a denunciar." (AP -3)

[cxxviii] "En tanto las mujeres afrodescendientes, en el período esclavista, se dedicaban a las labores más subvaloradas, desprestigiadas (vender, limpiar… la venta de animales supone matarlos, supone destriparlos y todo eso y, evidentemente, eso no lo hace pues en un quirófano, digamos, en las condiciones en las que estas, en la suciedad) y estos elementos que se asignan hoy a las personas afrodescendiente tienen como punto de partida todo este marco de la actividad productiva que se le confinó a los hombres y mujeres afrodescendientes. Y yo creo que muchas de las representaciones que existen no han problematizado estos elementos que fueron asignados a la población negra esclavizada. (…) ¿Cómo el Estado se relaciona con la población afrodescendiente en el marco de la cultura, ¿cómo?, ¿cómo mide el Estado la cultura afrodescendiente? Porque cuando se trata de levantar la cultura terminas haciendo estas exposiciones de comida, ¿no? "platos típicos" dicen, este… y tú comienzas como a reproducir todo esto, ¿no? Además, sin una lectura clara, digamos, porque si lo quieres hacer, a mí me parece bien, pero la pregunta es ¿cómo lo colocas? ¿desde dónde lo colocas? ¿cómo lo potencias para no terminar abonando al estereotipo, sino más bien para desmontar esto que se ha convertido en una representación de lo afro y darle una lógica distinta? Y ahí creo que hay errores serios, hay errores serios, o sea, no se termina de problematizar este tipo de prácticas que requieren ser repensadas y revaluadas". (AP- 23)

[cxxix] "esse quadro Bolsonaro mostra a importância da SEPPIR, né? De retrocessos que a gente está vivendo no Brasil mostra a importância de ter um órgão como a SEPPIR, que deixou um legado bastante interessante, na instrumentalização do governo em políticas públicas com recorte racial, foi a única com recorte racial. A questão das cotas mesmo foi super importante nesse processo, a lei 10639, a questão da saúde da população negra e o início também da discussão da violência contra a juventude negra, que é fruto de uma discussão da SEPPIR levada à presidência da República... Então eu acho que o pouco que foi feito é bastante significativo, mas muito há de ser feito ainda para chegar ao nível aceitável na condição da população negra no Brasil..." (AB -6)

[cxxx] "a estrutura de oportunidades da política pública condiciona as disputas institucionais das representações dos movimentos porque quem já tem uma boa estrutura de oportunidades vai lutar pra manter, não vai querer que a outra tenha também. Quem não tem vai montar pra entrar com exclusividade, não vai querer compartilhar com outra, não é uma opção, e assim, é o próprio Estado..." (AB -7)

[cxxxi] "[a SEPPIR] originalmente era pra ser um braço executor da presidência para o antirracismo estatal, era antirracismo e no antirracismo a produção de política de igualdade racial era um dos elementos, por isso que eu estou dizendo que a SEPPIR nunca foi o que deveria ter sido, já entrou no final, (...) já sem condição, já rebaixada, na sua missão rebaixada, quer dizer, o antirracismo volta, mas volta como um termo ali, mas não como ação." (AB -12)

[cxxxii] "De uma noite para a outra mudou-se o desenho e nós recebemos a informação pela mídia, de que o Governo Lula seria composto por tais e tais Ministérios e, que a SEPPIR — ou o órgão que estava planejado, voltado para a questão racial — não fazia parte." (Matilde Ribeiro)

[cxxxiii] "A gente precisa dar passos à frente para enfrentar problemas que cronicamente vem assolando a comunidade como a morte. Então assim tem que garantir o acesso a cotas nas universidades, as políticas de saúde, de educação, mas você também tem que fazer com que essa roda aqui pare de girar porque ela é destruidora. Então se você não conseguir incorporar o debate sobre o genocídio né, que é um verdadeiro genocídio (...). O impacto da ação da polícia e das forças armadas na população negra já estavam colocadas aí, sabe?" (AB -13)

[cxxxiv] "Deveríamos ter dado uma ênfase ainda maior à questão da juventude dos grandes centros urbanos, principalmente quanto à violência contra os jovens negros nas grandes cidades, com a construção de

políticas e uma maior conscientização dos jovens negros das favelas e periferias dos grandes centros urbanos sobre seus direitos." (Edson Santos)

cxxxv "Deveríamos ter dado uma ênfase ainda maior à questão da juventude dos grandes centros urbanos, principalmente quanto à violência contra os jovens negros nas grandes cidades, com a construção de políticas e uma maior conscientização dos jovens negros das favelas e periferias dos grandes centros urbanos sobre seus direitos." (AB-9)

cxxxvi "encontrava problemas objetivos né, que eram a dificuldade de entendimento do próprio governo sobre isso evidentemente." (AB-9)

cxxxvii "mesmo a nossa esquerda progressista ainda precisa entender de questão racial." (AB-15)

cxxxviii "Então a gente achava que focalização territorial, concentração na questão racial e foco nos jovens do sexo masculino podia produzir alguma ação efetiva tanto naquilo que a gente chamava em políticas sociais para [...] produzir os que nós chamávamos de "corredores de vida segura pra esse jovem", ou seja, que a gente pudesse, pela política social, criar um espaço na vida desse jovem, espaço num duplo sentido, tanto espaço territorial quanto espaço de vida, né? Espaço de tempo na vida para que esse jovem pudesse se proteger da violência nas suas várias formas. E por outro lado, o que a gente chamava de "aperfeiçoamento institucional" que é uma ação de combate ao racismo mais diretamente, de responsabilização de violência policial." (AB -9)

cxxxix "inúmeros documentos científicos foram produzidos mostrando o índice de letalidade policial por parte do Estado, mas me parece que essa narrativa ela tinha dificuldade de ingressar no sistema de justiça é.. a necessidade de ingressar no sistema de segurança pública e agora muito pior ainda". (AB -18)

cxl "Havia um receio no Itamaraty, (...) no discurso do genocídio que o Brasil poderia ser condenado internacionalmente, porque as leis no caso contra o genocídio são condenações pesadas, então eles não gostam que saia essa narrativa que no Brasil está havendo um genocídio por causa da Comissão Nuremberg, então fazem um esforço muito grande pra evitar que essa imagem do Brasil que produz genocídio contra indígenas e contra negros possa sair." (AB -18).

cxli "... mas dentro do Ministério [relações exteriores] impossível, porque não adianta, você vai falar e a pessoa fala "não, não, você fala demais", é assim que funciona, (...). Ou seja, você não consegue, é muito difícil você conseguir furar um certo pensamento definido de que essas coisas não são importantes." (AB - 14)

cxlii "então fui muitas vezes a África, visitar países, estabelecer relação até que nem sempre tão efetiva como o Ministro de Indústria e Comércio ou das Relações Exterior para tratar de... mas como há uma identidade na população brasileira com a população africana era importante estabelecer esses laços e o governo Lula tinha o entendimento da necessidade de priorizar a relação sul-sul." (AB -6)

cxliii "Os africanos também não tinham nenhuma proposta efetiva quanto a um trabalho junto à SEPPIR, não havia exatamente uma agenda sobre a questão racial. O que eles tinham era uma percepção muito interessante. Perguntavam: "Onde estão os pretos do Brasil? Por que em geral as delegações brasileiras são brancas, são homens e brancos?". Dizem que o Brasil é o segundo país em quantidade de negros fora da África, e onde eles estão?". (Matilde Ribeiro)

cxliv "Eu sempre lembro que o último genocídio formalmente reconhecido no território europeu foi durante a guerra da Bósnia, foram cerca de 8500 mil bósnios muçulmanos assassinados em '95 num episódio da guerra, o Tribunal Penal Internacional reconheceu. A gente tem mais do triplo disso anualmente de homens negros assassinados no Brasil, mas porque que o país não para discutir isso? Parando todas as outras coisas pra depois discuti-las? Porque essa vida tem menos valor e isso vem do racismo que hierarquiza o valor das vidas, então, quer dizer, no final das contas, tudo no Brasil se discute antes das vidas negras, quer dizer, desse projeto de desigualdade de país, eu acho que no direito, infelizmente, se a gente olhar de forma não fragmentada vai ver que é um reflexo de todas as outras áreas que olham para essa questão de discriminação, de desigualdade e aí quanto mais você dilui, menos você, de fato, trata da questão do racismo." (AB -3)

[cxlv] "Pra mim assim esse foi um dos grandes erros estratégicos da minha geração, não ter antevisto, como foi o cenário americano, que o sistema penal ia ser a forma de desorganizar a comunidade negra na sociedade brasileira. Não foi percebido que não era possível colocar todas as fichas, durante essas décadas, em ações positivas sem enfrentar o autoritarismo do Estado, sem enfrentar o racismo das corporações, porque tudo isso ficava num diálogo muito tímido né. A gente só encontrou agora uma voz mais potente com os movimentos sociais de mães, de pessoas que foram atingidas diretamente por essa violência racista. Mas é a primeira vez na história brasileira (...) que há uma geração de jovens que já tem um desencantamento, (…) "a gente vem pra universidade e a gente é revistado na porta da universidade e a gente é revistado não sei quantas vezes na porta da universidade". Então, uma geração que já tinha sacado que você pode fazer a ação afirmativa que você quiser, mas o lugar de ser negro vai ficar determinado enquanto essa força repressiva não for discutida, não for repensada. (…) eu não acho que isso seja o resultado da ação afirmativa, acho que é resultado da reação do sistema racista, que busca novas estratégias e acho que assim, nós não conseguimos dar uma resposta. Acho que a constituição de '88 foi extremamente tímida nas reformas institucionais com relação as forças armadas e as polícias e é isso que nós estamos vivendo hoje né? A gente não reformou, não mudou, não encarou e essa galera veio com tudo, com o pouco que se avançou eles estão agora, cavaram nessas décadas aí um retrocesso total." (AB-9)

[cxlvi] "a gente produz e aí a gente esbarra nas respostas mais fácies, eu diria. Quais são as respostas mais fácies? Urgentes, necessárias, mas mais fácies? Cotas, implementação da lei de 10639, por exemplo" (AB -9)

[cxlvii] "Evidentemente, cuando empieza el plan, el plan era muy ambicioso, no? quería transversalizarlo todo… quería incorporarlo todo, pero en la ruta el plan va cambiando porque claro, para sacar un plan tienes que consensuar con todos los sectores y ahí hay también una negociación, no? ¿qué puede cumplir?, ¿qué no puede cumplir?, yo puedo, yo no puedo." (AP- 23)

[cxlviii] "las orientaciones tienen efectivamente cuasi todo, pero pasar del escenario de las orientaciones que son sugerencias y propuestas al plan hay todo un proceso de formulación, primero técnico, y después político. Y en lo político la gente no siempre, cierto, acepta incluso cosas que técnicamente se dan como válidas, no, entre los sectores que participan en el plan. Ese es la razón..." (AP -27)

[cxlix] "alguns Ministérios se viam como neutros e ao se ver como neutros não se viam como brancos, acho que o Ministério da Justiça era esse, que era técnico, neutro e aí não era branco, portanto o que saísse do Ministério teria uma visão de justiça intrínseca, não precisava discutir outras questões..." (AB -7)

[cl] "me falavam 'olha o Ministro diz que ele ainda não entendeu o porquê, o quê que tem a ver questão racial com isso? Por que vocês [da SEPPIR] nos chamam?'" (AB -14).

[cli] "[...] eu não acho que eles consideravam essas secretarias desde um lugar de inteligência e de produção de conhecimento válido para discutir à altura deles para produção legislativa." (AB -9)

[clii] "essas leis que saiam do Ministério da Justiça, da inteligência do Ministério da Justiça, eu gostaria de ouvir (...) até que ponto elas saíam realmente coordenadas com uma produção considerada de igual com essas secretarias, não tem como, eles não chamavam, mas eles não chamavam, eles não se lembravam sequer que a secretaria existia." (AB -7)

[cliii] "esses Ministérios não têm política aí eles são só Ministérios de articulação, então a visão era essa, a saída era você conseguir com que o Ministério se aproximasse com algo de política ou conseguir fazer articulação num nível muito efetivo, mas você não conseguia porque assim o nível de racismo na esplanada era muito grande." (AB -7)

[cliv] "los sectores tienen que homogenizar, no hay atención diferenciada" (AP-27)

[clv] "la premisa de la función del Estado – "todos somos iguales" - por lo tanto, si todos somos iguales no hay necesidades diferenciadas" (AP-27)

[clvi] "nadie nunca puso el tema de necesidad de atender afrodescendientes, ningún sector, en su estructura presupuesto para atender la población afroperuana, salvo el caso de cultura y de educación, que lo consideran en su reglamento como sectores, nadie más lo tiene." (AP -27)

[clvii] "tienes que aprender a hacer pedagogía, porque lamentablemente esa otra persona con la que tú puedes dialogar es probablemente quien va a tomar una decisión respecto de tú vida, de tus oportunidades, tus expectativas, entonces tienes que hacer un trabajo pedagógico. Y ahí tenemos un problema complejo en este país, complejo, muy complejo… no hemos trabajado nada el tema de racismo, absolutamente nada." (AP – 23)

[clviii] "Eso, eso para mí es principal que me gustaría que habría más gente ahí en el Ministerio donde se toman las decisiones, técnicos, activistas afros, (…) entonces porque necesitamos necesariamente tener a un afro para que te genere alguna política, no, si la gente que está ahí tiene consciencia y es técnica y sabe que vive en un país multiétnico, pluricultural, tiene que aplicar para todos los grupos, por qué este grupo sí y este grupo no?" (AP -10)

[clix] "um órgão extremamente masculino, branco, racista, sionista e ao mesmo tempo construir por dentro uma política foi um exercício que é muito difícil de descrever (...). Eu não vou conseguir te dizer e muito menos você vai conseguir entender porque você não está no meu lugar de pertencimento, (...) quando tentava tocar uma coisa e não dava, eu ficava muito chateada, e esse colega dizia assim 'nega, te entendo perfeitamente porque eu volto pra casa e eu não tenho outros, não tenho os meus por perto pra olhar e dizer a eles assim não deu e você tem, então a sua dor eu entendo, eu imagino que sua dor é muito maior porque eu fico chateado, mas você não, você fica chateada e afetada diretamente'". (AP -10)

[clx] "ao mesmo tempo é um campo de batalha, de resistência e de disputa" (AB-10)

[clxi] "No hemos hecho mucho por acortar asimetrías que son estructurales de cómo el racismo ha operado en población afrodescendiente. Entonces, tú te enfrentas a un escenario donde quien toma una decisión es un sujeto o una sujeta que también está impregnado de un conjunto de elementos que lo ubican y te ubican en una estructura de poder, entonces pensar el racismo supone pensar tu proprio discurso y tu propia práctica y, al mismo tiempo, el pensarla no es suficiente sino que tienes que problematizarla para darte cuenta en qué momento existe una afectación de un derecho y no sé cuántas personas están dispuestas a hacerlo." (AP- 23)

[clxii] "a gente nunca esteve no poder, a gente nunca negociou essas coisas, então foi um aprendizado" (AB - 14).

[clxiii] "(…) es que veníamos de sociedad civil, no veníamos sólo de la academia, no veníamos de cualquier otro lugar y te ponen a resolver esto o no veníamos de la carrera pública, no, no… veníamos de la sociedad civil. Yo venía de mí lucha en sociedad civil como afro feminista y haciendo investigación. Entonces, en ese momento había que pensar cómo traducir esto que había sido nuestra agenda en el marco de una lógica estatal? Que obviamente tiene otra dinámica… otra dinámica! La sociedad civil es una cosa y el Estado es otra muy distinta, tiene sus tiempos, su burocracia, su… sus nombras, sus reglas, sus formas y teníamos que aprender todo sobre la marcha, no?" (AP- 23)

[clxiv] "ser transversal na política você precisa ter núcleos estruturantes nos outros Ministérios para que você possa fazer política porque se não o pessoal acha que está metendo a mão no dinheiro do outro" (AB -18)

[clxv] "Éramos una Dirección de cuatro personas, tres y medio incluso porque la secretaria la compartíamos con otra Dirección (…). Los sueldos de nuestra Dirección eran los más bajos comparados con los demás especialistas de las otras Direcciones a pesar de que los perfiles eran los mismos, y en general pues por cosas tan sencillas hasta cuando quieres presentar un documento en sociedad, un evento público y quieres que asista la ministra o el ministro o quien estuviera de turno no puede, no le avisaste con suficiente tiempo, no considera que el evento sea tan vendedor, en el sentido que sea algo atractivo de presentar, entiendes? Es entonces que uno empieza a tener esa sensación de que bueno, de repente esta Dirección es más que una concesión, un decir pues sí estoy haciendo mi tarea, tengo esto, no?" (AP – 15)

[clxvi] "nós temos dificuldades culturais como eu falei de financiamento, de orçamento pra poder trabalhar no Brasil inteiro, então você tem uma diretoria com três pessoas, com duas pessoas, uma diretoria de ação afirmativa, uma Secretaria com dez pessoas, oito pessoas, para fazer política para o país inteiro? É algo muito difícil..." (AB -18).

[clxvii] "Uma coisa é você chegar no governo, outra coisa é você governar, então você forma técnicos que eles ou não entendem ou discordam e não encaminham, então eu tinha dois casos, tinha um mesmo que se recusava, mesmo na SEPPIR, de ser orientado por negros, então ele pediu pra sair... ele não suportava... era do quadro, e não suportava. E outro, muito sério (...) estava tentando me dizer que ele não entendia profundamente de igualdade racial, era um analista técnico e que gostaria de ser formado (...) e levávamos muitos quadros intelectuais para fazer um processo de formação com esses técnicos, chegamos a estruturar uma empresa inclusive de formação. Então para você ter uma ideia da dificuldade de você chegar no governo e ter pessoas qualificadas e de certa forma com algum nível de compromisso com esse tipo de projeto." (AB-18)

[clxviii] "con la implementación del PLANDEPA nos vamos dando cuenta, nuevamente, de que hay esta falta de peso, esta falta de donde agarrarte, de acuerdo es el decenio internacional, pero qué? Entonces cómo hacemos? cómo hacemos para robustecer más, pues el carácter mandatorio que tiene que tener la atención a la población afroperuana y que no pase porque alguien considere o no, sino que simplemente tenga un carácter de ley, que se tenga que cumplir." (AP – 15)

[clxix] "El sello intercultural es esta herramienta que nos va a ayudar a seguir promoviendo este enfoque intercultural y se está empezando en seis regiones en el país, una de ellas es Piura, por ejemplo, Yapatera, donde vemos que hay mucha población afroperuana ahí y otras regiones de la zona andina y amazónica. Entonces, interesante cómo es que va configurándose en el país el tema intercultural, va consolidándose (…), yo creo que si me preguntan ¿en qué nivel estamos?, yo respondería que estamos, recién, casi por empezar porque estamos empezando como a tener el marco que nos va a permitir hace este trabajo y en esa línea y el tema de la discriminación racial también como parte de esta propuesta intercultural." (AP – 25)

[clxx] "qual é a adesão que precisa pedir pra convidar as pessoas para aderirem a alguma coisa para impedir que se mate tantos jovens como se mata assim né? (AB -12).

[clxxi] "Muito dificilmente um líder do movimento negro vai se reunir com o Secretário de Educação do Estado, mas ele se reúne com o Secretário de Igualdade Racial e aí o Secretário de Igualdade Racial fica sendo a expressão pública que é criticado e isso vai blindando as pessoas brancas nos espaços de poder e vai impedindo as pessoas negras que estão no governo de produzir uma agenda própria porque a agenda dessas pessoas fica sendo a de se representar, como linha auxiliar que apoia a Secretaria de Educação, que apoia a Secretaria de Saúde, que apoia a Secretaria de Cultura, mas a gente não cria uma agenda própria que seja capaz de definir o que é igualdade racial." (AB-9)

[clxxii] "quando na verdade o grande papel que eu acho que um órgão de igualdade racial é o de criar condições para que conflitos mais sofisticados aconteçam" (AB-9)

[clxxiii] "el Estado interesado en el desarrollo afro? No… al Estado no le importas, yo siempre digo: si el Estado fuera nuestro aliado, no estaríamos en la situación que estamos ni tendríamos un GTPA, tendrías un Ministerio en negritudes…" (AP -3)

[clxxiv] "Era evidente que la información era central, sin información era casi la excusa perfecta para el no hacer. (…) La ausencia de número[s] no te deja de hacer responsable del no hacer, o sea, no necesitas el número para saber que hay un problema, hay problemas que se ven, no? Entonces logramos, con mucho esfuerzo, sacar adelante el Estudio especializado para población afroperuana, que yo creo que fue clave, eso fue clave porque nos permitió levantar una demanda que había sido sistemática por los últimos veinte o treinta años de la sociedad civil, ponerle un número." (AP- 23)

[clxxv] "Pero aquí es muy difícil, no es tarea fácil, si tú miras educación, salud, Mindis, que difícil que es que piensen lo afrodescendiente. Yo creo que el censo les coloca un panorama distinto, que hoy se la tienen que pensar cuando dicen "no para qué lo afro, no hay data", hoy día esa ya no es escusa, pero creo que el desafío para ellos es ¿y cómo lo hacemos? ¿cómo hacemos esto? ¿y quién lo hace? Cuando sabemos que la mayoría

de los funcionarios desconocen la realidad de la población afrodescendiente ¿por qué? porque hay insuficiente información sobre población afrodescendiente entonces ¿cómo lo van a hacer?" (AP -23)

[clxxvi] "Porque qualquer governante chega e diz 'olha, vou erradicar a fome', então reúne a inteligência e diz 'o objetivo é esse, vamos fazer', (...) pegou a inteligência pública e disse 'vamos fazer', percebe? Então, isso parece um elogio, mas não é, isso é um atestado de incompetência, não é? Atestado de descompromisso, de que de fato o governo não fez o que devia né, deixou por nossa própria conta..." (AP -12)

[clxxvii] "pero lo que siento es que no hay una consciencia política del tema ¿no?, incluso el hecho de decir: "pero ustedes son menos del 3%" ¿no?, o sea "¿se justifica una política para la población afroperuana?" (AP – 24).

[clxxviii] "a Dilma ela interiorizou muito o discurso de que mais do 50% da população era negra (...), então ela queria números, tantas pessoas entraram na universidade, tantas pessoas foram contempladas por... ela queria números desse tipo, ela queria números quantitativos... (AB -7).

[clxxix] "pero el Plandepa por ser un plan nacional, y un plan de debía ser concertado con otros sectores, con funcionarios que no entienden, que por un lado la teoría de la política pública y la necesidad de generar un valor público en las políticas públicas, y que se entrecruzan con sus proprias dinámicas, sus proprias creencias sobre lo que es lo afroperuano, que se entremezcla con ese mito de la igualdad a través del mestizaje, en el que yo también tengo algo de afro porque mi abuelita, tatarabuela fue..., y en el que todos tenemos un poco de todo, todos somos iguales. Eso se convierte en un desafío."

[clxxx] "te vas a topar con personas en los espacios donde se toman decisiones que te van a decir: '¿en verdad necesitan un plan específico para población afro? ¿Por qué? ¿Para qué? Si todos los peruanos somos iguales, no hay razón para eso'. '¿No te parece que eso es que ustedes mismos se sienten diferentes?, que tienen que superar ya esa cosa'. Esas cosas vas a escuchar en tú cara y tú no sabes, frente a eso, si llora, si sale corriendo o recargar la pila y seguir en la lucha…" (AP -23).

[clxxxi] "una vez un presidente de la República me dijo: '¿tú has necesitado un poco de apoyo para poder estar donde estas?' Yo le dije: 'yo soy un caso de excepción, mi situación no significa que es la situación de todos los afroperuanos". (AP – 20).

[clxxxii] "em relação ao conceito de racismo, ainda há uma grande crença na democracia racial. (...) Dentro do Estado é... não é só vivo, como é muito vivo, isso dentro do Estado é uma coisa assim impressionante, impressionante como é vivo, muito vivo, entendeu?" (AB – 10).

[clxxxiii] "porque ellos [los afroperuanos] se han asimilado tanto a nuestra cultura porque casi toda la comunidad peruana es afro, todas las danzas peruanas de puno y de zona de Bolivia, por Potosí, son danzas negras, o sea, la cultura negra ha entrado en el Perú es tremenda, tremenda, o sea, la más fuerte, más que España es la cultura negra en el Perú, todo lo que es arte, música, el cajón es negro, toda la música y la comida entonces, nosotros… nuestro principales héroes de futbol son negros, o sea, al negro no lo vemos, como en otros lugares, no lo vemos tan mal. Que sí debe haber cuando tú, por ejemplo, pasas por una zona y ves un negro ya sabes que te tienes que hacer, sino que te asaltan también, entonces muchos de ellos se han inclinado a la delincuencia, pero eso antes era así, ahora no, se ha ido reduciendo bastante." (AP – 11)
[clxxxiv] "como a questão de raça e classe na formação social do Brasil está muito entrelaçada, as populações pobres se confundem, se articulam, se imbricam com a questão racial, então por isso que 72% das mulheres que foram beneficiados pelo "Bolsa Família" são negras ou as 86% das mulheres que receberam o programa "Minha Casa Minha Vida" ou "Água pra Todos", ou "Luz pra Todos", os porcentuais sempre gravitam entre 72% de presença da população negra nessas chamadas políticas dirigidas, por isso que é verdade quando você fala de política pública para corrigir um déficit histórico você beneficiou a população negra (...)". (AB -18)

[clxxxv] "você pode oferecer bolsa família para negras e brancas, e as brancas vão conseguir avançar e as negras não; você pode oferecer saúde materna para todas duas, entre aspas, e as negras continuam morrendo. O racismo institucional explica as ações cotidianas de uma dada instituição, mas as políticas também as promovem." (AB-13).

[clxxxvi] "você escolhe um termo em detrimento de outro é uma opção política, e aí a gente pensa: qual é a instrumentalidade dessa opção política? É para enfrentar o racismo ou para permitir que ele continue se perpetuando?" (AB -2).

[clxxxvii] "Há uma é uma certa diluição do conceito de racismo. Eu entendo a importância de falar em racismo estrutural, racismo simbólico, racismo ambiental porque a gente está tentando ser mais preciso na descrição de um fenómeno social complexo e multifacetado de várias expressões da sociedade cuja extensão precisa ser melhor descrita e esse é o papel que os cientistas sociais, os analistas, os interpretes da questão racial, mas ao mesmo tempo que eu reconheço a importância disso, eu acho que existe uma... isso pode produzir, e eu não tenho dúvidas de que esse não é o desejo de quem formula dessa forma, uma certa esterilização da discussão racial, em que a gente se perde em discutir se estamos frente a um fenómeno de racismo estrutural, de racismo simbólico, de racismo sei lá o que, que é uma guerra conceitual que nos afasta do cheiro, da cor, do som que o racismo tem, o racismo tem som, tem cheiro, tem cor, tem... tem... barulho. Barulho do racismo é um barulho de dor, o cheiro do racismo é um cheiro de sangue das pessoas, é isso! Se o conceito do racismo estiver te aproximando disso [...] e aí eu acho que uma questão epistemológica importante se a discussão sobre racismo está nos aproximando disso, então nós estamos falando de racismo, quando nós conseguirmos ficar confortáveis demais e não estivermos mais ouvindo barulho, sentindo cheiro, sentindo o gosto aí não pode falar de racismo, porque nós não estamos falando mais de um fenômeno que mata pessoas, nós não estamos mais falando de um fenómeno que ... decepa pessoas, não estamos falando de [...] nós estamos falando de outra coisa, então esse é um ponto que me preocupa bastante." (AB -9)

[clxxxviii] "en ese momento yo sentía que, de verdad, nos costaba decir que es racismo porque sí, porque es un mal de hace cien años, entonces sí, nos cuesta sentir esa tara, pero sí sentí mucha resistencia porque además hay una…como sensación de que el Estado siempre tiene que ser propositivo (AP – 4)"

[clxxxix] "naquela altura também por causa da crise política tinha uma discussão muito grande de como criar pautas positivas para o governo, e aí a gente era chamado para dizer o que se podia dizer para (...) falar de pautas positivas para população negra quando chegar [novembro]." (AB -7)

[cxc] "como fazer essa ação estatal que esbarra no contra-estatal, isso é uma coisa muito difícil, ou seja, como é que você tem frações do governo que operam contra a ação governamental? Como o Ombudsman do próprio governo ou como ao mesmo tempo... e isso nos dois sentidos porque se, por um lado nós éramos, ao lado de outras frações do governo, uma parcela dos governos que estavam operando para desmontar a arquitetura racista do governo, também havia do outro lado, de vários lados, gente operando para manter essas estruturas e essa tensão ativa, ela é ativa nos governos, ela não é passiva, ela não é por omissão, ela é por ação, ela é por ação política, por disputa de poder dentro dos governos." (AB-9)

[cxci] "... políticas feitas pra o diferente só consegue mudar se é justamente não pra atuar sobre o diferente, mas para atuar sobre a diferença, essa é uma questão que acho que é relevante porque o problema não é o diferente, é a diferença entendida como uma certa estrutura que sempre conforma e transforma as pessoas em algo que está longe da normalidade." (AB -19)

[cxcii] "Então eu, assim, eu não vejo saída em absolutamente nada que não interfira na política, ou seja, na organização do poder, na forma que o poder é exercido, na economia, na produção das regras, das normas numa maneira geral e nos processos de constituição da subjetividade, estou falando de educação, ideologia, meios de comunicação (...) na maneira em como o imaginário social sobre eles é construído, então é necessário que você dê vasão também para formas de expressão, de literatura, de arte, de construção do conhecimento, tudo isso..." (AB -19)

[cxciii] "Não há uma crença no sistema de justiça (...) A nossa luta por direitos se assenta na ideia de que nós construímos essa sociedade e que nós temos o direito de usufruir dos bens que nós produzimos, diz respeito a uma demanda histórica de reparação, de reparação para nosso povo, diz respeito a luta por humanidade" (AB -05)

[cxciv] "A tarefa dessa geração era mover o Estado por dentro, criar mecanismos, criar instabilidade (...). Então a relação com o judiciário é mais nesse sentido, tem que disputar, tem que criar instabilidade, expor a contradição" (AB-12).

[cxcv] “esse privilégio de recusar o Estado é um direito de quem tem muito Estado, né? Ou de quem tem formas mais poderosas do que o próprio Estado para resolver seus conflitos.” (AB-09)

[cxcvi] “no es casual que en este barrio [La Victoria] la policía entró con las dos puestas abiertas, dos personas con armas en cada puerta y disparando (…) para el Perú será que mató un delincuente que era necesario matar. (…) El Callao, la Victoria son posiblemente los dos barrios que son también históricamente negros.” (AP-3).