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The Global Fight against Racial Discrimination: Human Rights Assessment and the Making of Obligation in Costa Rica and at the United Nations

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in Anthropology

by

Joshua Patrick Clark

Dissertation Committee:
Professor Bill Maurer, Chair
Professor Susan Bibler Coutin
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2016

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DEDICATION

for Carlos Minott

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I wrote this dissertation in Sacramento, California, between September 2013 and October 2016. Sacramento being a significant distance from my home institution of UC Irvine, the dissertation was composed primarily in a number of coffee shops, in nearly every corner of the Sacramento State University Library, and occasionally in my car parked in a driveway or along the curb of a quiet street. My choice to "write-up" away from my campus meant that I missed out on some elements of the process that I can now say should not be undervalued – above all, an office that is not carried on one's back, and an embodied (as opposed to "virtual") intellectual community. That said, I think that this experience made me even more appreciative of the numerous sources of support I received from many people along the way.

I will begin with some exceptional colleagues and friends who, despite lack of physical proximity, did indeed make me feel like I had a community during the dissertation writing process. In this regard, I thank especially Sean Mallin and Taylor Nelms, with whom I shared many draft versions of chapters of this dissertation and many fruitful conversations about them. Sean and Taylor always gave generously of their time and insights to help me improve and continue pushing forward with my work. Caitlin Fouratt also provided helpful comments and suggestions on chapters contained herein; I am further grateful for her invaluable support and advice about parenthood during fieldwork and as a junior scholar. I would also like to thank Michele Statz for her camaraderie and generous and committed friendship as we both navigated our respective metamorphoses into scholar-parents. My work has benefited as well from many long conversations and much encouragement from my colleague and friend Chima Anyadike-Danes. Also deserving special mention is Miia Halme-Tuomisaari, with whom I have maintained an enriching and invigorating dialogue about anthropology and human rights since we met at the AAA meetings in 2013. I thank Miia for her collaboration, her advice and support, and for at more than one critical juncture helping me to re-center myself and recover my voice. Finally, I would like to thank all of those with whom I worked on the Board of the Association for Political and Legal Anthropology (APLA), and the wider APLA community, for their collegiality and mentorship.

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To all of those in Costa Rica who contributed their time, energy, and thoughtful reflections to this project, I am forever grateful. They truly made this dissertation possible. Their collaboration as ethnographic interlocutors was of course invaluable, as it provided me with the most important and illuminating material contained in the pages that follow. But I would add as well that their dedicated efforts – whether as community leaders, as activists, as census personnel, or as policymakers and civil servants – gave me the inspiration I needed to push forward even at times when this process was at its most trying. I thank all of you who welcomed, and shared your insights, frustrations, and hopes, with a young gringo researcher who in more than a few cases had simply cold-called you or just showed up at your office door.

I could not possibly go without singling out three Costa Rican interlocutors in particular, even if two of them I identify only by pseudonyms. If they read this, they will know who they are. "Azalea" and "Alfredo" were collaborators who exceeded every expectation I had of potential interlocutors in state institutions. Both bring levels of intellect, enthusiasm, resilience, and humility to their work that should impress and inspire anyone interested in public service. I know they do me. And finally, Carlos Minott, to whom I have dedicated this work. Carlos was a man of great intelligence, integrity, wisdom, kindness, and humor. He set a truly special example through his belief that a better and more just world is possible, his tireless and principled work to bring that world into being, and the joy he took in others and in life until his passing in March 2014. I learned a great deal from Carlos, and I have missed him greatly even

as his presence has been with me at every step of this process. “Azalea,” “Alfredo,” Carlos – you are friends and you are people I will never forget.

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2015 Being Like a State. Joshua Clark, Miia Halme-Tuomisaari, and Tess Lea. *PoLAR: Political and Legal Anthropology Review* Online, May 2015.

2016 Virtual Edition: Human Rights. Joshua Clark and Miia Halme-Tuomisaari, eds. *PoLAR: Political and Legal Anthropology Review*.

2016 Introduction: Anthropology, Human Rights, and Three (Miniature) Generations. Miia Halme-Tuomisaari and Joshua Clark. *PoLAR: Political and Legal Anthropology Review*, 2016 Virtual Edition: Human Rights.

2017 Knowing and Doing with Numbers: Disaggregated Data in the Work of the Committee on the Elimination of Racial Discrimination. In *50 Years of the International Convention on the Elimination of All Forms of Racial Discrimination: A Living Instrument*. David Keane and Annapurna Waughray, eds. Manchester University Press.

Legal and Policy Reports

2007	Unfulfilled Promises and Persistent Obstacles to the Realization of the Rights of Afro-Colombians (with co-authors). Report submitted to the Inter-American Commission on Human Rights. Rapoport Center for Human Rights and Justice.
2007	Afro-Colombian Human Rights: The Implications of a U.S.-Colombia Free Trade Agreement (co-authored with Karen L. Engle). Policy brief submitted to the Congressional Black Caucus and other members of U.S. Congress. Rapoport Center for Human Rights and Justice.

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2006	Estep Prize for Best Graduate Paper in Latin American History, Department of History, UT-Austin
2009-2014	Social Science Merit Fellowship, School of Social Sciences, UC Irvine
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2014	Associate Dean's Fellowship, School of Social Sciences, UC Irvine
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ABSTRACT OF THE DISSERTATION

The Global Fight against Racial Discrimination: Human Rights Assessment and the Making of Obligation in Costa Rica and at the United Nations

By

Joshua Patrick Clark

Doctor of Philosophy in Anthropology

University of California, Irvine, 2016

Professor Bill Maurer, Chair

International human rights agreements have always faced challenging questions concerning application and enforceability: What concretely must nation-states do to fulfill their commitments, and how can they be made to do it? This dissertation provides a multi-sited ethnographic analysis of the phenomenon of assessment – or evaluation – as a mode of governing states' human rights obligations. It shows that processes of evaluation do much more than "check up" on states' adherence to a pre-given model of compliance. Instead, through evaluation practice, I contend, state, inter-governmental, and non-governmental actors interpret, negotiate, and ultimately make and re-make what it means to comply.

I investigate assessment in the context of the United Nations human rights framework on racial discrimination, anchored in the 1965 International Convention on the Elimination of All Forms of Racial Discrimination. My study is organized around three procedures UN agencies prescribe for states that have ratified this Convention. One is an external review procedure conducted by the UN Committee on the Elimination of Racial Discrimination. The other two are internal "self-evaluations" to be undertaken by states themselves: the production of ethno-

racially disaggregated census statistics, and the creation of national action plans. My research on both of these focuses on national processes carried out in Costa Rica, a state that many UN agencies hope to make a regional model for combating discrimination.

The UN framework conceptualizes racial discrimination very broadly and in relation to a wide range of subject-matter areas. In each of my sites, I examine how constellations of actors and knowledge infrastructures determine which social, political, and economic problems oblige state remedy under the framework's provisions. The dissertation draws attention to the varied epistemological commitments, interpretive openings, and social relations through which UN and Costa Rican state actors render knowledge of discrimination in the course of assessment practice. It further highlights how procedural forms themselves shape, foreground, and filter what gets named as discrimination, and who as its subjects. I thus show that assessments constitute dynamic processes through which actors adapt human rights norms' meanings and mandates, and importantly, multiply and differentiate what count as obligations across time and states.

CHAPTER 1

Introduction: Evaluation, State Obligations, and Obligated States in the Global Fight against Racial Discrimination

If human rights has become such a potent phrase in contemporary politics, it is probably because it does not mean one thing, but many things; and what we mean by it when we use it is not very clear to us, let alone to others, who can receive what we say in a different way from what we had intended, which moreover changes according to the context. We can therefore all seem to agree, or at least partly to agree, when in fact we disagree.
- Marie-Bénédicte Dembour, *Who Believes in Human Rights?*, 261.

This dissertation is about processes and practices of evaluation employed in the international human rights framework for combating racial discrimination. Evaluation mechanisms offer privileged sites for investigating why certain racial or ethnic justice issues attract attention, and how they are rendered as problems, in the domain of international human rights. The global framework developed through the United Nations conceptualizes discrimination very broadly and in relation to a wide range of subject-matter areas, as I show below. It therefore holds great potential as a means for constituting as legal obligations a diverse array of programs, policies, and other initiatives for ethno-racial inclusion, equality, and justice. Yet at the same time, this breadth also gives rise to ambiguities concerning what, concretely, nation-states can and should do in the pursuit of compliance, and how they should be pushed to do it. Despite their status as legally binding under international law, the norms within what I call the UN or human rights framework on racial discrimination rarely have recourse to any court. Instead, they are governed primarily through the expanding phenomenon of evaluation, or assessment, that is the topic of this dissertation.

Across the chapters that follow, I consider how evaluation's forms themselves, the constellations of actors who carry them out, and the knowledge infrastructures that underlie them

shape what gets represented as compliant state practice. This means examining who or what determines which social, political, and economic problems register as discrimination, and how this in turn frames demands for – and subjects of – redress. I use ethnographic methods to study how those determinations are made through assessment at the level of external UN oversight, as well as in state self-evaluations conducted by public institutions in Costa Rica – a state many UN agencies are working to cultivate as a regional standard-bearer of the UN model for fighting discrimination. Investigating how each of these processes selects, filters, and foregrounds objects of attention, I show how evaluation in fact creates the targets of state obligation.

Indeed, it is a core argument of this dissertation that state compliance is not a given or stable object, transcending assessment procedures; it is rather an emergent one, evolving iteratively through evaluation practice. This claim is significant because it means insisting that procedures often written off as substantively vacuous rituals in fact contain spaces of variation consequential to the meanings and mission of the project of international human rights law. Across the UN and Costa Rican sites of my study, I draw attention in particular to epistemological commitments, interpretive openings, and social relations that guide how actors render and contest knowledge of discrimination in these procedures' practice. I show that understanding how broad international human rights norms are turned into concrete national agendas requires recognizing how the transnational phenomenon of evaluation induces states to become obligated, and how evaluation makes obligations. By ethnographically attending to state actors who carry out, and are subject to, assessment, I also show how these procedures spill over into other aspects of so-called technical and bureaucratic agents' professional work and self-understandings as they assume the weight of responsibility for enacting the human rights-obligated state.

But before delving too deeply into these issues, I think it will be helpful to revisit their key terms, namely *human rights* and *racial discrimination*. These terms are likely familiar to the reader, but this familiarity makes them prone to preconceptions about their meanings and uses that may be limiting or misleading here. A quick review of some issues prominent in the oversight work of the United Nations Committee on the Elimination of Racial Discrimination (CERD) is enough to show that the scope of the terms as used in international human rights forums is more expansive than is common in many other settings.

The CERD is in some ways the central institution in my research on evaluation, and a site in which I spent three of my thirteen months of ethnographic fieldwork. It is a human rights body comprised of 18 independent experts who meet for 3- to 4-week sessions two or three times per year at the United Nations offices in Geneva, Switzerland. The CERD was established by the International Convention on the Elimination of All Forms of Racial Discrimination, a multilateral treaty adopted and opened for state ratification by the UN General Assembly in 1965. The Committee's task is to "monitor progress" and "provide authoritative guidance" concerning states parties' efforts to fulfill their international commitments on racial discrimination (OHCHR 2005: para. 95).[1] In the meetings with state delegations through which it conducts this work, the CERD advises states on a wide variety of activities. It implores states to code census and other statistical data by individuals' ethno-racial identity in order to track socio-economic disparity and other inequalities between groups. It stresses the need for states to seek minoritized communities' consent before approving major infrastructure, development, and resource-extraction projects. It presses states to ensure that indigenous peoples are able to possess and use lands collectively. And it advocates for minority-language instruction in public

[1] A UN member state that has ratified, and thereby accedes to the provisions of, a treaty is known as a "state party" to that treaty; the term is pluralized as "states parties."

schools; the prosecution of ethno-racially inflammatory speech; and legal suppression of the formation of organizations professing racist beliefs.

For many in North America, and perhaps elsewhere, these issues are not readily identified as belonging to the category of "racial discrimination" or "human rights." Each of the examples just mentioned, however, is commonplace at the CERD. Though state representatives may sometimes disagree with the Committee's position, rarely would one say that any of the above issues lies outside the subject matter of racial discrimination. There are issues with respect to which the CERD occasionally hears such objections, however. One memorable example is an exchange between the Committee and a state representative from France in 2010. After several CERD members posed probing questions about the French ban on students wearing conspicuous religious symbols, as well as a proposed law forbidding the use of full Muslim veils in public, the French representative defiantly challenged the Committee regarding its mandate. In an exasperated tone, he reminded the CERD that the domain of its expertise and jurisdiction – its "*champ de compétence*" – was "racial, let me stress, *racial*," and not *religious*, discrimination.

Undeterred, one CERD member carefully explained that the two were not so easily distinguished. A law that disproportionately affects Muslims thereby commits *de facto* discrimination against them; when these ill effects are in turn felt by some ethnic or racial groups much more than others – as they are likely to be – the result is indirect discrimination that indeed falls within the Convention's remit. Another committee member noted that France's resistance to discussing problems facing groups it deemed religious in character was also aberrant practice. During the current session, he added pointedly, only the Islamic Republic of Iran had made similar complaints to the Committee. What is implied here – besides that France was not playing nice – is that, beyond its indirect ethno-racial impact, discrimination against people of a minority

religion is also part of the CERD's "*champ de competence*" because *other* monitored states have proven willing to admit it into their dialogues with the Committee.

The Scope of Human Rights Meanings in Practice

Perhaps by now we should not be surprised when we find that the subject matter treated under the human rights rubric exceeds our expectations. A wealth of ethnographic work over the past 15 years has shown that the domain "human rights" has come to incorporate a wide range of issues and claims in the proliferating contexts of local rights practice.[2] This research demonstrates that human rights are fluid cultural constructions whose meanings emerge through the articulation of transnationally validated norms with locally significant conceptions of dignity, entitlement, and "right," and in relation to specific contexts and "content" (see also Coombe 2007). Such articulations are more than a matter of overlap or compatibility. They involve adapting and reformulating norms' meanings such that they resonate with local frameworks, as well as shifting local definitions of grievances to reflect global categories. Sally Merry and others have stressed the role of national movement leaders and non-governmental organizations in effecting these adaptations – brokering between sites of norms' global production and their local deployment to remake rights "in the vernacular" (Merry 1996, 2006a, 2006b; Levitt & Merry 2009; see also Gregg 2008).[3]

Others have emphasized that creative re-interpretations or "vernacularizations" of global rights are not limited to such deliberate translators. Rather, whole series of networked actors iteratively evolve what human rights norms might mean and do, acting upon rumors, hopes,

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[2] Jane K. Cowan et al.'s (2001) volume was a pioneering work in this regard, and Mark Goodale and Sally Engle Merry's (2007) edited collection offers another significant set of contributions.

[3] Though Merry calls these actors "intermediaries," in the language of Actor-Network-Theory they would in fact be *mediators*. As Bruno Latour (2005:38-39) explains, while both intermediaries and mediators are conduits, the former merely transport meaning or force; the latter are defined by effecting translations and transformations thereof. Stated differently, intermediaries' outputs do not differ from their inputs; those of mediators do.

conjecture, and partial knowledge of rights' potential application in concrete situations (Eckert 2012; Speed 2008:Ch. 3; see further Coutin 2000; Eckert et al. 2012). Ethnographers have also found that activists and communities often reframe longstanding demands, grievances, and local histories in the human rights idiom with little deference to any purported authoritative source of human rights' meanings. These studies show a politically diverse range of actors appropriating human rights discourse for vastly different – even ideologically opposed – projects (e.g. Curtis 2014; Tate 2007), and sometimes so independently of any "original" as to challenge the notion that what we are seeing is "translation" at all (Englund 2012; Goodale 2007b; Piot 2011; Speed 2008). Indeed, Merry (2007:47-48) has observed that human rights "ideas" are so malleable in practice that many actors' evocations and mobilizations of them bear little resemblance to UN treaty texts or expert deliberations (see also Eckert 2012).

Ethnographic studies of human rights practice have thus done an excellent job of showcasing human rights norms' flexibility and generativity – and situated actors' creative and agential uses thereof – in domestic political struggles and legal claims-making. They also attest to what Richard A. Wilson (2006:78) calls an "ideological promiscuity of rights talk" that should preclude characterizations of human rights as a singular global "hegemonic" or "dominant" project. Yet I find a limitation in this literature in that it tends to locate the semantic and pragmatic dynamism of human rights in rights-claimants alone, leaving out legal actors and processes. Indeed, some contributors to this literature explicitly distinguish human rights "in discourse" – or "the idea" of human rights – from human rights "in law" in order to place the fluidity of the former in contrast to the formalist inertia of the latter. Jennifer Curtis has succinctly explained why this dichotomization of "discourse" and "law" is itself problematic. Notably, it ignores salient theorizations of law as discursively/linguistically constituted, and of

discourse as a form of action in the field of legal practice (see Curtis 2014:15-16). But the fundamental point that those who use this distinction want to make is about the difference between human rights' potentialities in the hands (and mouths) of rights activists, claimants, or subjects on one hand, and institutional, bureaucratic, or technical actors on the other. For them, if human rights remain receptive to context and difference, it is insofar as the discourse or idea escapes a legal domain whose operators – even in relatively "soft" legal mechanisms, such as those found at the UN – are obstinately committed to a uniform, formalist, and narrow application of rights norms (see e.g. Goodale 2007a:25-26; Merry 2006a: esp. 130-132, 225).[4]

This dissertation troubles that depiction of human rights norms as rigid and static in international legal processes. Focusing on formal assessment procedures, I show that in fact it is today both practice and prescript that state actors creatively adapt such norms relative to myriad factors (see esp. Chapters 3 and 6). Further, in working to render obligatory empirical accounts of the status of rights' fulfillment, state actors shape new iterations of an evolving vision of what "fulfillment" entails. Their encounters with rights norms and language lead them to construe new human-rights relevance, regulations, and responsibilities in their fields of professional or subject-matter expertise. On the other hand, these actors may also fail to represent, or to assign responsibility for, certain domestic problems as "human rights issues" based on contingent political, social, and interpersonal dynamics within or between state institutions. All of this has consequences for what state actors do in the name of the rights of those within their jurisdictions, but also for what is understood by "compliance" across wider networks of human rights actors.

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[4] This argument is of a piece with that which considers the "legalization" of human rights claims or struggles – i.e. their entry into the realm of legal process – to be inherently "depoliticizing." Wilson (2007:349-355) offers a nuanced challenge to the latter argument in light of his and others' ethnographic work on human rights practice.

Far less ethnographic research on human rights has been dedicated to local spaces of state institutional life than to activists and other non-state entities.[5] In addition to that research "gap," another likely reason anthropological literature represents legal and institutional human rights processes as relatively inert is the broad tendency – in no way limited to anthropologists – to assume that legal practitioners are possessed of legalistic, instrumental, and technocratic dispositions. Finally, anthropologists may overestimate the intransigence of "the law" itself. As Bruce Robbins and Elsa Stamatopoulou (2004:422-423) observe, anthropologists are sometimes too eager to present their knowledge as a de-mystifying or de-reifying counterpoint to "law," and end up overlooking the "suppleness in the law" – even when it is precisely what they purport to want (see also Engle 2010:11-14).

A range of legal scholars and theorists have commented on how institutional actors adapt the meanings and uses of international human rights in myriad legal settings (see e.g. Gearty & Douzinas 2012; Schaffer et al. 2014). One view considers that where legal practitioners seize upon interpretive and jurisdictional ambiguities, contradictions, and aporias in international human rights, "we can see the potential of the future and the dues of humanity shining like a strong sun through the hackneyed house of law" (Douzinas & Gearty 2012:14). Other legal scholars worry that human rights courts' and treaty bodies' interpretive "expansionism" – some would say overreach – are so palpable that they threaten states' continued engagement with these entities, as well as the very credibility of the norms they protect (e.g. Huneeus 2011; Mechlem 2009; but see Lixinski 2010). Still others point out that international legal formations evolve through feedback loops inspired by nation-state lawmakers' and transnational and domestic social movements' improvisations upon existing norms (e.g. Engle 2010; Shaffer 2013).

[5] I should note that I join some outstanding recent exceptions that have begun to correct this "selection bias" in literature on human rights meaning-making in practice (Babül 2012, 2015; Ballestero 2014; Hornberger 2011).

My research brings this appreciation for international human rights law's "suppleness" together with recent anthropological attentiveness to rights meaning-making as iterative, processual, and grounded in varying modes of reasoning, and degrees of intentionality and accident. When legal scholars analyze the flexibility of international human rights, they focus on actors who are expressly engaged in legal interpretation or production. I, on the other hand, am concerned with how emergent networks of actors re-make rights norms' meanings and mandates not in designated moments of law-making, but informally and inadvertently in the course of procedures ostensibly about evaluating state adherence to those norms.

Indeed, I will argue that the practices agents of evaluation employ in order to demonstrate that they are conducting assessments properly lead to always-modified, never-identical iterations upon the evolving object of compliance with international commitments to eliminate racial discrimination. That is, they tend not to stabilize the slate of rights and obligations constitutive of this object, but alter it through each procedure.[6] This is the case across the sites I examine, including both the external assessment of states by the CERD and internal state "self-evaluations" conducted by government personnel. The latter state actors include some specialists in international law, but also professionals in public administration, planning, and social demography whose familiarity with rights norms varies wildly. These actors nonetheless make crucial decisions about which information gets collected, how to classify and collate it, and even what issue areas "belong" in their respective assessment procedures. Their inclusions and omissions "interpret" rights norms in ways that alter both the domain of state obligations they

[6] My use of the term *object* follows Paul Kockelman's (2010:408) Peircean definition of the object as "simply that to which we can jointly attend – however vague it is, or misaligned we are." This conception of objects is therefore inclusive of concepts, relations, classes, and ideas (see also Hacking 2002); it "should not be confused with 'objects' in the Cartesian sense of *res extensa*" (Kockelman 2005:243), or what we would call "things" in anthropology or science and technology studies.

purport only to assess, and their wider understandings of their roles and responsibilities as professionals and persons.

Before proceeding to descriptions of the assessment procedures analyzed in this dissertation, and an elaboration of my arguments, it is worth reviewing the content of the actual norms adopted for fighting racial discrimination globally. Numerous scholars have commented that the popularity and ubiquity of human rights claims-making are largely due to the open-endedness, ambiguity, or vagueness of human rights concepts (Dembour 2006; Halme-Tuomisaari & Slotte 2015; Jensen & Jefferson 2009; Wilson 2006). But these qualities characterize not only human rights "ideas," but also the language in which they are codified as multilateral treaties, and acceded to by UN member states (e.g. Tobin 2010). The next section describes the main provisions of the core international instrument concerning racial discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination. It suggests that these provisions themselves set the stage for a diverse and wide-ranging array of potential duties and claims upon states to be recognized in them.

The UN Human Rights Normative Framework on Racial Discrimination

In December 2015, the UN commemorated the 50th anniversary of the General Assembly's adoption of the International Convention on the Elimination of All Forms of Racial Discrimination (hereafter, "Convention" or "ICERD"). Yet outside of professional international law circles, and a small sub-set of indigenous rights and other racial justice activists, the Convention remains little known in the United States, if not much of the world. The purpose of this section is twofold. First, it will provide a general overview of the UN human rights normative framework on racial discrimination inaugurated by the Convention, paying special attention to the distinctive features of this framework relative to the U.S. civil rights framework.

This comparison is important both because the reader will likely be more familiar with the U.S. framework, and because it and the UN framework are competitors in a struggle for global influence. Highlighting distinctions between the two makes clear that the UN framework conceptualizes discrimination such that more types of phenomena potentially oblige state intervention on behalf of minoritized people. Or, stated simply, it is broader in scope than U.S. anti-discrimination law.[7] A second point however is that within this breadth come a number of ambiguities. These include some apparent contradictions in discrimination's defining characteristics, and a general vagueness about the thresholds for deeming particular problems "discrimination," and for knowing when a state's obligations have been fulfilled.

The ICERD was drafted and adopted over the years 1964 and 1965 in the context of apartheid rule in South Africa and South-West Africa (present-day Namibia), and important campaigns in the African-American civil rights struggle in the United States.[8] The Convention was the first of what would come to be known as the core human rights treaties of the UN system, a set that now includes nine international agreements, the most recent of which were adopted in 2006.[9] As a convention, the ICERD – unlike the 1948 Universal Declaration of Human Rights – has the status of being legally binding in international law. This means that by ratifying the Convention, a state expresses not only moral but *legal* commitment to its

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[7] On Cold War-era McCarthyism's coercive abridgment of anti-discrimination agendas in the U.S., see Anderson 2003.

[8] On these historical circumstances' place in debates over the Convention within the UN, see Banton 1996: Ch. 4; and Lerner 1980. For a socio-legal account of broader social movement dynamics that informed these debates, see Lovelace 2012. On the origins and adoption of the Convention in general, see esp. Keane & Waughray 2017.

[9] The core human rights treaties are: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) of 1965; the International Covenant on Economic, Social, and Cultural Rights (ICESCR) of 1966; the International Covenant on Civil and Political Rights (ICCPR) of 1966; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979; the Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment (CAT) of 1984; the Convention on the Rights of the Child (CRC) of 1989; the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (CMW) of 1990; the Convention on the Rights of Persons with Disabilities (CRPD) of 2006; and the International Convention for the Protection of All Persons from Enforced Disappearance (CEPD) of 2006.

provisions. Despite the greater force of obligation this entails, states from across the globe became parties to the Convention relatively quickly. It is widely believed that most ratified primarily to join in condemning a few countries' overtly racist systems, without thinking that the ICERD was relevant to their domestic contexts (Banton 1996:99-100). As of June 2016, 177 of the 193 UN member states had ratified the ICERD.[10]

The impression that the Convention would only apply to the domestic affairs of a small number of countries is difficult to sustain if one takes seriously the content of its provisions. As one legal commentator has noted, the ICERD stands apart from earlier international agreements on discrimination in that it addresses fewer discriminatory grounds, "but with unrestricted scope" (McKean 1983:156). Here what is meant by "grounds" are the bases upon which prohibited discrimination can be found. Whereas earlier International Labour Organisation and UNESCO conventions covered discrimination based on race, sex, religion, political ideology, and more all under the same normative framework (see *ibid.*; Banton 1996:Ch. 4), the ICERD was focused on a more limited set of grounds. They include discrimination "based on race, colour, descent, or national or ethnic origin" (Article 1.1).

Now let us turn to the matter of "scope." Though I will focus on the ways in which the ICERD's scope exceeds other normative frameworks on discrimination, the treaty does of course contain some foreseeable provisions. Notably, the ICERD commits states to abstaining from discriminatory acts or practices, and purging any discriminatory content from existing domestic laws, policies, and regulations. It also proscribes state sponsorship, defense, or support of racial discrimination by any non-state person or organization (Article 2.1(a-c)). The Convention's

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[10] The most populous countries that have not ratified the ICERD are Myanmar, Malaysia, North Korea, and Angola.

Article 3 specifically calls for the eradication of racial segregation and apartheid, reflecting pressing issues in the era of its drafting.

The provisions of the Convention that have provoked the most debate at the UN – including even before member states contemplated placing them in a binding treaty (see McKean 1983:154) – are those found in Article 4. That article obligates states parties to the Convention to go on the offensive against discrimination, targeting racist discourse and ideology, incitement to racial hatred, and the organizations that promote them. Among other things, states are to deem such organizations illegal, and "declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred" (Article 4(a)). These provisions have long been controversial due to their apparent conflict with rights to freedom of expression, opinion, and association enshrined in numerous charters, including the Universal Declaration of Human Rights (UDHR) (but see O'Flaherty 1998:175-177). Article 4 certainly stands out in relation to jurisprudence in the United States, where the idea of unfettered free speech enjoys an unusually sacrosanct quality. Accordingly, the U.S. federal government lodged a formal "reservation" exempting itself from Article 4 upon ratifying the Convention in 1994, and it continues to challenge the article's provisions.[11] International forums have nonetheless reaffirmed that positive state action against ideas, speech, and organizations based on racial superiority or hatred is mandatory under the human rights framework on racial discrimination.[12]

More broadly, the general substantive articles of the ICERD articulate an expansive conception of racial discrimination as an object of obligatory state intervention. The Convention

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[11] See for example the U.S. government's periodic report to CERD submitted in 2013 (UN doc. CERD/C/USA/7-9: paras. 47-50). A number of other states, mostly in Western Europe and the Caribbean islands, also maintain interpretive restrictions regarding the provisions of Article 4, but these are less strident than the U.S. position.
[12] See especially the CERD's General Recommendation No. 35 on "combating racist hate speech" (2013); and the *Durban Declaration and Programme of Action* (paras. 86-87), adopted at the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance in 2001.

defines discrimination as "any distinction, exclusion, restriction or preference… which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms" (Article 1.1). The words "or effect" are highly significant here, as they indicate that a distinction need not have discriminatory *intent* in order to count as discrimination. As Michael Banton points out, the inclusion of "or effect" also means that discrimination can exist even absent (less-conscious) discriminatory *motivation*. A discriminatory effect, he continues, can be "one that could not have been foreseen at the relevant time. It complicates the law, because to a certain extent it detaches the concept of discrimination from that of unlawful grounds" (Banton 1996:65). That is, to identify discrimination actually does not necessitate having knowledge of a discriminating perpetrator. "Discrimination in effect," sometimes called "indirect discrimination," instead "turns on the objective characteristics of the protected class" (Banton 2000b:78) – specifically, whether or not members thereof enjoy their rights in fact.[13]

This conception of non-discrimination as requiring equality in the *effective enjoyment* of rights is further supported by Article 5 of the Convention. It commits states parties to ensuring that all rights guarantees shall be fulfilled evenly for everyone without tracking any distinction of race, color, or national or ethnic origin. When taken together with Article 1.1's reference to unintended effects, Article 5 suggests that a deficit in the realization of any category of right experienced disproportionately by members of a protected group constitutes discrimination. This arguably "detaches" state obligations from yet another of the ICERD's defining components of discrimination (in addition to that of "grounds") – the presence of an identifiable distinction,

[13] This can all be set in contrast to the boundaries of what counts as "discrimination" in the U.S. legal framework, which focuses on formal or procedural (rather than substantive) equality, and almost always requires demonstrating discriminatory intent (except for limited types of claims filed under certain federal statutes).

exclusion, restriction, or preference. Stated another way, given that the standard of effective "enjoyment" ignores the question of cause, it might be better to speak of discrimination as identifiable in "outcomes" or "conditions" rather than "effects." But this is one of those important ambiguities that is ultimately sorted out only indirectly through situated assessment processes like those analyzed in this dissertation.

A further and related ambiguity lies in the fact that, despite the apparent necessity to monitor rights enjoyment of each "protected group," the Convention is decidedly agnostic as to the ontology of group difference. As Patrick Thornberry (2005b:19) points out, "It is an obvious point – but easily missed – that the umbrella term for the Convention is 'racial discrimination', not race." Banton (1996:52) explains that the ICERD's definition of discrimination in terms of "grounds" follows a strategy in early UN human rights work that made it "possible to bypass any arguments about the nature of differences in themselves." Subsequent elaborations on the international framework on eliminating racial discrimination explicitly label the types of difference addressed in the Convention – viz. "races, colours, descent, national or ethnic origins" – as "socially constructed."[14] All of this leaves assessment procedures to operate with notions of discriminatory grounds, perpetrators, cause, and race all deeply unstable.

Finally, it should be noted that Article 5's commitment to the equal enjoyment of all human rights is followed by a (non-exhaustive) list of such rights, which includes a section for "economic, social and cultural rights" (Article 5(e)).[15] Some of the rights included therein are those to protection against unemployment, just and favorable remuneration, housing, medical care, social security, and education and training. This is important because many outside the

[14] See e.g. *Durban Declaration and Programme of Action*, para. 171.
[15] Michael O'Flaherty (1998:178-179) convincingly notes that the article's repeated use of the words "notably" and "in particular" implies that its enumeration of rights is not meant to be exhaustive.

international legal field do not necessarily think of such provisions as "human rights" – and not entirely by accident. In fact, even within this field, they are commonly – albeit ahistorically – designated "second-generation" human rights. As Pamela Ballinger (2012:19) rightly notes, this "generational" analytic "implies not just notions of priority and primacy but also a periodization and conceptual separation that don't stand up to empirical scrutiny." I follow a multi-disciplinary array of scholars who concur that what Miia Halme-Tuomisaari and Pamela Slotte (2015) aptly call "the contemporary human rights phenomenon" – encompassing both law and social movements – is a *recent* formation, and distinct from earlier partial "anticipations" of both the concept and words *human rights* (e.g. Cmiel 2004; Donnelly 2013; Koskenniemi 2015; Moyn 2010, 2014).[16] Within this formation – whether we look to the 1948 UDHR or subsequent binding human rights treaties – economic, social, and cultural rights have been there alongside more widely recognized civil and political rights all along.

Indeed, the division of human rights into sub-categories of "economic, social and cultural rights" and "civil and political rights" is a contingent construction, and the "dichotomous division" it creates "seriously misleading" (Donnelly 2013:40). As Kenneth Cmiel (2004) reminds us, the various ways in which rights are "clustered together" always have histories that merit critical examination. In this case, the dichotomization of "economic, social and cultural rights" and "civil and political rights" is a relic of Cold War ideology and inter-state politics that shaped an era of international lawmaking.[17] But this separation need not doom us to accept and reproduce the ideas that so-called economic, social, and cultural rights are less important,

[16] In her exploration of the history of the concept of objectivity, historian Lorraine Daston (2001:260) warns that these two types of historical "anticipations" are common historiographical red herrings, and neither equals "the same ideals, much less the same practices, of the two conjoined."
[17] Its most definitive artifact is the division of the content of the UDHR into two separate binding treaties: the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), both finally adopted by the UN General Assembly in 1966.

fundamentally different, or less "real" human rights than their civil and political counterparts. That they are still widely perceived as such in the Global North is a political and cultural product of well-funded U.S.- and U.K.-based human rights NGOs (from Freedom House to Amnesty International and Human Rights Watch), scholarly research agendas, and the long shadow of the U.S. federal government's position on what count as "rights."[18]

The ICERD however does not observe this hierarchy of rights priorities.[19] Though the U.S. maintains that certain topics the CERD regularly probes "which may be characterized as economic, social and cultural rights" are not in fact "rights" in the U.S. context, most states in the world do not take this position.[20] If I have gone to some lengths to emphasize this, it is because it is important to following this dissertation that the reader recognize the potential for a wide range of subject-matter areas to be treated under the "human rights" rubric. If the procedures analyzed in the following chapters largely refer to rights other than those canonized as such in the United States, these are nonetheless contemplated in the ICERD.

A final distinguishing feature of the framework on racial discrimination inaugurated by the ICERD is its provisions on what it calls "special measures." Special measures are those taken by a government in the interest of specific protected groups or individuals "in order to ensure [them] equal enjoyment or exercise of human rights and fundamental freedoms" (Article 1.4). These are elsewhere commonly known as "positive measures" or "affirmative actions," and sometimes derided as "reverse discrimination." The UN human rights system flatly rejects the

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[18] Until quite recently, Amnesty International and Human Rights Watch have said virtually nothing of economic, social, and cultural rights in their global campaigns. On the history of their choices of causes, see e.g. Moyn 2010:Ch. 4. Most of the empirical research on human rights treaties and their "effectiveness" has focused on the still smaller sub-set of rights referred to as "personal-integrity" or "physical-integrity" rights, as discussed below.

[19] The Committee formally reiterated this point in 1993, in its General Recommendation XIV on the definition of discrimination.

[20] Here I am quoting from the United States government's first periodic report to the CERD, submitted in 2000 (UN doc. CERD/C/351/Add.1: para. 298), but the position has been maintained through the most recent report submitted by the U.S. under the Obama Administration in 2013 (UN doc. CERD/C/USA/7-9: para. 58).

latter term – along with "positive discrimination" – as misnomers.[21] As O'Flaherty (1998:166) explains, "'discrimination' is always invidious, but 'differentiation' may be acceptable." Article 1.4 of the ICERD asserts as much, establishing that special measures are permissible so long as the preferences they create are discontinued once "the objectives for which they were taken have been achieved." Article 2.2 goes further. It provides that,

> States Parties *shall*, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. (*emphasis added*)

To adopt special measures is thus a state *obligation* "when circumstances so warrant." The Committee has further clarified that it is a "general obligation… integral to all parts of the Convention," i.e. it pertains to the achievement of equality with respect to *all* human rights.[22]

As I hope is now clear, the normative framework just described is broad enough to ensure that the phenomena it prohibits – "all forms of racial discrimination" – would not be limited to a few pariah states. Indeed, CERD members have long advised states that discrimination as conceptualized in the Convention can crop up anywhere there is difference. They have described it as taking evolving and "subtly mutating forms" (Thornberry 2005a:269), and have often referred to it as a "scourge" – a term that alludes to its persistence, but also casts it as a widespread pestilence as much as a series of individual criminal acts (see Banton 1996:73).

From this open-endedness in the conception of discrimination, it follows that the range of concrete state obligations that could be inferred from it is also quite wide, and standards of "fulfillment" ambiguous. Less than two decades ago, O'Flaherty (1998:172-173) observed that

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[21] The CERD has stated in its General Recommendation No. 32 (2009) that, "The term 'positive discrimination' is, in the context of international human rights standards, a *contradictio in terminis* and should be avoided" (para. 12).
[22] See the CERD's General Recommendation No. 32 on the meaning and scope of special measures in the ICERD.

"for a government to carry out its obligations… it must be acutely aware of the actual situation within its own jurisdiction, including the identity, characteristics, circumstances and requirements of all ethnic or racial groups," but that "many governments have not put in place the research and analysis tools for such work." Since then, UN human rights actors have devoted significant time and resources to changing that. This dissertation draws on thirteen months of ethnographic fieldwork in Costa Rica and at the UN in Geneva to offer an analysis of the multi-sited system of evaluation their efforts have developed. In the next section, I describe the three procedures upon which this fieldwork focused, and that states are expected to undertake to advance the ICERD and subsequent international norms concerning its protected classes.

Evaluation Procedures: Dialogue, Statistical Disaggregation, and Action Planning

In the Convention itself, only one mechanism is stipulated for the assessment of implementation – one that continues to be at the center, and to a large extent the driving force, of the wider evaluation phenomenon. This is the requirement under Article 9 that all states parties submit reports at regular intervals to be examined by the CERD in its capacity as a committee of experts.[23] The Convention says little about how this examination procedure is to be carried out, other than that states' periodic reports should detail all steps taken to realize the ICERD's provisions, and that the Committee may request additional information. Thus, it was left to the CERD to develop the form that the examination would take in the course of its practice.

The form given to the reporting procedure has come to be known as "constructive dialogue." With it, the pioneering work of the CERD established a model that all of the UN human rights treaty bodies have adopted for monitoring the treaties under their respective

[23] Article 8.1 of the Convention stipulates that the Committee shall consist of "experts of high moral standing and acknowledged impartiality… who shall serve in their personal capacity" – i.e. *not* as representatives of their governments.

charges. The constructive dialogue begins with a state submitting its report on the status of its treaty obligations, and subsequently sending an official delegation to the CERD's sessions in Geneva to present the report and undergo questioning by the Committee.[24] The Committee bases its questions on the information contained in a state's report, together with supplementary information from various additional sources as analyzed in Chapter 5. The product of a CERD examination is not a compliant/noncompliant ruling or set of rulings, but a document known as Concluding Observations, in which the CERD registers "positive aspects" and "concerns and recommendations" resulting from its evaluation. Ideally, a state is to pursue the specific recommendations issued by a treaty body and report on them in its subsequent periodic report, thereby creating a "seamless cycle" of constructive dialogue (Halme-Tuomisaari 2013:338).

When the CERD first began examining state reports, it did not invite state representatives to be present, and its members rejected initial proposals to do so. This early opposition to what would become a central component of all treaty bodies' work was motivated by the Committee's concern not to turn the examination into a contentious or adversarial procedure. Committee members wanted to avoid making states parties perceive that they were being interrogated, cross-examined, or otherwise "put on trial" (Partsch 1992:343, 354). Though the UN General Assembly's support for the idea soon led the CERD to invite state interlocutors to its evaluations of reports (Banton 1996:110), the Committee has sought to minimize the resemblance of the "constructive dialogue" to a courtroom trial ever since. Chapter 5 analyzes how this plays out in the CERD's strategic approach to evaluating information, so here I will limit myself to discussing a more material manifestation: the spatial arrangement of the CERD's meetings.

[24] The CERD initially held its sessions at the UN headquarters in New York, but has met in Geneva for the past thirty years.

The Committee meets with state delegations in a large conference room at the front of which sits a table on an elevated stage. This stage overlooks four long rows of tables set up perpendicular to it on the main floor (see Figure 1). In a typical tribunal setting, an elevated position in the room would be reserved for the judge(s), commission, or other body with authority over the proceedings. At the CERD however, the stage is home to the delegation from the state under review, with at least three seats at the table reserved for its members. These delegates are accompanied by the Chair of the Committee – essentially a moderator who rarely joins in questioning states – and support staff from the host agency, the Office of the UN High Commissioner for Human Rights (OHCHR).

Figure 1. The conference room on the ground floor of the Palais Wilson, where the CERD's meetings are typically held.

Committee members pose their questions from their seats at the outside tables on the floor level, a couple of feet below, and at a 90-degree angle from, the head of the state delegation (see Figure 2). This setup means that rows of Committee members face one another from opposite sides of the room, with the meetings' précis writers and any additional state delegates not seated on the stage located at the middle tables between them. This too seems to be meant to

prevent a confrontational "feel" in the meetings – indeed, quite literally so if "to confront" means "to meet facing."[25] For all of this, it can still be difficult to shake the sense that treaty bodies' meetings are or should be a scene of judgment, as I explore in the Conclusion. Indeed, other anthropologists use terms for them ranging from "hearings" that produce "jurisprudence" (Merry 2006a:49, 78) to the more analytically neutral "proceedings" for "processing" reports (Halme-Tuomisaari 2013). In using the "native" terms *constructive dialogue* and *examination*, I hope to avoid superimposing upon them meanings or functions foreign to their context (Bohannan 1969).

Figure 2. A member of the CERD turns to address a question to a state delegation.

The other procedures UN institutions prescribe for the monitoring and assessment of racial discrimination are to be conducted by states themselves, and might thus be characterized as "self-evaluations." My research on these focused on concrete national processes carried out in Costa Rica. Following this Introduction, Chapter 2 offers an "interlude" in which I explain

[25] Lest we think that this spatial arrangement is merely incidental to the setup of the Palais Wilson conference room in which constructive dialogues are usually held, I would note that it was reproduced identically in a different room when the CERD's August 2015 session was moved to the UN's Palais des Nations. Leaders of state delegations to other human rights treaty bodies likewise sit on an elevated stage at the front of the room, whether in the Palais Wilson conference room or elsewhere.

aspects of Costa Rica's historical and contemporary circumstances that make it a telling context for studying contemporary human rights assessment concerning racial discrimination. The subsequent Chapter 3 then analyzes more fully why and how the procedures I studied in Costa Rica – described in brief in the following paragraphs – are promoted transnationally, and in particular at the Latin American regional level.

A first of these procedures is the production of census statistics disaggregated into sub-populations potentially subject to discrimination on grounds of race, color, descent, or ethnic or national origin. I will refer to these as "ethno-racial statistics." It is of course not the case that anyone at the UN dreamed up the idea to identify census respondents by race/ethnicity and then disaggregate the data recorded on them in those terms. To the contrary, ethno-racial statistical production long pre-dates the United Nations, and its sordid history surely informs the UN Statistics Division's longstanding reticence to promote the universal use of ethno-racial variables.[26] Nonetheless, in the last 15 years, other UN actors and international human rights forums have enlisted ethno-racial statistical production as a key mechanism for combating racial discrimination, especially in Latin America. These actors promote ethno-racial census statistics as unique tools for identifying historically "invisible" – or "invisibilized" – forms of ethno-racial difference and discrimination. Crucial information about what it is to be black or indigenous in a given country can be uncovered, they say, if the demographic, economic, social, and other census data recorded on persons so identified are separated out from national totals and averages. But since, as Alain Desrosières (2001:347) reminds us, "contrary to what the etymology of the unfortunate term 'data' suggests, very few 'data' are actually 'given'," the enlistment of this procedure brings with it numerous questions about how ethno-racial statistics should be

[26] See, for example, UNSD 1967: paras. 175, 245-246; and UNSD 2008: paras. 2.160-2.162.

categorized, elicited, validated, and collated for discrimination assessment. These are key issues analyzed in Chapters 3 and 4 of the dissertation.

The other state self-evaluation procedure discussed in this dissertation is the drafting of a "national action plan" on racial discrimination. It may seem strange to refer to something called an "action plan" as evaluative, but as Julie Mertus (2005:97) has observed, this relatively recent human rights tool essentially creates a system of institutional assessment. National action plans are to begin with state actors taking stock of the country's "current situation" (OHCHR 2002:9), typically through some form of baseline study identifying the human-rights problems that need to be addressed. From these problems, action-plan drafters set targets for improvement, and propose concrete legislative and administrative steps for reaching them. Drafters also assign end dates by which each target – or the action plan as a whole – is to be fulfilled, and at which time the state agencies deemed responsible for each target will be expected to evaluate their success. This action-plan model is championed across the UN human rights system, and by treaty bodies in particular (Mertus 2005:97). Former-CERD member Morten Kjærum (2007:19) has called for states to integrate national action planning with treaty body reporting cycles. What he essentially proposes is that the "concerns and recommendations" expressed by treaty bodies be adopted into the national action plan's own baseline assessment and final evaluation rubric. Such an arrangement would no doubt be a dream for many UN treaty body members, as it would plug the outcomes of their "constructive dialogues" directly into the knowledge channels that shape state policy and action. How those all-important channels of accounting for the "current situation" are designed, and how decisions are made about what information can and cannot be poured into them, are topics explored in Chapters 3 and 6.

From Evaluating Human Rights Treaty "Effectiveness" to Analyzing the Human Rights Practice of Evaluation

This dissertation takes seriously both the forms and practices of the evaluation mechanisms just described, and seeks to illuminate what they do, how they do it, and why. It recognizes evaluation, or assessment, as a phenomenon enacted across multiple scales and locales, and thus one that merits a multi-sited ethnographic approach (see Marcus 1995). The multi-sited design of my project follows not from an imaginary of some *thing* that is in motion and must be "followed," but from conceptualizing assessment as an object that is multiply situated and iterated in the world of human rights legal governance. This object is manifest where we find structured processes for analyzing states' standing in relation to human rights legal commitments – in this case, those concerning racial discrimination.

Scholars and practitioners engaged with human rights treaties could benefit from better understanding how evaluation procedures work in practice. For many years now, empirical research on the human rights treaty system has been dominated by scholars working in the international relations tradition, who have framed their work around the questions of whether, and under what circumstances, treaties are "effective" (e.g. Hafner-Burton & Tsutsui 2007; Hathaway 2002; Hill 2010; Keith 1999; Neumayer 2005). The well-established study design utilized in this research program begins with the building of large sets of quantitative scores on human rights violations in each of the world's countries by year. These single-digit scores are assigned based on the incidence of violations reported in Amnesty International's and the U.S. Department of State's annual country reports, and usually account for only human rights related to the "physical integrity" of persons – protections against extrajudicial killing, torture, political imprisonment, and enforced disappearance or exile. Researchers use countries' scores – reckoned on scales with as few as three points – as metrics of "compliance," and look for

changes between the years before and after states' ratification of treaties in order to make macro-level judgments about whether treaties "make a difference."

In its search for more- or less-conditional "yes" or "no" answers to that question, this research program gives little attention to what formal assessment mechanisms themselves do. Indeed, they neglect these mechanisms in favor of placing the researcher herself in the role of evaluator. Rather than investigating oversight actors' situated approaches to implementation, they construe a standard, stable, and unilineal path towards a fixed object of compliance. Rather than asking how state and UN agencies determine what types of information reveal states' successes and failures, they claim for the researcher the interpretive and epistemological authority to do so, eliding issues of norm indeterminacy. This positioning of the researcher thus leaves significant gaps in scholarly understanding of the human rights treaty system.

Some scholarship in the international relations tradition offers noteworthy counterpoints to the "treaty effectiveness" program, and informs how I have approached my study of evaluation. This includes work pointing out that states do not implement broad human rights commitments evenly across all institutions – or otherwise "all at once" – but through extended processes involving persuasion, socialization, and routinization (see Chayes & Chayes 1995; Goodman & Jinks 2003, 2004; Koh 1997; Lutz & Sikkink 2000; Risse & Sikkink 1999). It also includes the important point that increases in the legitimacy of the "human rights" concept, and in the documentation and circulation of information framed in its terms, makes it misleading to simply compare reported violations across time. Where human rights reports document similar or greater numbers of violations relative to the past, it *might* be due to state negligence; but it could also be due to improvements in documentation or because incidents that once were not recognized as violations are recorded as such today (see esp. Clark & Sikkink 2013). Identifying

the many such factors that determine how evaluation procedures register racial discrimination is a central concern of my research.

Anthropologists have, to date, had remarkably little to say about the UN human rights framework on racial discrimination. The one glaring exception is Faye V. Harrison, who has shown a keen interest in social researchers' potential contributions as "co-constructors" in this arena of human rights work (see Jean-Klein & Riles 2005). Harrison considers anthropologists especially well-positioned to inform the conceptualization and formulation of truly trans-cultural human rights through our knowledge of "non-Western" ontologies and epistemologies; and also to monitor rights compliance and spotlight violations through our attentiveness to the everyday lives of people "on the ground" (Harrison 2002). As may already be clear, neither of these is the contribution I envisage for this dissertation. Elsewhere, however, Harrison (2000:59) remarks that, "In light of the legal status and international legitimacy of the UN's well-meaning instruments, [its] procedures and processes of enforcement need to be critically examined, building on and going beyond the important precedent Banton has set." Here we move closer to the ethnographic focus and objectives of my work.

UN-led efforts to combat racial discrimination certainly merit greater attention from our field, especially given their basis in a normative framework that can encapsulate most of what critical scholars find missing in more limited, civil rights-focused national systems. We cannot know – nor do I purport to ask – whether or how much the world would be worse off absent this UN framework. But we *can* track the concrete processes devised to carry it forward, asking not about treaties' "effectiveness" but more open-ended questions about these processes' *effects*. My own analysis highlights in particular how evaluation effects new roles, responsibilities, and relations among the expanding network of actors it enlists, and how performing these makes and

re-makes the human rights framework on racial discrimination as a project in international legal governance.

Research Methods Employed in this Study

I carried out research for this dissertation from 2010 to 2015, with the bulk of my ethnographic data collection undertaken between September 2012 and August 2013. My research on the CERD included three stretches of fieldwork in Geneva, each lasting three to four weeks during the Committee's August sessions in 2010, 2013, and 2015. During these sessions, the CERD held "constructive dialogues" with delegations from a total of 27 states. I observed these dialogues, as well as the Committee's regular forums for NGO representatives and informal lunch-hour NGO briefings involving smaller groups of CERD members.[27] In all of these, I focused on the forms of information in which committee members showed interest, what they did with that information once acquired, and whether and how issues it raised were laid to rest. The goal here was to locate tacit boundaries the Committee puts on its interpretations of the Convention and on its own mandate in the course of its practice (see Chapter 5).

I also participated in the everyday social world of CERD sessions, as observer and party to interactions over lunch in the UN cafeteria, in hallways, and on walks to bus stops, among others. My frequent casual, yet highly substantive, conversations with committee members in these contexts were supplemented with several semi-structured interviews. The latter were used as opportunities to better gauge CERD members' priorities in their work, to what extent practices I had observed were consciously strategic, and what aspects of CERD work they themselves had theorized. In addition to my ethnographic data collection, I have also reviewed dozens of states' and NGOs' reports to the CERD, and even more of the Committee's Concluding Observations.

[27] In addition to the CERD-state dialogues I attended in person, I also observed, and took "fieldnotes" on, the 2014 reviews of El Salvador and the United States via live webcast.

Relatedly, I conducted extensive research on official documents from CERD sessions housed in the UN libraries in Geneva and New York. Focusing on summary records dating back to the CERD's inception in 1970, this research offered important historical perspective on the development of examination practices, and context for recognizing what was most significant in the ethnographic present of the 2010s.[28]

My research in Costa Rica began with preliminary fieldwork in the summer of 2011, followed by nine months of ethnographic research between September 2012 and July 2013. During this time, I tracked processes coordinated from within two different state institutions. One was directed by the Instituto Nacional de Estadística y Censos (INEC – National Institute of Statistics and Censuses); the other by the Ministerio de Relaciones Exteriores y Culto (MRE – Ministry of Foreign Relations).

The INEC process I studied was that by which the Institute produced ethno-racial statistics through the 2011 population census.[29] As defined by the UN Statistics Division, "A population census is the total process of collecting, compiling, evaluating, analysing and publishing or otherwise disseminating demographic, economic and social data pertaining, at a specified time, to all persons in a country" (UNSD 2008: para. 1.4). My research covers this entire process, together with its preparatory stages including the design of the census form and the training of census-takers. Because these initial stages – and the door-to-door collection of data between May 30 and June 3, 2011 – took place prior to my arrival in Costa Rica, my analysis of them is based on interviews and institutional documentation. Here I let the actors and documents at the center of the work on the ethno-racial variable tell me what was most important

[28] No summary records from CERD meetings prior to February 1993 have been digitized; they are only accessible in the UN libraries.
[29] Formally, Costa Rica's *X Censo Nacional de Población y VI de Vivienda*.

or at stake in the ethno-racial variable, with the plan of locating this local (expert) knowledge in relation to transnational discourse on data disaggregation and human rights. My interviewees included census officials and technicians at INEC, as well as Afro-Costa Rican and indigenous activists, and a few anthropologists, all of whom participated in decision-making around the ethno-racial variable.

These interviews also informed my analysis of subsequent census stages of data evaluation, collation, analysis, and dissemination. For these however, I benefitted further from being present in the country when they were underway. This allowed me to follow mutations in the objectives and controversies around ethno-racial statistics as they unfolded throughout the census process, and with a view on the socialities that shaped them. To this end, I attended a workshop on the construction of indicators of the living conditions of indigenous people; a regional workshop on the collection and policy uses of statistics on people of African descent; and several public presentations of census findings delivered in San José. I also watched census figures and INEC personnel as they were enlisted in processes in my other Costa Rican "site" – the MRE's work to investigate, analyze, and account for racial discrimination in the country.

That work was driven by Costa Rica's Inter-Institutional Human Rights Commission, an entity established in 2011 under the direction of the MRE – just months before I began my long-term fieldwork. The Commission includes leaders from the MRE's small human rights division and representatives designated by the more than 20 state institutional members.[30] Beginning with its inception, the Commission was to compile and organize information on current discrimination problems to meet two evaluation functions: first, the baseline assessment for a

[30] Each institution – running the gamut from the Ministry of Public Education to the General Directorate on Migration to the Costa Rican Institute of Aqueducts and Sewage – designates two representatives, a principal Commission member (*miembro titular*) and a substitute (*suplente*). Typically just one of the two from a given institution attends Commission meetings, sometimes neither.

national action plan “for a society free from racism, racial discrimination and xenophobia,” and second, an overdue periodic report for submission to the CERD.

Figure 3. The Casa Amarilla, headquarters of the Costa Rican Ministry of Foreign Relations.

I followed the work of the Commission through a number of avenues. First, between my arrival in September 2012 and my departure in July 2013, I attended all of its monthly meetings, which were held in the MRE’s headquarters in San José – the Casa Amarilla (see Figures 3 and 4). Observing these meetings was itself a rich source of data, but it also allowed me to identify who were the influential and the relatively inactive members of the Commission. From there, I proceeded to interview a sampling of both. Influential members were of course sources of crucial insider knowledge and insight, and several would be among the most generative of my interlocutors. Perhaps most important, the MRE-based leader of both the action-planning and CERD-reporting projects was a key interlocutor who I interviewed on several occasions and with whom I maintained a rich, ongoing dialogue throughout my fieldwork. But I chose to interview less active members of the Commission as well in order to avoid biasing my understanding of members’ human rights knowledge and motivations, as may have happened had I spoken with

only those most engaged. I also interviewed black and indigenous scholars and activists with whom the Commission consulted, both to hear the "other side" of the story and in these actors' capacity as experts with respect to state human rights practice.

Figure 4. The Casa Amarilla's "Salon Azul," where Costa Rica's Human Rights Commission meets.

My conversations with Human Rights Commission members also yielded a number of participant-observation opportunities at workshops, training sessions, and other exchanges focused on racial discrimination and/or indigenous peoples' rights. These usually included a mix of attendees from state institutions, community-based organizations, and intergovernmental institutions. The rapport I built with the Commission's leadership also led to my being included as an observer (and sporadic participant-observer) in the eventual sub-committee/working group that took over the work of the anti-discrimination action plan in early-2013.[31] I attended this smaller group's meetings in San José, and also traveled extensively with members to attend meetings they held with local communities across the country. The latter meetings – ranging

[31] I discuss some complexities in the role(s) I assumed during fieldwork in this Introduction's final section below.

from community forums to site visits to conversations at people's kitchen tables – were the core of the avowedly *participatory* character of the policy process (see Chapter 6). To observe them, I accompanied small groups of 3-5 working-group members – including actors from diverse state institutions and one "civil-society advisor" – to nine different locales located as far as seven hours' drive from San José. These trips were invaluable not only for the opportunity to witness the meetings themselves, but also for the many additional hours I was able to spend with members of the sub-committee/working group in informal debriefing sessions at meals, in hotel lobbies, and in transit. These opportunities made my dialogues with these interlocutors grow increasingly deeper, richer, and more candid – yielding insights into the ideas, commitments, and motivations that shaped their work (and even their lives). They also led to my own deepening involvement in that work, as I discuss in the final section of this Introduction.

Evaluation, the Obligated State, and the Making of Obligations

My long-term fieldwork with UN and Costa Rican-state actors makes clear that those involved in steering evaluation processes do not believe that a state's record on racial discrimination can be reckoned through universal metrics or scales like those in the "treaty effectiveness" literature. More compelling still is that very few – and indeed only those least seasoned in human rights oversight – consider the benchmark of success to be a state's untarnished human rights record or fulfillment of all of its obligations. I contend that instead the governmental, inter-governmental, and non-governmental actors who have developed the UN system for monitoring racial discrimination have made evaluation focus more fundamentally upon state "obligated-ness" – or obligation, in the singular – than upon state obligations. That is, they have oriented evaluation towards cultivating in state subjects a model of how to *be obligated* to human rights anti-discrimination norms more than towards judging states'

achievements against a strict ideal of what obligations correspond to those norms. This distinction may appear odd, for what is it for a state to be obligated if not for it to have discharged its obligations? In this case, it is both less and more, and I will show that my distinction between the holding of a state to obligated-ness, versus to obligations, is crucial for analyzing what evaluation effects, how, and why.

In arguing that the multi-sited evaluation phenomenon holds states to an ideal of obligated-ness rather than to a set of concrete obligations, I should emphasize at the outset that state actors cannot evince the former without being able to report real achievements on (at least some of) the latter. But to have some such achievements is only one sub-point – one of several boxes to be ticked – for an obligated state. And, perhaps counterintuitively, these achievements should *not* demonstrate *complete* fulfillment of the state's international obligations to combat racial discrimination. In fact, to disclose some instances of *non*-fulfillment is also important for showing obligated-ness, for reasons explained below.

Being Obligated

So how is a state cultivated or shown to be obligated if not by evincing faithful adherence to all of its universal rights obligations? What is such an obligated state like? First and foremost, an obligated state is earnest in the quest to hunt down and root out racial discrimination, in all its manifestations. Here earnestness includes being self-motivated, vigorous, and persistent in efforts both to know and to intervene.[32] Obligated states should further bring creativity and open-mindedness to these efforts, never satisfied to passively conduct them as they have been done elsewhere or in the past. To the contrary, assuming obligated-ness means making a state highly attentive to the particular local meanings and consequence of

[32] I borrow the term *vigorous* directly from former-CERD member Theo van Boven's (2002:168) description of the desirable characteristics of a state party to human rights treaties.

difference and diversity. It also means being reflective and genuinely self-critical about past approaches to identifying and ameliorating discrimination. Being obligated should not be comfortable; it should be work. It should even hurt a little.

With this initial description, I have chosen to imitate a convention notable across the sites I studied, namely actors' tendency to discuss states as capable of qualities usually attributed only to individual persons. To anthropomorphize states in this way is not uncommon in everyday parlance. It is even a mainstay in international-relations scholarship, where states are consistently the "actors" analyzed as having beliefs, desires, ideas, and interests.[33] But such language takes on a different significance when it is adopted by actors who are not only analyzing, but also attempting to act as, through, and upon states. For those I studied – UN and state functionaries alike – the largely *interpersonal* work of cultivating obligated-ness *in states* made the practice of transferring characteristics and attributes reciprocally between persons and state ubiquitous (see also Clark 2014). On occasion, however, actors also drew critical attention to such conflations – both personification of "the state" and state-ification of persons[34] – insisting that the obligated state's being must be more than the composite of those persons who inhabit state institutions.[35] This issue of how evaluators think through what it is to engrain obligated-ness in a *state* as such – especially in relation to the distinct socialities of assessment processes – runs across the chapters of this dissertation.

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[33] Mika Luoma-aho holds that international relations scholarship is peculiar for how seriously it takes what should be a "*metaphorical* image of the personified, embodied state" (2009:293, emphasis added). A scholar of political theology, Luoma-aho provocatively makes the case that IR is more properly a religion than an academic discipline.

[34] Readers may recognize the term *state-ification* – or *étatisation* – as one used by Michel Foucault (e.g. 1978:150; 2008:77-78), so I should underscore that I mean it here in a different way. As may be clear contextually, by "state-ification of persons," I mean the ascription of state-ness or state being to persons (those representing or otherwise in the employ of a government institution), accompanied by the reciprocal ascription of those persons' actions and qualities to "the state."

[35] Ira Bashkow (2014) has discussed similar contending perspectives on the constitution of corporate subjecthood with respect to the private corporation (see also Bose 2010).

I argue that in any case, making states into subjects that are obligated – in their qualities, dispositions, habits, and practices – has emerged as the organizing objective of human rights evaluation procedures concerned with racial discrimination. Several significant effects follow from this, as I discuss below. But first, I should note that, for some, my emphasis on the subject-formation function of assessment – or even the topic of assessment in and of itself – would seem to call for framing my research in terms of "audit." "Audit" has become a popular analytic in scholarship on myriad modalities of accountability and evaluation since accounting scholar Michael Power (1994) wrote of an "audit explosion" in the 1990s United Kingdom and anthropologist Marilyn Strathern (1996/7, 2000b; see also Strathern 2000a) of "audit culture." I am however cautious, even skeptical, about framing the processes I study within the terms of audit. On one hand, the actors involved do not themselves label their work in this way – the trend that initially motivated Power's naming of the "audit explosion."[36] On the other, if we are talking of "audit" strictly as an analytical concept, to use it here could well mislead the reader. This is because the audit concept has been defined in critical social-science literature as expressing several "logics" or "mentalities" – financialization, neoliberalism, objectivity, standardization, scientism (e.g. Merry 2011; Shore 2008; Shore & Wright 2015; cf. Kipnis 2008) – that my findings suggest are *not* those animating the actors and processes I study. I see their divergence from these logics not as a sign of mutations in "audit" per se, but as a reason to choose to separate the assessment phenomenon I analyze from the diffusionist narrative of an all-encompassing "audit" ethos (see Kipnis 2008).

[36] Power (2003:187-188) has reiterated that the point of his influential original work (Power 1994) was to analyze the proliferation of the term *audit* itself. Only by "sleight of hand," he says, did scholars turn "audit" into an *analytical concept*, labeling practices and processes as "audits" even when the actors advancing them did not.

Other analytics from recent scholarship on human rights oversight are more illuminating of what I mean (and do not mean) to say about the demand for "obligated-ness" in evaluation, and its relationship to obligations. Two in particular are the characterizations of UN human rights assessment as "ritual" and as the "monitoring of monitoring" (Cowan 2013; Rosga & Satterthwaite 2009; see also Kelly 2009). Jane K. Cowan (2013) uses "ritual" in her analysis of Universal Periodic Review (UPR), a relatively recent UN human rights mechanism of state-to-state peer review. She explains that by calling UPR a compliance *ritual*, she means to stress how states' mere participation in the structured and routinized procedural form itself tends to "confirm[] them into the community of rights-respecting states" (*ibid.*:118). In their analysis of the UN Committee on Economic, Social and Cultural Rights (CESCR), AnnJanette Rosga and Margaret Satterthwaite (2009) talk of a shift in oversight towards the "monitoring of monitoring." Specifically, they use this phrase to describe the CESCR's choice *not* to foist standard, universal rights indicators upon all states, but instead to put the onus upon each individual state to design (and account for) its own monitoring systems and metrics. For Rosga and Satterthwaite, the problem here is that "handing off the task of indicator development" to states – and then monitoring *it* – moves oversight a step further from the direct assessment of rights fulfillment (*ibid.*: 259, 281).[37]

Indeed, both "ritual" and "monitoring of monitoring" are expressions of concern about oversight strategies focusing excessively on procedures and proceduralism. I agree with Cowan and Rosga and Satterthwaite that human rights oversight does *not* do what many would expect from evaluation: a comprehensive accounting of substantive rights. But was I to label the

[37] I should note that these authors later express even stronger misgivings about the prospect of globally standardized indicators, the adoption of which would entrench one measurable interpretation of the meanings of otherwise fluid and adaptable norms. I take up the question of how quantitative indicators are *talked about* in the UN system versus how they are *used* in oversight practice in Chapter 5.

evaluation procedures that this dissertation examines as "rituals," I worry that this could imply an inertia and automaticity that miss important dynamics captured by the notion of obligated-ness. Is it crucial for state actors to participate in these procedures in order to satisfy the demands of evaluators of anti-discrimination norms? Certainly. But at the same time, for those representing the state (or an institution within it) to simply show up and "go through the motions" would be more than insufficient – it would be a failing. This is because it would not demonstrate proper obligated-ness.

Oversight actors expect that obligated states not only conduct prescribed procedures, but also that each does so in its own way. As I have already mentioned, an obligated state is "creative" and attentive to local circumstances and context – part of what Chapter 3 shows is a turn in evaluation to a kind of romance with the idea of difference. Not only is a state to devise evaluation methods and metrics that fit the particularities of the country, it should also regularly scrutinize, adapt, and improve upon its own, and other states', past methods of assessment. One does well to report to international forums on inadequacies it has identified in existing models – contributions to improving norm implementation everywhere that evince an engaged, proactive disposition. Pressure to enact this type of obligated-ness stands apart from other scholars' findings of an unrelenting standardization push (e.g. Merry 2011), since it incentivizes novel substantive and procedural elaborations (or iterations) upon the system for monitoring racial discrimination. Thus, rather than ultimately reinforcing "structure" (cf. Turner 1969:Ch. 3-4) – or, the established "motions" required to "go through the motions" – properly enacting obligation actually *changes* what is expected for future rounds of evaluation.

The "monitoring of monitoring" frame comes closer to capturing this deepening of human rights oversight's scrutiny concerning *how* states craft their evaluations. But its

suggestion that this concern with form displaces that with substantive rights does not dig deep enough into the relationship between the two. First, to say that international oversight is "merely" the "monitoring of monitoring" plays on a substance/form dichotomization that forgets the extent to which the two co-implicate and mutually mediate one another in assessment and other bureaucratic sites (see e.g. Brenneis 2009; Hull 2012a; Maurer 2005; Riles 1998). As I explain in Chapter 3, the current procedural forms of evaluation were selected based on particular notions of the subject matter area – racial discrimination – and their forms remain in dynamic interplay with the content of evaluation through time. Second, oversight's interest in form and process does not appear to extinguish engagement with substance. As I have already noted, a state (or state agency) that does not disclose *some* substantive problems will always be found wanting; this is true no matter how well-defended its evaluation practices are.[38] A state must also show that it is addressing previously identified substantive problems as effectively as possible. This requisite blend of previously unknown problems discovered, and previously known problems acted upon, is better explained by the notion of cultivating obligated-ness than that of the "monitoring of monitoring."

Finally, to appraise UN agencies as doing only "the monitoring of monitoring" could imply – mistakenly, I think – a devolution of the regulatory role to state subjects á la the modes of power analyzed by Foucault as disciplinary. Specifically, it recalls Foucault's memorable analysis of the Panopticon, by which subjects rendered constantly exposed to a field of vision would internalize the inspector's gaze, doing as they ought at every moment whether or not they were actually being watched (Foucault 1977:195-205). Such a characterization simply does not

[38] States' once-common practice of attesting before the CERD that there was no racial discrimination in their countries, for example, has become unacceptable. As Chapter 5 suggests, whatever the information curried to defend such a claim, the Committee will always impute shortcomings.

fit the human rights evaluation phenomenon I have investigated. To the contrary, evaluation here posits no endpoint, no final arrival at a state's self-governed compliance with a determined slate of "oughts" (cf. Foucault 2007:44-47). It does not work through disciplinary panopticism's "fictitious relation" of overseen subject with unverifiable monitor, or by forbidding lateral vision and communication among those evaluated (Foucault 1977:200-202). Quite the contrary, it demands that state actors assume relations of interminable directive dialogue with evaluators,[39] and ongoing dialogues of mutual learning with peer state institutions. The obligated state is not a hyper-visibilized, self-disciplined isolate; it is a self-disclosing, dialogical partner.

Making Obligations, Re-Thinking States

In the previous sub-section, I held the multi-sited evaluation phenomenon concerning racial discrimination in tension with some current modes of explaining human rights oversight in order to draw out the unique dispositions, practices, and relations it demands of states. I characterize these demands as aiming to cultivate states' obligated-ness. Now I want to briefly point to some of the consequences arising from the dispositions, practices, and relations evaluation induces. Or, to pose the matter somewhat differently: What is made through evaluation as a result of its orientation towards the vision of the obligated state that I have described?

First, it is a central point of this dissertation that actors' everyday work to elicit and enact obligated states does not displace substantive obligations, but actually *makes* them. Stated as succinctly as possible, evaluation makes obligations. This is so on two levels – that of particular states subjected to cyclical rounds of evaluation, and the aggregate level of the "domain" of obligations. In the first case, each round of evaluation results in a certain number of problems

[39] This is more reminiscent of power relations Foucault discussed as "pastoral" than those deemed "disciplinary" (see esp. Foucault 2007:164-165, 173-177).

either "discovered" or conceded by the state actors involved, which are thereby represented as their unmet duties in the fight against racial discrimination. The various chapters of this dissertation show how technical, policy, expert, and civil-society actors collectively craft this knowledge, ultimately foregrounding certain subject matter areas while deferring on others, and thereby reinterpreting the implications of rights norms. What constitutes the products of these sorting, sub-dividing, and selection processes as *obligations* is the certainty that, if nothing else, the state will have to respond for *these* substantive issues by the next round of assessment if it hopes to prove itself obligated.[40]

At the aggregate level, the cultivation of obligated-ness tends to expand the domain of what are, or can be, considered state obligations by prompting dialogue around an ever-broadening range of actions taken, and problems identified as discrimination issues. This is because – over and above evaluators' efforts to push the bounds of their remit – the demand that state actors always disclose some problems and shortcomings, and also successes, leads them to construe new implications and applications of the norms, which feed back into future evaluations of other state actors. Because anti-discrimination norms are broad and their duty correlates indeterminate, state actors provide accounts that exceed the questions asked, to paraphrase Foucault's (1978:44) description of induced disclosures in another context. Doing so in transnational forums offers further iterations upon an evolving object of compliance – the practices and omissions catalogued therein becoming potential lines of questioning and recommendation elsewhere, fodder for broadening and lengthening directive dialogues with other states. It is perhaps best to think of these as a repository of *potential* obligations since, as

[40] This is connected to a more general point that evaluation criteria alter the behavior of subjects of evaluation, who adjust in ways that allow them to register better performances (see e.g. Espeland & Sauder 2007).

just discussed, any given evaluation will hold a state only to a selection of them, at least in the immediate.

This simultaneous expansion of the domain of anti-discrimination norms paired with the acceptance that every state will always only partially fulfill them leads to a second notable consequence. It means that the ideal of obligated-ness transforms the temporality of treaty compliance from a target to be reached "without delay" to a horizon towards which states should always be advancing, but never expected to arrive.[41] On one hand, this implies that no state can ever profess to have "nothing left to do," and when protected groups encounter new problems, they will likely be able to frame them as compelling state remedy under international human rights. But on the other, a system in which there will always be more to do is one with a permanent opening to defer some of those "doings" into the future. Such deferral can undermine rights subjects' experience of the norms in question as rights at all. How the sorting, sub-dividing, and selection that this dissertation analyzes is conducted, and by whom, is thus hugely – and arguably *excessively* – important, in that it can determine which "fundamental human rights" are for today, and which can wait until later.

If this is disappointing, it is because we expect international human rights norms to be what they claim to be, which they are not, but which they must profess to be if they are ever to resemble it – compulsory, incontrovertible, certain.[42] But the international normative framework on racial discrimination, like other human rights agreements, is very much a *project* in law, and must be analyzed as such. When UN actors elicit "only" demonstrations of obligated-ness, it is one of those strategic compromises arising from what Birgit Müller (2013b:1-2) calls "the paradox of entrusting relatively powerless and underfunded organizations with tackling some of

[41] As the reader may recognize, this is a surprisingly "Derridean" temporality of law or justice (see Derrida 1992).
[42] I discuss the feeling of disappointment surrounding human rights treaty oversight further in the Conclusion.

the essential problems of our time." To take the CERD as an example, the Committee may exude authority from its home in the lavish Palais Wilson overlooking Lake Geneva; but for years it has requested, and been denied, the power to make *in situ* visits to the countries it monitors. Its budget does not even cover the translation of all of the reports it considers into languages of fluency of all its members! Paper documents have virtually disappeared due to print costs; UN library staff requested that I send them copies of my research products to support their efforts to justify the expenditure of maintaining archives.

And despite the supposed "global consensus" around the ICERD, the human rights normative framework on racial discrimination is very much a challenger. Its conception of what counts as racial discrimination is uncomfortably broad for many influential governments. It recognizes ethno-racially marked socio-economic inequality itself as discrimination. It says that affirmative, positive, or "special" measures should not be subjects of shifting political tides and negotiation; instead – given certain conditions – they are the legal duty of a state. This framework is not the hegemon; it must be won. The effort to normalize its broad conception of discrimination is a long-term project championed by a relatively small number of human rights actors who work strategically to extend its imperatives into the future, and deeper and deeper into states.

This brings us to some final consequences of evaluation's elicitation of obligated state dispositions, which in this case spill beyond assessment processes themselves. The evaluation phenomenon I analyze generates tiers of account-giving, documentation, and investigation that bring many state functionaries newly into contact with, and into responsibilities for, the state's human rights treaty commitments. As I show in later chapters, this leads these actors not only to construe new applications of norms in relation to their work, but also to think differently about

their role as professionals within “the state.” If the state is the entity charged with ensuring fundamental human rights and they “are the state,” what does this change about their work? Many critically reflect upon and debate this question, re-think their relations with “the public” (now “civil society”), create new tasks for themselves, and recognize new – sometimes conflicting – criteria and sources of authority for their work. In general, some begin to see themselves as agents who must broadly “do” human rights; nearly all consider “the state” a more significant part of their identities as they see that international treaties cast “it” – often contrasted with changing government administrations and party platforms – as the continuous subject or locus of responsibility for fulfilling human rights.

Getting Over “Up”: Reflections on Ethnographic Fieldwork in Human Rights Legal Sites

It is fair to say that my principal ethnographic interlocutors were well-educated professionals, employed by or acting in the service of Costa Rican state institutions and United Nations agencies. Consequently, many would call my work “studying up,” and/or classify it as part of the growing – albeit unconsolidated (see Marcus 2004) – anthropological study of “elites.” I am ambivalent about this language, in part because it could be interpreted as endorsing some bright-line dichotomizations in my field sites – as between “the state” and “the activists,” the powerful and the powerless, the active decision-makers and the passive recipients or victims – that my findings tend to challenge. In general, I think we should avoid reifying these categories, as well as any unidimensional “up-down” depiction of power.

Further, I worry that an ethnographic project predicated on this “up-down” imaginary can distort the researcher’s engagement with her interlocutors by multiplying anxieties, self-consciousness, or distancing (see also Schwegler 2008), and generating an orientation to research that is excessively interested in fault-finding and criticism. This is not to say that such outcomes

are necessary corollaries to Laura Nader's (1972) classic call for anthropologists to "study up;" in fact, the latter was pivotal in inspiring me to become an anthropologist. But a number of more recent works offer valuable amendments to Nader's short piece, and insights for reformulating it. These include calls to think critically about parallels in the social positionings, norms, and practices of we anthropologists and those of our political-, economic-, or epistemic-elite interlocutors; to attend to these interlocutors' affective or "internal" worlds; and to engage them recursively in the (re)formulation(s) of research design, strategies, and concepts (see esp. Boyer 2008; Deeb & Marcus 2011; Hannerz 1998; Jensen & Winthereik 2013; Lea 2008; Marcus 2008; Schwegler 2008).

I strove to heed these recommendations during my fieldwork in Costa Rica and Geneva, and throughout the analysis contained in the chapters that follow. In particular, I am careful about the degree to which my analysis "others" the legal, bureaucratic, and technical personnel I discuss. After all, anthropologists have pointed out that organizational leaders required to conduct self-evaluations – and even dyed-in-the-wool evaluation professionals – share many of our established criticisms of standardized evaluation systems (see Jensen & Winthereik 2013; Strathern 2000b; Winthereik & Jensen 2017). Similarly, in their research on other UN human rights evaluation sites, anthropologists Miia Halme-Tuomisaari and Julie Billaud (*pers. comm.*) comment that what they encounter in these sites is often "radical sameness." This language is ironic, but also sincere. UN professionals and experts inhabit many of the same conditions as do academics, from the corporeal one of long, sedentary hours seated before a screen and/or keyboard; to the intellectual one of seeking to sort, consume, analyze, and produce something new from vast amounts of information, never with enough time or resources; to the affective one of continuing on with these practices despite perpetually wondering, indeed doubting, whether

they are having any of their desired effects.[43] To miss this makes it that much harder to get these actors "right," so to speak, and may foster more facile and caricatured critical depictions of them. Given these actors' greater propensity to "read what we write," this will only undermine projects for sustainable and mutually edifying exchanges across our respective domains, not to mention where those domains overlap.

Access

By now it is hardly unusual for anthropologists to conduct long-term fieldwork among various kinds of expert or elite actors.[44] Even so, Jon Harald Sande Lie (2013) observes that state institutions and international organizations have remained relatively unpopular ethnographic sites for anthropologists. This, he says, is in large part "because studying the social spheres of the state and international organisations entails certain restrictions that impinge on the anthropologist's ability to achieve participatory observation, as these sites have a political, bureaucratic and formal character that restricts access and limits what informants can say" (Lie 2013:205-206). Numerous ethnographic works on everyday practices of persons acting in the capacity of "the state" have appeared over the last two decades, but most focus on sites distinct from those Lie has in mind. They have been carried out at the frayed edges, "blurred boundaries," or "margins" of the state, in sites in which lower-level functionaries mingle with non-state actors (e.g. Das & Poole 2004; Gupta 1995; Lea 2008; Park & Richards 2007; Sharma 2006). Lie's comments instead address what he refers to as studying states or international organizations "from within." By this he means in institutional spaces likely to be seats of central

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[43] I would like to acknowledge that these observations are strongly influenced by a conversation with Miia Halme-Tuomisaari.
[44] Indeed, it is common enough that any in-text citation to support the point would inevitably run several lines long, a formality of which I spare the reader.

governmental or inter-governmental authority, in capital or "global" cities, and at middle or upper rungs of institutional hierarchies – the "interiors" rather than the "interfaces."[45]

My own informal conversations support Lie's point that many social scientists assume sites at the "core" of states and international organizations are uninviting of ethnography.[46] But numerous recent in-depth ethnographic studies with high-ranking policymakers, ministry officials, diplomats, and global and national regulatory bodies suggest that the impression of inaccessibility is overstated (e.g. Abélès 2008; Deeb & Marcus 2011; Greenhalgh 2009; Halme-Tuomisaari 2013, 2014; Latour 2010b; Müller 2013a; Neumann 2012). One can certainly speculate as to how much these functionaries might have "held back" in the presence of researchers, but as much is true of ethnographic fieldwork with persons of any subject position. A decade ago I might have assumed that my own access was an exception to the rule, enabled by my U.S. citizenship – a global form of privilege that some would argue levels power relations between Global South government officials and foreign researchers like myself. But since then, some exemplary ethnographic work inside state institutions has been conducted by researchers whose passports match those of their interlocutors (e.g. Halme-Tuomisaari 2014; Lea 2008; Neumann 2012), and not without examples from Latin America (de la Maza 2014).[47] These and my own experiences suggest that, in some cases at least, officials' self-understandings as public actors or civil servants make the various barriers – administrative staff, identification

[45] For further discussion of ethnographic fieldwork inside exclusive institutions versus at their interface with their "outside," see Ortner 2010.
[46] Douglas Holmes and George Marcus (2005:236) further comment that anthropologists generally "do not approach the study of formal institutions such as banks, bureaucracies, corporations, and state agencies with much confidence."
[47] Though I have only cited one piece here, I know of a number of other Latin American scholars who have recently conducted ethnographic research within their countries' state institutions. The "anthropology of the state" as formulated in the United States (see Gupta 1995; Sharma & Gupta 2006) has had especially notable influence among researchers in Colombia, Chile, and Brazil.

checkpoints, security guards – to the first steps towards access (often an interview) more permeable than they are for "private" elites (see Marcus 1992).

Still, some might object that each of the studies cited in the above paragraph was possible only thanks to the unique personal connections, stature, or "pitches" of the researchers involved, and are thus exceptions that support the inaccessibility thesis. Graduate students in particular may perceive such special circumstances as necessary to successful ethnographic research within state or similar institutional settings, often facing the extra burden of having to exhibit one or more to prove "feasibility" when seeking research support from funding agencies (or even dissertation committees). Such was the case for one well-known scholar who spoke on questions of ethnographic access during a roundtable at the 2015 meetings of the Law and Society Association. He recalled dissertation committee members who pressed him to explain why he believed extremely busy and important people – in his case, corporate executives – would allow a young, unimportant graduate student to study them. Reflecting now decades later, he suggested that this very *lack* of importance was an asset, not a liability. Had he been "important" – according to the terms of reference of those he hoped to study – his presence as a researcher could have been seen as threatening or risky to them. That it instead seemed innocuous is what made it agreeable.

My experiences are consistent with this point. Some actors in state or inter-governmental institutional centers may be resistant to ethnographic research due to anachronistic or otherwise erroneous ideas about anthropology's exoticization of its subjects (see Gusterson 1997). Others may have more well-founded worries that anthropologists study those "with power" only in order to find things to criticize, and will balk at anything that whiffs of exposé. But these and other initial hurdles to getting one's foot in the door may better be surmounted by the impression

of the researcher not as important, but innocuous.[48] In my research, I attended numerous meetings in which I was the only person at the table who did not hold an upper-level position in a government institution; I did not have to prove myself to everyone to do this, but I did need to be unobjectionable.

Beyond the practical question of access, to choose to step lightly and project oneself cautiously upon entering state and inter-governmental institutional sites also allows the ethnographer to be "disciplined," as Iris Jean-Klein and Annelise Riles (2005:185-187) put it, about the terms of her positioning. It may afford her the time and space to "read the room" and to better comprehend existing networks and relations rather than jumping at the first offers to "join," or into roles or alliances expected of, or foisted upon, her (*ibid.*). There is often a "wrinkle" here, in that entry into these sites may depend upon having established a relationship with someone who is equipped to open the door. But again, one avoids pigeonholing or hastily committing oneself if that relationship can be built without leaning on claims to the potential "importance" – or, for Jean-Klein and Riles, "relevance" – of one's perspectives or potential research products. Such "importance" can come through later, with the deepening of ethnographic dialogues.

The Useful Ethnographer

I also discovered in my fieldwork ways in which my sustained presence and dialogue with my interlocutors was actually beneficial to them, both professionally and personally. These were not planned, nor do I suggest that they are reproducible or "plannable" stratagems of

[48] This is not to say "uninteresting," but I was surprised to find in my fieldwork that proving my project was interesting or cultivating interlocutors' investment in it were not nearly as crucial to gaining access as Sherry Ortner (2010) suggests of her work on the film industry in Los Angeles. Overall, questions about the importance or the potential or desired impact of my research were much more common among activists and community leaders than UN or Costa Rican-state functionaries.

fieldwork. But they merit attention for the lessons they offer about how scholars should conceptualize, frame, and theorize bureaucratic, legal, and other institutional actors. As Tara Schwegler (2008) points out, examining how and why we gained access to "privileged" actors and sites – and I would add the *character* and *forms* of the access we gained – can afford considerable insight into how they operate. My reflections here focus on my fieldwork with Costa Rican officials involved in the anti-discrimination action-planning process; they describe how I found myself becoming useful to them in symbolic, practical, and affective terms.

First, though my ethnographic access certainly benefited from the ethos of openness, inclusion, and dialogue espoused by leaders of the action-planning process, it may also have been used as a sign of that ethos. That is, there were undeniable complementarities between my desire to observe and my interlocutors' wish to enact characteristics of what I have called an obligated disposition vis-à-vis the human rights framework on racial discrimination. If state functionaries want to demonstrate openness, earnestness, and so on, what better way than to allow non-state actors direct access to typically secretive and exclusive spaces? This is not to say that the Costa Rican action-planning process was *not* any of these things, and I in no way suggest that my interlocutors had calculated or cynical motives for working with me. But there is a blurry line between performance and enactment here. It is blurry much as was the way I was introduced in spaces of "civil-society participation": as "a North American doctoral student" who was "observing" (or "accompanying") the process. This is an accurate description – notwithstanding the ambiguity of the word *observing* – but it is also a credential, and a message, about the process: that it is open to being – indeed, that it *is being* – "observed" by a North American doctoral student. But the ambiguity between performing versus "being" open and inclusive also points to a problem with thinking of "the state" as singularly motivated in

processes like this one. Because if my access was in part a message, it was sent as much as anything from the leaders to the other members of the Human Rights Commission; it said that this project would not attempt to hide anything. It expressed and prescribed what at least these leaders genuinely wanted – that the state *shall* be obligated.

My long-term fieldwork with the Costa Rican action-plan working group also led to my becoming tangibly useful to my interlocutors as a contributor to their work. By the time the group began traveling to black and indigenous communities across the country – anthropologist in tow – OHCHR funding had all but dried up, and the project proceeded thanks to "donations" from different state institutions' discretionary funds. These institutions paid, for example, for the fuel and drivers of the "official use" government vehicles used to make the long trips.[49] One thing for which there was no budget was an official meeting minute-taker or précis writer. Members of the working group therefore took turns being responsible for compiling all of one another's notes from a given forum, and synthesizing them into short summary reports (*relatorías*). To my surprise, I was asked, first, to contribute notes to these reports, and later, to compile one. I admit that in part this was gratifying as a sign of my interlocutors' confidence in me, but it was also a bit startling to suddenly *do* the work of sorting, synthesizing, and collating information – concretely, indigenous community members' accounts and voices – that I had expected only to study. This type of contribution of intellectual services to organizations that anthropologists study is hardly unprecedented; others have written of negotiating research access by agreeing to provide it (Jensen & Winthereik 2013:Ch. 2). In my case, it came about when a

[49] I was very conscious of this, and its implication that space was very limited in the government vehicles. As such, I always offered to take public buses to the working group's destinations. Admittedly, it would have been impossible to keep up with the group's entire itineraries by bus, especially given their highly improvisational character. I was thus very fortunate and grateful to have been able to travel with working-group members in "official use" vehicles to all of the community visits I attended.

need arose; I suspect my interlocutors would have found it perverse to make my access to, or my work on, this human rights endeavor contingent upon a pre-arranged, formal exchange. All of this nicely illustrates those strange blends of the sacred and the extemporaneous, the high-minded and the chronically under-resourced, that guide the human rights legal project.[50]

Finally, I would suggest that my ethnographic dialogue offered a kind of *care* – or served a therapeutic function – for my principal interlocutors. This too was not part of my fieldwork "plan," and I expect it will sound strange to many. I say so not because the idea of the ethnographer offering care, recognition, or affirmation through listening is itself new in anthropology (see Garcia 2010; Wilson 2003; Zur 1998). Rather, it is that such suggestions are familiar only with reference to interlocutors in circumstances of violence, addiction, or other acute forms of suffering – subjects most obviously in need of care, which anthropologists have presumed includes the recovery of their voices through ethnographic attention (see Jean-Klein & Riles 2005:178-180). But what affective need could be met by an ethnographer's careful listening, intensive attention, and rapt interest in the fine details of the social and internal worlds of the "powerful," or the "voiceful"? This question is meant to be ironic, but I think it points to a genuine and widely shared misapprehension.

If we are surprised that so-called bureaucrats affectively "get something out of" having an ethnographer eager to listen to their every thought about work and life, one reason may be that we underestimate how much they affectively "put into" it. Such was the case at least with respect to my interlocutors in Costa Rican state institutions – for some no doubt due to the simple weight of professional expectation and pending evaluation, but for others out of sincere

[50] Even *as I wrote this paragraph* in May 2016, I received a press release in my email announcing, "Severe Financial Crisis of the IACHR [Inter-American Commission on Human Rights] Leads to Suspension of Hearings and Imminent Layoff of Nearly Half its Staff."

conviction to ideas of equality, human rights, and social justice. I can say with confidence that my *principal* interlocutors were people who not only believed in the goals behind the work they were doing, but who also worked long hours and weekends, and rarely "disconnected" even in their personal time. Meanwhile, the specialized, technical character of their work meant that they had few people in their lives – outside their professional settings – who they could use as a sounding board, or with whom they could reflect or vent. Likely they went home or to dinner with people who could only engage superficially with whatever was exhausting, frustrating, or invigorating them.[51]

The ethnographer, on the other hand, knows the specialized knowledge field and the personalities involved in their work, and is also a "safe" listener – one unlikely to be professionally consequential. I started to deduce this manner in which I was affectively valuable to my principal interlocutors when *they* began to be the ones to suggest the two of us meet to reflect or debrief, or when they confided in me about their affective states vis-à-vis their work. I doubt one could generalize about the impact such listeners have on the processes studied, aside from their feeding the obsessive tendencies of their interlocutors perhaps! I admit that I cannot help but wonder if here there is an opening for the anthropologist to shape the expert's or bureaucrat's approach or awareness – some twist upon Foucault's (2010:187-219) interpretation of a Platonic philosopher confidant/counselor who works upon the soul, spirit, and "way of being" of the Prince. But if there was such an opening, would the anthropologist be prepared to cultivate any "ways of being" better than those already pursued for the obligated state?

[51] Another thing (most) scholars share in common with "bureaucrats"!

Being There

I do not mean for the above paragraphs to suggest – either as unbridled encouragement to others or as an assertion of my own ethnographic authority – that there were *no* barriers that limited my fieldwork, or that I achieved "total access" (whatever that might mean). In terms of permissions, I had one formal written request to observe certain INEC meetings rejected via non-acknowledgement by someone apparently too shy to say "no" directly. But more significant was the barrier constituted by the contingent temporality of decision-making in institutional spaces. Surely many would be surprised at the relatively small number of functionaries who in the end decide how consequential details of a state's compliance with fundamental human rights norms are reckoned and represented in accounts considered "official" to both domestic and international audiences. Often matters are finally settled in unplanned moments – squeezed between myriad other tasks, in the waning minutes before a next commitment, or late at night when the functionary concludes that she simply *must* put to rest a pending decision about this language or that, or whether to include or cut a particular passage or figure. I know of no way to ensure one's "being there" at these unscheduled yet pivotal junctures. I would only add from my research experience that where these types of decisions lie with a "team" rather than one or two individuals, the ethnographer's integration into group email lists, together with interlocutors' use of technological functions likes "Reply All" and "Track Changes," can be invaluable.

Stepping back to the bigger picture, the temporality of the cycle of state human rights activities that are bookended by UN treaty body evaluations also poses a formidable challenge to the ethnographic study of implementation. In principle, for the CERD, there should be four years between rounds of review of any given state party; rare, however, are the cases that meet even this timeline. More common are seven- or eight-year reporting cycles, if by that we mean

the time from a state's drafting of one periodic report to the CERD's evaluation of the subsequent report. This timeline is at odds with that of most systems for funding ethnographic research.[52] Even if one had the resources to support a study of this length, she would also almost have to live in the capital city of the country being studied in order to follow the unpredictable waves of activity around the pursuit of international recommendations, internal documentation and assessment, and report compilation. The system for monitoring and implementing human rights treaties thus calls for creative approaches from those committed to understanding it ethnographically – in terms of the people, practices, and effects it enlists, however contingently. My choice to take evaluation as my object of study and to recognize it as multiply situated and worthy of attention across its transnationally distributed spaces and sites is one approach. I hope that other ethnographers will continue to dream up other strategies capable of pushing our understanding of the international human rights legal project – and our engagement with its practitioners – further still.

[52] To focus a study on one of those few states that actually submits its reports such that it is reviewed every four years would undoubtedly raise objections as to the generalizability of the findings.

CHAPTER 2

Why Costa Rica? (An Interlude)

Perhaps the most common question I have heard from colleagues and friends concerning my dissertation research is: "Why Costa Rica?" If you are reading this text, chances are you have asked me this yourself at one point or another. The question is of course a perfectly valid one, and especially welcome when posed as a query about my thoughts on ethnographic research design and knowledge production. To this register of the question I return below. But first, I would like to discuss the factors particular to Costa Rica that I find make people especially prone to asking why I would study issues of human rights and racial discrimination there (of all places). Indeed, the "Why Costa Rica?" question is often delivered in a tone of genuine befuddlement rather than simple inquisitiveness. The subtext in these cases is clear: Is racial discrimination – or the violation of human rights in general – really an issue in Costa Rica? After all, isn't Costa Rica a paragon of democracy and social harmony in the Americas?

This short chapter – an "interlude" really – begins with a sketch of some prominent imaginings of Costa Rica from the North, followed by a basic description of the dominant version of Costa Rica's national origin story. These are then contraposed with scholarly work that focuses on the histories of ethno-racial difference and differentiation in the country. Said work shows that, with respect to these issues at least, Costa Rica is hardly "exceptional" relative to regional neighboring countries. Finally, I explain what makes the processes I studied in Costa Rica particularly telling of evaluation procedures concerning racial discrimination in Latin America more generally, and venture some reflections on how to think about extracting lessons about global human rights procedures based on ethnographic material derived principally from ("just") one country.

"But why *Costa Rica*?"

If often those who ask me "Why Costa Rica?" seem perplexed, it is because of a particular pattern of partial, skewed, but widespread international familiarity with the country. For several decades now, North Americans' access to first- and secondhand knowledge of Costa Rica has been unusually broad for a country of its size and geographic location.[53] This is due primarily to international tourism promotors, both public and private, targeting these markets of potential visitors – and with great success. Tourism campaigns and services project a predictably curated image of Costa Rica as a safe, clean, and ecologically conscious country, in which a happy society of traditional farmers, charter-van operators, and zip-line proprietors live in harmony with one another and a breathtaking landscape of beaches, volcanoes, cloud forests, and wildlife. Several scholars undertook critical analyses of this image-making in the early 2000s, with a number of them pointing to how it casts Costa Rica – or at least the "desirable" parts of it – as also fundamentally European and "white" (Frohlick 2007; Rivers-Moore 2007; Vandegrift 2007). More anecdotally, North American tourists I encountered – always eager to know what I was doing in Costa Rica for so long – consistently expected that my research would pertain to sea turtles, biological diversity, or a local conservation project. More than one visibly recoiled when I told them I was investigating efforts to combat racial discrimination. Deflated at the mention of such an unpleasant topic, they responded, "But who is being discriminated against *in Costa Rica*?"

Many knowledgeable non-experts also share the impression that Costa Rica is a bastion of social harmony, egalitarianism, and peace – and not entirely without reason. Costa Rica's

[53] Other countries around the same size as Costa Rica are Slovakia and Bosnia and Herzegovina. Almost 40 Costa Ricas could fit in Mexico, and the country is just half the size of the state of Kentucky. Located in Central America, it borders Nicaragua to the north, Panamá to the south, the Pacific Ocean to the west, and the Caribbean Sea to the east.

military was abolished after the country's 44-day civil war in 1948, and the constitution adopted the following year has forbade the creation of a standing army ever since.[54] During the long period of political violence in Central America – from the CIA-sponsored 1954 coup in Guatemala to the myriad negotiated peace settlements of the 1990s – Costa Rica had none of the dictatorships, massacres, forced disappearances, or bloody civil conflicts that embroiled its neighboring countries.[55] Instead, it began building a reputation for having a strong middle class and extensive social welfare institutions, including a national health care system that rivals those of far wealthier countries. By the early-2010s, Costa Rica made international headlines for leading several lists ranking the "happiest countries in the world" (New Economics Foundation 2009, 2012; see also Breines 2014). Despite dubious methodologies, these lists have circulated widely in print and online sources.

According to Afro-Costa Rican and indigenous activists and intellectuals, the external image of Costa Rica that emerges from these fragments actually compounds their communities' problems. They regularly lament and lampoon tourism-industry slogans and designations like "the happiest country in the world" or "the Switzerland of Central America," which they consider barriers to the visibility of their grievances and struggles in international spheres that support Latin American black and indigenous organizations. If most Costa Ricans live more comfortably than much of the rest of the hemisphere, these activists say, those who do not share in those benefits must only work that much harder to gain the attention of inter-governmental bodies, and the advocacy and funding support of international NGOs and donor agencies.

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[54] The civil war itself was precipitated by the then-ruling government's attempt to throw out the results of a presidential election that was won by the opposition candidate.

[55] This is not to say that Costa Rica remained uninvolved or "neutral" in these conflicts, however. As is well-documented, in the 1980s, the Costa Rican government allowed counterrevolutionary militants and mercenaries to organize, train, and launch incursions into Sandinista Nicaragua from its side of the border.

Afro-Costa Rican and indigenous leaders further point out that Costa Rica's prevailing international image re-plays the very tropes of Costa Rican exceptionalism that have long denied their communities recognition and benefits of national belonging. In brief, narratives of Costa Rican exceptionalism trace the roots of the nation to hardworking Spanish homesteaders' arrival to a practically unpeopled land at the remote edges of Iberian colonialism. There these "smallholder farmers" worked the land in a setting free from the corrupting influences of racial difference and precious-mineral extraction, developing an egalitarian rural society from which flowered an innately peaceful, democratic, and Euro-American people. Though this national origin story took shape primarily to contrast Costa Rica with other Central American nations – Nicaragua in particular – it also set a standard of Costa Rican-ness that represents even those citizens who are not racialized as "white" as outsiders (see Fouratt 2014; Sandoval 2004; Sharman 2001). Given all of the foregoing, we must concur that reactions of surprise that there might be racial discrimination in Costa Rica on one hand, and actual ethno-racial exclusion and marginalization on the other, are based on many of the same ideas, narratives, and images.

Why Costa Rica

The historical narrative of Costa Rican exceptionalism in which European whiteness is central to national belonging did not coalesce by accident. Rather, nationalist politicians and intellectuals elaborated it through successive campaigns beginning in the late-nineteenth century, at times when cultural rifts and economic hardships threatened popular national sentiment and unity (Harpelle 2001; Molina 2002; Molina & Palmer 2007).[56] There has likely always been a majority population in Costa Rica that finds this narrative convincing, convenient, or both,

[56] Palmer & Molina 2004 features an impressive collection of Costa Rican newspaper accounts, personal memoirs, pamphlets, political cartoons, and other historical documentation, most of which illustrate exceptionalist motifs.

created as it is from fragments of the country's distinctive history, with numerous strategic elisions. As the philosopher Ernest Renan famously wrote in 1882, "To forget and – I will venture to say – to get one's history wrong, are essential factors in the making of a nation." Perhaps less quoted is Renan's subsequent clause, "[T]hus the advance of historical studies is often a danger to nationality" (Renan 1939:190).

For decades now, both Costa Rican and North American scholars have pursued such "dangerous" studies of Costa Rica's black and, to a lesser extent, Amerindian histories. The following paragraphs offer some of the particularly salient features of those histories. By no means is my aim here to "right" all of what has so often been gotten wrong. Rather, I take on the more modest task of sketching some of the contours of ethno-racial difference and differentiation in Costa Rica's past. This is meant in part to orient readers to issues that emerge in the evaluation processes I examine in subsequent chapters, but also shows why Costa Rica is an appropriate country for studying the implementation of the human rights framework on racial discrimination in the first place. I conclude by pointing out that important agencies in the UN system have also taken special interest in Costa Rica, and suggest that this is in fact the best reason for seeing my study as illuminative of the current evaluation phenomenon above and beyond this one "case."

Histories of Ethno-Racial Difference in Costa Rica

Contrary to the national origin story taught to generations of Costa Ricans, Spanish colonizers did not find in Costa Rica an uninhabited frontier. Though the pre-conquest population of several hundreds of thousands had already been reduced by European disease, a number of the first Spanish incursions on both coasts were repelled by native peoples. These incidents are left out of stories that begin with the colonization of the Central Valley – the

highland plateau in Costa Rica's interior whose history has long been represented as that of Costa Rica as a whole, or at least "the real Costa Rica" (see Molina 2002). Yet even in the Central Valley, the tale of Spaniards peacefully homesteading empty land is mistaken. In fact, the Spanish gained a foothold there only through the co-optation of local *caciques* (chiefs), and the Crown's promise that settlers who helped colonize and Christianize the territory could take on Indian inhabitants as serfs. These arrangements enabled Spanish colonizers by 1564 to establish their first permanent settlement in present-day Costa Rica in the Central Valley – the colonial capital of Cartago. But they also induced cycles of indigenous rebellion, increased Spanish repression, and native populations' flight to the forests and mountains (Molina & Palmer 2007:19-27; Biesanz et al. 1988:15-17).

This pattern, albeit with greater degrees of resistance and violence, played out in other regions as well. In fact, the Spanish would never fully conquer all of what became Costa Rica. The region of Talamanca is particularly noteworthy for its history of indigenous resistance to territorial conquest, labor exploitation, and religious conversion.[57] Long after Spanish conquerors and missionaries subdued other indigenous peoples, those of Talamanca remained known as "*indios bravos*" – wild Indians. The continued menace of European disease, forced re-location and enslavement, and wars between chiefdoms would thin and disperse colonial Costa Rica's indigenous populations. But it would not be until the entry of United Fruit Company at the dawn of the twentieth century that any outside force would take control of the Talamanca slopes and plain facing the Caribbean (Borge & Villalobos 1995:23-34; Lohse 2010:62-64; Molina & Palmer 2007:34-36; Stone 1962:7-8).

[57] The region of Talamanca, now a "canton" in the province of Limón, extends from the mountain range of the same name to the southern Caribbean coast.

Figure 5. Physical map of Costa Rica (Source: Wikimedia Commons). The Central Valley includes the cities of Alajuela, Heredia, San José, and Cartago (at center). Other places mentioned in the text that are labeled on this map are: Limón province, Matina, Puerto Limón, and Turrialba.

Costa Rica also saw its first black populations during the early colonial period, comprised, not surprisingly, of enslaved Africans. As a small, economically marginal colony, Costa Rica's contact with the Atlantic slave trade was sporadic, leading to significant variation in black colonial experiences. Elites in Cartago began holding slaves as domestic servants as early as the sixteenth century. But enslaved Africans only arrived in large numbers in the second half of the seventeenth century, brought principally to work on cacao haciendas in the eastern Matina Valley, and cattle ranches in the Pacific region.[58] While domestic servants had daily contact

[58] Notably, the use of enslaved Africans on cacao plantations was, for Spanish colonials, a convenient and legal solution to their difficulties securing sufficient forced labor from Talamanca Indians (Lohse 2010).

with Spanish colonists, slaves on the haciendas lived far, and relatively independently, from their Cartagan masters. In different ways, both of these dynamics tended against the establishment of a rigid "color line" in Costa Rica. A significant population of "free blacks" emerged, as slaves found means to purchase their freedom,[59] were liberated in wills upon the death of a master, and saw children conceived with Spanish men born into freedom (see Fonseca et al. 2001:51; Lohse 2005, 2010; Meléndez 2011b).

Far from an egalitarian one, the society into which free blacks in colonial Costa Rica were integrated was divided into an increasingly complex socio-racial status system of "*castas*." This *casta* system became highly socially significant throughout the colonial period, allocating different duties and protections to individuals based on designations largely derived from their supposed "racial" provenance.[60] Colonials came to regard the mixed-race terms "*mestizo*" and "*mulato*" as derogatory and, if addressed at a European-descended person, their use could lead to punishment for slander (see Fonseca et al. 2001:53-60; Meléndez 2011b:44-55; Olien 1980). At the same time, Carlos Meléndez (2011b:49) observes that while the proliferation of nomenclature for racially intermediate *castas* is proof of deep-seated prejudices, it also suggests that taboos restricting inter-*casta* relations were regularly transgressed. Scholars agree that black populations originating in the colonies mixed with non-blacks to the point that their descendants are "indistinguishable from other Costa Ricans except for slightly darker skin color" (Olien 1980:18). Their more lasting legacy seems to be a socio-racial vocabulary many terms of which continue to be recognizable to – and their relevance and meanings subjects of vigorous debate among – contemporary Costa Ricans (see Chapter 4).

[59] The period in the early eighteenth century in which cacao was a legal colonial currency is particularly noteworthy in this regard.
[60] As Elizabeth Fonseca et al. (2001:53) note, "The priests charged with writing down the *casta* of a child brought to be baptized had great power in their hands."

A subsequent population of African descent has made a deeper impact on the socio-cultural life of Costa Rica – that of migrant laborers from the Antilles, often called "West Indians." These migrants began arriving to Costa Rica's Atlantic coast in 1872. They came by the hundreds to work in the construction of a railroad connecting Puerto Limón to the coffee-growing Central Valley, a project led by North American contractors the Keith family. Antillean migrants did not aspire to lay down roots in Costa Rica, but instead hoped to make their riches and return home – for most, to Jamaica. These migrants recognized themselves as subjects of the British Crown, and strongly identified with all it represented. As Afro-Costa Rican scholar Quince Duncan (2011a) explains, this generation's migrants considered their language, culture, morals, and hygiene superior to those of Costa Rican "Spaniards," and had little interest in "mixing" with them. The Anglophone Antilleans had greater affinity for their North American employers, and remained famously loyal to them throughout the long, turbulent railroad project (Duncan 2011a; Meléndez 2011a). As construction progressed, the Keiths used large land concessions in the Atlantic region to establish banana plantations and export operations facilitated by the new railroad. This business led to the formation in 1899 of United Fruit Company, a corporation that would dominate the Atlantic region of Costa Rica for nearly four decades. More immediately, the banana industry offered jobs that inspired railroad workers to delay returns to their island homelands, and prompted thousands of new Antillean arrivals (see Chomsky 1996; Duncan 2011a; Harpelle 2001; Purcell 1993).

It would be hard to overstate the role of the banana industry in shaping race relations in twentieth-century Costa Rica. Beyond the sheer number of black, predominantly Jamaican, migrants it attracted to the country, United Fruit Company gave English-speakers preference in hiring and advancement, and practiced ethno-linguistic workplace segregation. This did not

make a docile workforce of the Antilleans, who formed unions and participated in numerous strikes in the 1910s through '30s (see Chomsky 1996; Duncan 2011b:13-15; Harpelle 2001). But it did succeed in dividing workers, and further contributed to migrants' certainty that their cultural inheritance from Britain was more valuable than any benefits of assimilating to Costa Rican society (*ibid.*; Purcell 1985).[61]

The Antilleans' rewards for casting their lot with United Fruit Company would prove fleeting however. Facing alarmist criticisms that it had "Africanized" Limón, pressure to rescue Costa Rican citizens from Depression-era unemployment, and widespread plant disease in the Atlantic region, the company accepted nationalists' demands in its 1934 contract negotiations with the government. These included relocating the bulk of banana operations from the Atlantic to the Pacific region, and honoring a law passed in conjunction with the contract that mandated hiring preferences for Costa Rican citizens and prohibited employing "people of color" in Pacific operations (Harpelle 2000).[62] In other words, the industry upon which multi-generational Antillean communities – along with the entire Costa Rican Atlantic economy – were built was moving, and if you were black, you could not go with it.

The "companion law" to the 1934 banana contract proved pivotal to the creation, and terms of incorporation, of a permanent Afro-Costa Rican population. Though the law did not formally restrict movement, it was enforced such that it was known and remembered as the law that banned black people from "passing through Turrialba" (see Hernández 1999; Meléndez 2011a:88-89) – Turrialba being the gateway from the Atlantic region to the Central Valley. The

[61] The interweaving and mutual manipulation of ethnic differentiation and occupational hierarchy that Philippe Bourgois (1988) found in nearby United Fruit Company plantations in the 1980s, then, was built on a well-established practice in this Caribbean banana enclave.
[62] The provision prohibiting "*gentes de color*" can be found in Article 5 of *Ley No. 31 del 10 de diciembre de 1934, Regulación en las Zonas Bananeras en cuanto uso de tranvía, obligaciones y contratación con los trabajadores*.

law isolated "people of color" to an Atlantic that the banana industry had left economically and ecologically devastated.[63] It also opened space for subsequent racist and xenophobic laws, including a ban on the entry of ethno-racially "undesirable" immigrants,[64] and restrictions on foreign residency that forced migrants to either assimilate or emigrate. Many of the thousands of young people who were born to migrants in Costa Rica, but whose parents had not claimed their right to citizenship, endured a naturalization process bent on cultural assimilation (Harpelle 2000, 2001). More broadly, the majority of the Antillean community that chose to stay in Costa Rica suddenly had to angle for "white" Hispanic Costa Ricans' acceptance as co-nationals. Performing adherence to the latter's values and practices facilitated a partial integration that recast them as an ethnic minority rather than foreigners (see *ibid.*; Foote 2004; Purcell 1993). But in the process, Harpelle (2001:189) explains, the Antillean community had to abandon its hopes for public recognition of its distinct cultural and economic contributions to the country.

Reformists passed laws ending *de jure* discrimination in the years after Costa Rica's brief 1948 civil war, but Afro-Costa Ricans would soon fade from the national agenda. For decades the Atlantic region remained home to the majority of the population, who struggled in a stagnant economy, neglected by private and public investment alike. The region – whether referred to as the "Atlantic," "Caribbean," or by the name of the province Limón – became synonymous with blackness, and "Afro-Costa Rican" interchangeable with "*Limonense*" ("of Limón"). Interestingly, this did not change the popular dictum that Costa Rica was a "white" nation. Again, since the Central Valley was "the real Costa Rica," *Limón* could be "black" while *Costa*

[63] In a final action that is hard to understand as anything but malicious, according to Ronald Harpelle (2000:50), "on its way out [of the Atlantic region], United Fruit ripped up tracks, bridges and other infrastructural supports."
[64] Omar Hernández (1999:222) recounts that *Decreto Ejecutivo No. 4 del 26 de abril de 1942* bans the immigration of "population[s] of the black race, Chinese, Arabs, Turks, Syrians, Armenians, Gypsies, [and] Coolies, considering them undesirable immigrants due to contagions and behavior supposedly contrary to those of Costa Ricans."

Rica remained "white." With ethno-racial categories removed from censuses for fifty years following 1950, official statistics could not refute this popular perception (see further Chapter 4).

Meanwhile, the discriminatory law of 1934 did not disappear from public memory or discourse, but instead became an important part of the nationalist narrative that Costa Rica had no "race problem." Similar to elsewhere in Latin America (see Dulitzky 2005), dominant sectors recalled this instance of *de jure* discrimination as a "convenient comparison" by which to cast racism as isolated to another time or place. In 1967, Costa Rica became the seventh nation-state in the world to ratify the ICERD, but was soon one of an astonishing number that insisted before the CERD that their countries were entirely free from racial discrimination (see Banton 1996:106-7). The fledgling Committee – still working out its mandate and interpretation of the Convention – frequently accepted these claims. Costa Rica further benefitted from having a national on the Committee who in 1970 was willing to state unequivocally on his country's behalf that "there was no racial discrimination in Costa Rica" (SR.34). A scholar of private international law – and by no means an expert on ethno-racial difference – this CERD member, Mr. Ortiz Martín, added that Costa Rica's "population was on the whole homogeneous. The indigenous inhabitants had never been numerous; at present they numbered approximately 5,000" (*ibid.*).[65] He made no mention of even the fact that Afro-Costa Ricans existed. In fact, no state delegate or CERD member would do so in any of the reviews of the first four Costa Rican state reports between 1970 and 1978 (see SR.34; SR.131; UN doc. A/9618; SR.385).

[65] There were no authoritative numbers on Costa Rica's indigenous population in 1970, but this estimate is almost scandalously low. When Costa Rica held its first census in fifty years to record respondents' ethno-racial identities in the year 2000, the figure for *indígenas* was just shy of 64,000. For 5,000 to have been accurate in 1970, the growth of the indigenous population over the intermediating thirty years would have had to have been four and a half times that of the general population.

For the indigenous peoples of Costa Rica – so callously minimized by Mr. Ortiz Martín – the twentieth century brought a series of laws that juxtaposed cultural-conservationist and liberal-integrationist motives. Following the multiple displacements common to indigenous peoples throughout the Americas, much of this legislation concerned which land and resources should be under indigenous control, and who exactly could share in decisions about their use. A 1939 Costa Rican law proposing to "conserve our autochthonous race and free them [*sic*] from future injustices" declared lands "in which [indigenous] tribes exist" to be inalienable and exclusive to them.[66] But the law remained largely dead letter until 1956, when finally the first three indigenous *reservas* were established in Costa Rica's southern Pacific region.[67]

In the intermediating years, the Costa Rican state joined the regional Instituto Indigenista Interamericano and subscribed to its agenda of *indigenismo*. As state policy, *indigenismo* called for protecting indigenous cultural forms deemed valuable or "positive," while overcoming barriers to indigenous people's "progress" and national integration – many of which were also attributed to cultural difference (see Engle 2010:35-38).[68] In Costa Rica, the state invested in indigenous cultural programs and development, but also in new schools that used the national curriculum and special campaigns aimed at cultural "uplift." Infrastructure and other projects were also initiated, fostering indigenous contact with non-indigenous labor and commodity

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[66] See *Ley No. 13, Ley General sobre Terrenos Baldíos*, Art. 8. José Manuel Argilés and Raquel Ornat (2005:26) insightfully point out that while this law's language "recognized that the indigenous had occupied certain areas of the country as owners, it maintained the classification of these lands as unused/empty [*baldíos*] and, as such, under public ownership." This "legal pirouette… allowed the state to obviate the territorial rights of [the indigenous] and present itself as [their] generous benefactor."

[67] The *reservas* in question were Térraba-Boruca, Salitre-Ujarrás-Cabagra, and China Kichá. Though still officially "*reservas*" in law, indigenous territorial units are most often referred to as "*territorios*" today. This change reflects concern that the original term implies a vision of indigenous people as resources to be guarded and preserved in the manner of endangered species, museum pieces, or other such nonhuman objects. Most Costa Ricans apparently had no scruples about these connotative implications until the end of the 20th century.

[68] *Indigenismo*'s seemingly paradoxical combination of proto-relativist cultural valuations and a unilinear concept of social progress reflects the views of its most important thinker, Mexican anthropologist Manuel Gamio, who was trained by Franz Boas but deeply sympathetic to Comtean positivism (see Lomnitz 2001:Ch. 11; Brading 1988).

markets – as well as people – throughout the 1950s and ’60s (Argilés & Ornat 2005:26-29; Díaz-Azofeifa 2012:142; Ornes 1980:78-79). But by 1976, seven new indigenous-only *reservas* were being created, and Costa Rica’s president declared a state of emergency in indigenous regions due to widespread non-indigenous occupation of indigenous land (see Figure 6). Together all of this may appear a “disorganized, scattered, incongruous” policy agenda (Ornes 1980:84), but its mix of integrationist interventions and communal-cultural protections is consistent with state *indigenismo* as practiced across Latin America from the 1940s to the end of the 1970s.

Lunes 15 de marzo de 1976

EXCELSIOR

Página 3

Zonas de emergencia regiones aborígenes

(De Jimen Chan, enviado de EXCELSIOR).

BORUCA, Cantón de Buenos Aires. -El Presidente de la República, Lic. Daniel Oduber Quirós, firmó aquí el decreto mediante el cual se declara "Zona de Emergencia Nacional" a las regiones indígenas, ayer.

Estas son Boruca-Térraba; Ujarrás-Salitre-Cabagra; China Kicha; Guaymi; Chirripó; Estrella y Talamanca.

Tal disposición se toma "por la constante invasión de tierras que han soportado los indígenas de parte de personas no-indígenas".

Transcribimos seguidamente el citado decreto que fue confeccionado a raíz y durante la gira de ayer del Mandatario, y el Ministro de Gobernación, Policía, Justicia y Gracia, Lic. Edgar Arroyo Cordero:

Con fundamento en los incisos 3) y 18) del artículo 140 de la Constitución Política y las disposiciones de Ley N°. 4374 del 14 de agosto de 1969,

DECRETAN:

ARTICULO 1°.: Declárase Zona de Emergencia Nacional las áreas del territorio Nacional comprendidas dentro de las demarcaciones de las siguientes Reservas Indígenas:

-Guatuso,
-Boruca-Térraba,
-Ujarrás-Salitre-Cabagra,
-China Kicha,
-Guaymi,
-Chirripó,
-Estrella,
-Talamanca.

Lo anterior en vista de la constante invasión de tierras que han soportado los indígenas de parte de personas no-indígenas, con la consecuente devastación de sus territorios, así como el maltrato y abandono en que han tenido que vivir estos compatriotas indígenas.

ARTICULO 2°.: La Comisión de Emergencia Nacional...

CABAGRA.- Baldomero Torres, líder comunal de San Rafael de Cabagra, entre Arroyo y Oduber, explica al Mandatario los problemas que enfrentan los indígenas de la zona por los despojos de tierras, mientras éste se dirigía al sitio en donde se improvisó un salón para recibirlo. Al lado se ve a otros vecinos. (Foto: José Carlos Morales).

EL DECRETO DE LAS RESERVAS INDIGENAS

EL PRESIDENTE DE LA REPUBLICA Y EL MINISTRO DE GOBERNACION, POLICIA, JUSTICIA Y GRACIA.

Con fundamento en los incisos 3 y 18 del artículo 140 de la Constitución Política y Ley N° 5251 de 11 de julio de 1973 y; Considerando:

1) Que la población indígena de Costa Rica está gravemente amenazada en su existencia por un despojo continuo y arbitrario de sus tierras, y que este fenómeno se acentuó de manera alarmante en los últimos años, llegando hasta actos de violencia.

2) Que el despojo se hizo posible por el hecho de que los indígenas no tienen ningún respaldo legal de propiedad de las tierras que ellos ocupan desde tiempos inmemoriales.

3) Que por otra parte, los indígenas han demostrado no poder contener por sí solos la invasión de sus tierras.

4) Que por las razones anteriores los indígenas han venido solicitando desde hace mucho tiempo la creación o la legalización de Reservas inalienables y el reconocimiento de su derecho a la garantía de la tierra.

5) Que aún existen territorios poblados exclusivamente por indígenas haciendo posible la delimitación de dichas Reservas.

6) Que la Cultura y la organización social de los indígenas son profundamente diferentes de las de los no-indígenas, por lo que merecen ser respaldadas.

7) Que los métodos agrícolas de los indígenas son menos destructivos de los bosques que los de los no- no-indígenas, permitiendo así una mejor protección de las cuencas hidrográficas, sobre todo en zonas de topografía accidentada; y que por otra parte, es obligación del Estado aseguranque los terrenos de vocación forestal permanezcan siempre con su cobertura de bosques.

8) Que los indígenas son explotados inmisericordemente y llevados al alcoholismo por las pulperías y cantinas respectivamente, establecidas a ese fin en sus territorios por n-indígenas.

9) El desarrollo de la zona del Pacífico Sur, tuvo como consecuencia desastrosa la espoliación casi total de los indígenas, por falta de legislación y medidas adecuadas. Lo mismo que ocurre actualmente con las zonas indígenas de la región atlántica y de Coto Brus donde ni siquiera existe legislación al respecto.

10) Que es deber del Estado vigilar la seguridad de sus ciudadanos, e impedir las injusticias y malos tratos, especialmente en el caso de minorías indígenas actualmente marginadas.

POR TANTO; DECRETAN:

Artículo 1°: Establécese las Reservas Indígenas de Chirripó, Estrella, Guatuso, Guaymi y Talamanca, que comprenden los territorios ubicados dentro de las demarcaciones explica... sin pago de indemnización alguna.

ARTICULO 9°: A efecto de establecer la demarcación de los límites de las Reservas Indígenas de la Zona Atlántica, se tiene por modificado el artículo 2° del Decreto Ejecutivo N° 4658 del 19 de febrero de 1975, en el sentido de liberar a favor de dichas reservas indígenas los terrenos que en ese decreto se traspasan a JAPDEVA.

ARTICULO 10: De la misma manera se modifica el Decreto Ejecutivo N° 3886A del 17 de junio de 1974, a efecto de liberar a favor de la reserva indígena de Chirripó la zona afectada por la demarcación de la Reserva Forestal de Río Macho, establecida en dicho decreto y que está comprendida dentro de la demarcación de la mencionada reserva indígena.

ARTICULO 11: Los terrenos pertenecientes al ITCO, que se encuentren incluidos dentro de la demarcación de las Reservas Indígenas, deberán ser cedidos por dicha institución para destinarlos a asentamientos campesinos de comunidades indígenas.

ARTICULO 12: Los terrenos comprendidos dentro de las reservas, que sean de vocación forestal deberán guardar ese carácter, a efecto de mantener inalterado el equilibrio hidrológico de las cuencas hidrográficas y de conservar la vida silvestre de esas regiones. Los recursos naturales deberán explotarse racionalmente de manera que permanezcan removables. La vigilancia y protección de los bosques será confiada a guardias escogidos entre los mismos indígenas. Unicamente podrán llevarse a cabo programas forestales por las instituciones del Estado, que deben garantizar la renovación permanente de los bosques...

Conviene que se pase...

Viene de la página 1

go Facio", a propósito del presupuesto de la educación superior, porque están equivocadas algunas y otras irrespetan descaradamente la verdad. En primer lugar, el Rector Gutiérrez, en su discurso de recepción a los nuevos estudiantes, dijo que "el Ministro de Educación se queja de que hayamos recibido al 95% ...

RESERVAS INDIGENAS.— Se aprecian en el mapa las reservas que fueron establecidas mediante decreto que firmó ayer el Mandatario. Son 1- Chirripó, de 53.930 Hectáreas; 2- La Estrella, de 10.345 Ha; Guatuso, de 2.994 Ha; 4- Guaymie, de 5.544 Ha; y Talamanca, de 27.030 Ha.

CREARON 5 RESERVAS...

Viene de la página 1

en el caso de los bosques, sólo la Naturaleza puede hacerlo en un proceso que dura de tres a cuatro siglos.

También el Presidente y el Ministro Arroyo, firmaron en Boruca un decreto que declara "Zona de Emergencia Nacional", las áreas del territorio nacional comprendidas en las citadas reservas (ver información aparte).

El ingeniero Morales expresó al Mandatario el temor de que no se legisle debidamente, y que al pasar de los años, se vuelva a despojar nuevamente a los indígenas.

La primera reserva indígena, la de Boruca, fue establecida en 1945. De un total de 30.000 hectá...

deben servir para rectificar errores. Si no se detiene la deforestación, toda la zona será un desierto y se quedará sin agua como Guanacaste, y la famosa presa de Boruca, quedará sólo en los planos.

PROBLEMA MULTIPLE

"Yo no creo que el problema indígena sea sólo de policía; lo es también de salud, de educación, de cultura. Estoy de acuerdo con el ingeniero Morales de que el establecimiento de las reservas no debe ser para mantener a los indios como piezas de museo", dijo el Ministro Arroyo Cordero.

Agregó que los decretos firmados por el Presidente y él...

40 hijos.

Habló el director de la escuela, Marcos Ortiz, y por los vecinos Benigno Figueroa.

Es la segunda vez que este caserío es visitado por un Presidente de la República.

Se le plantearon al Mandatario problemas de falta de asistencia y ayuda, falta de asistencia a la escuela. La escuela ha reducido el número de sus educandos desde 1972 debido a la falta de un albergue, especie de internado ya que las distancias impiden a los niños trasladarse al centro educativo.

Becas para los egresados de primaria, fue otra de las solicitudes.

El niño Dionisio Figueroa le pidió al licenciado Oduber...

...donde inmediatamente se trasladó al salón comunal e izó el Pabellón Nacional.

Alejandro Noguera, dio la bienvenida en nombre de la comunidad y pidió su ayuda al Mandatario para la construcción de los caminos Boruca-Changuina, Boruca-San Joaquín, el nombramiento de un auxiliar de enfermería y la finalización de la titulación de parcelas en la reserva.

DIA TRASCENDENTAL

El ingeniero Morales expresó que para él fue una suerte el estar presente en el día que "puede ver plasmados los destinos de nuestros hermanos".

Instó a sus hermanos aborígenes para que luchen por su tierra, y habló sobre su experien...

Figure 6. A photocopy of clippings from a 1976 issue of the newspaper Excelsior, *affixed to the interior wall of the community center in the indigenous territory of Térraba. Displayed alongside graffiti and portraits of Ché Guevara and Subcomandante Marcos, the news articles discuss the creation of new indigenous territories, and the state of emergency concerning land invasions.*

The number of indigenous *reservas*, or territories, in Costa Rica increased over the 1970s and ’80s until reaching the current total of 24. Each territory belongs to one of the eight recognized indigenous peoples (see Figure 7). Most indigenous rights advocates support these territories’ normative bases: that they are to be under indigenous governance and exclusive possession, with no land parcel available for sale, rent, or other transfer to any non-indigenous

entity.[69] Their realization however has been riddled with difficulties. Initial demarcation processes created boundaries that were imprecise, and generally "made to correspond to natural [geographic] features" rather than actual indigenous occupation (Argilés & Ornat 2005:27). This has fueled chronic disputes, recrimination, and animosity between indigenous peoples and non-indigenous *campesinos* in areas where ethno-racial distinctions are sharp.[70] Non-indigenous Costa Ricans have found their longtime homes suddenly inside indigenous territories, or more

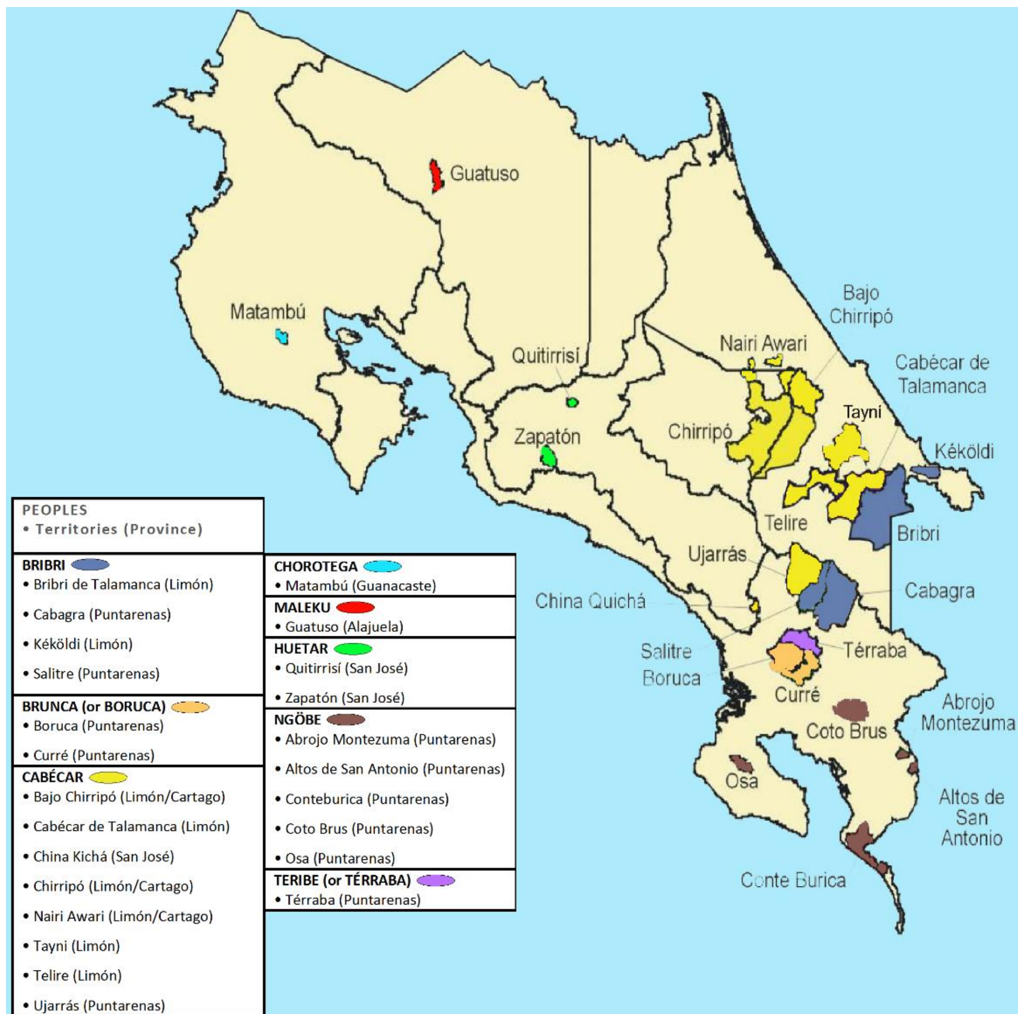

Figure 7. Indigenous territories of Costa Rica.

[69] See *Ley Indígena, Ley No. 6172 de 29 de noviembre de 1977 y sus reformas*, esp. Art. 3-4.
[70] Karen Stocker (2005) has studied a region where ethno-racial distinctions are not so salient, and finds that local residents criticize the demarcation of the indigenous territory there as both geographically arbitrary and arbitrarily productive of ethno-racial differentiation. This case notwithstanding, in most areas of Costa Rica where indigenous territories were created, ethno-racial difference was already a widely recognized aspect of social reality.

commonly, they have invaded or illegally purchased indigenous land. The state has policies in place to address both kinds of problems – expropriation with compensation in the former case, eviction in the latter – but they are poorly enforced.[71] Indigenous territories have also been subdivided numerous times, exacerbating factionalism within territories, as well as rifts between peoples that hindered the emergence of a national indigenous movement (Argilés & Ornat 2005:33). Finally, the administrative structure prescribed for indigenous *reservas* – the Association for Integral Indigenous Development (ADII) – has inspired further internal conflict and protest. A 1982 law established that each territory is to have one ADII, which is empowered to govern and to represent it vis-à-vis the Costa Rican state.[72] But with few exceptions, ADIIs have been maligned by indigenous activists as state-imposed and contrary to traditional organizational forms, and their legitimacy eroded further by factionalist takeovers.

What I hope this historical sketch has demonstrated is that ethno-racial difference and differentiation – as lived experience, and in their codification and official denial – have been broadly consequential in the making of Costa Rican nationality and society. The above paragraphs further offer an outline, reference points, and relevant vocabulary on some historical precursors to current issues with which Costa Rican state actors, and black and indigenous leaders, grapple as they produce knowledge on racial discrimination. This history has brought us roughly to the 1990s, when the UN human rights agenda launched its "new era" of implementation. As I discuss in Chapter 3, this shift fueled the adoption of the evaluation mechanisms whose exercise in Costa Rica is the focus of Chapters 4 and 6. But having shown that there are indeed issues worth tracking through Costa Rica's processes, what are the ways in which my ethnographic work may be illuminating beyond this particular country?

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[71] See the strong language declaring these policies in *Ley Indígena*, Art. 5.
[72] See *Decreto Ejecutivo No. 13568 de 30 de abril de 1982*.

But What Can We Learn from It?: Costa Rica in Latin America (and the World)

For all of the emphasis in Costa Rica's national narratives on its exceptionalism in the region, there is much that students of race and ethnicity in Latin America will find familiar in the above historical excursus. Even as I have attempted to highlight particularities that help contextualize subsequent chapters, any account of black and indigenous Costa Rican histories is bound to recall wider regional trends and trajectories. Commonalities in aspects of Spanish colonial socio-racial rule and ideology – such as the *casta* system – are clear (e.g. Katzew 2004). Ben Vinson III (2003:761) points out that historian Rina Cáceres's landmark work (esp. Cáceres 2000) on colonial Costa Rica also demonstrates "common patterns of black life… from a case that we might initially consider a divergent example." Lara Putnam (2013:Ch. 3) shows that Anglo-Antillean immigration was common across late-19th and early-20th century mainland Caribbean basin countries, as was the Depression-era emergence of regulations on hiring non-nationals to discourage or reverse permanent Antillean settlement. The subsequent twin phenomena of racialized space and spatial peripheralization of racial difference – as found in "black Limón, white Costa Rica" discourse – is also well-documented in many other Latin American countries (Cunin 2003; Gordon 1998; Rahier 1998; Ramos 2003; Wade 1993). I have also noted that, for at least four decades, Costa Rican policy followed the regional agenda of *indigenismo*, with its selective blending of cultural conservation and assimilation (Ornes 1980). Finally, the Costa Rican state employed virtually all the same forms of denying, camouflaging, and minimizing racism and discrimination employed by its regional peers in international forums like the CERD (see Dulitzky 2005).

All of this shows that Costa Rica is not an *outlier* in Latin America; but what makes it – and not some other country – *the* right site for my study? Some would say that a better "case"

for studying the impact of international norms would be one in which racial discrimination is severe – where it is codified in law, or takes the form of overt repression or violence. But we should remember that I am not attempting to judge whether these norms are "effective" or not, which would be the rationale for focusing above all on contexts where they are "needed most" (Hafner-Burton & Tsutsui 2007). Overtly racially discriminatory systems are today not the rule but the exception;[73] multiplex, persistent, often invisible, and plausibly deniable manifestations of discrimination are "the rule." That does not mean that exceptions should *not* be studied, only that the questions I pose – about what, how, and why evaluation procedures "do" – are probably not best illuminated by one.

In designing my study of human rights evaluation as a multiply situated object, I prioritized selecting a nation-state that UN agencies actively seek to cultivate as a model of norm implementation. Costa Rica is such a state. For both of the (state) self-evaluation procedures I study – the production of disaggregated census statistics and the national action plan – Costa Rican processes received significant funding support from UN agencies, in particular the UN Economic Commission for Latin America and the Caribbean (ECLAC) and the Office of the UN High Commissioner for Human Rights (OHCHR). They were also carried out with ongoing guidance from these agencies' technical experts and officials. These advisors spoke candidly of wishing to make Costa Rica a regional model or "leader" in the fight against racial discrimination, and Costa Rican functionaries embraced the proposition.[74] Costa Rican state agencies have participated regularly in regional forums on the design and execution of these evaluations (see Chapter 3), and are as immersed in the resulting expert networks as any other

[73] Furthermore, they have never been "the rule" in Latin America, at least since the colonial era.
[74] Ironically, in some cases UN and state actors referred to this as being in continuity with past Costa Rican leadership on human rights in the region, playing on some of the exceptionalist discourse that would need to be overcome to fight discrimination in line with the human rights framework.

Latin American country's institutions. Significantly, leaders of Costa Rican black, and to some extent indigenous, organizations have also been very active in parallel regional organizing and advocacy related to advancing the UN human rights framework on racial discrimination.

That all of the above actors share overlapping interests in making the Costa Rican state a vehicle for this framework makes what they do and how they do it significant for understanding the contemporary evaluation phenomenon. This does not necessarily make Costa Rican processes globally "representative" or prototypical cases at the fine-grained level of analysis offered by my ethnographic treatment of them. But one would search in vain for any single state that could represent or foretell what happens in and through these procedures everywhere. Meanwhile, given the temporality of evaluation cycles described in the Introduction, to carry out ethnographic research in a "representative" sample of four or five or ten countries would be highly infeasible, at least absent a team of at least as many researchers.

This uncertainty about so-called representativeness does not however undermine the possibility of drawing "generalizable" lessons from my research. First, as I explained in the Introduction, the object of my study is the evaluation phenomenon. With respect to it, I have indeed studied multiple sites and procedural forms, the juxtaposition of which provides the relevant comparative or cross-case dimension to my analysis (see Marcus 1995). Next, generalizability is not a question of "whether." Instead, it concerns how to scale generalizations and at what level of abstraction to derive lessons. For example, I have written elsewhere of indigenous transnational migrants being left out of the Costa Rican anti-discrimination action plan's baseline assessment (Clark n.d.) – a process that aspired to be a model for the region. But I do not thus conclude that all such plans' baseline studies *necessarily* exclude indigenous migrants, nor even that the particular causes of this exclusion in Costa Rica will have the same

results everywhere. Instead, I render lessons about what my account of those causes can teach us at a somewhat higher level of abstraction, arguing that there are "infrastructures" that function as translational devices.[75] Finally, because state self-evaluation practice develops through transnational, inter-sectorial exchanges (see Chapter 3), no concrete process of a participating country is an isolated, atemporal "instance" of a structure. Instead, to echo Max Gluckman (1967), it is more a stage, a slice, or a cross-section of a broader, ongoing process of the evaluation phenomenon. Costa Rican actors' immersion in the networks carrying that transnational process forward – and oversight actors' investment in their potential role as a model – makes their efforts an especially integrated, and thus a telling, cross-section indeed.

Having said all this, I would note by way of conclusion that I consider the processes I studied in Costa Rica important also in their own right, and not merely insofar as they are instruments of broader theoretical generalization. What I mean here is to emphasize that they involve real, long-standing, and consequential problems of insecurity, inequality, and injustice for people and peoples that merit attention in and for themselves. This is another reason that I have spent such time discussing the historical roots of ethno-racial difference and differentiation in the country. It has also led me, again with inspiration from Gluckman (1961) and Jaap van Velsen (1964, 1967), to consciously include in my analysis not only "apt illustrations" of presumptively generalizable patterns, but also ethnographic data that may be idiosyncratic or indeed inconsistent. We should be suspicious of accounts of humans that are too neat and consistent, as generations of ethnographically rich anthropological work attests. Including what is contradictory, ironic, or just messy helps to preserve the persons *as* persons and "personalities,

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[75] To be more specific, the lesson I propose is that understanding how an evaluation process sorts, sub-divides, and constitutes information as part of a state's rights record requires comprehending some deeper, more diffuse, and likely inadvertent knowledge mediators not immediately visible in "the everyday" (Clark n.d.). Such "infrastructures" will vary from context to context, but a full account of a process must always attend to them.

and not just as occupants of particular statuses" (van Velsen 1967:143). We may also find in it unforeseen sources of insight on the processual unfolding of mechanisms for evaluating states' adherence to international anti-discrimination norms in Latin America and beyond. Next we will look at those mechanisms in greater detail.

CHAPTER 3

Inclusiveness, Difference, Particularization: How to Self-Evaluate Like a Discrimination-Fighting State

In the previous chapter, I took a bit of a detour from the dissertation's central topic – human rights evaluation concerning racial discrimination – in order to explain why Costa Rica is an appropriate, and indeed a telling, country in which to study the evaluation phenomenon. Following a lengthy historical excursus, among other things I noted that UN agencies have provided substantial technical and financial support to the Costa Rican state in hopes of seeing it become a regional model with respect to the procedures of self-assessment described briefly in the Introduction. In this chapter, I return to those procedures, providing a fuller discussion of their form and an analysis of what intergovernmental actors promote as "model" state engagement with them, especially at the Latin American regional level.

The drafters of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) created as its monitoring mechanism the state-reporting and examination procedure, and it has been in operation for some 45 years. But since the turn of the twenty-first century, two additional forms of assessment have become crucial supplementary procedures for obligated states under the UN human rights framework on racial discrimination. These procedures are the production of ethno-racially disaggregated census statistics, and the creation of national action plans. Whether in meetings of expert working groups, reports of special rapporteurs, or the recommendations of the Committee on the Elimination of Racial Discrimination (CERD), disaggregated statistics and action plans are regularly posited as necessary instruments in states' fight against racial discrimination. UN agencies have demonstrated their commitment to these procedures by convening seminars and workshops on

each, and offering financial and technical support to states willing to undertake them. Most of these efforts are regionalized in scale and perspective, and Latin America has been targeted in particular for the expansion of both mechanisms' use.

This chapter examines the emergence of action plans and censuses as essential tools in the global fight against racial discrimination in the twenty-first century. It analyzes in particular how UN actors and forums instruct states on why and how they should employ these mechanisms, and what those efforts tell us about the "turn to implementation" in the international human rights legal project. UN representatives commonly refer to the contemporary era as one in which earlier efforts at norm *codification* – through the creation of treaties – and *consensus-building* – through broad, ideally universal, ratification – have given way to a focus on *implementing* the norms established (see Annan 2005; Kjærum 2007).[76] Here *implementation* means moving normative ideals or commitments from concept to reality. Or – given that it is states that are bound by human rights treaties, and people their beneficiaries – we can specify that implementation is the process of ensuring that states make people "on the ground" experience these ideals as realities. The idea of "implementation" is closely related to that of "compliance," though the former more strongly connotes action and change than does the latter. In this sense, the term *implementation* better reflects important contemporary views that all human rights involve both negative *and positive* duties, and impose obligations of three types: to respect, to protect, and to fulfill.[77]

Indeed, it was with the arrival of the implementation era that action planning and statistical disaggregation ascended as mechanisms by which states should know discrimination,

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[76] This is so despite that two new human rights treaties were adopted as recently as 2006.
[77] See, e.g., *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, adopted in Maastricht, Netherlands, January 1997, para. 6.

and account for which of all of these kinds of duties have gone unmet. They are thus tools of evaluation with clear prescriptive implications. UN human rights actors championed action plans and censuses specifically to broaden the substantive scope of states' existing efforts to identify unmet anti-discrimination obligations. In particular, these tools were meant to bring into focus implicit, *de facto*, or otherwise "subtle" forms of racial discrimination that most states were inclined to ignore. Indeed, as I show below, both are able to mark a far wider range of social and economic inequalities as discrimination than approaches organized around administrative offices receiving and processing grievances. Such limited, passive approaches are what allowed many Latin American states, like Costa Rica, to deny outright at the CERD and other international forums that racial discrimination was an issue *at all* in their countries (see Dulitzky 2005).

By the 1990s, decades of indigenous and black activism had made such claims untenable. Activists argued that their governments' policies of assimilation, formal legal equality, and non-recognition of ethno-racial difference failed to address – and indeed papered over and facilitated – widespread stigmatization, exclusion, impoverishment, and other abuses of their communities. Strong transnational black and indigenous social movements ensured that UN and state actors could no longer shunt these problems aside as class-based or otherwise ethno-racially neutral.[78] Most of these movements did not place disaggregated statistics and action plans among their core demands. But as I show below, these tools' entry into the human rights canon was based largely on state and UN admissions that much that should have registered as discrimination had gone hidden, denied, or overlooked. UN forums promote these tools as means for capturing the full range of discriminations covered by the human rights framework – not only those of explicit bias

[78] An immense amount of scholarship on these movements appeared beginning in the 1990s. Jackson & Warren 2005 and Wade 2006 offer insightful guides. Valuable subsequent work bringing together analyses of indigenous and Afro-descendant legal rights and claims-making include Engle 2010 and JLACA 2007.

in laws and behavior, but also more diffuse and indirect forms manifest in the more open field of "outcomes" or *de facto* empirical conditions (see further Clark 2017).[79]

Nonetheless, despite – or perhaps because of – this lofty charge, the privileging of either censuses or action planning may raise concerns about the increasing technocratization or "expert rule" of human rights work (see Kennedy 2005; Sokhi-Bulley 2011b). As a bureaucratic statistical enterprise, the disaggregation of census data seems bound to vest authority over evaluation in a small professional community with specialized training and fluency in powerful discourses of objectivity and science. These technical experts could thus drown out contending voices concerning what counts as evidence of unmet duties.[80] Similarly, with its inescapable connection to the managerial activity of "planning," the national action plan could be seen as a tool for neutralizing political contestation over rights implementation by transforming it into a technical problem-solving exercise (see esp. Ferguson 1990; Li 2007). The location of action planning within an administrative bureaucracy may also raise concerns about its formalism, narrowness, and insulation from public scrutiny and accountability. On top of all this, the production of population statistics and national action plans are both procedures lodged within the entity that is under evaluation – the state. They are not activities occasioned by claims-making "from below," nor for asserting supra-national judicial authority "from above" – two more familiar modes of doing human rights work. That both procedures are essentially at the charge of the state that they are supposed to regulate may raise understandable concerns about their susceptibility to manipulation or "capture" by interests in minimizing their bite.

[79] In some respects this could be characterized as a shift from a jurisprudential to a socio-legal approach to the evaluation and implementation of anti-discrimination norms.
[80] Several scholars have forecast such problems where statistics play a significant role in human rights monitoring (Davis et al. 2012; Merry 2011, 2014; Rosga & Satterthwaite 2009).

This chapter analyzes UN-supported workshops, expert seminars, instructional documents, and other means of promoting state self-assessment procedures. In doing so, I note several ways in which these explicitly seek to minimize the kinds of potential biases in states' production of human rights knowledge just mentioned. I do so while also scrutinizing the extent to which their program of oversight and guidance actually succeeds in averting those problems, identified by scholars so often in similar endeavors that render complex socio-political problematics technical.

Nevertheless, my own principal argument is that this program is emblematic of a more significant "turn" in the human rights legal project than one towards technocratization. We might prosaically call it a "turn to difference." UN efforts to promote ethno-racial statistics and human rights action planning are permeated with the values of difference and particularization: each country's problems are unique; what counts as discrimination must be understood in light of local contexts, circumstances, and diverse populations; and ultimately, each state should end up with its own slate of human rights duties tailored to the specificities of its own situation. Though international "experts" are at the center of these efforts to push state self-assessment, it is notable that their aim is decidedly *not* international standardization, if by that we mean "constructing uniformities across time and space, through the generation of agreed-upon rules" (Timmermans & Epstein 2010:71; see also Bowker & Star 1999). Instead, they call for the metrics and even the methods of evaluation procedures to be calibrated to local circumstances of each implementation context, and, crucially, to the perspectives and experiences of local actors affected by discrimination. These distinct features of "the local" are to guide an assessment process, and ultimately how it defines some social, political, and economic problems as conferring obligations upon the state.

On one hand, this turn to difference is easy to understand given the human rights conception of racial discrimination as a multi-form, pernicious, and evolving phenomenon. How could such a phenomenon have a finite, pre-determined, and globally uniform list of manifestations, or means of registering them? Likewise, how could even "international experts" construct a standard formula for census and action-planning procedures that could be expected to effectively generate knowledge of all of these manifestations for all times and places? Yet the humble (or resigned) acceptance of these limitations may come as a surprise to those more accustomed to thinking of the human rights legal project as a fount of totalizing universalisms that take states and humans as essentially homogeneous units. Many critical scholars have maintained that, in the words of Balakrishnan Rajagopal (2007:274), "Mainstream or dominant human rights" positions rights in conflict with difference, insistent that it is "culture [that] is about difference while rights are about leveling and sameness." But here I show no less "dominant" or "mainstream" a human rights institution than the Office of the UN High Commissioner for Human Rights (OHCHR) insisting that a properly obligated state should discover its own distinct set of obligations derived from the particular characteristics of its population and local contextual factors. This state is to chart its own path by way of profound empirical investigation and reflection; broad and inclusive participation of rights subjects; and a recursive, self-critical relationship to its own means of knowing, supported by a transnational dialogue of sharing and mutual learning with peer institutions.

It seems then that these UN oversight programs fold several elements into technical evaluations of discrimination that critical social scientists find important, and which such procedures have often been criticized for lacking.[81] For decades, scholars have wished for

[81] See Annemarie Mol and John Law's (2002) excellent appraisal of "morally comfortable," but ultimately too-simple, scholarly critiques of knowledge practices that simplify, such as standardization and quantification.

professional demography to be more critical and reflexive about the field's concepts, categories, and methods (Kertzer & Fricke 1997; Petit 2013; Szreter et al. 2004). Similarly, as Brit Ross Winthereik and Casper Bruun Jensen (2017) note, critical scholarship on mobile forms of technical evaluation has settled into well-established criticisms of them as inflexible, reductive, and "inherently incapable of making visible anything different, new, or surprising." But Winthereik and Jensen perceptively point out that while standardization was ubiquitous in organizational evaluation, just as it carries a bad name elsewhere (see Timmermans & Epstein 2010) so too has it fallen out of favor – and been recognized as ineffective – in this sphere. Exemplary ethnographic studies of evaluation processes have chipped away at the image of obligatory self-assessments as dominating their hapless subjects (Ballestero 2012; Jensen & Winthereik 2013; Winthereik & Jensen 2017). These works find such subjects creatively re-making assessment procedures, and turning them into "sites of active sociality and experimentation" (Ballestero 2012:230). Here I show that, where UN actors push states to use censuses and action plans to assess discrimination, they actually encourage such experimentation. Rather than a bottom-up "short-circuiting" of a top-down model (Ballestero 2012), the "opening up," tailoring, and indeed "surprises" of evaluation procedures are prescribed parts of state assessment processes.

Is it, then, time for critical scholars to stop worrying and love (these instances of) technical evaluation? That is not the argument I am trying to make. But I think that we must consider turning the page on some familiar lines of critique, which, as the material I present below demonstrates, many UN human rights professionals no doubt feel they have already addressed. Context? Difference? Local knowledge? Inclusive participation? Check, check, check, and check. We can and should point out of course that none of these is so straightforward

– a discrete entity lying around waiting to be "plugged into" evaluation processes. But we should not stop there, satisfied to conclude once again that technocrats have simplified and corrupted "our" concepts.[82] If one wants human rights knowledge (and ultimately interventions) attuned to context, local circumstance, and diversity, there are many less comfortable questions to answer, beginning with how each of these is to be defined and by whom.

This chapter draws out the dilemmas, paradoxes, and contradictions that arise for evaluation in making a "turn to difference," in particular where this turn looks like an effort to operationalize some of those things critical scholarship finds chronically displaced by technocratization and standardization. We must remember that whatever the knowledge project, the question is never *whether* complexity, indeterminacy, and inclusiveness are reduced, but *in what ways* and *why these* rather than some others (see Bowker & Star 1999; Mol & Law 2002; Winthereik & Jensen 2017). Here I explore the openings and boundaries on potential knowledge created by the census and action plan *forms*, and by UN agency-led approaches to their promotion and oversight in Latin America. That is, what is at stake is an understanding of how these supra-nationally prescribed forms of assessment themselves – prior to their application in national settings – shape what phenomena might possibly be identified as racial discrimination, and thus as unmet state obligations. Chapters 4 and 6 analyze how actors in concrete processes in Costa Rica work through some of the problematics that the oversight system I outline here leaves unresolved – always embedded however in the transnational, multi-sectorial networks that this chapter shows the system constitutes.

Before proceeding, two issues merit special mention, as their recurrence across the sections below show them to be central dilemmas in the "turn to difference" in human rights

[82] For a critical discussion of this move in some past anthropological work on human rights, see Jean-Klein & Riles 2005.

assessment of racial discrimination. The first is the resilience of concepts of race and races, which contemporary evaluation procedures lead actors to work through and to reinforce. This is somewhat paradoxical if we remember that the human rights framework on racial discrimination has intentionally evaded questions about the character of race and groupness, instead focusing conceptually on discrimination and discriminatory grounds (see Chapter 1). Yet as UN agencies promote new procedures to make state self-evaluators employ a broader lens on discriminations – as well as investigative methods that are agile and informed by local actors and circumstances – they inadvertently make evaluation in some ways reliant upon the reification of racial groups. I show that, in the filtering of both objects of knowledge and subjects of participation in state self-assessment, groupness and group membership quietly return as key constructs in action planning and census data disaggregation.

A second consequence of UN agencies' emphasis on difference, the local, and particularization in state evaluation mechanisms is that it makes implementation a process of *relativizing* rights. Contemporary evaluation's turn to difference does not play out as merely the charting of different routes (and duties) resulting in the same rights everywhere. Instead, UN agencies' program of oversight and guidance on action planning and census data disaggregation calls for variation in what different obligated states must do, and space for conceding things that may remain *un*done. The result is that what any given person can expect these agencies to accept as adequate fulfillment of her rights will vary – for example, in relation to the living conditions of co-nationals both inside and outside one's nominal "group," to professed limitations on state capacity, and across time. Promoting evaluation procedures such that they honor context and difference might broaden the range of issues that can be placed on anti-discrimination agendas, then, but it is also subjects those agendas (and purportedly "fundamental rights") to the

contingencies of who ends up defining *what* context and *whose* difference – contingencies that we see play out in later chapters.

The National Action Plan

In September 2010, Costa Rica's Ministry of Foreign Relations (MRE) hosted a two-day seminar in San José to consider the prospects for devising a national action plan against racial discrimination in the country. The event's billing as "exploratory" was likely not entirely sincere, as the decision to launch the project seems to have been made prior to the days' activities. That decision was, in any case, long overdue. The Costa Rican state had committed to formulating a national action plan at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) nine years earlier, and had since received repeated recommendations in UN human rights forums to make good on its commitment. Recently the regional office of the UN High Commissioner for Human Rights (OHCHR) was cleared to support a Costa Rican action-planning project financially, and this, rather than the seminar discussions, is what seems to have finally gotten the effort off the ground.

But the seminar served as an occasion for the MRE to officially inaugurate the process, make the case for its import publically, and convene a transnational cast of actors whose expertise should direct its course. This cast was represented among the seminar's attendees, and fit an established set of slots for recent human rights initiatives of this type. They included public officials from across several state institutions; a handful of leaders of black and indigenous organizations, embodying "civil society;" UN "technical advisors" (and patrons) from the OHCHR; and representatives of other Latin American governments that had developed similar projects on racial discrimination (see MRE 2010a, 2010b).

By the conclusion of the seminar, the MRE and OHCHR were ready to announce their partnership for a national action planning process to be launched in 2011. While Costa Rica's highest ranking diplomats lauded the project as a continuation of the country's "extensive commitment" and international leadership in the field of human rights (MRE 2010a), the representative of the OHCHR's Central American regional office spoke in more sobering terms about what the process would require of the state. She reminded attendees that approaching discrimination "with a human rights perspective" means "that the state has the responsibility: to *respect* the right to non-discrimination of all persons under its jurisdiction; to *protect* these persons from all forms of discrimination; and to *guarantee* to all a life free from discrimination" (Villa 2010, emphasis added). These responsibilities, she continued, pertained to both "direct" and "indirect" discrimination, and meant that every group should equally enjoy all human rights, including the economic, social, and cultural. "There is no country [that is] immune to discrimination," she noted, and attendees could learn from the Mexican, Brazilian, and Argentine government officials present about their particular "advances and challenges" in addressing problems long held not to exist in their countries. But "in each country the causes and manifestations [of discrimination] are distinct," and thus each state must undertake "a profound and inclusive reflection upon [its own] current situation, and the challenges and barriers that [it] faces." Through repetition, the UN representative left no doubts about the intended takeaways for action planners: Discrimination is pervasive yet hidden; takes multiple and distinct forms in every country; and can be fought not by recourse to any formula, but through tailored state actions grounded in inquiry, broad dialogue, and introspection (*ibid.*).

Seminar attendees also echoed other common UN rationales for championing national action plans as a solution to states' limited follow-through on treaty commitments. These point

out that the problem is not that UN member states drew up treaties and other international norms without monitoring or enforcement mechanisms attached. To the contrary, numerous such mechanisms were created. However, as these multiplied in number, the work of UN human rights professionals came to appear dispersed, inconsistent, and inefficient, making it difficult to secure the confidence and ultimate compliance of states. Furthermore, these mechanisms did not install implementation procedures inside states themselves,[83] but instead strapped relatively weak and underfunded international bodies with the burden of exerting external pressure on states (OHCHR 2002:8; van Boven 2007:774).[84]

Both of these issues were high on the agenda in the United Nations' 1993 World Conference on Human Rights in Vienna, Austria. The Vienna Conference focused on advancing the implementation of existing human rights norms, and the 171 states represented there adopted several significant principles to point human rights work towards that goal. One that was emphasized greatly by NGOs and diplomats from the Global North was that states were the agents responsible for fulfilling the human rights of those within their borders. This implied both a reiteration that while the UN offered sites for crafting norms, only nation-states could ensure their realization; and a retort to postcolonial states that insisted that global capitalism, the international system, or "the West" was largely to blame for rights going unfulfilled in their countries (see Whelan 2010:Ch. 9). In hopes of promoting states' active formulation and ownership of concrete human-rights duties, states included in the Vienna Declaration and Programme of Action the recommendation "that each State consider the desirability of drawing

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[83] The author acknowledges the need for scare quotes around each of the last three words of this clause.
[84] Chapter 5 offers an analysis of one such body's – the CERD's – strategic efforts to exert influence within manifest constraints.

up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights" (para. 71).

Though rather weakly worded, this recommendation – together with similar affirmations at the World Conference on Women in Beijing in 1995 and the WCAR in Durban, South Africa in 2001 – began a push within the UN that increasingly promoted national strategies and action plans as fundamental to states' fulfillment of human rights (Kjærum 2007). Treaty bodies and the OHCHR have become especially enthusiastic advocates of the concept of national action planning as a means to implement human rights treaties.[85] The former expert bodies regularly make recommendations imploring specific states to draft action plans, and at least one has made a general recommendation that all states parties develop plans structured around treaty provisions.[86]

Meanwhile, the OHCHR has provided financial support and instruction in *how* states should create action plans. Besides convening meetings and seminars like that described above, this effort includes a published statement of principles, guidelines, and recommendations, called the *Handbook on National Human Rights Plans of Action* (OHCHR 2002). The remainder of this section will focus primarily on analyzing this handbook, as it is the touchstone for what a human rights action plan – whether on racial discrimination or any other rights-based subject matter – should be, and how processes for drafting and enacting them should be conducted.

It is appropriate to begin by noting that the *Handbook*'s vision of action planning rejects the notion that fulfilling international human rights norms is an unambiguous task that requires

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[85] The OHCHR and the national human rights action plan form in fact have intersecting origins, as the former was created by the UN General Assembly in response to persistent lobbying by NGOs in the aftermath of the Vienna Conference (see van Boven 2007).
[86] I refer to the Committee on the Rights of the Child's General Comment No. 5 (2003). See UN doc. CRC/GC/2003/5, paras. 28-36.

only a state's will, as studies that judge states' commitments as sincere versus insincere suggest (e.g. Hafner-Burton et al. 2008; Hathaway 2002, 2007; Smith-Cannoy 2012). Nor does the *Handbook* suggest that there is some universally correct set of formal procedures and institutions that should be reproduced by every state, as Tobias Kelly (2009) finds that UN monitoring practices concerning torture do. Quite the contrary, what stands out first in the *Handbook* is its insistence that states' duties are context-dependent: Normative commitments must be tailored to the "local circumstances" and "current situation" of the country. For example, the *Handbook* asserts that, in fulfilling human rights norms,

> [T]here are certain general principles that will be applicable to many, if not all, countries. But it has always been central to the national action plan approach that each country starts from its own political, cultural, historical and legal circumstances. There is no single approach that can be applied to all countries. Each has to develop proposals suited to its own situation (OHCHR 2002:8).

The *Handbook* further speaks of "incorporation" and "synthesis" between international norms on one hand, and "features of the local situation" on the other (*ibid.*: e.g. 60-61). Action planning process is to begin with a baseline study as a foundational component for grasping said "features." If contextually specific political, cultural, historical and legal circumstances are to mediate – or to serve as the interpretive rubric of – human rights norms in action planning, this approach bears a notable resemblance to the concept of "vernacularization" popularized by legal anthropologist Sally Merry (2006a:135-137; 2006b). But here, rather than a tacit practice of activists in the service of claims-making and mobilization, the vernacularization or "synthesis" of global norms to local circumstances is a prescribed element of states' work to enact compliance with their treaty commitments. That is, state compliance is to begin with each state determining by way of the action-plan process what are the actual concrete obligations that would constitute compliance in its own distinct case.

Indeed, international legal scholar Olivier De Schutter (2010:474) says that growing support for human rights action plans comes from seeing them "as a means of bridging the gap between generous but vague norms set at [the] international level and practical implementation" in particular national settings. But since these plans are state-led processes, the implication is that the concrete duties incumbent upon a state at any given moment will follow from empirical "circumstances" determined by the investigation and "reflection" of that state itself. This starting point invites skepticism in that it could allow states to produce accounts of the "current situation" tailored more to their own interests than to those of rights subjects. This would amount to a kind of human rights "regulatory capture," given that the authority to define problems is the authority to circumscribe the field of possible solutions – or in this case, obligations.

This is thus a first potential source of distortion or domination in action plans as instruments of contextualization and difference in human rights work – the self-interests of institutions of state. The *Handbook* offers suggestions as to how such distortion might be avoided, but they point in two epistemologically distinct directions. The tension here is characteristic of human rights knowledge production around racial discrimination in the implementation era. On one hand, the OHCHR insists that planners ensure that an action plan's baseline analysis is accurate, "frank," and comprehensive (e.g. OHCHR 2002:61). This frequent refrain suggests that national action planners' success in knowing the status of rights commitments hinges on their commitment to being forthright and impartial – adhering, that is, to standards of "objectivity" in a broad sense. There is a reality of human rights "shortcomings" and "deficiencies" out there, and planners can discover it if they are honest and open, not allowing discomfort or self-interest to limit what they find (*ibid.*). The OHCHR points out to

states that it may be appropriate to hire a "third-party" – viz. detached or impartial – consultant to undertake this work, but that that decision (like all else) will depend on local circumstances.[87] In any case, a first suggested line of defense against the "capture" of human rights evaluation and implementation by state self-interest is the championing of "objectivity."

While "objectivity" standards may address this most blatant type of bias, they in no way allay some other concerns raised by scholarship on technocratization. Indeed, if anything they underscore a second possible source of epistemic domination: the privileging of knowledge that is backed by technical criteria and professionals with specialized training and credentials. Yet the *Handbook*'s preference for "objectivity" and its modes of expert validation is, upon closer inspection, much thinner than it at first appears. I say this because of another ingredient of action planning that the OHCHR promotes even more unequivocally (including as a condition of funding support) – consultation with, and full and effective participation of, the general, non-expert populations who are the subjects of rights. The Office insists that action planning should generate inclusive, meaningful, and ever-broadening spaces of public consultation; it should open a "genuine process of dialogue" between state and civil society (OHCHR 2002:56).

This requirement could be in part about accruing more knowledge of the multiple "locals" and problems in a country. But more than that, the *Handbook* emphasizes that it should ensure that "the general public will accord greater credibility to the process," and not see it as a project of and by "elites" (*ibid.*:58). That is, planners should foster the participation of a range of

[87] In practice, the OHCHR sometimes takes a firmer stance by making its financial support contingent upon the use of a consultant, as was the case for Costa Rica's action plan on racial discrimination. There the job description for the consultant position listed among the necessary qualities "impartiality, independence, objectivity, and transparency" – all characterized as "UN principles." The document in question is titled, "Términos de Referencia para la Contratación de un Consultor (a) para el proceso de elaboración del Plan Nacional de Acción contra el Racismo y la Discriminación Racial" (Terms of Reference for the Contracting of a Consultant for the process of elaborating the National Action Plan against Racism and Racial Discrimination). It bears the insignias of the OHCHR, the UN, and the MRE as headers. Copy on file with the author.

competing voices because doing so accrues *trust* in the *fairness* of the inquiry.[88] By this standard, knowledge of human rights conditions need not be subject to validation vis-à-vis rigid criteria of "objectivity." Thus, the norm of effective participation bends against expert rule in action plans' means of defining problems or "the current situation."

At the same time, the idea of "participation" is not without its baggage. The concept enjoyed currency in 1990s international development discourse when critiques of top-down models popularized it, along with "sustainability," "the grassroots," and "civil society." Soon enough, however, the new "participatory development" itself came under criticism as a technique of cooptation, appropriation, and even "tyranny" (Cooke & Kothari 2001; Green 2000; see also Paley 2001). Much critical scholarship has since emphasized the ways in which participatory and consultative mechanisms moderate, govern, and "render technical" political struggles (e.g. Li 2007; Schech & vas Dev 2007) – "channel[ing] discontent through acceptable modes of discussion… while permitting extractive activities to continue apace" (Perreault 2015:447).

This critique of participation is particularly salient in the context of large-scale development initiatives. There the holding of consultations often contains the foregone conclusion that the project will move forward, and thus the premise for "participation" effectively precludes the principal demand of local communities. But the critique fits less well where the parties to consultation do not object to the project itself, as I suspect is the case for most human rights action plans. This is of course an empirical question to be asked in each specific case. So too are questions of whether participatory mechanisms detract from or "coopt" more radical forms of contestation, and whether they are tokenistic "add-ons" versus truly

[88] Feminist and social epistemologists have proposed a conception of "objectivity" that defines it in precisely these terms (see esp. Longino 1990; Fine 1998). However, I have no evidence that those involved in promoting human rights action planning justify "participation" in such epistemological terms, and thus do not consider the promotion thereof to be a manifestation of objectivist commitments.

efficacious means of wielding international norms and moving the state (cf. Albó 2002; Hale 2004; Perreault 2015; Postero 2007).[89]

A more inevitable complication that the norm of "participation" creates for anti-discrimination action planning is how to determine who participates, and on what basis. As critical geographer Tom Perreault (2015) notes, participatory and consultative mechanisms always operate on basis of particular spatial scales and criteria for defining target populations. These scales and criteria help materialize participatory processes as events in particular spaces and times – as well as methods for selecting "participants" – and thereby prefigure whose voices will be heard. UN human rights norms generally hold that participation is for those whose rights are at stake, or "affected populations" – in this case, those who are subject or vulnerable to racial discrimination. But if a baseline assessment is meant to uncover the contours of discrimination – particularly in its most hidden forms – then how are action planners to know in advance of the assessment who to include in it?

The OHCHR mostly sidesteps this paradox by employing the notion of "vulnerable groups." By starting with "groups," this approach has the commendable effect of recognizing collective as well as individual subjection to discrimination, including more diffuse forms thereof.[90] But where racial discrimination is concerned, it also creates notable problems. If participation is for discriminated groups, then ethno-racial *groupness* – rather than discrimination *based on ideas of* race or ethnicity – becomes the central criterion in the process. As I explained in the Introduction, such reification of race and/or ethnicity is contrary to the human rights conception to racial discrimination. Further, it usually means that planning processes must

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[89] I speak to these questions for the case of Costa Rica in Chapter 6.

[90] Diffuse collective harms would include many of those long-ignored exclusions and "macroaggressions" that devalue – to borrow Katheryn Russell's (1998:138-140) example – black*ness* in general even without referring to any specific "black" individual(s).

include *indigenous* participation, *black* participation, and so forth – participant categories given to creating false equivalencies across diverse populations. Designing participation around ethno-racial groups also leads to extremely complicated decisions about which locales, organizations, and/or political structures will be the conduits of participation for each nominal "group." How and with whom must planners dialogue in order to have "done" "indigenous participation"? Later chapters will analyze how these decisions were made in a Costa Rican action-planning process. The general points for now are that they are dilemmas built into the form of anti-discrimination action planning, and part of an encompassing tension in the UN's promulgation of principles of both objectivity and inclusive participation in the assessment of states' shortcomings in fulfilling international norms.

How the tensions I have described get resolved, and by whom, has real consequences, not only because action plans use assessment to tailor a slate of state duties, but also because they prescribe that *some* things – *but decidedly not everything* – must get done. Indeed, with the action plan concept, the UN promotes a procedure in which states perform their obligatedness by affirming that some of their human-rights shortcomings oblige immediate attention, while others do not. We can see this in the aforementioned OHCHR *Handbook*, which, despite calls for "comprehensiveness," also teaches that action plans must be *selective*. For example, in its discussion of baseline assessments, it notes that even "a comprehensive study of just one issue can take a considerable amount of time and involve substantial resources." To keep a process from becoming too "expensive or prolonged," planners are advised "to find a commonsense approach" – approach to limiting the scope and detail of the assessment, that is – "in the light of their own [country's] circumstances" (OHCHR 2002:61). Elsewhere the OHCHR repeatedly emphasizes that human rights action plans must be above all *practical*, and should set

"*achievable* targets" and propose "*realistic* activities" (*ibid.*:3, 9, emphasis added). If, as Tobias Rees (2014:458) says, planning is an endeavor that "oscillates between the feasible and the fantastic," the *Handbook* is weighted decidedly towards the former.

Action planning ensures that what is in principle legally obligatory for a state – to fulfill *all* of its human rights treaty commitments – becomes "the fantastic" (Rees 2014) through a very simple core feature: dates for completion. These dates are to be attached to action plans as a whole, and often to each of their individual objectives or targets, with the laudable goals of making state actors recognize obligations as firm, urgent, and accountable. Fixed time frames for plan objectives portend future evaluation, the results of which should, in turn, "lay the foundation for a successor plan" (OHCHR 2002:41). Indeed, the promise of not just one, but "a series of successor plans" is central to human rights action planning, which "should be continuous, with the conclusion of one plan leading to the commencement of another" (*ibid.*:99, 13). But together, mandatory plan completion dates combined with this presumption of cyclicality make it both necessary and acceptable that any given action plan limit itself to the "achievable" and the "realistic." The aim of fulfilling *all* rights commitments is deferred into a future in which there will always be more need for reflection and consideration of circumstance, and always more to do (see *ibid.*:20). Action planning then supports an alternative temporality of compliance in which the time for a state to show *obligatedness* is now, but requiring that only some *obligations* adhere in the present, with others held in abeyance for the next plan, or the one after that.

Thus, the OHCHR promotes the human rights action plan as an instrument that is deeply pragmatic, but also relativizing. It positions states to impute particularized, concrete duties from broad right norms, basing this "vernacularization" on an assessment of local circumstances,

caught between standards of objectivity and agreeability. Through this process, planners are to decide based on the plan's time frame which prospective duties are "realistic" and, by extension, which are not. Planning thereby simultaneously (re)affirms the obligation to act on some unfulfilled rights while – just as essentially – putting off the conferral of obligations for others. A state must be on a path towards implementation, but it will be *its own* path, and one on which to *advance* but never *arrive*. If what counts as a state obligation always depends on a vague notion of "circumstances," subjects of the same rights can be sure that what passes as satisfactory enjoyment of those rights will differ relative to time and place. So whether public participation is primarily about diversifying the plan's information sources or winning trust and social legitimacy, who is included is important because real variability in potential outcomes is at stake. While the *Handbook* assures that the most urgent problems "[u]sually… will draw attention to themselves" (OHCHR 2002:65), it is *people* who negotiate this, calibrating their judgments in relation to one another, and to the structural design and criteria of action planning I have analyzed. Together these determine which, and how much, rights work *in the present* counts as state compliance within this contemporary evaluation procedure.

The Census

While the action plan has a relatively short history in relation to fighting racial discrimination, that of the census is both longer and more complicated, even contradictory. Indeed, due to the historical uses of official racial classification to support the segregation, disenfranchisement, and underdevelopment of black communities in South Africa and the United States (see Bowker & Star 1999:Ch. 6; Nobles 2000), many associate ethno-racial census counts with *facilitating* discrimination rather than eliminating it. Such is not the case among those engaged in human rights-based anti-discrimination work in Latin America, however. In

December 2012, I joined a transnational, multi-sectorial cross-section of that community in San José, Costa Rica to participate in a seminar and workshop on the "statistical recognition of Afro-descendants in Latin America."[91] The event blended elements of celebration, critical assessment, and agenda-setting for the future of official statistics. Among the attendees were activists and census personnel from the nine countries that in the past three years had conducted censuses allowing respondents to identify as being of African descent – some for the first time in generations. Several of the activists in the seminar room had been instrumental in late-1990s domestic and international campaigns that made the return of ethno-racial census categories – in particular those for black and indigenous identification – a region-wide phenomenon. Also in attendance were representatives from some of the intergovernmental and development agencies that have supported the push for more and better socio-economic statistics on Latin America's indigenous peoples and people of African descent. These include the UN Economic Commission for Latin America and the Caribbean (ECLAC), the Inter-American Development Bank (IDB), and the Spanish Agency for International Development Cooperation (AECID).

The 2012 seminar opened with a panel of event organizers and funders who reminded attendees why their work to shape official statistics was of such great importance to the region. The first speaker was Walter Robinson, a well-known Afro-Costa Rican politician, development expert, and rights advocate for decades. Robinson recalled that many of the activists present had observed problems with the first round of censuses to enumerate Afro-descendants in the 2000s. Their engagement with technical actors in spaces like this one could change flawed census practices, improving the knowledge base that informs public policies in their countries.

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[91] *Afro-descendant* is the term used by scholars, advocates, and activists as an umbrella demonym for people throughout the Latin American region who trace a significant part of their ancestry to Africa and the transatlantic slave trade.

Robinson then concluded with a decidedly more moral endorsement of this work, addressed to state census-makers and activists alike:

> And finally, we can do this with complete certainty [*seguridad*]; we should not have any reservation that we are in the right. It says in the Bible that we are all children of God, created in his image and likeness. Therefore, none can be wrong when we count an African, when we count an indigenous [person], when we count someone else. There is no way to be in the wrong. [And] there are other less noted things [in the Bible as well]: 'Down to the last hair on each one of you is counted'… I think that we will never arrive at that: that one of the censuses of Afro-descendants is counted out until the last hair of everyone. That, it seems to me, is the spirit with which to take up this work.

Plenty could be said about Robinson's use of Biblical passages here, with its imputed blessing of census counts in general, and of ethno-racial classification in particular. After all, the track record of censuses in the Bible is spotty at best.[92] For our purposes however there are two other aspects of Robinson's remarks the explication of which is more pertinent than that of their theological soundness. A first is their unequivocal claim about the rectitude of enumerating people by race/ethnicity: It is *right* to count, and we know that it is right. This position is shared by the vast majority – or possibly all – of those who were present at the 2012 seminar, as well as the wider network of which they are a part. Robinson's invocation of the Bible does not actually reflect the source of this collective position – which is not theologically driven – but should be taken instead as an expression of the degree of conviction around it.

The second point in the remarks above is the stance that no census – and in particular, no ethno-racial count – will ever be made to operate perfectly, but that this should not discourage the census-makers and activists present from pursuing their work. Robinson suggests that the *ideal* is comprehensiveness – a pretext and fiction of many census projects, to be sure (e.g.

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[92] Beyond the apparent role a census played in forcing Joseph and Mary's untimely journey to Bethlehem, the Old Testament tells of a pestilence befalling King David's people when a census he ordered inexplicably transgressed the will of a vengeful God. Much of the seventeenth and early-eighteenth century Christian world took a clear message from this: It can be a sin against God to conduct a population census (Cohen 2005:30-33).

Anderson 1991:Ch. 10) – but that this goal may well be the sole preserve of the omniscient. It is ambiguous whether the "spirit" he mentions in his final sentence means that of fixing sights on this ideal, or of accepting its unattainability; Robinson surely advocates both. This too is characteristic of the multi-sectorial, regional network that guides ethno-racial enumeration projects in Latin America. In regular transnational forums, this network scrutinizes and amends nascent methodological norms on disaggregated-data production in relation to concrete "experiences" of each new census conducted in the region. This recursivity cycle does not, however, tend to hone in centripetally upon a standard formula for conducting ethno-racial enumeration. Instead, it problematizes more and more aspects of the census process, insisting that every state must attend to each of them, but in line with its own local specificities and difference.

The following sub-sections explain how the rise of ethno-racial statistical production as a mechanism for assessing discrimination in Latin America, and regional efforts to regulate census processes shape how state compliance with international norms on racial discrimination can be known. First, I discuss how states' collection of ethno-racial data came to be articulated as good anti-discrimination practice, and what kinds of information – i.e. in what units and with respect to what and whom – it makes available as knowledge of discrimination. Next, I analyze transnational efforts to monitor and direct the practices employed in national ethno-racial enumeration processes, especially under the leadership of the Latin American regional UN entity ECLAC. I show that ECLAC too stops short of promulgating standardized methods – even for as technical an endeavor as the production of population statistics – emphasizing instead that states should attune censuses to local ethno-racial particularities and participation. Still, ECLAC sustains a transnational, multi-sectorial dialogue that has its own kinds of regulatory effects. I

explain these, and explore how they too shape what can be produced as state duties and as knowledge of racial discrimination within evaluation's turn to difference.

The Difference Making it (a) Right to be Counted Makes

After Walter Robinson concluded his 2012 remarks affirming the rectitude of enumerating marginalized ethno-racial groups in censuses, two of his fellow opening panelists asserted in equally strident terms the practice's direct connection to *rights*. The first was a representative of the University of Costa Rica, the seminar's host institution. He referred to Hannah Arendt's notion of "the right to have rights" in order to say that the work in which attendees engaged was to ensure that everyone had that right, irrespective of race or ethnicity. That is, without the "right" of a person or group to be counted in a census, he suggested, a person or group may have no access to rights at all. A subsequent speaker from the funding agency AECID similarly spoke of census enumeration as being about "recuperating Afro-descendants' *first right*" – the right to be recognized and made visible (*visibilizados*). This recognition would enable, in his words, a move from "the singular" to "the plural" in policies for achieving human rights – now in line with the particularities of group identity and difference.

While these commentaries may give the impression that people identified as "black" or "indigenous" were until recently not counted *at all* in Latin American censuses, this is not in fact the case. Rather, it is that no one was counted *as* black or indigenous; official demography simply did not register ethno-racial difference. But this omission itself was a relatively recent development. After decades of using them, census agencies across Latin America began removing race and/or "color" variables from national censuses in the 1930s. They had all but disappeared by 1950.[93] States abandoned ethno-racial classification in line with projects to

[93] The lone exceptions are Brazil, Cuba, and the Dominican Republic. The last Costa Rican census of the 20th-century to include the ethno-racial variable was that of 1950.

consolidate unitary national identities, and widespread international antipathy to producing such data in the aftermath of the Holocaust.[94] Their continued omission of race/ethnicity from official statistics was later justified by arguments that such distinctions were irrelevant to domestic law and administration, and even contrary to the very social sensibilities of their citizens. To give just one example, a Mexican state representative reported to the UN Committee on the Elimination of Racial Discrimination (CERD) in 1980 that Mexico's recent census contained no racial or ethnic identification question because the "existence of problems based on race or ethnic origin was unimaginable to a Mexican" (UN doc. CERD/C/SR.492: para. 17).[95]

Such strident denials that racial discrimination exists have long been common across Latin America. Typically they are grounded in the idea that biological and cultural "mixture" (*mestizaje*, or *mestiçagem* in Brazil) have rendered social differentiation by race – and thereby racism – obsolete. But while numerous states have claimed that their non-use of the race/ethnicity variable *reflects* citizens' belief that ethno-racial difference has disappeared from their nations, many scholars show that censuses have been instrumental in *constructing* that belief (Albó 2012; Ching & Tilley 1998; Lazzari 2003; Loveman 2009, 2014; Tilley 2005). Indeed, the manipulation and removal of ethno-racial categories from censuses have been criticized for many years by Afro-descendants, and for decades by indigenous activists, as perpetrating "statistical ethnocide."[96] Activists and scholars alike have further argued that the absence of ethno-racial census variables inoculates myths of "racial democracy" against empirical scrutiny. It does so by making it impossible to compile comprehensive quantitative

[94] Mara Loveman (2014) emphasizes the consistent influence of changing international criteria of "modernity" and "progress" upon Latin American states' choices about whether to use ethno-racial classification in censuses.
[95] On Latin American states' modes of denying before the CERD that racial discrimination exists in their countries, see Dulitzky 2005.
[96] Guillermo Bonfil Batalla (1981:21) found this expression used by indigenous activists as early as the 1970s. The late Afro-Costa Rican scholar and activist Carlos Minott (*pers. comm.*) recalled that transnational Afro-descendant movement leaders have used it since at least the late-1990s.

evidence that socio-economic inequality is distributed along ethno-racial lines (see Dulitzky 2005; Lennox & Minott 2011; Nobles 2005; Safa 2005; Sue 2009; Telles 2007).

Thus, Latin American indigenous and black activists consider censuses' failure to take ethno-racial identity into account a work of "invisibilization," and their own efforts to reform censuses as the pursuit of "visibility." They seek in fact a double "visibilization" that counters both of the two criticisms of previous censuses explained above. That is, ethno-racial census categories should, first, make visible the existence and extent of diversity; and second, make visible the particularities and differences in living conditions attendant to said diversity. The mission statement of the Afro-descendant Study, Research, and Development Institute – the main organizer of the San José seminar described above – captures these hemisphere-wide census-reform goals:

> Our mission is to secure the incorporation of the racial and/or ethnic variable in census forms, allowing that Afro-descendant men and women of Latin America and the Caribbean are visibilized through technically and culturally well-formulated self-identification questions, with the objective of applying truly inclusive public policies that allow for the reduction of social and economic gaps and accurately account for the quantity of Afro-descendants of the Americas and the Caribbean.[97]

It was this language of visibilizing difference of identity and of living conditions that pushed Latin American states to commit to reincorporating ethno-racial categories into their national censuses in two inter-governmental forums held in the final months of the year 2000. The first of these was a seminar in Cartagena, Colombia called *Todos Contamos*,[98] organized by the World Bank and Inter-American Development Bank (IDB). *Todos Contamos* was the first

[97] This quote is from the homepage of the Instituto Afrodescendiente para el Estudio, la Investigación y el Desarrollo, http://afrodesc.com. In the original Spanish: "Nuestra misión es lograr la incorporación de la variable racial y/o étnica en las boletas censales, permitiendo que los y las afrodescendientes de América Latina y el Caribe sean visibilizados a través de preguntas de autoidentificación técnica y culturalmente bien elaboradas, con el objetivo de aplicar políticas públicas verdaderamente incluyentes, que permitan disminuir brechas sociales y económicas y dar cuenta cierta de la cantidad de Afrodescendientes de las Américas y el Caribe."

[98] The words "*todos contamos*" translate most directly as "we all count." The more common English rendering of the event's name is "everyone counts," which loses the first-person construction of the Spanish.

regional meeting of its kind, convening national census personnel from 14 countries, demography experts from UN Economic Commission for Latin America and the Caribbean (ECLAC), funding-agency representatives, and Afro-descendant and indigenous leaders to discuss ethno-racial data collection. The seminar emphasized that such data were urgently needed to inform development planning, and began to explore the methodological issues involved in generating them through censuses (see Matías Alonso 2006; World Bank 2002). The other event of 2000 was the Santiago Conference of the Americas, a regional preparatory meeting for the 2001 WCAR in Durban. In Santiago, the region's heads of state for the first time collectively acknowledged that racial discrimination did indeed exist in Latin America, and must be confronted (Dulitzky 2005:52). They further committed their governments to reforming data-collection strategies in the service of anti-discrimination policies and projects. Much of the credit for these changes of position is owed to Afro-descendant activists, who lobbied high-ranking state officials both in Santiago and in their home countries prior to the conference (Lennox & Minott 2011). Those activists and the World Bank/IDB both framed the issue in terms of "visibility" and "social inclusion."

These Latin American regional initiatives were a major boon to UN efforts to make data disaggregation a core mechanism of state implementation of human rights norms on racial discrimination, particularly the work of the CERD. The Committee had requested that states report statistical data on their various ethno-racial sub-populations since 1973, when it issued a general recommendation to that effect, later enshrined in its guidelines on reporting to the CERD.[99] But many states the world over did not include ethno-racial categories in official

[99] See the CERD's General Recommendation IV of 1973, its 1974 clarification of the recommendation (UN doc. A/9618:38), and its 1980 General Guidelines concerning the Form and Contents of Reports by States Parties (UN doc. A/35/18:147). I have elsewhere analyzed these documents and the historical evolution of the CERD's requests for ethno-racially disaggregated data in greater detail (Clark 2017).

statistics. Lack of consensus on the Committee over whether they could or should pressure states to do so had always prevented the CERD from arguing unequivocally that monitoring and evaluation *necessitated* ethno-racial data (Clark 2017). But Latin American states' official commitments at the Santiago Conference – which they later reaffirmed in Durban (see UN doc. A/CONF.189/12:135) – enabled the CERD to do just that, at least for this particular region. Its discourse of visibility and invisibilization redefined the omission of ethno-racial categories not as preventing discrimination – like states previously claimed – but as implicitly imposing the dominant, state-endorsed national identity upon everyone, thus harming (discriminatorily) anyone who identified otherwise.

The enlistment of the census as a core mechanism for fighting discrimination has a number of significant knowledge effects on assessment in the UN framework. First, the very presence of ethno-racial categories on a national census represents a state's affirmation that diversity does indeed exist, and invariably identifies some number of people as belonging to the groups listed.[100] This renders implausible any claim that a population is homogenous, and that therefore discrimination is "unimaginable" and need not be discussed. Throughout its history, the CERD has held that a state's simple recognition of ethno-racial difference – with or without widespread complaints or perception of discrimination – is enough to require that it diligently monitor, investigate, and report on diversity and discrimination in the country (see Clark 2017; and Chapter 5). The production of ethno-racial data in a state's own demography likewise makes it difficult for officials to say that the issue is irrelevant to domestic law and politics.

[100] This, as many scholars point out, irrespective of whether all or most of those people would identify themselves in the same terms *absent* the categories' appearance on the census (Kertzer & Arel 2002b; Petersen 1987; see further, Hacking 1986).

Besides showing that diversity exists and thus discrimination should be monitored, a census that accounts for ethno-racial difference is itself a base of data from which knowledge of discrimination can be extracted. Indeed, much of the reason reformists call for ethno-racial categories is in order to cross them with the many other categories on census forms, generating discrete "nuggets" of information – information, that is, in what Mary Poovey (1998) labels the epistemological unit of "the modern fact" – about the particular living conditions of each ethno-racially identified group. When each individual is coded by ethno-racial identity, the data on all of these categories can be broken down into separate totals and/or averages for each ethno-racial sub-population. These figures in themselves become modern facts, in that they are bounded, easily reproduced, and apparently interpretation-free descriptions of the specific circumstances of each nominal group (see *ibid.*). Further, their cross-tabulation allows for direct comparisons across groups that prove convenient for assessing disparity indicative of what the human rights anti-discrimination framework calls "discrimination in effect." The juxtaposition of different groups' outcomes highlights "less than" and "greater than" relations that call for articulation as "facts" about the state – whether, and to what extent, it has ensured the equal enjoyment and exercise of rights.

It is in this way that censuses fit what I have identified as a shift towards seeking out discrimination as a subtle, diffuse phenomenon to be discovered in prevailing empirical conditions. Within this shift, the choice of the census as evaluation tool also foregrounds some issue areas over others – namely, those registered by a census. Not incidentally, these issues are not those commonly associated with racial discrimination as a civil rights issue, like voter enfranchisement, access to public places, membership in civic organizations, and so forth. Rather, censuses contain questions about the family structure, housing, education, economic

activities, and material conditions of respondents. That is, they refer to subject matter more closely related to economic and social human rights.[101] The rise of the census thus pushes back against the longstanding treatment of such rights as secondary vis-à-vis civil and political rights in domestic and international anti-discrimination agendas. In the present implementation era, censuses potentialize the naming of a wide range of issues in the economic and social spheres as unmet state obligations.

One final notable way in which ethno-racially disaggregated census data shape how knowledge of discrimination is rendered is that the facts they produce are inevitably about *collectives* rather than individuals. In a census, data points are anonymized as to the individual or household to which they correspond, and thus become knowledge of specific persons in the world only by way of other group classifications. To disaggregate from the total population then always means producing new, smaller aggregates based on a particular variable – in this case ethno-racial identification.[102] The result is that, where instances of disadvantage are found, it is in the outcomes for statistical groups. If deemed discriminatory, these disadvantages would presumably call for state remedies scaled and targeted at the group(s) in question as a whole. On one hand, this would open the door to programs, policies, restitution, and/or reforms broader in scope than might be prompted by accounts of individual cases of discrimination alone. On the other, to produce facts only at the scale of nominal groups overlooks the phenomenon of intra-group inequality in rights enjoyment. This is especially significant where evaluators consider improvement in a group's outcomes *relative* to the general population to be *the* indicator of

[101] This is not to say that variables in censuses are adequate proxy measures for these rights, and, as Merry (2011) and others suggest, to accept them uncritically as such would silently import particular interpretations and values into oversight. But the use of proxy measures of human rights is rarely accepted uncritically or with silence. Both scholars and practitioners are engaged in spirited debates on existing statistical measures' prospects and problems as metrics of economic and social rights (e.g. Apodaca 2007; Chapman 2007; Corkery 2016; Malhotra & Fasel 2005).

[102] I thank Véronique Fortin and Susan Coutin for pushing me to think through the relationship between aggregation(s) and disaggregation(s) in this context.

progress, despite that such rises do not always involve changes in the conditions of those worst off. More broadly, to investigate discrimination by comparing sub-population group outcomes is to relativize what counts as adequate enjoyment of a right for any given group. That is, the same rate of Afro-descendant unemployment or indigenous child poverty, for example, may appear "normal" in one national context and "discriminatory" in another, depending upon the rates for the general population.[103]

The previous paragraphs have explained how the national census found its way into the canon of human rights tools for assessing racial discrimination, and some ways in which its form shapes the scope and scale of the potential knowledge of discrimination made through it. But looming over all of this are significant questions about how census processes should decide which apparent ethno-racial sub-populations are significant, and how enumerated persons are assigned to one versus another category, for purposes of dis-/re-aggregation. The passages from the 2012 San José seminar cited above seem to take for granted that there are self-evidently black and indigenous persons out there, just waiting to be counted. This stands in contrast to an international human rights normative framework that has long resisted giving much ontological weight to concepts of race and ethnicity (Banton 1996:52), and that often labels these forms of difference "socially constructed."[104] And in fact, it is not representative of the robust and nuanced conversations found at the San José seminar – and other regional forums like it since *Todos Contamos* – when attention turns from the "whether" to the "how" of ethno-racial statistical production. In the next sub-section, I examine how these forums monitor and direct national census processes, not by proposing standardized methods, but by defining salient

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[103] This is among several problems for which Tara Melish (n.d.) has criticized advocacy strategies that rely on the anti-discrimination framework as a route to securing economic and social human rights.
[104] See e.g. *Durban Declaration and Programme of Action*, para. 171.

methodological challenges and dilemmas, constituting the casts of domestic actors that should respond to them, and asking them to do so in ways appropriate to local circumstances.

Guidance and Oversight of States' Census Methods: Or, Standardizing Localization

Census figures on ethno-racial difference are frequently contested, usually on grounds that they undercount marginalized groups. This led me to wonder whether members of the UN Committee on the Elimination of Racial Discrimination (CERD) – a major international proponent of disaggregated data production – use criteria of validity or methodological soundness when considering census data reported to them by states. Those who I interviewed suggested that doing so was not matter of course. If NGOs or activists brought complaints to their attention, they would pose questions on the matter to state representatives.[105] But otherwise, they do not generally delve into the proverbial nuts and bolts of census practice, despite the importance they attach to this mechanism of state self-evaluation.[106] One CERD member particularly given to pressing states for disaggregated data told me that the Committee mostly assumed that the validity of census data was ensured by other UN institutions. This member specifically mentioned "regional standard-setting bodies" as the appropriate loci of oversight. In the case of Latin America, the body whose mandate matches this description is the population division of ECLAC.

ECLAC does indeed play a significant role in influencing national decision-making around methods for producing ethno-racially disaggregated census data, but it is not through "standard-setting" conventionally understood. As with the OHCHR's work to promote action planning, ECLAC too embraces the stance that the methods for producing knowledge should be

[105] Indeed, I am aware of a handful of cases in which they have done so in examinations of Latin American states.
[106] I will have more to say about the reasons the CERD requests to see ethno-racially disaggregated census statistics in Chapter 5. See also Clark 2017.

tailored to the specificities of local actors and contexts. It is fair to say that theirs is a methodological standard of localization. This is remarkable for a profession in which international organizing has almost always been predicated upon the goal of bolstering the field's bona fides as scientific and objective through methodological standardization. Such efforts date back to international statistical associations and conferences convened in the early years of national statistical bureaus in mid-nineteenth century Europe (see Desrosières 1998; Hankins 1908:Ch. 2; Petit 2013).

This sub-section explains how ECLAC advances a standard of localization in its large-scale activities to promote and oversee ethno-racial enumeration – regular regional technical forums it has hosted or co-sponsored since, and building on the model of, the *Todos Contamos* seminar.[107] *Todos Contamos* was a landmark, but not a singular event. Besides its 2002 sequel (*Todos Contamos II*), it has led to near-annual regional forums for analyzing and improving national ethno-racial statistical processes beginning in 2005.[108] As with the San José seminar discussed above, these forums consistently include not only national census professionals and ECLAC experts, but also indigenous and/or Afro-descendant community leaders and activists. The inclusion of the latter groups in these spaces follows the norm of participation, and has created a diverse regional network of experts on national censuses as technical-cum-human-rights-evaluation instruments.

The best way to illustrate how regional forums direct ethno-racial data disaggregation without imposing uniform methods is by examining what forum participants do concretely. The principal activity in these forums is a series of panels not so different from academic or other

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[107] It may bear noting that ECLAC also provides advice to Latin American census agencies through private, direct consultations as needed.

[108] These include (at least) events in Santiago, Chile in 2005 and 2008, Panamá in 2008, Rio de Janeiro in 2010, Cartagena in 2011, and San José in 2012.

conferences. Typically each is comprised of three to five speakers who present information in their area of expertise or experience, most often with the assistance of a PowerPoint slide show. Panels are scheduled such that, at the conclusion of each set of presentations, time is reserved for other forum participants – many of them presenters on another panel – to pose questions. Among the presenters are members of each of the sectors represented – black and indigenous organizations, national census agencies, intergovernmental bodies, and occasionally scholars;[109] often organizers intentionally compose each panel to be multi-sectorial in make-up. To encourage the participation of everyone present, panels are sometimes accompanied by "breakouts" and smaller "working groups" conducive to creating exchange among those less given to raising issues or questions in the larger group setting.

There is a highly routinized format to the content representatives of both census agencies and indigenous and Afro-descendant organizations deliver at regional forums. Indeed, in some cases this format is prescribed in explicit guidelines pre-circulated by ECLAC or other transnational host organizations.[110] Presenters first provide background information on their country's recent previous ethno-racial enumerations (if any exist), highlighting methodological problems subsequently identified domestically or through previous regional meetings. They then describe the stages of the most current census process, including the widely-contentious formulation of the ethno-racial question; aspects of data collection including methods, personnel, and enumerator training; and efforts to disseminate census findings to the public. In the way of conclusion, panelists are to give two lists of evaluative statements – one of the positive aspects

[109] Increasingly, participants in regional forums belong to more than one of these sectors and, through consultancies and contract positions, are sometimes affiliated with all four.
[110] The following analysis is indeed based in part on one such document, titled, "Pauta para Preparar la Presentación para Países que Ya Hicieron Censo de la Década de 2010 o Están Próximos a Hacerlo" (Guidelines for Preparing the Presentation for Countries that Already Carried Out [their] Census of the 2010 Decade or Are Near to Doing So). Copy on file with the author. It is also informed by interviews with participants in other regional census forums, and my own participant observation at the 2012 San José seminar.

and the other of negatives. The latter category takes slightly different valences depending on the presenter, with census-makers perhaps more prone to speak of lessons learned (*lecciones aprendidas*), limitations (*limitaciones*), and challenges (*retos*), and non-state actors somewhat more overtly critical. At the same time, this format, and the broader framing of the forums around concrete technical matters and constructive problem-solving, establishes a tone and implicit decorum that encourages collaborative over confrontational language. Finally, presenters are to report back to the transnational, multi-sectorial audience present on the extent and quality of the census agency's consultative or participatory process with domestic civil society organizations and experts.

This format is significant because it contains several aspects of the oversight work that regional forums and the actors convened in them do. First, these forums constitute a *cast of actors* as necessary to decision-making processes about ethno-racial statistics in national censuses, and simultaneously train and socialize these actors in a model of dialogue. Fundamental to this effort is instilling in state census-makers the idea that black and indigenous activists are fellow experts and co-participants in the census process. This is no small task. After all, census officials and technicians are used to seeing their work as *technical*, meaning, as Theodore Porter (2009) reminds us, that it is not only complicated, but also relies on concepts, methods, and vocabulary in which only a limited number of trained specialists are invested. Most indigenous and Afro-descendant leaders involved in census advocacy did not begin with formal training in demography or statistical methods. Prior to the *Todos Contamos* seminars, many of the census agency personnel involved in planning ethno-racial enumerations had never engaged with, or even met, those leaders from their countries (Mazza 2002:5).

But at these and subsequent forums organized by ECLAC and partnering institutions,[111] black and indigenous representatives have been invited as equal participants in evaluating census processes. They are fellow presenters on panels, and contributors to multi-authored publications (e.g. CEPAL 2006) alongside census professionals. As a result, they are validated in transnational spaces as significant agents of knowledge concerning census practice. In turn, it also informally trains and socializes these leaders as interlocutors with census-makers. Beyond the tone of "constructive" expert discourse I already mentioned, indigenous and Afro-descendant representatives in regional census forums acquire technical language, context, and reference points in common with state census personnel, and thus the ability to speak like an "insider." All of this is not merely to prepare actors for the next in the series of regional meetings; it is to prepare, and prescribe, them as participants in decision-making processes in their home countries' next national censuses. The regional meetings normalize these "civil society" actors' place at the table, and model how states should make good on already-existing commitments to their participation.[112]

Second, the format of presentations is part of the structuring of a regional, multi-sectorial "dialogue" as a *progress narrative*. It is not merely a courtesy that each presenter remarks on both positive and negative aspects of her country's most recent census experience; failure to do so would not go unnoticed. An activist presentation that did not acknowledge successful "steps forward," or especially a census-agency presentation that admitted no pending "challenges," would be viewed by experienced attendees as incomplete, insufficiently forthright, and likely not

[111] In addition to the IDB, World Bank, and ECLAC, sponsors of these forums have included the UN Office of the High Commissioner for Human Rights (OHCHR), the UN Permanent Forum on Indigenous Issues, the Spanish Agency for International Development Cooperation (AECID), the Ford Foundation, and Fondo Indígena.
[112] At the Santiago Conference of the Americas in 2000, Latin American states affirmed the need to develop "participatory strategies for these communities [of indigenous peoples, people of African descent and other ethnic groups] in the processes of collecting and using" statistical information (UN doc. A/CONF.189/PC.2/7: para. 85).

constructive. To be "constructive" in this context – as elsewhere in human rights assessment (see esp. Chapter 5) – is to use knowledge of past (or even ongoing) problems not to decide culpability, but to bring about the next steps in, and affirm commitments to, continuous improvement. This is as true for the assessment of "the facts" about difference and discrimination – which probably never get "down to the last hair" – as it is for the assessment of the assessment process (viz. a specific census experience). Assessing a census is likewise not expected to yield an *exhaustive* record of each methodological right and wrong – which would require an ideal formula – but a collection of each. By attesting to progress but also room for improvement, participants enact the kind of candid, collaborative dialogue forum organizers envisage, while also creating the need to continue that dialogue, with its recursive regulatory effect on the cycle of national censuses it runs alongside.

Finally, and as a consequence of the two dynamics just described, the format of regional forums makes them spaces of state accountability, or – to use less-loaded terminology – of a *rendering of accounts*, with a supra-national audience. As I mentioned above, regional forums engender not merely the "dialogue" of successive presentations, but also periods of question and answer, and discussion. Throughout this exchange, black and indigenous activists-cum-experts air problems and proposals regarding their own and other countries' census practices, and do so before ECLAC experts who are both technical authorities and potential brokers of financial support for national census agencies' work. Although, as I have argued, identifying at least *some* problems is necessary, a census agency may be shamed or embarrassed if found repeating the same shortcomings or well-known mistakes. This provides an incentive for agencies to heed "lessons learned" in regional forums during their national census processes – or at least not to flout these lesson such that they could not claim to have done so. Perhaps most damaging would

be for census officials to be decried for not having conducted a truly participatory process back home; thus these forums all but ensure some form of domestic consultation with indigenous and/or Afro-descendant organizations. Nowhere is the strength of this international imperative as clear as where such organizations are relatively indifferent to the census, but a state nonetheless *recruits* them to participate anyway to evince its obligatedness (see Clark 2009).[113] In this sense – and as Jensen and Winthereik (2013:Ch. 5) observe elsewhere – "participation" can indeed be just as regulatory for those charged with performing and reporting on it as for participants at risk of being coopted by it.

So what do ECLAC's demography experts contribute to this exchange of reported methodological shortcomings, advances, and proposals? They too give presentations at regional forums, as well as producing conference framing and outcome documents, institutional reports, and articles in the population division's journal, *Notas de Población*. But given the ECLAC population division's position as the paramount source of regional expertise on censuses, it is remarkable that these works mostly limit themselves to surveying and synthesizing national actors' accounts of methodological challenges, without definitively resolving them. They produce instead a kind of evolving catalogue of types of dilemmas identified in recent census experiences, instructing census-makers to address them in each of their own processes, but without mandating uniform solutions.

What ECLAC generalizes then is not a repertoire of standards but a repertoire of problems.[114] Regional demography experts will explain biases attributed, for example, to various ways ethno-racial questions have been formulated in different countries; to the inclusion

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[113] This is a missing piece in the little existing scholarship to look at regional census forums. Previous analyses emphasize how activists use these spaces to bolster *already existing* national-level struggles over censuses (Lennox & Minott 2011; Paschel 2013).

[114] I thank Taylor Nelms for suggesting this way of phrasing the point.

(or exclusion) of dominant group identities as response options; to blind spots in censuses' public awareness campaigns; to the ways variables are selected and populations sub-divided in published census results. States are to take these experiences into account, but in the course of investigating and adopting whichever methodological solutions are most appropriate to the local social and cultural context. A different process, and different metrics of rights fulfillment and discrimination, are "right" for each country.

This places a great deal of analytical responsibility upon census-agency personnel. The latter are authorized to shape aspects of census practice, but should do so in relation to dynamics quite outside their domain of technical expertise. Census-makers are to ensure that ethno-racial identity questions are socio-culturally legible and appropriate, to identify socio-cultural impediments to cooperation in data collection, and to publish and disseminate findings that foreground metrics that are meaningful to their diverse populations, for example. Much of this requires knowledge that exceeds the training and concepts of census technicians. Personnel must further learn to account for their tailored practices, and devise strategies for assessing their successes and shortcomings, in terms of "the local." In short, the form of oversight enacted through regional forums creates a lot of work for census agencies, and work that demands a reflexive, self-critical, and dialogical approach to which most are unaccustomed.

ECLAC consistently reiterates that marginalized groups must be included in these processes, advocating "the full and effective participation of indigenous peoples and Afro-descendants on equal footing [*en igualdad de condiciones*] in all stages of the census" (CEPAL et al. 2011a:41). This norm of participation however shares many of the same difficulties with that in action planning over how to determine who participates. Here too, participation is prescribed and reckoned in terms of particular "groups" – essentially indigenous peoples and

Afro-descendants – that are hardly monolithic. Multiple organizations may make demands on these groups' behalf, not necessarily advocating the same census practices (see e.g. Paschel 2013). If indeed census agencies undertake inclusive participation to satisfy expectations of international observers (Clark 2009), black and indigenous activists with ties to these observers will enjoy a privileged voice. Those who draft the lists of invitees for regional forums may in doing so pick the winners and losers in these contests for influence.

In fact, the more rounds of critical examinations of census processes that occur, the more "stages" – or at least census micro-practices – are deemed in need of scrutiny. Regional forums elicit the discovery of new problems, leading to the problematization of aspects of the census previously taken for granted or not considered. As I show in Chapter 4, this is even true where seemingly standardizing normative principles of census practice – such as that of "self-identification" – emerge. In attempting to fulfill such principles – and subsequently reviewing successes and failures – actors construe ever more potential barriers to, and requirements for achieving, their realization.[115] In this sense, regional oversight continuously expands that which is subject to debate and decision-making, and to the black and indigenous participation that it simultaneously institutionalizes. All of this tailoring does not mean that flaws will ever be averted entirely, but so much the better for ECLAC. It encourages census agencies to undertake exhaustive documentation of their activities, extracting lessons to continue the regional exchange of experiences (CEPAL et al. 2011b:66). "Challenges" and "limitations" are fodder for continuing this exchange, with its inclusive, critical reflection and accountability effects.

[115] I use the example of self-identification, but the same can be said for other generalized principles that some might think are exceptions to my argument about non-standardization, such as the "right to privacy" and the "right to information" discussed in recent regional forums.

Conclusions

This chapter has examined two technical procedures that UN human rights actors insist that states use to track their own adherence to norms on combating racial discrimination. Following much previous scholarship, it has been concerned with the ways in which such procedures establish boundaries on what knowledge can be produced through them, as by privileging certain classes of actors or epistemological principles, or simply through built-in blind spots in the methods and metrics they employ to register empirical phenomena. What I found remarkable about UN efforts to push these procedures are the ways they constitute new constellations of evaluator "experts;" are only tenuously committed to a particular epistemological orientation; and insist that each state find evaluative methods and metrics of rights appropriate to its own specificities. So while UN agencies push states to undertake these procedures, monitor how they do so, and provide (or withhold) financial resources to exert influence on states' efforts, they do so not towards standardization, but towards tailoring.[116] Hence my argument that, though the development of national action plans and ethno-racial disaggregation of census statistics are no doubt "technical," the most important thing their emergence as human rights procedures demonstrates is not "technocratization," but a kind of romance with the local, with context, and with difference.

It merits reiterating that this turn to difference responds to warranted criticisms of the scope of previous oversight and accountability efforts regarding racial discrimination. UN human rights actors and many heads of state acknowledged that racial discrimination takes diverse forms across social contexts; that much of what functions, and should "count" as,

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[116] It could be said that to conduct the procedures is a kind of "standard," but their conduct should not be standardized. On differences between standards and standardization – including enduring esteem for the former and growing public distaste for the latter – see Timmermans & Epstein 2010.

discrimination had remained "invisible" in official accounts; and that different segments of national populations need different things in order to experience the same rights. These are the main rationales for producing disaggregated statistics and action plans. And whatever the precise methods and metrics used, in Latin America, these procedural forms do indeed capture problems, especially in the economic and social realm, whose recognition and amelioration are long overdue. If, as I argued in the dissertation's introduction, human rights evaluation not only judges but also makes obligations, the privileging of these procedures undeniably potentializes a wider range of obligations than more traditional evaluations of legal doctrine, records and adjudication of discrimination complaints, voter enfranchisement, etc. Their adoption brings the structure of evaluation more in line with the broad conception of racial discrimination in the human rights framework.

Further, if "technocratization" is the process of technical experts seizing power by closing ranks and squeezing other actors out of decision-making, I have shown that UN human rights actors limit any such tendency. They do so by including rights subjects in transnational forums, and by demanding and monitoring their effective participation in states' self-evaluation processes. I have noted that activists' adherence to social conventions of transnational expert spaces may to some extent temper their claims-making. But the few scholarly analyses (Chapter 4; Lennox & Minott 2011; Paschel 2013), as well as black and indigenous representatives' own accounts, suggest that many have nonetheless experienced having a meaningful voice in shaping census practice at domestic and regional levels. The recursive, transnational regulatory dialogues held around both census and action-planning procedures makes more corners of state action (and inaction) subject to scrutiny for their role in buoying discrimination and/or obfuscating evidence thereof. Chapter 4 offers a concrete illustration of how micro-practices of

state knowledge production become opened up to new forms of scrutiny from "civil-society" actors, leveraging the authority of international norms and transnational expert networks.

I have shown as well, however, that the procedures recently embraced to broaden evaluation's lens tend also to fix that lens upon the potentially problematic unit of ethno-racial "groups." The concepts of race and races, we should remember from the Introduction, are generally disavowed in the UN human rights framework. Former-CERD member Michael Banton (2000b:78) has commented that moving from seeking out "direct" to more "indirect" forms of discrimination means shifting one's focus from perpetrators and their motivations to "the objective characteristics of the protected class." It bears acknowledging that this seems to require reifying ethno-racial groups along the way as the collective objects of knowledge. Even "participation" – explicitly meant to transform these actors from objects into subjects in the fight against discrimination – appears reliant upon defining, and thereby giving ontological status to, ethno-racial groupness and group membership. UN agencies have, after all, enlisted "civil-society" participants in transnational networks on basis of certain group categories – in Latin America, indigenous and Afro-descendant – and hold states accountable for the inclusive character of national processes based on the same. As I discuss in Chapter 6, this way of parsing participation threatens to turn it into a system of unelected representation, unlikely to bring harmony between state and self-identified indigenous and black communities over which individuals' inclusion checks the "participation" box for which collectives.

Finally, I have emphasized that, just as the two self-evaluation procedures respond to a push for recognizing "other discriminations," the program of guidance and oversight concerning how to conduct them rejects one-size-fits-all formulae for the implementation of rights. I think that this is representative of a wider rebuke of standardization that has been underappreciated in

existing scholarship on human rights in legal, policy, and bureaucratic realms. Even while it is the case that UN human rights actors press virtually all states to "do" ethno-racial statistics and action planning, agencies' oversight and guidance calls for contextual variation that stimulates "experiments in optimizing" these forms (see Winthereik & Jensen 2017). This is meant to allow flexibility, methods as agile as the racial discrimination itself, and continuous improvement of both the means of tracking rights and rights themselves. Yet all of this creates an oversight system generative of real variation in what knowledge – and knowledge of what – gets produced, what is sidelined, and thus what is expected of – or made the functional obligations of – different states.

It is interesting to note that my ethnographic findings here are largely the inverse of Sally Merry's (2014) – identifying a proliferation of standardized indicators – but my analysis *supports* one of her core points. Merry argues that when proxy metrics used to track states' rights obligations are fixed across time and states, this "firms them up," in a double sense: It makes the rights more binding because verifying compliance becomes unambiguous; but it also locks potentially quite fluid meanings of rights into a single, "firm" interpretation. I have shown instances of implementation efforts evincing the advance not of uniform methods and metrics, but of non-standardization, or a "standard of localization" and of difference. Yet – paralleling Merry's appraisal of standardized assessment – I have suggested that while the non-standardized approach opens up the possibility of articulating rights as encompassing a much broader range of obligations, it also makes very little safe from the vicissitudes of the process that defines the relevant context, circumstances, and differences. I insist that we recognize the UN human rights implementation agenda's turn to difference not because it is a "victory" over standardization, but because these dynamics too merit scrutiny. In their efforts to abide demands for state

obligatedness, technical actors play out a range of implications or “vernacularizations” of human rights norms that can be quite surprising indeed. These can be consequential for both what discrimination and rights they make known and how, and also how they mediate other professional imperatives within state institutions, as Chapter 4 shows. Let us now turn to it.

CHAPTER 4

Between Reality and Rights: Producing Ethno-Racial Statistics in Costa Rica

> *[D]o not confuse means and ends. Race statistics are needed not to satisfy an ideal notion of truth or science, but to assist in the achievement of very real, concrete goals: measuring and eliminating discrimination.*
> *- James Goldston, "Race and Ethnic Data," 41.*

> *Censuses are tools. They are political tools, scientific tools… but tools* ***for human rights****.* *- "Alfredo," INEC (interview, 7/28/2011).*

It is July 2013, and I am seated in an office of Costa Rica's National Institute of Statistics and Censuses (INEC), going back over some of the finer details of the agency's ethno-racial enumeration practices with a key interlocutor, Alfredo. Alfredo is one of the principal technical personnel who worked on the "ethno-racial issue," as it is often called, in the 2011 Costa Rican national census process. He regularly participates in regional forums like those analyzed in Chapter 3, and has consulted often with black and indigenous rights advocates about the production of ethno-racially disaggregated statistics. He also led trainings for INEC colleagues, teaching them how to train the 2011 census's enumerators – public school teachers employed temporarily to administer the census questionnaire door-to-door in every corner of the country. Alfredo is thus as qualified as anyone to answer the hypothetical question I am putting to him at present: "Let's say that I am a person being enumerated [*censado*] and you are the enumerator [*censista*]," I begin. "You read me the question, 'Joshua considers himself [*se considera*]…' and then you read all of the ethno-racial categories on the form. If I ask you, 'What is "*mulato*"? What does this term mean?' What would you say? What do you do?"

Alfredo is no stranger to my hypotheticals, and surely understands that what I mean to ask is how census-takers in general are trained to handle situations like the one I have described. Still, he will not miss the opportunity to slide in a quick joke, and one that alludes to a fairly

strongly held position. “What would *I* say?,” he asks with a mischievous smirk. “Me, *personally*?” We both laugh for a moment before proceeding to discuss my actual question about how enumerators are to clarify census queries, which I discuss below. We laugh because of course I already know – and because Alfredo knows that I know – what he *personally* would say about this term, *mulato*. He would say that it means very little, and that what it does mean is derogatory, even racist. He might add that the category has no scientific standing, and reflects an anachronistic way of thinking about human difference.

In these views, Alfredo has plenty of company around INEC. Other census technicians and institute officials likewise speak of *mulato* as an outdated term, one with only a phenotypic (but not cultural) referent, and one that confuses Costa Ricans about what the ethno-racial identity question is asking. And yet, there “*mulato*” was – an option on the 2011 census form, read aloud to each Costa Rican just after “black or Afro-descendant” and just before “Chinese.” How does a term that no one at the census institute seems to believe has any legitimate meaning become a category on the census? Who or what exerts authority over such technical and methodological matters if not the officials and technicians of state demography? Remembering that ethno-racial categories’ recent return to Latin American censuses is largely about generating knowledge of diversity, disparity, and, ultimately, discrimination, what does it mean for that knowledge if it relies for legitimacy upon something other than its scientific standing?

Entering the Production Line: Ethno-Racial Statistics and Human Rights

This chapter is an ethnographic study of Costa Rican census-makers – the officials and especially technical personnel who make day-to-day decisions for INEC – in the context of the recognition of ethno-racial statistical production as a human rights issue. Chapter 3 explained how enumerating census respondents by race/ethnicity came to be considered good anti-

discrimination practice in the UN human rights framework, and in Latin America in particular (see also Clark 2017). The ethno-racial classification of individuals allows for data collected on their socio-economic conditions to be disaggregated by, and compared across, ethno-racial groups, thereby statistically "visibilizing" group-specific problems and patterns of disparity. Such disparities – often referred to as "gaps" ("*brechas*" in Spanish)[117] – are considered under the international framework to indicate racial discrimination, at least if they relate to some human right, whether civil, political, economic, social, or cultural.[118] As discrimination, these disparities – no matter their causes – oblige the state in question to take positive remedial actions.

The view that ethno-racial enumeration is more about exposing and extinguishing "gaps" than tracking mere "demographic trends" has become relatively uncontroversial among census-makers in Latin America (see Antón & Del Popolo 2009; CEPAL 2009:12). That this was true of the INEC team working on the issue for the Costa Rican census was clear as early as my first interview with a census official in 2011. Even before I explained that human rights and discrimination were central issues in my research, this interviewee stated flatly: "To be able to present gaps in socio-economic indicators is the objective. This is how we track human rights. In reality, [enumerating by race/ethnicity] is about this."[119]

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[117] As I explained in Chapter 3, these are almost always the "gaps" that lie between the *mean outcomes* of one sub-population's social and economic indicators versus another's. Think side-by-side ethno-racial group bell curves more than scatter plots.

[118] See, for example, the ICERD, especially Articles 1-2; and the *Durban Declaration and Programme of Action*, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance in 2001. Interestingly, the UN Economic Commission on Latin America and the Caribbean (ECLAC) has taken the position that where disaggregated data that might reveal gaps are not available, this is itself "a serious manifestation of structural racism," because it poses a barrier to knowledge, and thus fulfillment, of human rights (CEPAL 2009:29).

[119] "Ser capaces de presentar brechas en los indicadores socioeconómicos es el objetivo. Así seguimos los derechos humanos. En realidad, es esto."

Given these stakes attached to ethno-racial statistics, it is no surprise that technical decisions about how to produce them are complicated matters involving multiple actors both within and beyond state institutions. Understanding the deepening relationship between human rights and ethno-racial statistics requires investigating exactly how and on what bases those decisions get made – opening the proverbial black box of the statistical production line. Considerable previous scholarship has analyzed the classification schemas – and identity categories in particular – used in modern censuses. One influential body of work focuses on how state and colonial authorities create classification systems to facilitate governance and social control – producing simplified, ready-at-hand knowledge to render complex populations legible for top-down intervention (e.g. Anderson 1991:Ch. 10; Cohn 1996; Scott 1998). David Kertzer and Dominique Arel (2002b:6-7, 27) concur that to categorize is always "an imposition of central state authorities," but point out that categories themselves are increasingly "crafted through a complex and messy process of political struggle, involving interest groups formed from the people being categorized." Indeed, many studies show that census classifications by race, ethnicity, and/or nationality are rarely cut from whole cloth, and have long been objects of contestation in struggles for political power (e.g. Kertzer & Arel 2002a; Labbé 2007; Nobles 2000; Urla 1993). Similarly, other studies of census categories emphasize that they are not "authored" unilaterally, but rather the contingent products of ongoing narrative constructions of the nation that crisscross policy and societal spheres (Yanow 2003; see also Goldberg 1997). Mara Loveman's (2014) excellent historical-comparative work on ethno-racial classification in Latin America emphasizes the extent to which these processes of social and political construction are in fact international in scope (see also Clark 2009; and Chapter 3).

All of these perspectives informed my thinking about my research in Costa Rica, but over time my findings pointed me towards a different analytical orientation to ethno-racial statistical production. This was due in part to the fact that the technical and methodological matters that proved to be "in play" in Costa Rica were in no way limited to category construction alone. Rather, INEC personnel explored potential benefits and drawbacks of numerous micro-methods across several stages of the census.[120] Their decision-making processes were informed by field tests ("pilots"), internal reviews, experiences of regional neighbors, international principles, and above all, a lively and sometimes-contentious dialogue with leaders of indigenous and especially Afro-Costa Rican organizations. Further, as I tracked how competing proposals were appraised, debated, and ultimately adopted through these processes, it stood out that the actors involved slipped back and forth between different modes of justifying one proposed course of action over another. This was particularly clear where debates among INEC personnel and Afro-Costa Rican census expert-activists yielded the surprising outcome to which my opening anecdote on the "*mulato*" category alludes: census-makers adopting a methodological course of action even while believing that an alternative approach would generate a more accurate statistical representation of the country's ethno-racial reality.

Indeed, my argument in this chapter begins with the point that representational accuracy, or "faithfully reflecting reality," was not the dominant criterion used to make choices about how to produce ethno-racial statistics in Costa Rica. INEC personnel and Afro-Costa Rican and indigenous advocates subjected proposed methodological courses of action to multiple criteria or "orders of worth" (see Boltanski & Thévenot 2006), of which this realist-epistemological order

[120] As noted in the Introduction, I use the term *census* in line with the UN Statistics Division's definition: "the total process of collecting, compiling, evaluating, analysing and publishing or otherwise disseminating demographic, economic and social data pertaining, at a specified time, to all persons in a country" (UNSD 2008: para. 1.4).

was only one. This is noteworthy because the modern census was conceived around, and has long claimed legitimacy based on, standards of accuracy, precision, and comprehensiveness (Desrosières 1998; Espeland & Stevens 2008:405; Porter 1986:27-39; Stigler 1986:162-6). One could thus expect that census-makers would resolve methodological decisions in terms of those criteria – whether as true-believers, or just strategic operators of scientistic authority. This is to say that they would employ basic scientific-realist justifications in which knowledge production must aim to deliver the truest accounts of entities as they really exist in the world independent of the means of knowing them (see Hacking 1983:Ch. 1). In the case considered here, this would mean that decisions such as which ethno-racial categories belong on the census questionnaire, how to impute missing or incorrect data, or how to organize and present findings would all turn on which courses of action are deemed best suited to making statistics reflect ethno-racial "realities."[121]

This chapter offers an in-depth analysis of how just those decision-making processes played out in the 2011 Costa Rican census. Following the work of Luc Boltanski and Laurent Thévenot (1983, 2006), I pay careful attention to the criteria actors use to ground and evaluate contending methodological proposals, and the modes of justification that ultimately convince and compel INEC technicians to take one course of action over another (see also Desrosières 2009). By doing so for a series of decision-making processes spanning the collection, validation, collation, and presentation of data as census "results," I show that census-makers in practice juggle at least three different kinds of criteria as they resolve methodological impasses in the making of ethno-racial statistical knowledge. Recognizing the distinction among these criteria

[121] Alain Desrosières (2001) insightfully points out that official statisticians often unconsciously mix multiple attitudes about what "reality" is as they attempt to represent it. My account shows that so too can they commingle realist ends with altogether different kinds of motives and purposes that may or may not have much to do with accurate empirical representation (see also Espeland & Stevens 2008:405).

reveals that divergent legitimate registers of evaluation operate in this milieu, which suggests that census-makers perceive multiple sources of legitimacy and authority bearing upon ethno-racial statistical production (Boltanski & Thévenot 2006; Thévenot 2002).

Specifically, I highlight two other kinds of criteria alongside that of representational accuracy that influence decision-making over micro-methods of ethno-racial statistical production in Costa Rica. A first is the methods' adherence to the human rights-based principle that states should classify individuals and groups on basis of *self-identification*. The pull of this criterion is evident where census personnel sideline the question of which methodological course of action best enables them to represent "the truth" in favor of the question of which empowers the free and unencumbered will of census respondents. A second criterion is methods' potential to push forward the anti-discrimination agenda. We see this criterion where census-makers depart from the pursuit of registering and reflecting reality by considering what kinds of *interventions* a methodological choice effects – whether one approach better serves the cause of fighting discrimination than another, or if it might itself be racist or discriminatory.

INEC technicians' repeated contemplation of methodological decisions in relation to these criteria leads me to conclude that the human-rights and anti-discrimination mission that generated *demand* for ethno-racial statistical knowledge has since crept into the epistemic *production* line. That is, this mission is no longer just the reason *to* count; it also shapes *how* data are elicited, and worked upon, at every step of the process. I say that human-rights ideas *crept* into the production line because there is no rulebook that mandated what I found in Costa Rica. Rather, evolving ideas about what the abstract notion of "self-identification" implies, and of what kinds of knowledge products best serve the fight against discrimination, shaped ethno-

racial statistics because they were mobilized by activists and/or creatively construed by INEC personnel.

These findings contribute to research showing that an increasingly diverse range of state actors elaborate and re-make human rights meanings and mandates through their situated interpretations of them in their work (see Babül 2012; Hornberger 2011; Jefferson & Jensen 2009). It also adds a new twist to recent scholarship on the relationship between human rights governance and quantification. Such scholarship has focused on the ways statistical measurement of rights outcomes endangers the flexibility of rights' meanings, threatens to make rights claims subservient to scientific discourse, and empowers technocratic forces at the expense of other political actors (Davis et al. 2012; Merry 2011, 2014; Rosga & Satterthwaite 2009). In short, this literature points to statistics governing human rights governance.

My findings in Costa Rica suggest that there is more to the story. In them we see that, before human rights is *governed by* statistical knowledge, *it governs* the making of that knowledge. Census personnel do not seek to purify the productive process of the interests and ends that occasion it – as the "great divide" (Latour 1993) of modern official statistics would dictate (Desrosières 1998, 2009; Porter 1986); they instead appear to accept that their means of quantification should partake in the "doing" of human rights work. Having internalized regional rights discourse – and rights-based critiques – related to ethno-racial statistical production, INEC census-makers see themselves as not only conduits of science but also agents of human rights. As they navigate the tension between these roles, sometimes the census method that promises a "truer" representation of reality is not the one they find most defensible. My material attests to the fact that the pluralization of methodological criteria has the potential to dramatically impact

statistical outcomes, and also implies a significant opening in activists' ability to influence those outcomes in otherwise largely technocratic spaces.

Situating the 2011 Census: Costa Rica's Place in the Region, and 2000 Census Experience

Costa Rica's 2011 census offers a revealing window into recent thinking about ethno-racial statistical production across Latin America. As I showed in the previous chapter, the reincorporation of ethno-racial variables in Latin American censuses has been a regionalized project, involving regular conferences and workshops, technical literature and oversight, and a multi-sectorial network of experts. The 2011 Costa Rican census process bears the imprint of these regional dynamics. INEC personnel have participated regularly in regional forums since their inception, with some of those who did so in the early years having since ascended the agency's ranks. Institutional discourse on ethno-racial enumeration reflects that of the regional network, and census personnel routinely reference articles and reports published by the UN Economic Commission on Latin America and the Caribbean (ECLAC) in their work.

INEC's civil-society counterparts are likewise very active participants in regional debates over ethno-racial statistics. Afro-Costa Rican rights advocates were among those who successfully lobbied state officials from across Latin America to commit to producing data disaggregated by race/ethnicity at the 2000 Santiago Conference of the Americas (see Lennox & Minott 2011). This victory at the regional level came on the heels of having won a place for black and indigenous self-identification on their own country's 2000 national census (see Chang et al. 2001). Afro-Costa Rican NGOs have since been major protagonists in raising consciousness about the political import of "technical" decisions about censuses across Latin America.[122]

[122] The forum discussed in Chapter 3's section on the census provides just one example of such efforts.

Costa Rica is thus an auspicious case for understanding how immersion in the regional network influences decision-making processes about ethno-racial statistical production in national censuses. Other scholars have analyzed the state of ethno-racial enumeration in Latin America through the case of Brazil, pointing out that it has the region's most advanced data-collection apparatus on race/ethnicity (e.g. Hernández 2013). I would argue, however, that Brazil's unique history of racial classification makes it less well-suited to understanding the trajectory of most 21st century Latin American censuses. Brazil is in many ways an exception in the region, not least because it included race/ethnicity in censuses throughout the period when other Latin American countries did not, and has a correspondingly long history of domestic political contestation over the variable (see Nobles 2000). Costa Rica, on the other hand, reincorporated ethno-racial census categories on the cusp of the region-wide turn to indigenous and Afro-descendant "statistical visibility," and its domestic debates over how to enumerate minoritized groups have both shaped, and been shaped by, those at the regional level.[123]

This ongoing, interactive process between national and regional discursive spaces implies that regionalization does not follow a simple diffusionist plotline. By 2010, most Latin American countries' census agencies – including Costa Rica's – had one recent ethno-racial enumeration experience of their own from which to build. This made for a decade whose methodological debates were characterized by the interplay between emergent regional norms and country-specific lessons deduced from the previous decade's experience.

For those who would shape Costa Rica's 2011 process, the country's lone recent example of a census that enumerated by race/ethnicity was the previous one, held in 2000. The variable reappeared on the 2000 census for the first time since 1950 after Afro-Costa Rican organizations

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[123] Christina Sue (2009) has noted more generally that the use of Brazil as a supposedly representative case of Latin American ethno-racial dynamics tends to distort sociological scholarship on the topic.

applied direct pressure on INEC officials to include it. In this historical detail, Costa Rica is in fact a special case; as Loveman (2014) has pointed out, in most countries it was the sway of international organizations more than domestic groups that ultimately landed ethno-racial queries on Latin American censuses.[124] In Costa Rica, however, leaders of NGOs like Asociación Proyecto Caribe and Centro de Mujeres Afrocostarricenses sought and gained an audience at INEC, and were soon joined by indigenous leaders.[125] The Ministry of Foreign Relations also backed the proposed 2000 ethno-racial enumeration, recognizing its relevance to international human rights reporting obligations (Chang et al. 2001:5-6).

The ethno-racial variables that began to appear on Latin American censuses in the 2000s were not simply a return of those of generations past. In fact, Costa Rica's 2000 query, like others soon to follow, was explicitly designed to be different from that of 1950 (see Figure 8), above all for its rejection of the concept of "race." Consistent with social-movement and multicultural-reformist discourse prevalent across Latin America at the time (see Engle 2010; Hooker 2005; Sieder 2002; Van Cott 2000), state and non-state actors alike preferred to articulate group difference in terms of "culture," even where racism and racial discrimination were the issues on the table. Accordingly, census-makers in Costa Rica cast the 2000 ethno-racial census question as being about "cultural diversity," and formulated it as follows: "To which culture does [*name*] belong?... indigenous?; Afro-Costa Rican or black?; Chinese?; None of the above" (see Figure 9). One INEC official wrote that the use of the term "culture" here was intended to render irrelevant a person's "physical appearance, skin color, or place of residence or

[124] One particularly stark example is that of El Salvador (see Clark 2009); but an additional exception to the rule can be found in Colombia, where a strong domestic movement has driven the agenda for "statistical visibility" of Afro-descendants (see Paschel 2013).
[125] During my fieldwork, more than one Afro-Costa Rican activist suggested that this major change in state recognition of ethno-racial difference owed a great deal to the individual efforts of a few sympathetic officials at INEC. One insightfully remarked, "Sometimes 'the institutions' are just their people, aren't they?"

origin" (Solano 2004:344). These characteristics were precisely those on basis of which the 1950 census classified Costa Ricans (Chang et al. 2001:4-5).

4. Color o raza	
Blanco o mestizo	B
Negro	N
Amarillo	A
Indígena	I
Otros	O

Figure 8. Ethno-racial variable ("Color or race"), 1950 census.

6. ¿Pertenece ____ a la cultura ...

... indígena? 1
... afrocostarricense o negra? 2
... china? 3
Ninguna de las anteriores 4

Figure 9. Ethno-racial variable, 2000 census.

Another significant change in the ethno-racial variable of the 1950 versus the 2000 census is the very fact that the latter treated it as a question to be posed to the respondent. In 1950, the enumerator was granted the authority to decide what each person "was." INEC reasoned however that the 2000 variable – with its self-consciously non-racial conceptualization – was better suited to the classificatory method of self-identification (Solano 2004). It bears noting that in this enumeration experience, the term "self-identification" was used in the limited sense of referring to a simple technique whereby the enumerator reads the questionnaire aloud and allows the respondent to decide her answer. We will see below that, by 2011, INEC personnel would recognize "self-identification" as a broader, and more fluid, principle. Indeed, it would become the most pervasive of those other, non-realist criteria governing decision-making across the ethno-racial statistical production line.

Like any data-collection effort being made anew after fifty years, Costa Rica's 2000 ethno-racial enumeration question was something of an experiment, and certainly much more could be said of it than I have covered in the previous few paragraphs. But rather than delving

further into the 2000 experience here, and thereby relegating it to the place of historical background, I will discuss its salient features as they emerged in the ethnographic present of my research on the 2011 census. In this way we will see how methodological decisions are forged with reference to multiple criteria of legitimacy, through evolving understandings of emergent norms as well as perceived successes and failures of previous national experiences.

Stage 1: Devising the Slate of Categories

Undoubtedly the most contentious debate about ethno-racial statistics in Costa Rica's 2011 census concerned which identity categories would appear as options on the questionnaire. INEC and its civil-society interlocutors debated the merits and demerits of different individual categories and combinations thereof for around 15 months before arriving at a final slate. Their justifications for different approaches offer a good example of how methodological debates mingle diverse criteria for what exactly the census should be designed to achieve. They also show that even where INEC assumes the scientific-realist position that its methods are simply about effectively capturing reality, it is actually a qualified realism – one that is altered by census-makers' recognition of the social constructed-ness of ethno-racial identity.

The issue of which response categories to place on the census began as a subset of the broader one of how to formulate the ethno-racial question. Yet the former matter soon eclipsed the latter, as the actual wording of the question did not become the major sticking point in Costa Rica that it has been in other countries (see Clark 2009; Paschel 2013). INEC technicians and their non-governmental interlocutors agreed from the outset that the question should be concise, and should use terminology that alludes to the subjective identity of the respondent. The decision then came down to "Do you consider yourself…?" versus "Do you (self-)identify

as…?,"[126] of which INEC proposed the former in its initial consultation with Afro-Costa Rican advocates. This formulation saw no major objections, and would endure the long process of determining which response categories should follow it.

While the verb that appeared in that first proposed question did not provoke debate, the slate of categories that accompanied it did. INEC proposed that the question "Do you consider yourself…?" be followed by options to mark (1) indigenous, (2) Afro-descendant (followed parenthetically by "*negro(a), mulato(a)*"), or (3) neither indigenous nor Afro-descendant. This approach was consistent with that of the 2000 census, but for the lack of a "Chinese" option. Thus, if repeated, it could yield data that were comparable across time – a goal of demographic science in general, but also advantageous for the particular objective of tracking sub-populations' rights outcomes and disparities (Antón & Del Popolo 2009). Indeed, INEC formulated this initial slate of response categories with the explicit goal of capturing data solely on population groups historically subject to discrimination. This approach, census personnel were quick to point out, was consistent with recent recommendations from ECLAC. In a 2008 framing document for a major regional conference, ECLAC demography experts advise census-makers that it is "important not to include among the response categories those that can be very ambiguous (*mestizo*, *mulato*) and can [therefore] draw away [*atraer*] responses, or even the category '*blanco*' which is not the object of this type of study" (CEPAL 2008:22). A paper published by ECLAC's Susana Schkolnik (2009:81) went on to explain that "the objective of the question is to identify ethnic groups and not to classify all of the population."

These statements deserve a bit of explanation. On one hand, they are meant to reiterate to Latin American census-makers that the re-introduction of ethno-racial enumeration is not about

[126] In Spanish this was the decision between the reflexive verbs, *se considera* and *se (auto)identifica*.

producing what critical scholarship calls a "totalizing grid" of the nation's population groups (see Anderson 1991:Ch. 10; Scott 1998). That is, the categories within the ethno-racial variable need not aspire to a comprehensive taxonomy – like the colonial-era socio-racial systems for classifying *castas* (Katzew 2004) – nor form a bounded series in which every respondent can find one discrete slot into which she "fits" (see Anderson 1998). Such an approach would not only exceed the goal of making specific groups – and their socio-economic standing vis-à-vis the general population – visible. It would also present the variable as a taxonomy of human "kinds" all-too-reminiscent of theories of biological "races" that ECLAC experts disavow.

But a pragmatic dimension also attends this symbolic one in ECLAC's recommendation to avoid categories like *mestizo* and *mulato* in particular. In their analyses of ethno-racial data from Latin American censuses of the 2000s, ECLAC experts interpreted these categories as contributing to the underreporting of indigenous and Afro-descendant identities. What makes the terms *mestizo* and *mulato* "ambiguous" is that both allude to notions of "mixed-ness" commonly understood in primarily biological/phenotypic terms. According to ECLAC, when respondents perceive the ethno-racial variable in this way, they may be "drawn away" from identifying as Afro-descendant or indigenous, preferring intermediate categories that they find less stigmatizing.[127]

INEC officials adopted ECLAC's position that *mestizo* and *mulato* categories were undesirable because they "draw away responses," and thereby exacerbate indigenous and Afro-descendant undercounts. Afro-Costa Rican activists, however, countered that they were undercounted in the 2000 census, and it featured no such categories. For them, the issue of

[127] The assumption here is that there are more people who consider themselves "culturally" indigenous or Afro-descendant than would identify as such in a question that appeared "racial" due to the inclusion of categories understood in primarily phenotypic terms.

concern was not that categories were too ambiguous, but that they were too exclusive. Among those most vocal in this position was Epsy Campbell, a prominent Afro-Costa Rican activist, politician, and scholar, who is also deeply involved in transnational organizing around the issue of ethno-racial statistics. Campbell argued that having just two response options on the 2011 census would make it both easy and appealing for Costa Ricans to essentially opt out of the question by choosing the residual "neither" category. What this slate communicated was that the question was something of a peculiarity, only intended, as Campbell put it with characteristically wry humor, "to count the ones who are different – the ones who look weird." From this perspective, it is categories like "neither indigenous nor Afro-descendant" that in fact "draw away responses," further othering the identities it named while reinforcing an unmarked "non-ethnic" Costa Rican norm.

Campbell's Centro de Mujeres Afrocostarricenses and other Afro-Costa Rican leaders therefore demanded that more categories, including *blanco*, *mestizo*, and *mulato*, appear on the 2011 questionnaire (see Campbell 2011). In the lead up to the census, INEC conducted small-sample field tests employing various combinations of ethno-racial categories, but was unable to determine if any was less likely than the others to induce responses based on phenotype. The decision-making process would thus have to proceed along lines more theoretical than "evidence-based." Census planners chose to follow an ECLAC recommendation (and common regional practice) to split the ethno-racial question into two, creating an indigenous identity question separate from a subsequent one featuring categories that might be deemed "racial." They also brought back the "Chinese" identity category from the 2000 census at the request of the Asociación Costarricense de Profesionales de Origen Chino. But the basis on which to

decide which other categories to include remained ambiguous, with the term *mulato* fueling a particularly contentious debate.

"Mulato" as Category Error, and Discriminatory

INEC officials continued to object to the use of *mulato* even absent any evidence that it swayed respondents towards interpreting the variable as phenotypic. Their primary reason was that they were convinced that the term did not correspond to the intended referent of the query. The purpose of the variable was to register something deeper than skin color – what several of my INEC interlocutors described as "what a person *feels* [herself] to be." Though a Costa Rican could certainly think that she *looks mulato*, census-makers were confident that one could not *feel mulato*. This is no doubt a problematic premise, but more germane to the current discussion is what it shows about how the field of possible realities with respect to ethno-racial variance is delimited. *Mulato* is treated as a category error – that is, not a potentially "real" ethno-racial identity – because its meaning is taken to be inextricably lodged in discredited notions of biological or phenotypical race. Real categories of ethno-racial identity are those that one comes to feel, enact, and live. Thus, here it is identities conceived as primordial that are fictive; only those that are constituted through social and cultural processes count as reality.

Alongside this decidedly social-constructivist definition of the objects of realist representation, INEC technicians also expressed apprehension about the work that the category *mulato* would do in social terms. The aforementioned Alfredo was especially cognizant that to include a category on the census was to endorse it, and thereby to put the state's weight behind its construction as a social fact (see e.g. Alonso & Starr 1987; Goldberg 1997; Kertzer & Arel

2002b). Repeatedly bringing up the term's racist etymology,[128] he insisted that such a disgraceful term had no place on a national census form. Irrespective of whether the term was used in Costa Rican society, INEC should not lend it a legitimacy it did not warrant.

This reasoning is significant because it shifts the decision-making process from being about the type of reality the census should register to how the census might actually intervene in social life. It is just one of a number of instances in which Costa Rican census-makers reflexively contemplated their instruments' effects in society during the design process. Another example can be found in INEC's discussions about whether to provide cohabitating same-sex couples an option to identify as a domestic partnership (*unión libre*) on the census form. When this issue arose, the INEC board of directors instructed census technicians to consult with LGBT advocacy organizations about their position. LGBT rights advocates were pleased that INEC was open to making same-sex couples statistically visible, and that the agency considered such a count a valuable piece of demographic knowledge. But the consultation over whether to enumerate quickly turned to the question of what such a count could *do*. If the returns showed a small number of same-sex domestic partnerships, this might make same-sex partnerships appear marginal or unimportant. A large number, on the other hand, could provoke public backlash or, at a minimum, energize conservative factions already pushing legislation to prevent same-sex marriage rights. In the end, census planners and LGBT organizations agreed that it would serve neither's interests to produce official statistics on same-sex couples.

These examples show INEC factoring the foreseeable social effects of an enumerative practice into the decision about whether or not to employ it. With respect to both same-sex

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[128] The term *mulato* is derived from *mulo* (mule), understood as the offspring of a donkey and a horse. It is a past participle construction, and thus to identify one as *mulato* is to say that she is "muled," i.e. mixed from two different species.

domestic partnerships and the *mulato* category, census-makers interrupt deliberations over how the census can elicit knowledge of social reality to consider its potential impact as an instrument deployed in society. Significantly, in each case, they try to make the census do anti-discrimination or human rights work, broadly conceived. Indeed, it was after explaining to me the decision not to count same-sex domestic partnerships that Alfredo made the statement that I use as an epigraph for this chapter – that censuses are tools *for human rights*.

Enter "Self-Identification"

The justification for excluding *mulato* from Costa Rica's 2011 census on grounds that it would elevate a historically derisive term to the level of official state category did not, however, settle the matter. Instead, Afro-Costa Rican leaders submitted the issue of category selection to a new "order of worth," re-framing it as principally about not passively reflecting "real" identities or actively undermining ostensibly racist nomenclature, but fostering the exercise of self-identification as an end in itself. To do so, they analyzed the country's previous census of the year 2000 from another critical angle. In that year, 95% of Costa Ricans chose not to identify as indigenous, Afro-Costa Rican or black, or Chinese, leaving them with only the option to be "none of the above." This, the Centro de Mujeres Afrocostarricenses claimed, was evidence of a failure to enable 95% of the population to self-identify.

This argument is premised upon an expanded meaning of self-identification. As I alluded earlier, "self-identification" entered the lexicon of ethno-racial statistical production as a term referring to nothing more than assigning respondents to the ethno-racial category of their preference, rather than based on a proxy variable or the enumerator's judgment. Early ECLAC publications on the enumeration of indigenous populations treated self-identification as just one in a series of viable means of classification – alongside identification by language, observable

cultural traits, geographical residence, ancestry, and origin of surname, among others (see CELADE 1994; CEPAL 2004; Peyser & Chackiel 1999). But as indigenous- and human-rights activists and discourses increasingly entered spheres of census expertise in Latin America, they broadened the semantic and pragmatic potential of "self-identification" there. They brought with them an articulation of the term as a general principle for eliminating any form, manifestation, or means of denying or imposing an identity – harms all-too-familiar to indigenous peoples in the Americas (see Engle 2010:Ch. 2-3).[129]

In their criticism of the 2000 census's outcome, the Centro de Mujeres Afrocostarricenses deployed "self-identification" in a way that is only possible in light of this expanded rights-based conception. They suggested that the concept means not only permitting individuals to decide their own classification from a pre-determined slate of categories, but also ensuring that each individual will find among those categories the name she herself would give to her own subjective identity. From this perspective, realizing the full and free exercise of self-identification means providing options for any and all identities that Costa Ricans ascribe to themselves – no matter the basis – using the terms that resonate in daily life (see Campbell 2011:21). This is a rather expansive take on self-identification even in rights-based discourse, where it is usually about limiting states' ability to define persons into subjugated positions, or peoples out of existence. It does not necessarily imply providing everyone with affirmational experiences. Still, census-makers recognized the concept's strong association with anti-discrimination and human-rights norms, and no one wanted to be accused of violating it.

[129] The concept of self-identification in relation to indigenous peoples' rights is most closely associated with the International Labor Organization's *Convention (No. 169) concerning Indigenous and Tribal Peoples*, the preeminent binding multilateral treaty on indigenous rights. Convention 169 establishes that, "Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply." Diane Nelson (1999:296) explains that indigenous delegates to Convention 169's drafting insisted upon this provision, arguing "that state power to classify groups as nonindigenous, through purportedly objective or extrinsic criteria such as genealogy and behavior, is actually the power to extinguish legal rights."

Though there was no consensus about what all it entailed, INEC accepted the principle of self-identification as a legitimate criterion for evaluating slates of ethno-racial categories.

With much reluctance and apprehension, then, INEC accepted Afro-Costa Ricans' proposal to include options for 2011 census respondents to identify as white, *mestizo*, or *mulato*. Ultimately, Costa Ricans would be asked to choose one of seven responses: indigenous, black or Afro-descendant, *mulato*, Chinese, white or *mestizo*, other, or none (see Figures 10 and 11). Respondents were first asked whether they considered themselves indigenous, and those who responded in the affirmative were then prompted to mark the people (*pueblo*) to which they belonged. Those that did not "consider themselves indigenous" could choose one of the other six categories.

7. ¿[Nombre] se considera indígena?

Sí . . . 1 No . . . 2 → Pase a 10

8. ¿A qué pueblo indígena pertenece [nombre]?

Bribri.	1	Maleku o Guatuso . .	6
Brunca o Boruca. .	2	Ngöbe o Guaymí. . . .	7
Cabécar.	3	Teribe o Térraba. . . .	8
Chorotega.	4	De otro país	9
Huetar.	5	Ningún pueblo	10

9. ¿Habla [nombre] alguna lengua indígena?

Sí . . . 1

No . . . 2

Pase a 11

Figure 10. Questions on indigenous identity and language, 2011 census.

10. ¿ [Nombre] se considera...

... negro(a) o afrodescendiente?	1	... blanco(a) o mestizo(a)?	4
... mulato(a)?	2	Otro	5
... chino(a)?	3	Ninguna.	6

Figure 11. Question on (non-indigenous) ethno-racial identity, 2011 census.

There was more than a hint of appeasement in the way INEC officials explained the decision to include *blanco*, *mestizo*, and especially *mulato* on the census. Though they conceded that some Costa Ricans might identify with these terms, they insisted in private that they were not "ethnic" ones. Census personnel continued to consider them a threat to respondents' ability to interpret the question properly, and thus to their own ability to accurately enumerate the populations of principal concern – Afro-descendants and indigenous peoples. In the end,

however, INEC accepted an approach to category construction grounded in a rights-based principle – saying essentially, "fine, in the name of self-identification then" – rather than in a logic of scientific realism.

Stage 2: Validating the Data

INEC personnel carried their doubts about the expanded slate of ethno-racial categories beyond the census's data-collection period and into the subsequent stage of evaluating census returns. Soon after the information recorded on paper questionnaires was entered into an electronic database, technicians began to investigate whether the ethno-racial enumeration question had "worked." Initial reviews of the data showed that far more Costa Ricans identified as "*mulato*" than expected, and that the figures for "*negro o afrodescendiente*" had dropped significantly since 2000 (see Figure 12). This was in contrast to the populations reported as "*indígena*" or "*chino*," which remained notably more consistent with the 2000 data. For these reasons, along with their pre-existing skepticisms, INEC focused its evaluation of the ethno-racial question on the *mulato*- and *negro/afrodescendiente*-reported populations. What these

	2011		*2000*	
	Population	% of Total	Population	% of Total
Indígena	104,143	2.4%	63,876	1.7%
Negro(a) o afrodescendiente	45,228	1.05%	72,784	1.9%
Mulato(a)	289,209	6.7%	- - -	- - -
Chino(a)	9,170	0.2%	7,873	0.2%
Blanco(a) o mestizo(a)	3,597,847	83.6%	- - -	- - -
Other	36,334	0.8%	- - -	- - -
None	124,641	2.9%	3,568,471	93.7%
Not Declared	95,140	2.2%	97,175	2.6%
COSTA RICA	4,301,712	100%	3,810,179	100%

Figure 12. Ethno-racial sub-population counts in Costa Rican censuses, 2011 and 2000.

evaluations led them to infer was a conclusion that enumeration based on free self-identification would seem to preclude: that a significant number of census respondents answered the race/ethnicity question *wrongly*.

To investigate whether a census question "worked" requires that there be some baseline for judging the validity of the responses it elicited. For this, INEC personnel relied on the institute's official definitions of the ethno-racial identity categories, published most publicly in its *Manual for Census-takers*. According to the manual, the term *mulato* refers to "persons who recognize in their identity primarily cultural roots of a lineage from Africa and its diaspora, by way of one of their parents" (INEC 2011:143).[130] The *negro o afrodescendiente* category was defined in the same way, but omitted the final clause limiting African cultural rootedness to just one parent. With these definitions, INEC officials hoped to stress that the categories referred not to some innate biological or phenotypic characteristics, but instead to a subjective sense of personal connection to particular (yet underspecified) cultural legacies. Whether the definitions succeed in this regard is certainly debatable given how prominently they feature lineage, parentage, and ancestry. It is also notable that only one of the reference points that INEC personnel regularly invoked in conversations about the ethno-racial variable – culture, traditions, customs, and practices – appears in these definitions.

That said, we should be cautious about how we understand the extent of these definitions' influence. It is a common practice of critical scholarship on race/ethnicity in censuses to deconstruct such simplified, bureaucratic renderings of ethno-racial categories, assuming that they skew responses (and thus, ethno-racial statistics writ large), impose authoritative state

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[130] In Spanish: "Mulato(a): las personas que reconocen principalmente en su identidad las raíces culturales de ascendencia africana y su diáspora, a partir de uno de sus progenitores." In an interview with a census technician, I asked whether "*progenitor*" in this context was likely to be interpreted as "parent" or "ancestor" more generally. He replied unequivocally that it was the former.

meanings upon identities, and shape respondents in their image. But such assumptions can exaggerate what is often a very limited "social life" of these definitions. Indeed, in the case examined here, there is no reason to believe that most census respondents ever encountered them. The definitions appeared in the *Manual for Census-takers*, and were underscored in training sessions, but largely to convince enumerators of why they should not categorize people on sight. Indeed, the definitions are preceded by the directive, "For no reason [should you] assign an answer [to the ethno-racial question] by taking as a reference the person's physical appearance" (INEC 2011:143, underlined in original).[131]

But census-takers were not to provide respondents with the definitions of ethno-racial categories in the course of enumeration. As with all other questions on the census, protocol dictated that census-takers should simply read the census form aloud and allow respondents to interpret the question without any mediation or interference. In the event that a respondent asks for clarification, census-takers are to repeat the question verbatim a second or even a third time. If the problem persists after this many attempts, a census technician told me, census-takers may explain the categories based on what they learned in their enumerator-training sessions. When I asked if the expectation would be that the census-taker pull out her manual and read the definitions from it, the technician only repeated that she should explain the categories as they were taught to her in training. Thus, despite oft-voiced worries about the effects of using categories for which the terms of reference are ambiguous, INEC does not mobilize what would appear to be its best tools for minimizing respondent "confusion" – its own definitions of the categories.

[131] In Spanish: "Por ningún motivo asigne una respuesta tomando como referencia la apariencia física de la persona" (underline omitted).

Though INEC's definitions were absent from the census-taking encounter – in which "freer," if less-informed, self-identification seems to have been the priority – they reappeared as a kind of "reality" standard in relation to which INEC would later judge the census returns. The evaluation of these returns involved conducting re-interviews with inhabitants of geographical units in which INEC identified anomalies in the ethno-racial breakdown of the local population. Specifically, they used the census database to flag as "errors" all of those enumeration areas (*áreas de empadronamiento* – AEs) in which 50% or more of the population was recorded as *mulato*, or 25% or more as *negro o afrodescendiente*. This was the case for 175 AEs – about 0.5% of the total number in the country. INEC worked with a call center to contact a sample of the households in these AEs, attempting to reach census respondents. Those that the callers were able to contact were asked three questions. First, the callers asked respondents whether they remembered their census-takers asking them to identify themselves by race/ethnicity. Next, they re-asked the ethno-racial enumeration question as it appeared on the census. Finally, respondents were asked to give a reason or reasons for choosing the category that they did.

This survey was successfully administered to 624 persons living in AEs identified as having an anomalous ethno-racial breakdown. INEC technicians drew at least three major conclusions from its findings, none of which seems to support the conclusion that the question had "worked." First, the survey findings suggest that census respondents did not identify themselves on basis of the criteria in the census manual's definitions. The vast majority of those re-interviewed said that they based their response on the color of their skin, and only a tiny minority made reference to their "customs" and/or "traditions." I would point out that this does not rule out the possibility that these respondents feel that they have such cultural links to the identity categories that they chose. But it does show that it was not these, but rather phenotypic

characteristics that the question and response categories first brought to these respondents' minds.

Next, the survey findings supported INEC personnel's worries that the question and response options would confuse a significant part of the population. Their evidence was the fact that fully half of those who were re-interviewed by telephone gave different answers than those that appeared on their census forms. This is indeed quite shocking, and open to multiple interpretations. It is particularly difficult to understand why so many respondents' answers would vary if virtually everyone based those answers on their perceived skin color. INEC offered little analysis of the issue beyond saying that it spoke to the "volatility" of the ethno-racial question, and of the *mulato* category in particular.

One might venture further explanations of the inconsistencies between census and re-interview data by considering them in light of findings on another survey question – whether or not respondents remembered being asked the ethno-racial question by their census-takers. Of 624 respondents who were re-interviewed by phone, 171 said that they were not asked the question and 257 did not remember whether they had been asked. Thus, not even 1/3 of the sample could say with certainty that they were offered the chance to self-identify on the census. INEC's report on the evaluation of the ethno-racial enumeration process gives surprisingly little attention to this issue, saying only that if so many respondents did not remember being asked, this was "probably due to the lapse of 4 to 5 months that passed between the date of the census and the re-interview."

The report does not entertain the rather obvious implication that the mismatch between so many of the re-interview data and the census data could be due to census-takers having recorded respondents' ethno-racial classification without asking them. Officials at every level of INEC

admit that this happens at least occasionally, and anecdotal evidence tells me that it is more prevalent a problem than they acknowledge. Still, it could be a red herring with respect to discrepancies between the census and survey reports of individuals' race/ethnicity. After all, while 56% of those who know they were *not* asked the census question were assigned to a race/ethnicity that did not match that from the re-interview, the mismatch rate only drops to 43% for those who know that they *were* asked by both the census-taker and the phone interviewer.

Finally, census technicians used the conclusions above in tandem with broader statistical analyses of the *mulato* population to conclude that many of those found in this category were not in fact *mulatos*. They came to this final conclusion after noticing that Nicaraguans are overrepresented in the *mulato* population relative to the total population of the country (15.52% versus 6.7%). Further examination of the data found that in numerous cantons in central and northern Costa Rica, more than a quarter of those reported as *mulato* are Nicaraguan-born. From there, INEC measured the relationship between being *mulato* and being Nicaraguan[132] using the Pearson correlation coefficient and determined that there was considerable evidence of "a direct positive relationship" between the two.

While Nicaraguan birth hardly precludes one from "being *mulato*," the strong correlation raised red flags at INEC. Census technicians acknowledged that some, perhaps many, Nicaraguans recognize African and diasporic cultural roots in their identities, but since Nicaragua's most recent (2005) census had not queried the issue, they had no basis for comparison with the rates in Costa Rica. What they did find significant for interpreting the correlation is the generations-old racialization of Nicaraguan nationality prevalent in their own country. Stated very briefly, of the many ways in which Nicaraguans – and especially

[132] Because the latter variable is determined by the person's place of birth, it would be more precise to say "having been born in Nicaragua."

Nicaraguan migrants – are othered in Costa Rican popular imaginaries, perhaps the most steadfast is their characterization as having darker skin than purportedly "white" Costa Ricans (see Fouratt 2014; Sandoval 2004). Given the survey finding that respondents generally interpreted the ethno-racial question as one about skin color, analysts at INEC concluded that it was this othering, and not African descent, which led to the Nicaraguan-*mulato* correlation.

From Evaluating Accuracy to Validating Inaccurate Ethno-Racial Data?

The entire evaluation process just described has a very simple realist premise: Good data on *mulatos* will be those that best reflect the real number of people who identify with African or diasporic cultural roots, and a successful question will be that which elicits such data. One could interpret the findings above as suggesting either that several thousand Nicaraguans identified themselves as *mulatos* for having internalized the idea that they are darker than "white or *mestizo*," or that Costa Rican census-takers did so for them. If it was the former, one should conclude that the source of failure was the slate of response categories; if the latter, fault would lie with the census-takers. But in either case, from a realist perspective, the consequence is that the data are wrong – there are fewer, likely far fewer, "real" *mulatos* in the country than the census claims.

Given INEC personnel's confidence about the existence of such systematic bias – a *mulato over*count, to be sure – what they did with the results is somewhat surprising. Upon learning the results of the evaluation, I asked Alfredo what strategy INEC would pursue to adjust the data. As a Costa Rican anthropologist mentioned to me, because each respondent answers only one question about ethno-racial identity, it is impossible to confirm the accuracy of results case by case. He lamented this fact, saying that additional questions, such as a direct query about ancestry or ancestral language, would enable INEC "to clean the statistics in order to have

something realistic." Indeed, the strategy of posing more than one question related to race/ethnicity – albeit without undermining self-identification – has gained support in recent years, as ECLAC documents demonstrate (CEPAL 2008:14; CEPAL et al. 2011a:25). With respect to the 2011 Costa Rican census, however, the only such tool for triangulating the responses recorded on the census questionnaires was the post-census survey data. Would these be the basis for "cleaning" the data?

Alfredo explained that there are a number of variables with respect to which INEC does indeed "clean" the data when responses are either inaccurate or missing. As an example of the former case, he mentioned that INEC's information system registers an error if there is a contradiction between a person's age and her profession, such as if a 5 year old is recorded as a doctor. There are also circumstances in which missing data can be imputed from those available. For example, if no information has been entered regarding the roofing material of a particular house, but the roofs of all the other homes on the block are zinc, it is safe to fill the field as zinc.

With respect to ethno-racial classification however, Alfredo said that nothing would be done. There is a "human right to self-identification," he explained, and to change any answer, or the sum thereof, would be to violate it. Here again, we see an interesting take on what it means to realize census respondents' exercise of self-identification. For INEC, sound evidence suggests that either answers were given out of confusion over what was being asked, or that they were decided not by respondents but by their enumerators. Yet what is marked on the paper questionnaire is protected, apparently immune to alteration from the moment of inscription. To return to the focus of the chapter, we also see that here self-identification – articulated in this instance as itself no less than a human right – overrides, and is more important to the integrity of the data than, the commitment to having something more "realistic." The evaluation process

thus would not invalidate any data, whether officially or unofficially. Knowledge of its results has remained within a small circle of technical experts, presumably waiting to serve only as "lessons" for the next census process.

Stage 3: Presenting Results

INEC's principled stance against altering ethno-racial classifications – even where its own evaluation process found them dubious – would seem to dictate that data presented as official results would have to be disaggregated only into the categories that appeared on the census form. The interpretation of self-identification it implies would mean that each individual fixed the ethno-racial coding of her data in the encounter with the census-taker, and that the statistical category to which they belonged could not be represented otherwise. But when INEC began to collate data to present them as "results," another debate about the *mulato* category challenged these premises. Here Afro-Costa Rican leaders pushed INEC once more to adopt an approach that would generate statistics its technicians considered misleading, this time also contradicting the logic of previous decisions aimed at upholding self-identification.

Exit "Self-Identification"

The controversy over data on *mulatos* during the final stages of ethno-racial statistical production centered on an issue that came to be called "summing."[133] At stake in debates about "summing" was whether or not the data on those who self-identified as *mulatos* could or should be combined with those on "blacks or Afro-descendants" in official INEC census results. To combine the data would essentially mean the disappearance of *mulato* as a statistical category through the absorption of the population so reported into an aggregate Afro-descendant category. Leading Afro-Costa Rican voices on ethno-racial enumeration had advocated summing since

[133] The term in Spanish is *sumando*, from the verb *sumar*, "to add together."

before the 2011 enumeration began, at that point based on an argument grounded in a realist logic. They contended that even though "Afro-descendant" appears as a separate option on the census questionnaire, it is a blanket term, and that those who identify as *mulatos* actually *are* Afro-descendants, whether they realize it or not (see Campbell 2011:27; Minott 2009:19-20). Summing would thus put them in their correct place, even if it was not the response option they selected during the data-collection stage.

This position clearly employs a different logic and "order of worth" than that which put *mulato* on the census in the first place, and which kept data coded as *mulato* despite INEC technicians' doubts about their accuracy. In both cases, the evolving notion of self-identification as a norm of human-rights practice ensured the production of statistical knowledge on *mulatos*. Having accepted this criterion, INEC personnel found it contradictory, even cynical, that they should later be asked to collapse these figures under another category. The demand read as blatant political maneuvering, intended, as one census official said, only to "enlarge their [Afro-Costa Ricans'] numbers." This official went on to reject such an approach to ethno-racial data collation, stating indignantly that "to add them together is *not* to respect self-identification."

But as the census returns began being made public in various forums in 2012, advocates of summing shifted the criteria for judging how statistical results should be packaged. Here again it was Campbell who was the most prominent among Afro-Costa Rican advocates. She argued in public presentations – including one at INEC's culminating symposium on the census's findings – that those identified as "*mulato*" and those as "black or Afro-descendant" were indeed a single population not *a priori*, but because their socio-economic indicators attested to it. The census revealed that both groups suffered inequality relative to the "white or *mestizo*" population in essentially equal measure. Since designing targeted policies to "attack gaps" was

the reason for enumerating by race/ethnicity in the first place, she reasoned, to keep the figures on "*mulato*" and "black or Afro-descendant" separate was to muddle the data's message. It allows for policymakers to perceive two smaller populations, each in need of its own specialized initiatives. Summing, Campbell reasoned, was the more effective method for presenting data such that they might attract, and focus, policymakers' attention.

Shaping (and Re-Making) Statistics to Do Anti-Discrimination Work

All of the INEC personnel with whom I spoke stridently opposed summing on grounds that it violated the very principle upon which "*mulato*" was included as a census category in the first place. Yet INEC would have had a hard time shrugging off Campbell's rationale – that categories of disaggregation are valid as a function of their utility in relation to the data that populate them. In fact, an INEC proposal regarding how the institute should present disaggregated census results on indigenous peoples followed this very same logic.

The proposal in question was put forward at an October 2012 INEC consultative workshop on the construction of indigenous indicators, which I attended. It consisted of dividing all of the census's socio-economic figures on indigenous people into the statistical sub-categories "*indígenas con pueblo*" and "*indígenas sin pueblo.*"[134] These labels rankled more than a few workshop attendees, virtually all of whom found them at least conceptually problematic. Representatives of government agencies and the UN office in San José called the pair of categories "bothersome," "unclear," and "disturbing." The head of the NGO Mesa Nacional Indígena went further, arguing that to be "*indígena sin pueblo*" was a logical impossibility. Thanks to many decades' work at the United Nations, indigenous collectives were defined

[134] The meanings of these terms in English are basically "indigenous persons with a people" and "indigenous persons without a people."

precisely as "peoples." He pointedly asked if INEC's intent was to overturn this international achievement – to try to define an alternative reality of a stratified indigeneity.

INEC personnel initially defended the category "*indígena sin pueblo*" by saying that it arose through self-identification. It was derived from the combination of a "yes" response to "Do you consider yourself indigenous?" and a "ningún pueblo" response to the subsequent, "To what indigenous people do you belong?" (see Figure 10 above). But the objections raised in the aforementioned workshop seemed to have an effect, and INEC's rationale for using the category changed when it began appearing in official presentations and publications. No matter whether "*indígenas con pueblo*" or "*indígenas sin pueblo*" are expressions of "real" groups *or* products of self-identification, they *did work* that INEC technicians argued was important. Presenting data disaggregated under these labels revealed differences in characteristics like indigenous-language use and access to resources that justified the design of programs differentially targeting these newly named kinds of person. In this case then, INEC demographers prioritized collating data in a way that would highlight patterns and problems that they believed should provoke the response of an imagined policymaking audience. Here a person's socio-economic data *could* after all be bundled into a new identity category, not to better reflect belonging to a group, but rather belonging within a statistical set.

Separating *indígenas* "con pueblo" and "sin pueblo" is of course different than summing, in that anyone who wishes to recombine their disaggregated units can easily do so. Summing, on the other hand, threatened to erase *mulato* self-identification from ethno-racial statistics altogether, while inflating the numbers of Afro-descendants. Having opposed the use of "*mulato*" in the first place, and later finding evidence that many of those recorded as such may not actually identify with African diasporic roots, INEC was loath to take this step. But at a

December 2012 regional seminar on statistical recognition of Afro-descendants, a compromise solution appeared in the presentation Alfredo gave on the agency's behalf. For the first time, the PowerPoint slides he showed contained tables of official INEC socio-economic indicators with rows for "*afrodescendiente*," "*mulato*," and the new aggregate "*Total afrodescendiente*." Alfredo had also created images of the country mapping the concentrations of "Afro-descendants without *mulatos*," "*mulatos*," and "Afro-descendants including *mulatos*" (see Figures 13-15).

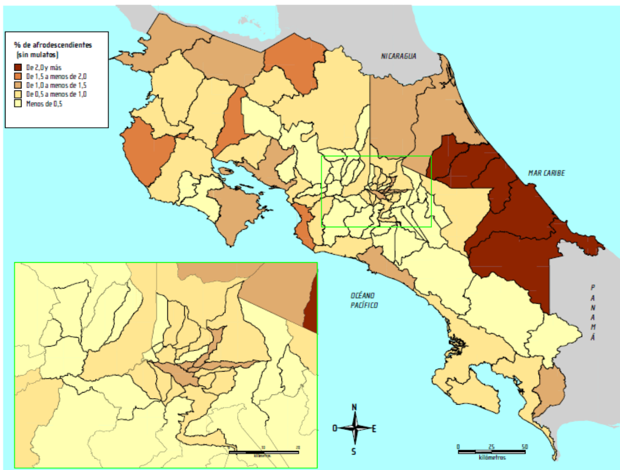

Figure 13. INEC map titled "% of Afro-descendants (without mulatos*)." (Source: INEC 2012)*

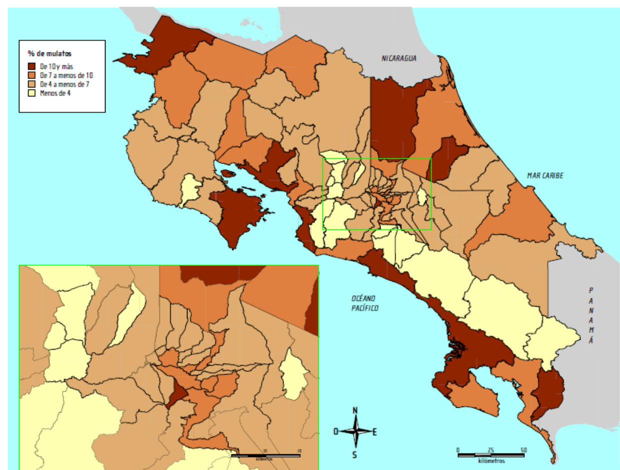

Figure 14. INEC map titled "% of mulatos*." (Source: INEC 2012)*

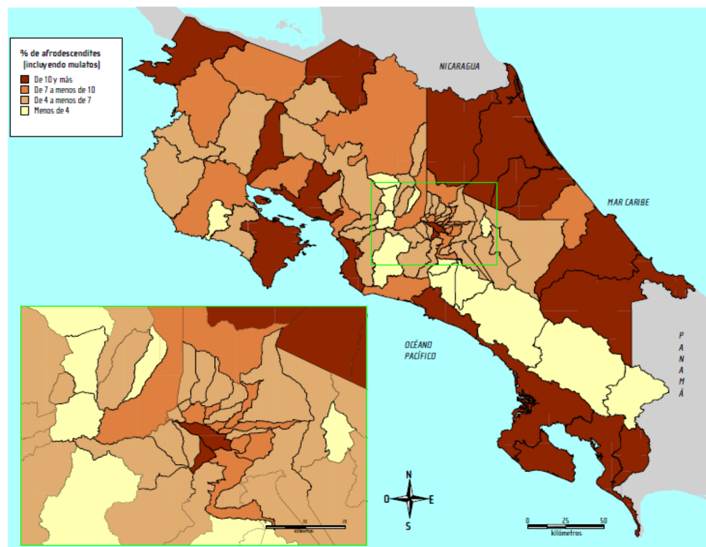

Figure 15. INEC map titled "% of Afro-descendants (including mulatos*)." (Source: INEC 2012).*

These maps present very different images of the size and distribution of Costa Rica's population of African descent, and provide a striking example of the effect of summing. At the level of the national population, summing turns the 6.7% of Costa Rica classed in the socially ambiguous category of *mulatos* and the miniscule 1.05% "black or Afro-descendant" population into a total Afro-descendant population representing 7.75%, 7.8%, or 8% of Costa Ricans (depending on who does the rounding). This, as Epsy Campbell told attendees at the seminar on Afro-descendant statistical recognition, is no insignificant quantity of people. Of equal importance, the map combining self-identified "*mulatos*" and "blacks or Afro-descendants" (Figure 15) destabilizes the long-dominant perception of Afro-Costa Ricans as a categorically Caribbean population, and the popular axiom that Costa Rica is white and the Caribbean province of Limón is black (see Duncan 2011a; Harpelle 2001; Sharman 2001). Beyond its challenge to popular racial imaginings of the nation, such a re-mapping of Costa Rican blackness also makes it difficult to sustain the argument that socio-economic "gaps" – evident across the Afro-descendant population – are regional rather than ethno-racial in distribution.

In the few sentences above, I touch on only the tip of the iceberg of how adding together "*mulatos*" and "blacks or Afro-descendants" – and all of the data on their socio-economic standing – alters official knowledge of ethno-racial difference and inequality. Concerned not to "lose information" by creating the "*Total afrodescendiente*" category, Alfredo pointed out to me that he did not let this category replace "*mulato*" and "black or Afro-descendant," but put the three alongside one another. Yet this has not been the case as INEC's census figures have traveled. For example, Costa Rica's national anti-discrimination policy and action plan – the subject of Chapter 6 – makes extensive use of 2011 census statistics in its description of socio-economic disparity. In fact, the 23-page "Current Situation" section laying out the empirical

rationale for positive state action against ethno-racially distributed inequality is comprised almost entirely of disaggregated data from the census (see further Clark n.d.). Yet the word *mulato* cannot be found in this section even once.

Similarly, in INEC's own collection of scholarly works analyzing 2011 census data (INEC 2014), Epsy Campbell's article on the Afro-descendant population features only the third of the maps re-produced above (Figure 15). It is labeled simply "% of Afro-descendants located by Regions in Costa Rica." An accompanying pie chart likewise omits the *mulato* category, and states that the census found that Afro-descendants comprised 8% of the census population (Campbell 2014:353-4). This despite the fact that the aggregate "total Afro-descendant" category – the 8% – includes far more people than perhaps any INEC technician accepts is a "realistic" representation. Yet through decisions justified in terms of self-identification – with its myriad renderings and implications – and others made to streamline policy-ready knowledge, INEC took the steps that produced these figures, and in so doing, made them "INEC's."

Conclusion

Demographers have long presented their knowledge production as grounded in an abiding commitment to faithfully and accurately representing reality. Yet Desrosières (1998, 2011), Simon Szreter et al. (2004), and others have historicized demographers' investment in standards like objectivity and impartiality, pointing out that they are contextual rather than inherent to the field. More specifically, they respond to the particular incentive structures created by the demands of other professional communities to which demographers are accountable (see also Porter 1995). Where, in studying demographers, we see that steps in the knowledge-production process are evaluated and calibrated relative to other – or across multiple – criteria, values, or orders of worth, we must ask what other sources of legitimacy or structures

of authority are shaping their work (Boltanski & Thévenot 2006).[135] How should we characterize the intersection of authorizing and governing forces at which they sit, and what does it make of the resulting epistemic products?

This chapter has shown that ethno-racial statistical production does not follow a rigid, pre-defined set of methods or epistemic infrastructure (see further Clark n.d.). Instead, actors patch together methodological courses of action through a series of complex decision-making processes. In the case I examined, activists representing Afro-Costa Ricans proved highly influential in these processes, convincing INEC to accept almost all of their proposals. Debates centering on the category of *mulato* illustrate particularly well how mistaken it can be to take census statistics as knowledge authored unilaterally by "the state" (see also Paschel 2013; Yanow 2003:Ch. 1). INEC included this category despite not believing that it named a real identity of the type the ethno-racial variable sought. The agency then validated data collected on the category even after its own internal evaluation found that the census returns did not track its definition of the category. These decisions depart from epistemological commitments to realism – both with respect to entities, and with respect to theories or representational truth (see Hacking 1983:26-28) – in which modern census practice has long been grounded. Finally, INEC conceded to the creation of an aggregate category placing data on "*mulatos*" under the umbrella of a term (Afro-descendant) named for precisely the characteristic that INEC's evaluation suggests that many of those so recorded lacked (descent from Africans). Ironically, this statistical category is that which policymakers and advocates recognize and present as "official." Meanwhile, the two separate component categories originally used for self-identification on the

[135] See further Lamont 2012:esp. 207-210, and works cited therein.

census questionnaire ("*mulato*" and "*negro o afrodescendiente*") are forgotten – trivial idiosyncrasies of the data-collection process.

These methodological choices undeniably owe a great deal to the persistent advocacy of the activists who backed them. However, I hope to have complicated Loveman's (2014:42, 311) suggestion that such influential activist-expert participation in census-making is of a "transparently political nature," and that, as such, it risks diminishing the very legitimacy of census statistics that indigenous and Afro-descendant rights advocates hoped to leverage. The cracks in the realist, scientistic, and technocratic edifice that I have highlighted should not be attributed to simple pliancy or weakness on the part of INEC; activists did not in fact "get their way" with each demand they made. Rather, by tracking the twists and turns in argumentation and evaluation concerning methodological choices, I have shown that activists succeeded when able to justify their proposals in terms of what I have identified as legitimate criteria of evaluation for this milieu. INEC personnel further carried these same criteria with them in their own methodological deliberations. The criteria in question, once again, are: conformity with the (highly malleable) concept of self-identification, and effectiveness as interventions advancing the fight against racial discrimination.

Both of these criteria for evaluating competing courses of action in statistical production are fundamentally derived from the preeminent source of demand for ethno-racial statistics: UN human rights oversight systems and actors. The main point of the chapter then is that, before statistical knowledge ever has the chance to govern the meanings and regulation of human rights, human rights concepts and agendas govern the production of the statistics. Indeed, human rights-based criteria at times overrule realist criteria, or we might say the results of "rights tests" can trump those of "reality tests" (see Lamont 2012:213). It is with this point in mind that I gave

this chapter its somewhat mischievous title, "Between Reality and Rights," which intentionally transposes those two R-words relative to their usual ordering in empirical scholarship on human rights. In said scholarship, phrases like "between rights and reality" – or especially "from rights to reality" – set up a tension the point of which is generally to call for less attention to rights "ideals" in favor of focusing upon the "reality" that always comes up short, and especially to expose the gap between the two.[136] Uncovering such gaps is also essentially the goal of the phenomenon of human rights evaluation that this dissertation analyzes. But in the case of ethno-racial statistics – fascinatingly, to my mind – the revelation of "reality" must actually at times stand down vis-à-vis evolving understandings of what "human rights requires," which thereby shape the knowledge-production process. "Rights" thus become *part of* the epistemic infrastructure – switches that sort and re-route data on their path to becoming knowledge about the fulfillment of substantive rights.

Finally, to reiterate, even as human rights govern the production of the ethno-racial statistics used to track them, this does not transpire automatically, predictably, or in a uniform manner. It happens because people mobilize the criteria derived from human rights ideas and, I contend, because census-makers have formed new ideas about what makes their work credible, and what are legitimate grounds for criticizing it. I have suggested that in Costa Rica, INEC's immersion in the regional network and discourse on ethno-racial statistics and human rights has generated such ideas. Census personnel have internalized the message that ethno-racial statistics are necessary in order to identify and close "gaps" in human-rights enjoyment, and have found in this a new dimension of professional responsibility: they are human-rights actors, doing human-

[136] This directly parallels the classic tension on basis of which the field of socio-legal studies emerged: "law in books" versus "law in action" (Pound 1910). Karl Llewellyn (1930:451), for example, memorably and influentially called for giving "the discrepancy, great or small, between the official formula and what actually results… the limelight attention it deserves."

rights work. Whether they find this satisfying or burdensome no doubt varies from individual to individual; census technicians are after all people possessed of a range of socio-political perspectives and commitments, like any other group. But in either case, the important point is that census-makers interpret the reasons for producing ethno-racial statistics as establishing new criteria for the means of their production. Trying to fulfill these criteria at each step of the production process, they ultimately created a very different portrait of the contours of difference and disparity in Costa Rica than would have emerged had they thought of their work's credibility as hinging on an ideal notion of "truth." In the next chapter, I show that this sense of the importance of quantitative data on difference and discrimination, but also their partial dislodging from the project of truth-making, holds as well in another site of human rights evaluation – the UN Committee on the Elimination of Racial Discrimination.

CHAPTER 5

Truth Silences:
Knowing and Relating at the UN Committee on the Elimination of Racial Discrimination

As I conducted fieldwork at the UN Committee on the Elimination of Racial Discrimination (CERD) in August 2013, the Palais Wilson, like many United Nations office spaces, was tense with talk of the seemingly imminent U.S.-led air strikes in Syria. One day as CERD experts packed away their folders and checked their e-mail before dispersing for lunch, I overheard one of several exchanges on the issue that, despite its brevity, stood out. One expert, staring into his laptop, his hands darting around to navigate between news stories, asked abruptly to anyone who might be listening, “Have they proved yet that it was chemical weapons used in Syria?” The expert’s colleague seated a few feet away looked up from his own laptop and peered over his reading glasses to respond with an ironic laugh, “Oh, it takes *forever* to *prove* something!” Letting a few seconds’ pause erase the wry smile from his face, this second expert then concluded in a quieter, humorless voice that action surely would not wait for UN investigators to turn up anything as firm as proof.

This commentary stood out not so much for its appraisal of the situation in Syria as for the way it appeared to reflect the CERD’s engagement with uncertainty in its own work. The CERD is a human rights treaty body charged with overseeing states’ implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. The Convention stipulates that the Committee consist of “eighteen experts of high moral standing and acknowledged impartiality… who shall serve in their personal capacity” (Article 8(1)). The CERD’s status as a treaty-based committee of experts distinguishes its charge from that of diplomacy (Banton 1996). Though each member has a different nationality, all are sworn to

serve in the interest of the Convention, not their respective governments. It is perhaps a testament to this independence that existing anthropological accounts have characterized human rights treaty bodies' members as reflecting the perspectives of a "transnational elite" more than those of their co-nationals (Halme-Tuomisaari 2013; Merry 2006). Where the CERD is concerned, members occasionally express differing priorities and opinions regarding treaty monitoring, but generally operate as a coherent unit. Their varied interests and expertise as lawyers, judges, social scientists, diplomats, and advocates converge around a shared effort – and, for most, a genuine personal commitment – to use international legal tools effectively to induce state action against racial discrimination.

As with all UN treaty bodies, the CERD's oversight activity centers around the examination of states' periodic reports on their progress towards implementing treaty provisions. Each state that ratifies the Convention commits to submitting such a report every four years,[137] but most reports arrive late, sometimes with a lapse of more than a decade.[138] The CERD evaluates states' reports alongside supplemental information from other official sources, including reports by UN agencies, special rapporteurs, and other human rights bodies. Experts also consider information provided by domestic and international non-governmental organizations (NGOs), as I discuss below.

The unwieldiness of all of this information is palpable in its material manifestation: binders and boxes of paperwork that pile up on the tables of the conference room where the CERD meets. For any given country, these can amount to hundreds of pages of statutes, figures, and narrative – often more than those who serve on the Committee, unpaid, are able to carefully

[137] The Convention calls for reports every two years, but the CERD now asks for a "combined" report (i.e. of two biennials) every four years as a way to relieve states' reporting burden and its own workflow.
[138] As of June 2016, Brazil for example had not submitted a report to the CERD in 13 years.

sift through in preparation for reviews. Doing so for each country might indeed "take forever," and in any case there is no guarantee that the result would be fewer, rather than more, contradictions and ambiguities. The CERD therefore faces a major challenge in knowing what information – whether as "proof" or otherwise – should be the basis of its action, which is to formulate an outcome document known as Concluding Observations.

Figure 16. Boxes and binders containing various reports cover the long tables, and create demand for extra chairs, in the conference room where the CERD holds its meetings.

It is precisely such situations of factual uncertainty that have led significant segments of the international human rights community to advocate the use of statistical indicators for monitoring purposes. This trend has drawn the attention of anthropologists and socio-legal scholars, who propose a research program for critically interrogating the epistemological bases and political consequences of increased indicator use (Davis et al. 2012; Merry 2011). This chapter observes that call, using ethnographic methods to examine the CERD's engagement with quantitative and other empirical data in the practice of its periodic examination procedure.[139] It

[139] I use the terms *review* and *examination* interchangeably throughout this chapter.

offers a novel contribution to literature on human rights by analyzing the pragmatics of this epistemic work, contextualized in the social and regulatory relations prevailing between UN expert committees and states.

I show first that the CERD demonstrates little strategic investment in erasing uncertainty, or a margin of error, from its evaluative discourse. Stated another way, the Committee does not orient periodic examinations towards revealing or pronouncing "the truth." Though the procedure consists of a broad review of information relevant to states' implementation of the Convention, committee members are generally reluctant to adjudicate between conflicting accounts, and avoid directly asserting that they have identified rights violations. They do not speak of ascertaining "proof" of discrimination, nor apply strict evidentiary standards in their review practice. This is not to say that CERD experts are deferential to the information they receive or to the meanings states ascribe to it – they are not, including when provided with ostensibly transparent quantitative data. Instead, they conduct evaluations with uncertainty always present, many suggesting that this is an inescapable condition of their work, and one unchanged by the availability of statistical measures. This finding troubles a core assumption of critical literature on indicators, which is that numbers are mobilized primarily to bolster authority through claims to objectivity and certainty.

CERD review practice neither deploys nor concedes to discourses of epistemological authority because doing so could detract from what I argue is the most essential strategic goal of examinations: to sustain relations with states conducive to their continued acceptance of the Committee's oversight and guidance. Fulfilling this objective requires the CERD to strike a delicate balance. In each examination, it must demonstrate the need for further remedial state action against racial discrimination – and subsequent review – while simultaneously reinforcing

an ethos of constructive, non-adversarial cooperation. If the CERD fails to convey doubt concerning a state's compliance record, government officials may conclude that their implementation work is complete – and further examinations unnecessary – as has happened throughout the procedure's history (Banton 1996). Conversely, for committee members to speak too definitively or forcefully of a state's failings may alienate it from the cyclical review process. After all, to declare an authoritative judgment about the truth is a unilateral action that precludes further dialogue – that is, it *silences*. Such silencing – not uncertainty or perceived irresolution – is the strongest threat to treaty bodies' ability to effectively exercise their mandate. As such, CERD experts defer on claiming what is or is not true in favor of more provisional statements, and expressions of doubt and concern. Their restraint reflects those on their authority, but it also advances this authority – not by increasing its force, but by extending it into the future.

My argument then is that the CERD's practice aims to make reviews ever more *iterative* rather than conclusive. Importantly, the goal of iteration here does not imply institutional self-perpetuation for its own sake, but a long-term strategy for pushing states to implement the Convention through achievable, incremental steps. CERD members recognize that speaking unequivocally about "the facts" can strain the relations upon which this strategy depends. They therefore make their epistemic work appropriate to its social context, carefully asserting measured authority (see also Clark 2014), not the authority of measurement.

To Pronounce the Truth

Readers may note some resonances between the claims just articulated and anthropological literature on bureaucratic documentation. This work demonstrates that documents do not simply "contain" determinate information, but generate meanings in dialogue with situated actors, and create social worlds through their circulations (Hetherington 2011; Hull

2012a, 2012b; Reed 2006; Riles 2006b). I build on these insights, but through ethnographic material that is distinct in two important ways. First, my primary analytical focus is upon *quantitative* data, including race/ethnicity-coded census statistics and figures on discrimination complaints and prosecutions. Following Wendy Espeland and Mitchell Stevens (2008), my interest is in when, how, and why these statistics become semiotically and pragmatically flexible, contrary to numbers' usual function as "hard facts" (Poovey 1998). Second, the context in which I track these numbers is a formally *legal* one. While human rights treaty obligations are not backed by sanctions, they are legally binding under international law; we might say that they involve "hard-law" commitments with "soft-law" enforcement.[140] Still, they are a mode of global governance that is avowedly legal in character, and one that I have referred to throughout this dissertation as a *project in law*. Former-CERD member Michael Banton (1996:305) captures this well, saying that the Convention represents "an attempt to expand the realm of law at the expense of the realm of politics." The "CERD's starting-point," he further points out, "is that of legal obligation" (*ibid.*:310).

For these reason, this chapter converses most directly with recent critical studies of the use of quantitative data in international law and governance, and in the area of human rights in particular (Davis et al. 2012; Merry 2011, 2014; Rosga & Satterthwaite 2009; Sokhi-Bulley 2011a). These studies analyze myriad renderings of such data – from complex indices and composite scores to ratios, percentages, and simple counts – under the term *indicators*. Scholars observe that the proliferation of indicators "cater[s] to the demand for (and receptivity to) numerical, rank-ordered, and comparable data" (Davis et al. 2012:75) capable of streamlining knowledge of unwieldy social realities. They worry that indicators will reduce broad obligations

[140] On ambiguities in the conceptualization and functioning of "hard" versus "soft" law, see Benda-Beckmann et al. 2009 and Zerilli 2010.

to simple metrics, precluding alternative means of judging compliance and turning evaluations into lifeless "technical exercises" (e.g. Rosga & Satterthwaite 2009). The authoritativeness of numbers might "firm up soft law" (Merry 2014), but while "shift[ing] the balance of power" in international legal debates towards "technical" experts with specialized training and mastery of the discourse of scientific validity (Davis et al. 2012:87; Sokhi-Bulley 2011a).

Sally Merry (2011) offers a theory of human rights indicators that is particularly helpful for framing research questions for contexts like the CERD. Drawing on influential social and historical studies of science and quantification, she posits that "indicators rely on the magic of numbers and the appearance of certainty and objectivity that they convey" (*ibid.*:s84) to garner the status of immutable facts. They are therefore convenient tools through which human rights oversight can – following the model of the financial audit – surmount doubt or mistrust through transparent, objective, and scientific means of verification (see also Rosga and Satterthwaite 2009).[141] Merry argues that using numbers to represent human rights conditions is misleading however, in that their inherent comparability conceals the contextual specificities of the social phenomena they claim to measure. Yet, as numbers, indicators "seem to be neutral and descriptive," and are "presented as objective, with an interpretive narrative attached to them by which they are given meaning" (Merry 2011:s89). These meanings garner authority because indicators "convey an aura of objective truth" (*ibid.*:s84).

These passages outline salient tendencies by which numbers assume discursive authority, but they are missing something crucial: people. None of them includes an indirect object – that is, a recipient of the objectivity that quantitative measures present, the meanings they give, or the certainty or aura of truth they convey. Could indicators be able to impress the objectivity of their

[141] Michael Power (1997) notes that while "checking up" and trust are not mutually exclusive, mistrust is always an underlying, if unspoken, premise of audit-style accountability processes.

form and the self-evidence of their meanings upon whosoever examines them, irrespective of which site of human rights oversight is concerned?

This chapter puts my ethnographic data on the CERD in conversation with emerging theory on indicators. Doing so allows me to engage current questions about numbers' allure and authority in the specific context of treaty-body oversight, while offering a vantage point on "how soft law works in concrete social locations," which "is often left vague and opaque" (Zerilli 2010:12). AnnJanette Rosga and Margaret Satterthwaite (2009) have taken an important first step by showing that behind-the-scenes UN technical personnel enthusiastically promote indicators as means by which human rights treaty bodies can mobilize claims to objective, scientifically valid knowledge. They go on to predict that these bodies will embrace indicators, hoping to gain "a kind of authority treaty bodies have never [previously] been able to achieve" (*ibid.*:289). But the limited ethnographic work on international experts' interactions with monitored states suggests that epistemological force does not guarantee influence in practice (see Harper 2000). This article thus tracks quantitative data to the treaty body "frontlines," asking how CERD experts ultimately marshal these numbers in the interpersonal work of global governance.

Before proceeding, it is worth clarifying what I mean when I describe actors as seeking (or not) to enunciate truth. The literature on indicators cited above, along with other recent socio-legal scholarship (see e.g. Benda-Beckmann et al. 2009; Latour 2010b; Merry & Coutin 2014), demonstrate increasing interest in using Foucauldian and science-studies analytics to scrutinize the law's particular regimes for pronouncing truth, or exercising "veridiction." I share these analytical influences, but want to remain open to finding that "truth" may not always be what is fundamentally at stake. Thus, prior to the question of *how* legal processes formulate

what is true, we should investigate *whether* that is what they aspire to do, and if not, why. Reading Foucault not for concepts but for "tactics" (Valverde 2010), we see that his own research identifies discursive acts as truth claims only insofar as actors adopt context-specific methods for constituting them as such (see esp. Foucault 2010). Whether something is an enunciation of truth then is an empirical question about practices rather than a quality inherent to a domain such as "law," especially where that term encapsulates a diverse range of regulatory and law-like forms, as it has in legal anthropology since Malinowski. Therefore, in arguing that the CERD does not orient itself towards enunciating truth, my claim is not that it traffics in lies or falsehood – which would be preposterous – but that it does not perform its examinations through practices that purport to resolve what is and is not true.

The remaining sections proceed as follows: First, I describe some general characteristics of the Committee's engagement with empirical data, demonstrating that its members are not committed to an epistemologically theorized evaluative practice. Next, I turn to quantitative data in particular, showing that the CERD regularly requests statistical information from states, but does not hesitate to critically challenge its meanings and consequence. Finally, I explain the reasoning underlying the CERD's evaluative approach by situating it within the broader social relations governing the review procedure.

Checking Up, without Evidence

Though the CERD evaluates states primarily based on written information, the review takes place through face-to-face interactions. After receiving a state report, the Committee schedules its examination for an upcoming session and invites government representatives to participate. The ensuing meetings are called "constructive dialogues" and are held in the Palais Wilson, a striking Second Empire Baroque-style building on the waterfront of Lake Geneva.

During CERD sessions, committee members, delegates from reporting states, and domestic and international NGO representatives all mingle easily in the building's ground-floor conference room, cafeteria, and wide corridor connecting them. CERD experts who share a common language with state representatives may sit with them during breakfast or lunch; those who are smokers casually chat with one another outside the Palais Wilson exits. In short, examinations happen within an everyday social space that largely downplays the boundaries and hierarchy implied by individuals' formal positioning as expert monitors and obligatorily supervised states.

Figure 17. The Palais Wilson, as seen from the pedestrian path running along Lake Geneva.

As I discuss below, committee members strive to foster such cordiality in the constructive dialogue itself, even as they critically evaluate states' rights records. These dialogues consist of two three-hour meetings between the Committee's 18 members and state delegations. A dialogue begins with the head of delegation presenting key points from the state report before the forum is opened to CERD experts' questions and commentaries, followed by an interactive exchange.[142]

[142] This basic format, with slight variations, is consistent across all of the UN's treaty-based human rights bodies.

These meetings defy simple classification. Experts often pose probing questions about apparent manifestations of racial discrimination in one moment, and congratulate states parties on their countries' beautiful landscapes or their citizens' cultural or athletic accomplishments in the next. But it is the sum of all of this that constitutes the review, a procedure that depends upon the mutual confidence of its parties. Discussions rarely become argumentative considering the charged nature of the subject matter, or the fact that what is under review are obligations to a legally binding Convention. CERD members are generally cautious about brandishing this point, just as their interlocutors rarely remind them that the state's subjection to CERD scrutiny essentially depends on the discretion of its foreign ministry. To frame review as just another instantiation of the impersonal audit would be to elide this complex social negotiation of authority. But it is in this sociality – and not an anonymous transfer of spreadsheets – that indicators and other information are endowed with meanings (cf. Hetherington 2011).

When CERD experts press a state delegation to elaborate upon the content of its report, they frequently remark that their goal is to "understand the situation" in the country. This notion of understanding a situation is contrasted, often explicitly, with merely knowing the legal framework or institutional structure by which a state purports to prevent racial discrimination within its borders. It therefore gestures towards "outcomes," but without the CERD establishing precise categories or limits concerning what is relevant. What becomes clear over the course of several review meetings is that such limits are elusive – no state report is ever considered exhaustive. Dialogue tends not towards completion, but towards a multiplication of data needs and discourse that necessitate further dialogue.

In preparation for the review dialogue, CERD experts form impressions of a country's "situation" by considering a wide range of sources alongside the state report. More than once the

Committee has discussed adopting rules restricting the information it may use, but most experts consider doing so undesirable. The debate over the issue in 1991 is illustrative. Though committee members expressed misgivings about the reliability of some sources – NGOs in particular – they ultimately decided to hold themselves only to the vague standard of acting "responsibly" in relation to source materials (SR.924). The CERD would thus continue using all available information, its experts judging for themselves "what constituted reliable data" (*ibid.*: para. 41), observing the "duty to check [them] very carefully" (SR.925: para. 12), and convinced that "the collective common sense of the Committee would overcome any difficulties" (SR.924: para. 35).

Studying the CERD ethnographically highlights just how eclectic its means of collecting information have become. Rights advocates today travel from across the globe to treaty bodies' sessions in hopes of influencing reviews. Though the CERD now regularly holds scheduled meetings for accredited NGOs, until recently these encounters consisted largely of informal conversations and printed materials transacted in the hallways or cafeteria of the Palais Wilson. Committee members commonly employ these sources' accounts – often verbatim – when questioning state delegations. The CERD's questions and commentaries also allude to Internet research, e-mail news alerts, and personal travel experiences that inform their evolving understanding of a country's "situation" with respect to the Convention.[143] These interventions merit close attention because it is they that fuel the dialogue, and, in significant ways, the dialogue *is the review*. As CERD experts often point out, only matters that are brought up in review meetings may be officially registered in the Committee's Concluding Observations. In other words, the oral dialogue is the requisite medium through which an account must pass to be

[143] Tobias Kelly (2011) reports similar findings on the information-gathering methods of the UN Committee Against Torture.

leveraged as an outcome of the evaluation. The question then becomes: On what grounds does the CERD determine which claims are relevant and valid, or recognize an account as revealing something useful to the examination?

This question would appear to be fundamentally one of *evidence*; yet when I broached it as such in my first interview with a CERD expert, this term drew a decidedly puzzled look. Responding to his hesitation, I reframed my question: "What is good or bad information from the Committee's point of view? How is information verified?" The expert explained that it is difficult to generalize about how information is collected by "the Committee." Each expert does her or his own independent reading on her or his own time, and any "verification" of information "is not done collectively." These comments remind us that CERD experts function as a unit during not even two months of the year. They are not a standing tribunal, and, as expert Mr. Lindgren pointed out in a CERD meeting with NGOs, examining states' reports is not their livelihood.[144] This usually makes any formal "verification" of information infeasible, as fellow-expert Mr. Peter admitted in the same meeting.

CERD members tend to depict the work of preparing for reviews as inevitably imprecise and fallible. An expert must read as much as possible, hoping to find corroborating accounts, but in the end, in one expert's words, "you have to make a judgment… based on what you have." For another, it was this inferential process that constituted "the work of a *real expert*," which he contrasted with "swallowing whatever an NGO, or whoever, gives you." On another occasion when I asked how the Committee "considers or verifies information" (now purposely avoiding the term "evidence"), a CERD member pointed directly to the conduct of the review: "You have

[144] When referring to CERD experts, I employ the treaty body system's practice of using the titles "Ms." and "Mr." followed by the individuals' surnames. To protect interviewees' anonymity, I identify individual experts by name only in connection to statements they made in public meetings for which the UN publishes summary records.

been here for most of the meetings, no?" I replied that I had. "Well then, you saw it!" he exclaimed. A short elaboration later, his point was clear: There are no set standards for establishing "the facts," and nothing independent of the interactive dialogue with state delegations.

These and other conversations with CERD members led me to the first point that I have in mind with this chapter's title, "Truth Silences": that the CERD is silent with respect to deciding what is true. Here I draw inspiration from Marianne Constable's (2005) *Just Silences*, a rich and provocative work that suggests among other things that law today may be silent as to the issue of justice. As Constable (2010) explains, "Justice is a little like silence in the library: we all seem to recall or imagine signs that said silence in libraries. But now it seems that those signs are difficult if not impossible to find." Likewise, it is not always obvious where to find law directly speaking to the issue of justice – a silence whose implications are ambiguous. Were we only assuming a connection between law and justice all along? Or was justice there before, only to have receded as law increasingly oriented towards something else?

Parallel questions – not about justice, but about truth – emerge in the context of human rights treaty oversight. For many other human rights accountability efforts of the past two decades, truth has been precisely what is at stake. It is the product for which numerous commissions have been established the world over, some with quite complex apparatuses for extracting, rendering, and validating what is true (French 2009; Wilson 2001). At the CERD, however, the closest to a "rule of evidence" is the aforementioned prohibition on entering any matter into its Concluding Observations to which the state delegation has not had a chance to respond orally. This rule is procedural, and aimed above all at reinforcing a spirit of cooperation between the CERD and states. Specifically, it prevents the former from publishing criticisms

that blindside the latter. Meanwhile, matters such as how to adjudicate incompatible fact claims go unaddressed. This omission places the periodic examination in stark contrast to ideals of auditing as well as the adversarial legal tradition, both of which employ explicit evidentiary standards (see Mautz & Sharaf 1961; and Damaška 1997, respectively).

In his study of the latter context, William Twining (2006) notes that legal actors sometimes fail to theorize how to determine facts because they consider doing so extraneous. Here factuality is treated as a question requiring little more than "clear thinking and general knowledge," or the same basic mechanics of reasoning that are applied to quotidian affairs (*ibid.*:23-24). But this explanation does not fit the case of the CERD. Though experts do sometimes adopt a posture of naïve empiricism, any suggestion that they treat all information they receive as straightforward and cumulative is belied by something obvious to state delegates and NGOs alike – the experts must be *convinced*. It is not enough to simply "reveal" facts to them; they are recognized (including by themselves) as having some knowledge, judgment, or other special ability that is more highly developed than those who merely "think clearly" (e.g. Banton 2000a:8). Below I explicate this expert capacity by analyzing how it confronts those ostensibly simplest of "facts": numbers.

Requesting Statistics

If my aforementioned CERD interviewee could not generalize about how the Committee collects information, he did not hesitate to identify its most persistent data problem: states' failure to provide reliable statistical indicators. I was not surprised to hear this, having begun my fieldwork acutely attentive to the CERD's frequent requests for quantitative data. Indeed, by the early 2010s, the Committee's Concluding Observations on states in Latin America had begun to almost always press for more or better statistics illuminating aspects of the ethno-racial

"dimension" or "situation" of the country.[145] Recognizing that the term "statistical indicators" can refer to a broad range of numbers, I asked my interviewee to clarify which specific data he considered useful. He explained that he meant primarily socio-economic statistics disaggregated by racial, ethnic, or national identity. In the review dialogue, he and his CERD colleagues make a habit of imploring states to include such statistics in their reports. They point out that national-level (aggregate) data often obscure disparity between different population groups' educational, health, income, and other outcomes. Indeed, these appeals are so common that committee members sometimes preface them by noting to their state interlocutors that the CERD raises them in every review dialogue.[146]

For states to report ethno-racially disaggregated socio-economic data requires of course that data-collection instruments like censuses include a race, ethnicity, or comparable variable. This is not prevailing practice in all parts of the world (see Morning 2008). As such, the CERD regularly recommends that states reform their population censuses so as to recognize national heterogeneity and enable them to fulfill the reporting requests of the Committee. This recommendation has been heeded in some cases (Clark 2009), but it also draws resistance, including from CERD experts themselves. Some on the Committee believe that their colleagues' calls for states to provide ethno-racially disaggregated data have become too generalized, ignoring that such classification may be inappropriate to some national contexts.

This issue was brought to the fore in August 2013, in an unusual debate spanning dialogues with multiple states parties, but carried out primarily among CERD experts. It began when, during the examination of Burkina Faso, various committee members advocated collecting

[145] See, for example, the Concluding Observations for El Salvador in 2006 (UN doc. CERD/C/SLV/CO/13), Costa Rica in 2007 (UN doc. CERD/C/CRI/CO/18), Ecuador in 2008 (UN doc. CERD/C/ECU/CO/19), Perú in 2009 (UN doc. CERD/C/PER/CO/14-17), and Panamá in 2010 (UN doc. CERD/C/PAN/CO/15-20).
[146] For a broader historical analysis of the Committee's requests for disaggregated data, see Clark 2017.

statistics by ethnic identity, saying that doing so allows states to identify and ameliorate patterns of unequal distribution before these imbalances result in conflict. The CERD's Mr. Lindgren objected however, noting that many countries' civil disputes – such as those between herders and farmers – are not experienced by their protagonists as "ethnic." In such cases, the CERD should not promote the disaggregation of indicators in these terms, as doing so creates and legitimizes divisions that entrench conflict and fragment society. Mr. Thornberry affirmed both positions, saying that while states need to have an information base to direct policy, there are sometimes "legitimate concerns about data collection focusing identities around limited categories." In the end, however, "most countries manage the dilemma without fragmentation," and it would seem that "more friction is possible due to a lack of adequate policies than any administrative data effort." During the subsequent review of Belarus, Mr. Lindgren countered that "recent experiences in Europe, Asia, and Africa" attest that "disaggregation is a two-edged knife" – even where well-intentioned, it "can easily be used to foster resentment, unrealistic claims, refusal to integrate, separation, and war." Though Mr. Lindgren defiantly cast his concerns as challenging a position "passed on as 'consensus'" at the CERD, my interviews suggest that other experts also question whether the recommendation to disaggregate data by race, ethnicity, and/or nationality should be extended to all states.[147]

Though the majority on the CERD still favors receiving disaggregated socio-economic statistics from states, two other points emerge from this debate that are worth underscoring. First, the Committee as a whole does not approach such data from the standpoint of statistical realism, by which I mean the perspective that censuses and similar data-collection efforts

[147] Significantly, the CERD did not ultimately include in its 2013 Concluding Observations on either Burkina Faso or Belarus any recommendation that disaggregated data or statistics be provided in future state reports (see UN doc. CERD/C/BFA/CO/12-19; and UN doc. CERD/C/BLR/CO/18-19, respectively).

discover truths about real entities through objective categories, all of which exist in the world independent of their naming and measurement. Instead, both Mr. Lindgren and Mr. Thornberry echo certain scholarly critiques of institutional systems for classifying people, including that they authorize a reduced set of possible identities, solidify otherwise permeable boundaries, and may in fact create patterns of differentiation that they purport merely to record (e.g. Bourdieu 1994; Collier et al. 1995; Hacking 1986; Kertzer and Arel 2002b). These arguments, it is safe to say, are not lost on the CERD;[148] its members choose to request and analyze disaggregated quantitative data despite them. Nor has the Committee ignored fraught political questions about how individuals are assigned to an ethno-racial category. On this matter, the CERD issued a General Recommendation in 1990 stating that, "such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned" (UN doc. A/45/18:79). This recommendation is meant to steer states away from the discriminatory practice of imposing or denying individuals' identities and experiences based on external criteria, no matter how ostensibly "objective." In sum, the CERD has promoted coding data by race/ethnicity on grounds more pragmatic than statistical realist. Members advocate data disaggregation insofar as it can mobilize policymakers against inequality, not for its ability to reveal representational truths.

A second, related point has to do with the kind of epistemic intervention disaggregated socio-economic statistics constitute for treaty monitoring. We might remember that much of the critical concern about quantitative measures – and what indeed makes their representation of social phenomena perverse – is their tendency to obscure the proxy variables, technical decisions, and complex calculations through which they are produced. These not only entail

[148] Here we find a good example of a phenomenon discussed by Annelise Riles (2006a), in which critical theoretical insights we might have deployed to analyze a legal context are already present among the actors in that context.

covert decisions about what information to preserve in quantitative abstractions (Merry 2011), but also the construction of figures that are impenetrable to anyone not trained in statistical analysis (Davis et al. 2012). Such problems are rife where developing indicators means designing composite measures that collapse multiple, sometimes differently weighted, subscales into single scores. But the CERD's promotion and consideration of ever-more disaggregated socio-economic data – while raising their own problems, to be sure (see Chapters 3 and 4) – is a "technical" intervention of quite a different order. It would seem analytically imprecise to lump the two types of quantitative data under a single general critique of "indicators."

Indeed, few CERD members themselves use the term "indicators," and the polemic described above prompted some to backtrack from even the term "statistics" in favor of the more generic "data." They continued to mean *quantitative* data, but wished to stress that the CERD is not rigid about exactly *which* data it requires. Mr. Diaconu even noted with respect to Burkina Faso that socio-economic data by geographic regions might be an adequate substitute for ethnic disaggregation, assuming they are suggestive of trends on the major population groups in the country. Mr. Thornberry went on to remind his CERD colleagues that indeed the Committee has never sought to dictate a uniform method by which states collect and report data. Here again we see the CERD demonstrating flexibility, while simultaneously avoiding the establishment of limits on what may or may not be relevant to the review. Members do not seek data in order to fit them into an established matrix, equation, or apparatus for disclosing their truths (cf. Wilson 2001). Instead, as one expert told me, the CERD needs to remain "creative" in figuring out which data tools enable states to more effectively take action against discrimination "given their context or circumstances." As I will show, despite that most on the CERD do not have any

technical training in formal statistical interpretation or analysis, the Committee still demonstrates significant critical engagement with the numbers presented to them.

Numbers, without Certainty

We can gain insights into the way the CERD practices expertise in relation to reported empirical data by examining instances in which the Committee challenges the meanings statistics proffer. One telling example came during the 2010 dialogue with the state delegation from Uzbekistan, which had just concluded reporting on a survey administered to members of the country's Roma population. This survey was conducted at the CERD's request in order to fill a "gap in knowledge" about Romani experiences of discrimination. Its overwhelmingly positive findings, however, were met with incredulity. "If Uzbek Roma do not feel discriminated against," remarked expert Ms. Crickley, "it would be the only place in the world where this was true." Others on the Committee echoed her surprise, with the survey's findings effectively unintelligible in light of previous reviews of, and general knowledge about, the treatment of Roma in other countries. Ms. Crickley proceeded to impute flaws in the application of the survey, asking rhetorically how the Uzbek state knew that the Roma were not simply "giving the answers that they believed the powerful people asking questions wanted to hear." Here we see exercised a privilege of the expert – speculating about the methods of data collection, absent any direct knowledge of them, as a "way of dealing with… facts that are fugitive" (Holmes & Marcus 2005:237). The Uzbek survey's claims are in this case not recovered as facts of any kind, however, lacking a way to be made to "fit." They are instead made sense of as inaccurate findings through the lens of a prior empirical generalization.

The CERD expresses similar doubts around another commonly reported set of national statistics: those on complaints and prosecutions of incidents of discrimination by public or

private actors. State reports that document large numbers of discrimination complaints are of course met with alarm – the CERD reads such numbers as indicators of pervasive problems in need of immediate address. However, committee members also consistently point out to state interlocutors that "a small number of complaints is not necessarily a positive thing." It may instead show that the institutions that receive complaints are inadequate, or that people are unaware of, unable to access, or mistrustful of them. This is a "lesson learned from experience," according to expert Mr. de Gouttes, and "a constant doctrine on this Committee." Indeed, the CERD formalized the point in a General Recommendation to states parties. This document communicates that reports lauding few discrimination complaints will be read as providing instead a "possible indicator" of inefficiencies in the functioning of the justice system.[149] In the 2013 review of Sweden, Mr. Vázquez took this logic one step further, questioning the ratio of complaints to prosecutions in that country. Understandably surprised that less than 1% of discrimination claims held up in court, he reasoned that there must be a problem with the legal system if its standard for what constitutes discrimination was so out of step with that of public complainants.

My point in raising these examples of the CERD's engagement with reported statistics is not to criticize their reasoning; to the contrary, the appraisals they offer are very plausible. I call attention to them instead precisely because they *are* appraisals and because plausibility – and not certitude – seems to be as far as they are meant to go. In these examples, CERD members express doubt without positioning themselves – or I would say *confining* themselves – to proclaim what is true. They propose alternative narratives to explain the numbers states present to them, but only as what seems likely, and always with calls for further reflection and

[149] See the CERD's General Recommendation No. 31 (2004), para. 1(b).

investigation. They also consistently acknowledge the unknown mediating role played by the social conditions of indicators' production. Listening to their silences, as Constable (2005) recommends, I would further point out that they do not opt to push states for supplementary indicators, or indicators to support their indicators, such as the ratio of national residents per complaint-intake site, the number of rights training workshops held, or the amount of state funds allocated to awareness campaigns. Numerous such categories of quantification can be imagined; indeed, they are commonly required of human rights organizations reporting to donors, whose authority to demand and judge "proof" is less ambiguous (see Gready 2009). The CERD however does not pursue turning periodic examination into a slate of ledger sheets. Instead, it retains uncertainty in the space where experts might otherwise seek conclusiveness as a platform for the denunciatory voice of veridiction.

Where CERD experts refuse to accept reported figures in the examples above, it is on grounds of a generalization or truism explicitly rooted in the Committee's "experience." If objections are articulated as doubts about states' methods, they are not in fact *substantively* technical. What CERD members actually address, and what states are called upon to "fix," are their *findings*; their problem, one of *believability*. These statistical accounts make claims that the CERD finds unbelievable on basis of what the Committee already "knows" in general terms about discrimination.[150] As Mr. Lindgren stated in the 2010 review of El Salvador, "It used to be possible to say, 'Sure, there is discrimination – at my neighbor's, but not in *my* house!'" But now, he continued, the Committee understands that "unfortunately, it is *everywhere*." This is an oft-repeated point – indeed, a working principle – of the CERD's examination practice, even if

[150] As Aryn Martin and Michael Lynch (2009) point out, to discount anomalous outcomes on grounds of assumed measurement error is also often a way to stabilize and reinforce generalizations.

not one originating "in law." That is, it is not articulated as an *a priori* (for example, in the Convention), but is instead traced to unspecified empirical referents.[151]

The invocation of the empirical here underscores a context for periodic examination – a kind of background truth – that discrimination is ubiquitous. The point is to remind states what cooperation – or demonstrating their earnest obligated-ness – therefore requires of them. If they are to be recognized as having participated in good faith, they must render *some* accounts or admissions of what forms discrimination takes, and how it is confronted, in their countries. The CERD's requests for numbers, and allusions to thresholds of believability, may then serve in part as a "formalizing practice" (Lampland 2010), instructing states in one mode of enacting their obligated-ness: providing information that will extend and deepen the constructive dialogue. But as one CERD expert told me flatly, "Data do not speak for themselves." Neither does their increased presence in review tend towards resolution into standard formulae for measuring different dimensions of discrimination with certainty. After all, if it did, what use would there be for dialogue anymore?

Expert Practices of Reasoning and Regard

Having reviewed some salient features of the CERD's consideration of information – quantitative data in particular – I think it worth pausing to summarize this ethnographic material as a set of practices (and non-practices). First, the CERD does not impose upon states a permanent, uniform set of categories of information on which to report. Committee members draw on a wide range of sources, and though they cross-check and otherwise exercise discretion, there are no formal criteria for verifying information. Experts request statistical data

[151] My archival research on review dialogues confirms that this position is one that formed over decades of CERD evaluative practice. Throughout the 1970s and into the 1980s, it was common for CERD experts to affirm that there was no racial discrimination in a country or that the state had "successfully overcome" it.

disaggregated by race, ethnicity, and/or nationality, but determine whether to promote states' production of such data based on their foreseeable domestic effects more than their representational value. They critically interrogate the accounts presented to them, defer on proclaiming matters to be "proven," and articulate apparent problems as issues requiring further state attention. Virtually no information is considered superfluous to the dialogue, and the Committee expresses no hint that its members consider comprehensive knowledge a possibility. They deploy the Committee's personal and collective experience in interpreting the information they receive, in no way disavowing their own subjectivity as experts, even in relation to purportedly objective data.

I do not recognize in these practices a guiding orientation towards surmounting factual uncertainty, or a coherent regime for pronouncing "the truth." They do not reflect principles for categorizing, segregating, and purifying forms of knowledge and reasoning that make up the core of modern technologies for "discovering" what is true (Latour 1993). Nor do they even reflect more qualified commitments to objectivity and technical criteria evident in many "cultures of expertise" that permit occasional forays into anecdotal, experiential, or other un-systematized knowledges. Douglas Holmes and George Marcus's (2005) research provides an example of such a milieu in central bankers, who carve out niches for deploying experiential knowledges, but only under exceptional circumstances and to buttress a primary base of superordinate technical knowledge. If the CERD employs any such distinction, it is not nearly so stark, and at least the members who I interviewed are not conscious of it. Indeed, it is not technical know-how, but the particular capacities to intuit and infer derived from their experiences that qualify CERD experts for their role. Thus to degrade experiential knowledge, or judgments rooted in it, is contrary to the frame through which experts operate.

The reasoning the CERD employs in its evaluation practices is much closer to those Twining ascribes to judges in the common law system. Echoing earlier legal realists, he suggests that judges' processes of reasoning and inference are less rule bound than they admit, conceiving basic facts and ultimate conclusions through what Twining describes as "a stock of knowledge" (1997:73; cf. Frank 1970). Such "stocks" consist of "ill-defined agglomerations of beliefs… a complex soup of well-grounded information, sophisticated models, anecdotal memories, impressions, stories, myths, wishes, stereotypes, speculations, and prejudices" (1997:74). A stock of knowledge is the messy whole of epistemic resources that an individual or collective relates, and is therefore prepared to apply, to a certain domain at a given moment. It is with reference to its complex mixture of beliefs from across various degrees of reliability and lucidity that sense is made of newly rendered accounts. Terminologically and conceptually, here one must be reminded of William James. James spoke of "stocks of truth" (1978a:34-35) as the set of *sufficiently verified* but *provisional habits* of belief (104-106) that shape what further ideas might be believed. These stocks absorb new information in whatever form requires the least alteration of extant beliefs, with ideas about any "new fact… stewed down in the sauce of the old" (1978a:82-83).

This mode of evaluation resonates in many ways with CERD practice – its epistemic *bricolage*, its pragmatic standards of the sufficient and the provisional, and its faith that one context can be illuminated by general patterns found in others.[152] Periodic examination does not result in findings of guilt or innocence, but this reasoning does culminate in a type of "outcome." Committee members communicate whether they are satisfied with the information offered on an issue by either continuing to pursue its discussion or letting it come to an end. As former-CERD

[152] Indeed, these characteristics also share affinities with ethnography, which, like periodic examination, is practiced by inquirers aware of the *partiality* of their "truths" (Clifford 1986).

member Rüdiger Wolfrum (1999:508) has written, pressing a state for "further information" is a way that the Committee delivers an opinion, even "a kind of verdict." Repetition and reiteration are then the CERD's means of affirming doubt or dissatisfaction concerning accounts of an apparent manifestation of racial discrimination in a country. These practices tell the state that the issue in question remains unsettled. Such a "*kind of* verdict" does not actually "speak truth" (*veir dit*) of the issue, but instead confers an impetus upon the state to devote attention to it so that, when the matter continues to be probed in subsequent reviews, the state will have more assuring information to report.

The most formal means of such reiteration are Concluding Observations, a written document meant to create continuity from one examination to the next – "form[ing] a seamless cycle" of review (Halme-Tuomisaari 2013:338). My research finds that the CERD's formulation of Concluding Observations conforms to the larger pattern of review practices I have discussed. That is, they do not adjudicate competing claims, authoritatively state whether rights have indeed been violated, or speak of legally binding decisions.[153] Instead, Concluding Observations inscribe the principal issues from a dialogue that remain outstanding, and for which the CERD will expect the state to account in its next report. The language the CERD utilizes here is one of "concerns" or, where these concerns are grievous or long-standing, "regret" about the apparent persistence of problems. Following an exceptionally contentious review of Australia, for example, the word "regret" was used 11 times over six pages of Concluding Observations (UN doc. CERD/C/AUS/CO/15-17: paras. 9-26).

For each "concern," the CERD also makes a recommendation, calling on the state to further investigate an alleged problem and/or take specific remedial actions. Framing

[153] International law scholar Michael O'Flaherty (2006:36) points out that, as dialogues are non-adversarial, "To confer a compulsive quality to the subsequent findings by the treaty body would be inconsistent with this model."

Concluding Observations in the relatively soft language of concerns, regrets, and recommendations balances goals of promoting states' continued dialogue with the CERD *and* inducing concrete improvements in the implementation of the Convention. It is then in this double sense that Kelly (2011) is correct to characterize treaty bodies' work as strategically oriented towards the future. Like the dialogue, Concluding Observations must impel state action, but also perpetuate the review relationship. The CERD must therefore be pragmatic more than revelatory, leveraging information so as to push states as productively as possible, but without going "too far."

Indeed, this notion of "going too far" is central to why the CERD conducts evaluation without a discourse of objectivity or systematic practices of veridiction, and more broadly, in a manner that some might see as lax. Though submitting reports is obligatory for treaty-ratifying states, a state that is no longer willing to endure the CERD's scrutiny is unlikely to face concrete consequences if it withdraws from the review cycle. Even the threat of "reputational" damage is slim, as simple failure to submit reports is not the type of (in)action that attracts public or media attention. Indeed, throughout its history, the CERD has seen states' cooperation in the reporting procedure wax and wane relative to its perceived necessity and intensity (see Banton 1996). The Committee therefore recognizes that states' foreign ministry personnel must be motivated to continue participating in review. This entails among others things receiving achievable recommendations upon which they will later want to report their successes. Being harshly confronted by unassailable, objective truths does not fit this model. Therefore, the CERD's style of reasoning not only reflects members' individual training and proclivities, and the limitations wrought by their sporadic work as a Committee; it is also mediated by their keen awareness of the fragile and indefinite nature of the social relations required for their work.

The CERD's inquiries into formally binding international-legal obligations are thus shaped by periodic examination's character as a cyclical process, always under construction and always without guarantees. As Bill Maurer shows in his research on the regulation of offshore financial institutions, reproducing the relations – or "regard" – that ensure cooperation in reviews often requires aiming inquiry just below "the curve of truth" (Maurer 2005:490). CERD members appear to recognize this, seeking to spur state action against discrimination – and the need for further dialogue – without exhaustively interrogating state delegations to the point of diminishing their regard for the Committee. A concrete example can be drawn from the 2010 review of Morocco, in which the CERD's opening round of questioning delved into micro-level details about the state and society that drew a conspicuously cold response from the head of delegation. Sensing the risk of alienating the state party, the CERD's then-chair Mr. Kemal apologetically noted the "exacting and hard-working" personalities of his colleagues. "If we do not go into depth," he explained, "members feel that they are not doing their homework… I would not worry too much at their searching and detailed questions." Though unusually frank, this statement is entirely consistent with review practice. If the CERD must always prompt more discussion, it must also keep the dialogue from becoming too laborious for a state to bear. This is the balance through which the CERD sustains its iterative process for influencing states' work to eliminate discrimination. It does not leverage information as immutable because doing so would contradict this strategic application of measured authority.

Finally, the CERD's pursuits of knowledge and regard also come into conflict over how it should engage with NGOs. The proper role of NGOs in review procedures is in fact a contentious issue across the UN human rights treaty body system, and has been debated extensively in the reform process known as "Treaty Body Strengthening" (see Egan 2013).

Because human rights treaties are agreements among states – and authorize oversight as a committee-state relationship – many governments see NGOs as unwelcome interlopers in the review procedure. At the CERD, few states take the position that *all* NGO involvement subtracts from states' relationships with the Committee, but many express disapproval when the Committee cites information from sources they consider belligerent to the governing administration or regime. Some CERD members insist that to raise information in the review dialogue is not to affirm it, but rather to solicit, as Ms. Dah put it in 2013, the state's "point of view on the NGOs' perspectives." Others, however, acknowledge what repetition in the dialogue represents, and occasionally reprimand their colleagues for repeating information provided by certain NGOs, for example, those affiliated with separatist or autonomist movements. To use this information is imprudent not because it is necessarily bad for *knowing*, but because it is bad for *relating*. Though reviews are strongly influenced by information from NGOs, the CERD regularly reaffirms to state delegations that states have been, are, and will continue to be its primary partners.

CERD members further reiterate in every dialogue, usually several times, that periodic examination is about cooperation, shared objectives, partnership, friendship, and assistance. The CERD reinforces this, and the non-adversarial character of review, by employing careful, measured language in any public statements it makes about states. This practice belies the common idea that human rights strategy (outside of courtrooms) revolves around "naming and shaming." A successfully executed review in fact never makes denunciation its primary product, as denouncing, along with the pronouncement of truth more generally, is an action likely to silence. The CERD therefore has no interest in it, as silence is the only condition that assures its work will not have a future – its iterative authority lost.

Conclusions

I approached my fieldwork at the CERD anticipating very different findings than those presented here. Indeed, I went to Geneva searching for the CERD's "evidentiary protocols" – as I wrote in a funding request – and expecting to find the experts and their state interlocutors taking statistical indicators at face value, using them as trumps, and developing standard auditing grids around them. In short, I thought it likely that quantitative data would have the kinds of epistemological and political effects that existing critical studies of indicators foretell. If we expect this, it may be that we are too eager to see numbers in periodic examination fall into line with how quantification and measurement have worked in other empirical cases. That is, we already "know" in general terms – as through pivotal studies by Mary Poovey (1998), Theodore Porter (1995), and others – the narrative of numbers: what drives demand for them, what they do, how they are used, and why. Our reasoning, in this sense at least, parallels what I have demonstrated is the CERD's.

My findings however affirm that there are many ways to quantify, reasons for doing so, and modes of reading and "speaking" numbers (Espeland and Stevens 2008; Lampland 2010). That is to say, first, that there are many ways in which people and numbers *conspire* to produce meanings (see Ballestero 2012; Maurer 2008). Adopting this notion of co-production is a promising "middle way" between contrary assumptions that *either* people make numbers represent *or* numbers impose their meanings – or convey an aura of truth – upon people (see Latour 2010a). Secondly, it is also to say that people and numbers do different kinds of work together, and always in relation to their circumstances and conjunctures. We must be mindful to look for not only numbers' representations, but also their contextual instrumentalities (see Lampland 2010) in the "snapshot moments" of meaning and doing in which they are deployed

(Guyer 2010). If *number* as an abstract category of knowledge has been socially situated as objective or impartial (Poovey 1998), numbers do not necessarily maintain these ascribed characteristics as they circulate in social practice, including that of law.

This chapter has used detailed ethnographic material on concrete actors and practices at the CERD to pursue current theoretical questions about how indicators are presented and received in human rights oversight. I have shown that the CERD does not evince a logic of scientism and is in fact averse to asserting conclusive truths. These findings do not fit our expectations concerning the relationship between epistemological and legal authority, namely that leveraging the former enhances the latter. Instead, the "soft-ness" of law in this context – and its resulting sociality – actually seems to *soften* what might otherwise appear as "hard facts." However, the message is not simply that soft law makes for deferential evaluative practice. As demonstrated above, the CERD does not accept just any state accounts – including statistical data – as good-faith contributions to oversight, or as evidence of the state's obligated-ness. It disregards those that it finds implausible, on basis not of standards of evidence or truth, but of experiential knowledge and inference. Maintaining uncertainty and casting doubt, the CERD mediates its epistemic work in conformity with a practical imperative: to sustain relations with states that advance its ability to guide them incrementally and iteratively towards effective action against racial discrimination.

Having noted throughout the chapter the commonalities among human rights treaty bodies' methods and social relations, I suspect my findings are not unique to the CERD. This is of course a question for further research. My findings also offer insights of more general interest to anthropology. While anthropologists know a great deal about how certain forms of knowledge become socially endowed with epistemological privilege, we know less about what

conditions make enacting their authority infeasible or undesirable. Though not the first to find rationalized, technical information made semiotically unstable in social life (Hetherington 2011; Maurer 2005; Riles 2006b), this article has explored authority-limiting conditions in a particularly hard case for indeterminacy – one involving numbers in a context meant "to expand the realm of law" (Banton 1996:305).

Whether, and for whom, the review procedure's Concluding Observations have truth *effects* may also be a question for further research, but here I have shown that the CERD neither makes nor purports to make truth *claims*. The Committee does not treat doing so as a boon to its effective authority because conclusive "truths" may undermine the unstable cooperative relations through which that authority is negotiated and constructed. Where numbers are incorporated into review, they do not transcend these relations but become elements within them. In this particular context of international-legal governance, they, like other tools for conveying "truth," could constitute a liability. CERD members thus calibrate their review practices to inquire in ways that generate a degree of revelation, but above all, sustainable relations.

CHAPTER 6

Participation and State-ness in Costa Rica's Anti-Discrimination Policymaking Process

The great promise of Costa Rica's national action plan was that it would make things clear, concrete, unambiguous. It would finally bring consistency to the state's application of international norms on racial discrimination, and spell out with some precision who was responsible for what in the project of eliminating it. Leaders of the document's drafting team regularly described their eventual product as akin to a kind of "guide," or manual; it would provide explicit instructions to colleagues across state institutions in how to realize the rights of the three population classes it contemplated: Afro-descendants, indigenous peoples, and migrants and refugees. Further, should members of these populations encounter bureaucratic intransigence, they could wield the action-plan document as an authoritative tool for securing what was guaranteed them. This was the vision drafters enunciated over many months prior to the policy document's completion in September 2013 – both in meetings with civic and community leaders, and before the Inter-Institutional Human Rights Commission, the state entity of which the drafting team was a "sub-committee."

But as "concrete actions" go, those ultimately contained in the *Action Plan for a Society Free from Racism, Racial Discrimination, and Xenophobia, 2015-2018* turned out surprisingly indecisive, and in many cases intangible.[154] Many of the prescribed "actions" are in fact calls for specific state institutions to design further plans, strategies, or even just proposals, or to conduct more targeted internal evaluations. While some of these calls refer to specific issues in need of attention (the revitalization and strengthening of indigenous languages, for example) or programs

[154] The title of the Costa Rican action plan in the original Spanish is: *Plan de Acción para una Sociedad Libre de Racismo, Discriminación Racial y Xenofobia, 2015-2018*.

to be improved, many more assign to institutions a generic task of designing inclusive, human rights-based approaches to whatever subject matter those institutions treat – be it housing, health, telecommunications, or sanitation. By drawing attention to this content, I do not mean to discredit or diminish it. But it is not very much "like a manual" after all, doing far less work than its drafters envisaged to resolve ambiguities and close spaces of government interpretive discretion around those "generous but vague norms set at [the] international level" (De Schutter 2010:474).

All public policies have histories. By now this point has proven robust and resonant enough to have been accepted across a variety of fields of policy scholarship. Anthropologists have been among those to emphasize the social embeddedness of policymaking, but also quickly advanced beyond this tried-and-true theoretical insight.[155] Employing various ethnographic strategies, anthropological research has since focused on tracing how contingent "apparatuses" or "assemblages" of discourses and practices, epistemic and normative principles, and human and non-human agents frame, enable, and give effect to policy (e.g. Feldman 2012; Greenhalgh 2009; Shore et al. 2011; see further Wedel et al. 2005).

This chapter presents an ethnographic study of anti-discrimination policymaking in Costa Rica. It is based on fieldwork organized around the work of the state actors who led the action-plan project from its inception to its eventual approval and adoption by (presidential) executive decree. Though these state policymakers are the focal point of my ethnographic analysis, tracking their everyday work demonstrates the highly consequential roles other governmental, inter-governmental, and especially non-governmental actors played in the process as well. Indeed, the demands upon the principal policymakers to marshal discourses, practices, and

[155] While acknowledging the salience of this insight, Bill Maurer (2004) was one of the early voices to argue that anthropology's engagement with modern institutions must move beyond it.

occasionally material objects in order to negotiate, construct, and re-constitute myriad social relations among these actors are central to the story I tell. Indeed, they are central to the way in which this policymaking enterprise "has a history" in the sense in which that phrase is typically meant.

In detailing the unfolding of that history, one of the points I emphasize is its divergence from the narrative of the policymaking process written into the structure of the policy product itself. In point of fact, we should be talking of not one but *two* products, as the creation of the action plan against racism, racial discrimination, and xenophobia gave birth also to that of a *national policy* on the same.[156] This sequence of events itself offers a good illustration of the disjuncture between the historical process and the subsequent narrativization of policymaking to which I refer. Though the action-plan project expanded into the formulation of both a plan and a policy, their form and text represent the two as though the former is a logical and historical consequence of the latter.[157]

More broadly, the structure of the policy and action plan narrativizes the development of their content as a rational, linear, and deductive process. This begins with laying out the authoritative sources of international norms, first and foremost the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), followed by other treaties on human rights and various manifestations of discrimination. It then provides a lengthy accounting of the country's "current situation" using social and economic data broken down by ethno-racial groups (and further by sex and age) that emphasize inequalities across groups and also

[156] As both products were created through the same process and ultimately completed at the same time, I use "action-planning process" and "policymaking process" interchangeably.
[157] In the lexicon of the policymakers with whom I worked, a "policy" is to set out broad principles and guidelines for directing public decision-making around a particular subject matter, while, as the opening paragraph of this chapter explains, the policy genre of the "action plan" is to delineate more precise "actions" flowing therefrom.

occasionally relate groups' outcomes directly to rights guarantees. This accounting is supplemented by qualitative "findings [*hallazgos*]" from policymakers' dialogue with civic and community leaders. All of this leads up to the statement of the Costa Rican state's anti-discrimination policy proper, and subsequently the action plan for implementing it. The clear, and at times explicit, message is that each of these pieces are linked in a sequential, causal chain. It is a chain that perfectly mirrors the logic of the national action planning approach to norm implementation promoted by the UN human rights system (see OHCHR 2002; and Chapter 3): Global norms are held up against existing empirical realities and, on their bases, translated into policy terms that are locally/nationally-relevant and specific, and from which tailored, concrete action steps are in turn derived.

An anthropology of policy has been posited largely as a corrective to all manner of such just-so narratives about policy's linear, rational trajectory, often taken for granted by mainstream policy-studies scholars and policy professionals (see Shore & Wright 1997; Wedel et al. 2005). This chapter attests that long-term ethnographic immersion can illuminate dynamics guiding the course of policy formation – prior to its *ex post facto* rationalization – that even the most astute critical-interpretive analyses of policy text would miss. One can easily imagine, for example, an analysis of Costa Rica's anti-discrimination policy and action plan that carefully parses the weaknesses in its definition of the problems, in how it relates these problems to international norms, and its derivation of the "actions" it posits as solutions to them. Such a textual approach might make valid points, but they will not tell us much about what actually made policymaking unfold as it did. Further, these points will likely misattribute criticisms of the product to inadequacies in the policymakers' reasoning or will, while reinforcing the idea that policymaking is indeed linear and deductive for having taken the terms of the process for granted.

My ethnographic account makes clear that the policymaking process in Costa Rica did not advance by way of the ideal steps UN actors have outlined for how states should translate human rights normative commitments into actions. As anthropology of policy would foresee, an existing "social" and the relations therein made demands upon the translational process that had nothing to do with this ideal's deductive logic. These relations include those among actors within individual state ministries and other agencies, between and across different agencies, and between institutional and civic or community actors. But I would underscore a particular quality of the "social labor" in the process that makes the policy story I present about more than mere social embeddedness. What I show in this chapter is not just policymakers attempting to navigate a challenging social terrain, to negotiate between divergent interests, or to wordsmith their way to "consensus." In attempting to make administrative policy that enacts international legal commitments by and of "the state," these policymakers find themselves having not only to accommodate social actors and relations, but also to *constitute* them.[158]

Specifically, policymakers must enlist and cultivate actors to play out the roles in terms of which the policy project has been scaled and framed in line with international norms, and doing so becomes part of the policymaking process. These roles include most crucially those of an obligated state whole, and a participating civil society. I show that the drafting process becomes increasingly guided by dual and mutually mediating aims of creating both the policy itself and these social constituencies that go along with it. These efforts demonstrate that Costa Rican policymakers themselves recognize that these units are not nearly as consolidated as they are depicted by the policy form and process. Further, they also recognize that policy will not do

[158] Anya Bernstein (2017) has recently made the case that, while policy is portrayed most often as the work of legislatures, administrative agencies are highly consequential policymaking worlds with rich potential for social research on bureaucratic agency, legal interpretation, and public accountability.

the *work* of anything rightfully befitting of that name if they do not dispose social actors beforehand to treat as real the roles and relations policy presumes.

The Anti-Discrimination Policymaking Process: A Brief Historical Overview

Before proceeding to the main body of my ethnographic analysis, I think it will be helpful to the reader to grasp some basic historical coordinates of the policymaking process I will be discussing. To begin, it makes sense to think of this process as having two stages, which correspond to the years 2012 and 2013. The first stage – that of 2012 – was carefully and methodically planned out in advance; the second was improvised from beginning to end. Indeed, the second stage only existed because of, and in evolving response to, recognized shortcomings and failures in the first year's work.

During that first year, the project was under the direction of a few officials from Costa Rica's Ministry of Foreign Relation (MRE) and their benefactor-advisors at the Central American regional office of the UN High Commissioner for Human Rights (OHCHR) in Panamá. These officials hired a temporary consultant to conduct much of the day-to-day work of creating a draft of the action plan, which was to be based largely on a nation-wide dialogue with the communities whose rights were to be affected. Specifically, the consultant was responsible for conducting a series of "participatory workshops" through which such communities could provide direct input and proposals for the action plan's content. These would be incorporated into an emergent draft document compiled also on basis of one-on-one and small group meetings with black and indigenous intellectuals; other states' human rights action plans; and recommendations from the UN Committee on the Elimination of Racial Discrimination's 2007 review of the country. The product of this synthesis would then be worked over, revised, and

amended by the state's Inter-Institutional Human Rights Commission in its monthly meetings at the MRE headquarters.

All of this work was initially envisaged to culminate in a "national workshop" in San José, in which civil-society organizations would give a final round of input. The plan would then need only to receive state-institutional approvals in order to be complete. But when the national workshop was held in December 2012, it yielded a deep and thoroughgoing critique of the conception and form of public participation in the process. This forced a decision: The MRE and Human Rights Commission could either stand by their work to date, in defiance of indigenous and Afro-Costa Rican leaders' repudiation of it; or they could embark upon a new effort to secure these constituencies' confidence and support.

To their great credit, the leaders of the action-planning project took the criticisms they received in December 2012 with much seriousness, choosing to use them as guides for embarking upon a second stage of public participation. This second stage enjoyed only minimal financial support from the OHCHR, whose funding allocation apparently reflected the view that one year was the appropriate timeframe for achieving "participation." This left the Costa Rican project leaders with only a bare-bones budget for 2013, but also gave them more latitude to "re-direct" the course of policymaking as they saw fit. The Human Rights Commission began by empowering a smaller sub-committee, or working group, of its members to meet more frequently and make decisions about the action-planning project's path forward. Leaders soon sought and received permission to expand the project from the drafting of merely a national action plan to a policy and action plan, which they hoped would have a more enduring impact on state activities.

Just as importantly, the sub-committee launched a new open-ended and multiplex round of public engagement, organized primarily around small-group visits to black and indigenous

communities across the country. Rather than a consultant, the sub-committee invited Carlos Minott[159] – an expert in the UN human rights system with deep roots in Afro-descendant organizing and advocacy – to join these "tours [*giras*]." Minott would soon also be incorporated into the drafting team, and, like state-institutional members, took responsibility for drafting certain sections of the policy's text. The sub-committee worked on the *National Policy for a Society Free from Racism, Racial Discrimination, and Xenophobia, 2014-2025, and Its Plan of Action* until mid-October 2013, when the MRE circulated a final draft to high-level officials of government ministries and other agencies. After receiving all necessary approvals across these institutions, and up and down the ranks of the MRE and the Ministry of National Planning and Economic Policy (MIDEPLAN), the government's official daily gazette (*La Gaceta*) reported the policy and action plan's adoption by decree of then-President Laura Chinchilla on February 20, 2014. Again, this section has been meant only as a brief overview of the anti-discrimination policymaking process, which I hope will orient the reader to the timeline and some relevant reference points in the analysis that follows.

Who Trusts Assessment?: Emic Critiques of Diagnostics and Evaluation

For many years now, assessment phenomena have drawn considerable interest from critical social scientists – and perhaps especially anthropologists – typically under the rubric of "audit culture" (see Chapter 1). Scholars have documented and analyzed extensively the growth of discourses of efficiency/ies, transparency, and accountability, and the global proliferation of instruments of evaluation promising to enhance them. But while these scholarly analyses often reveal their *authors'* vexation and lack of confidence in formal assessment systems, rarely does

[159] Given that his participation in the policymaking process in the role I describe is documented in the policy itself, and because I have dedicated this dissertation to him, I choose to use the late Carlos Minott's real name here rather than a pseudonym.

the reader get a sense for how widespread the perception – and unpopularity – of assessment's ubiquity actually is. In my fieldwork in Costa Rica, I was struck by the pervasive exhaustion, frustration, and even antipathy towards evaluation by members of each of the principal sectors involved in elaborating the anti-discrimination policy and action plan. This exhaustion was directed both at actual evaluations and at the very idea of evaluation, or of the "diagnostic" or diagnosis (*diagnóstico*). I say that this distaste was striking because it was prevalent even among those whose interests would seem to be served by the "diagnostic" in question. The reasons behind actors' various aversions to evaluation are crucial to understanding the course the policymaking process would ultimately take.

Critiques from State-Institutional Subjects of Evaluation

The human rights action-planning model establishes that a plan should begin with assessment, specifically by way of a baseline study. In principle, these studies form a discrete stage in the action-planning cycle, in which "pressing human rights problems," "shortcomings," and "deficiencies" are identified (OHCHR 2002:61). Since "the state" is the subject that ratifies human rights treaties and thereby assumes a legal commitment to uphold them, "it" (the state) is by extension the subject of this assessment. That is, the shortcomings in some sense "belong" to the state: Their being registered implicitly "puts them on the state's account," whether or not there is direct attribution of fault for, or authorship of, the problems in question (see Ricoeur 2000:esp. 13-15). This can be enough, as the OHCHR (2002:61) acknowledges, to make the baseline study a "sensitive issue."

So it was in Costa Rica. But interestingly, this sensitivity emerged even apart from – or on more registers than – the prospect of state actors and institutions receiving blame for unfulfilled human rights. In interviews with several state Human Rights Commission members,

my questions about how best to identify manifestations of racial discrimination in Costa Rica quickly led to broad-ranging commentaries on “diagnostics” more generally. These state functionaries found it important to situate their orientation towards the particular policy process I was studying within their experience of what they saw as a spate of institutional evaluations. Though they agreed that state institutions should deeply understand and clearly define problems before purporting to address them – and who wouldn’t? – their experiences led them to view activities coded as “diagnostics” with suspicion.

Overall, the state actors with whom I discussed evaluations of state-institutional programs had come to recognize these as exercises conducted *about* them, but neither fundamentally *by* them, nor to their edification. Several stressed that a project involving a “diagnostic” was almost always one driven by UN- or other international-agency funding – and with strings attached. Typically, one of those strings was the installation of a contracted consultant in a position of epistemic authority. Rather than channel funds to creating diagnostic capacities within the state itself, one interviewee told me, UN agencies marginalize public functionaries from playing an important role in assessment. “They do not want us, the little dummies [*nosotros los tontitos*], carrying out the diagnostic,” he said acerbically. Instead, the role for state personnel, he continued, is to keep their heads down and occupy themselves with their tasks.

Another equally critical line of analysis targeted diagnostics’ tendency to unduly privilege the perspectives of NGOs. A member of Costa Rica’s Human Rights Commission who I will call Rogelio offered a particularly sophisticated version of this position. Rogelio is a high-ranking functionary in a state institution who has extensive knowledge of state human rights activities, including those of the Commission. He closely observed and supported the anti-discrimination action-planning process, but mostly from the sidelines rather than in any kind of

leadership capacity. In my interview with him, Rogelio expressed his frustration with how the rise of state-programming evaluation provides NGOs with the packaging to legitimate and elevate what often amount to shallow critiques and complaints. These evaluations always involve forums between NGOs and state institutions that, from his perspective, provide an outlet for grievances more than any new insights for improving state services. "A good state knows what its problems are," Rogelio asserted. "A good bureaucrat knows which are her limitations." This knowledge comes from doing the work – including, crucially, interacting with the public – day in and day out. NGOs simply are not equipped to know what state institutions really do, and even less to understand the conditions and constraints under which they to do it. On this point, Rogelio echoed numerous of the state functionaries I interviewed.

But Rogelio went further, arguing that the boom in the notion of assessment also creates a perverse incentive for NGOs to direct their work towards its funding streams at the expense of their own missions. Non-state actors have their own responsibilities, he argued, to bring about social change and to fulfill human rights. But they choose not to contribute directly when they can get funds to be what Rogelio said they call "pressure groups" – to "go to the UN and tell them how bad the Costa Rican state is." Here Rogelio opened a larger monologue, locating the international funding of evaluations of state programming within a broader NGO industry that international agencies have made a competitor with public institutions for funding support. The digression was not without bitterness, but nor did it seem motivated by simple envy or institutional self-interest. Rather, Rogelio was making a principled critique of breakdowns in the material capacities of public institutions, and the weakening of the nexus between public funding, administration, and accountability upon which they traditionally rest. Suffice it to say,

for this official – vocal about his commitment to an ethic of self, and of state, as public servant – the topic of diagnostics churned up a lot of feelings.

Finally, another Human Rights Commission member, Angelica, explained that, whether a diagnostic is led by a consultant or NGOs, the very concept tends to frame investigative work in a way that can alienate state-institutional personnel. The understood purpose of a diagnostic is to *uncover problems*, Angelica stressed, which can mean failing to recognize positive work and programming already underway. This type of commentary too was common among state personnel, who generally saw assessments as fault-finding exercises that did not give credit where it was due. But Angelica's point went deeper than a gripe about praise withheld. She proceeded to explain that state programs for vulnerable populations or international human rights are generally the first to be slashed when finances get tight, and always need as much institutional reinforcement as possible. Something like an action plan offers such reinforcement, but not if its baseline study is uninterested in successful or emerging programs. In this sense, Angelica said, state personnel see these studies as disrupting momentum where it needs to be buttressed, creating ruptures in programming where they want continuity.

Thus, many Costa Rican state actors approached anti-discrimination policymaking already put-off by assessment for numerous reasons: It makes them feel disempowered, and that their professionalism and/or competence are in doubt; it siphons away funding that the state could put to other uses; and it highjacks the programming agendas for the issues it treats. Of course, no one likes to feel "diagnosed" either – to be told what one's problems are, or to have someone else "speak one's truth," so to speak – and this certainly fed state actors' aversions as well. But I find it remarkable that my interviewees took *institutional*, as opposed to individualized, evaluations so "personally" – that they stirred such passions. Aren't these just

bureaucrats, grinding out the work of bureaucracy? Rogelio's comments are particularly noteworthy for their idealistic stance on the role of the public sector, and their insightful critique of neoliberal competition for and redistribution of state-ness and "state effects" (Trouillot 2001; see also Ong 2000). He exemplifies the subject position of "state actors against neoliberalism" – one whose logic is not hard to fathom, and which I had encountered previously in research in Colombia and El Salvador, but that is rarely given voice in scholarly critiques of the "neoliberal state."

Critiques from Indigenous and Afro-Costa Rican Leaders

Even though the state was indisputably the object of intervention in the anti-discrimination policy process, black and indigenous Costa Ricans struggled to shake the sense that it would be *they* who were studied, *their* faults – and "truth" – diagnosed. Thus, these non-state participants also brought distrust of, and exhaustion with, diagnostics into the policymaking process. For members of marginalized ethno-racial communities to be suspicious, reluctant, or outright resistant to being objects of study vis-à-vis dominant actors is of course more than justified. More scholarship than is practical to cite demonstrates that colonized peoples – and perhaps especially Amerindian- and African-descended peoples – have regularly been subjected to regimes of knowing that facilitate their being devalued, exploited, subjugated, made ill, tortured, and killed. As a result, some scholars celebrate where they see colonized or "state-less" people evading government documentation, data collection, and other processes that make them more "legible" to, and for, government (esp. Scott 1998, 2009; see also Chatterjee 2004; but see Coutin 2000; Coutin & Yngvesson 2015; Jansen 2015; Greenhalgh 2004; Villaveces-Izquierdo 2004).

This does not tend to be the strategy of indigenous and black Costa Ricans, whose apprehensions about contemporary diagnostics are not nearly so dire. Nonetheless, many of those I met or observed in meetings expressed frustration that studies launched to improve programs or policies targeting them did not treat them fully as *subjects* rather than objects. Specifically, they argued that consultative or participatory components undertaken with their communities were limited to the collection of "raw" information on needs, which would only subsequently be sorted, synthesized, and analyzed by someone else. Their voices were heard, but in a circumscribed epistemic space oriented to the accumulation of data points. The important work of using these to define more macro-level problems and, crucially, to make decisions about concrete steps for solving them was reserved for an elsewhere to which they were not invited.

The figure of the consultant was usually at the center of these black and indigenous Costa Ricans' criticisms too, and for many of the same reasons. Like state personnel, they take umbrage at knowledge-production processes that imply that they are either unqualified for the analytical work, or irredeemably biased. In Costa Rica at least, the idea of a "third party" did not offer reassurance to these populations, as I show below. Additionally, though a consultant is typically hired as an expert on the subject matter at hand – be that diabetes, cartography, or discrimination – for those involved, the diagnostic can feel like another in a series of occasions in which they find their fate in the hands of someone who is not *of* them, but who acts as an expert *on* them.[160] The consultant is seen as having the "last word," and this power is

[160] It merits acknowledging that historically the encounter with the anthropologist has been one of these occasions. The consultant figure here replays that of the anthropologist-nativist that Trinh T. Minh-ha (1989:67) critiqued as always embedded in a discursive structure that creates "[a] conversation of 'us' with 'us' about 'them'… in which 'them' is silenced… Subject of discussion, 'them' is only admitted among 'us,' the discussing subjects, when accompanied or introduced by an 'us.'"

unaccountable – due to both the consultant's privileged epistemic positioning, and her invulnerability to public scrutiny, protest, or removal.

Indigenous and black community leaders were also keenly aware that when studies are conducted in their communities, someone gets paid, and rarely does that someone look like them. Indigenous people in particular spoke of frequent, short-term visits from various – mostly undifferentiated – sorts of researchers ostensibly seeking information to help their communities in one way or another. One elder indigenous leader told me that diagnostics and other similar studies frustrated him and his community because the outcomes may lead to powerful institutions acknowledging, "Poor them [*pobrecitos*]," but "we don't [ever] move beyond 'poor them' [*de 'pobrecitos' no pasamos*]." His impression was that many people are able to secure funding "to help *los indígenas*," but "they get funds… and we continue on the same [*seguimos igual*]."[161]

One prominent Afro-Costa Rican intellectual explained in perhaps more unexpected terms why leaders of black communities are likewise unenthusiastic about the prospects of a "diagnostic" on issues like racial discrimination. His fellow scholars and activists, he said, did not see struggling to define the details of such problems as a good use of limited political openings. From his perspective, the problems facing Afro-Costa Ricans are largely well-known. This of course flies in the face of a pervasive discourse in Costa Rica (and elsewhere) about discrimination's "invisibility." The interviewee said that when Afro-Costa Rican leaders see a project like an anti-discrimination policy on the national agenda, they know that they must "seize

[161] More than a bit self-conscious by the time this community leader spoke of feeling like a "lab rat" for the second time in what would be a two and a half hour-long conversation, I took the opportunity to reiterate that I in no way purported to be "diagnosing" his community's problems, nor would I profess to "know its reality." If I was diagnosing anyone, I told him, it was those who conduct the diagnostics; I interviewed him in his capacity as an expert on them. He flashed a smile and nodded his head, as to say, "I know – don't worry."

the time," so to speak.[162] Like the "field slave," in his words, who sees the master's house on fire – making clear reference to a famous speech by Malcolm X (1965) – they knew that such opportunities were rare and fleeting. They would not squander them ensnared in squabbles over the "current situation," but instead favored advocating concrete solutions swiftly and purposefully.

Thus, part of the backdrop against which the anti-discrimination action-planning process was launched was a widespread sense of mistrust and reluctance about the foundational element upon which such planning is to be built. Though, as I have just shown, its rationales differed somewhat across groups, this general ethos was shared by the main protagonists, and rooted in each groups' past experiences. Though I doubt the project's leaders at the MRE appreciated the full breadth of misgivings about evaluation or "diagnostics," they knew enough for it to impact significantly their approach to the policymaking process. The next section shows how the MRE sought to accommodate in particular the doubts of the action plan's intended beneficiary populations – Afro-descendants, indigenous peoples, and migrants and refugees – and how both policymakers' and their non-state counterparts' critical engagement with the notion of "participation" shaped the policymaking process.

Year 1: Form and Scope of Participation, and its Discontents

The anti-discrimination action-planning process was conceived from its inception as one that would be multisectorial and participatory – key qualities prescribed for all state human-rights efforts in the twenty-first century. MRE project leaders were thus eager to show prospective "civil-society interlocutors" – principally Afro-descendant and indigenous activists,

[162] In this case the allusion to a classic statement on black liberation from the United States (Seale 1970) is my own. But keep reading.

intellectuals, and organization leaders – that the project would meaningfully incorporate their voices, and would not be another waste of time as some feared. Part of their efforts in this regard was to be very explicit from the outset: They were ready, and indeed *wanted*, to hear proposals, demands, and *solutions* from indigenous and black communities – not just problems. When the MRE deployed the project's consultant to these communities, it was with instructions to be clear in soliciting such presumably more-empowering types of input.

From very early on, then, Costa Rican policymakers considered untenable the action-planning model that begins with a baseline inquiry that discovers unknown problems, the identification of which points to corresponding solutions conceived only on those problems' bases. Instead, the proposing of actions to be taken against discrimination could happen independent of or concurrent with the identification of problems, and throughout the policymaking project. This is significant as a departure also from one of the cornerstones of the modern ideal relationship between science (or "evidence") and policy – the temporal separation between description and prescription. As Alain Desrosières (1998:9) explains, in said ideal, "It is because the moment of objectification [of knowledge] can be made autonomous that the moment of action can be based on firmly established objects" (see also Desrosières 2009:314-5). Here we find one of those "purifications" the promise of which, as Bruno Latour (1993) argues, is part of what constitutes "the modern." But if, as Latour says, we have never been modern, perhaps we should not be so surprised when the promise falters in practice, and epistemological demands and social ones, as well as imperatives to know, to do (or "make do" [Latour 2010a]), and to improve, each mediate one another (see e.g. Maurer 2005; Strathern 1996/7).

Neither then would we be surprised to find in Costa Rican anti-discrimination policymaking that there was no moment of "What is?" that was purified of, prior to, or

determinative of "What is to be done?" In this case, the collapsing of the two was an intentional response to prevalent social mistrust towards the notion of the diagnostic as a policy tool. It was a way in which the MRE sought to show the state's good-faith commitment to not trivializing or pigeonholing the role of non-state actors. It is worth noting that this omission of a "pure" moment dedicated to the rigorous delineation or "objectification" of the current conditions of discrimination also spares state actors the implicit and explicit "naming-and-blaming" that make a full baseline evaluation a "sensitive issue." In this sense, we see that the causal arrow that moves from description to prescription in the modern ideal mentioned above is mirrored by the arrow connecting responsibility *qua* retrospective imputation to responsibility *qua* prospective obligation (see Ricoeur 2000). The undoing of the former undoes the latter as well.

In any case, it would soon become clear to the MRE's anti-discrimination policymakers that beneficiary groups would not be won over by a broadening of the scope for their substantive input alone. Rather, the very social processes through which this input was collected and synthesized would need to be revamped relative to past "participatory" endeavors, lest Afro-Costa Rican and indigenous community leaders withhold support for the policy product. This threat proved compelling; indeed, only because it did can we talk of there being two stages – and two years – to the policymaking process.

Participation* a Distancia *(at a Remove)

What proved to be the first year of the policymaking process (2012) can in many ways be defined as the year of the consultant. The MRE hired a consultant with funding support from, and at the behest of, the OHCHR. Together, the two institutions selected a Costa Rican applied anthropologist who has decades of experience doing short- and long-term fieldwork with indigenous communities, and who, in his own words, "lives on consultancies." The consultant's

principal task was to conduct the public-participatory component of the project. As just explained, this component sought from communities likely affected by discrimination their proposals for solutions – or "concrete actions" – at least as much as descriptions of the problems they faced.

Following several small meetings in San José convening the consultant and leaders of the fledgling Human Rights Commission with prominent rights advocates and organizations, "participation" would be enacted in earnest through a series of regional "participatory workshops." The consultant was to lead these public workshops in five locales across Costa Rica where numerically large black, indigenous, and migrant populations live. The outcomes of the effort, however, would fall well short of satisfying these "target populations," and, as a result, neither did they satisfy the Human Rights Commission, regional representatives of the OHCHR, or even necessarily the consultant himself. This sub-section discusses why and how indigenous and Afro-Costa Rican leaders rejected both the specific person and the figure of the consultant. By doing so, I highlight myriad demands upon the notion of "participation" that would later re-orient Costa Rican anti-discrimination policymaking, and which are significant to understanding such projects more broadly.

As I showed above, anti-discrimination policymaking in Costa Rica began against a backdrop in which many black and indigenous communities viewed state efforts to engage their problems as shallow, tokenistic, condescending, and/or self-serving. Though the MRE set out to mollify some of these misgivings, the manner in which the consultant it hired ran the regional participatory workshops did not do it many favors. It was telling that, when I asked this consultant to describe his methods, he began by listing what he called his "rules." First, he said that in any such forum, obtaining good results requires that the time be limited to no more than

three hours. This he regarded as "the real attention span" of any person – be it a professional, a campesino, or anyone else. Next, he maintains a rule that speakers are allowed the floor for only three minutes at a time, in order to discipline them into being brief, clear, and to the point. He also requires that everyone present participate; thus, in the regional participatory workshops, he went around the rooms of as many as 30 people, calling on each to contribute something. He does not permit any interruptions or cross-talk between participants, nor that any one person speak too many times. Finally, he does not allow that the same point or proposal be repeated to excess: "If it has been said once, it is noted already, and does not need be said again." At the end of this litany of rules, the consultant noted without apology that, "As host [*conductor*], I am very strict in this sense."

Even though the consultant was soliciting quite consequential content – specific actions to be placed in the state's anti-discrimination plan – this manner of conducting "participation" rankled more than a few workshop attendees. The rules just listed are only the most tangible illustration of what many indigenous and especially Afro-Costa Rican leaders involved in the process described as a patronizing, arrogant, and/or domineering approach, and one that was certainly hierarchical and imposed. This characterization is reflected also in the consultant's *Methodology for the Participatory Workshops*, a programmatic document he created for the participatory component of the action-planning process.[163] What stands out in this document is an overall managerial – as opposed to rights-based – outlook on public participation and the consultant-participant relationship. Indeed, the consultant frames participation in terms of "stakeholder theory,"[164] and refers to people one would expect to be defined as "rights-holders"

[163] This document's full title in Spanish is *Metodología para los Talleres Participativos del Plan Nacional de Acción contra el Racismo y la Discriminación Racial: Materiales y Herramientas*. Copy on file with the author.
[164] The document specifically cites the business management texts *Strategic Management: A Stakeholder Approach* (Freeman 1984) and *Managing for Stakeholders* (Freeman et al. 2007).

instead as "stakeholders." He further talks of his prospective interlocutors as "indigenous, Afro-descendant, and migrant *interested parties*" (emphasis added), and repeatedly refers to what is at stake in action planning as "interests" rather than "rights."

This nomenclature entails distinctions that are more than stylistic. They are part of a structuring of participation as a managerial or administrative activity rather than one whose relevant conceptual coordinates are located in legality or democratic theory. They also exceeded the merely attitudinal or discursive. A number of those who interacted with the consultant reported experiencing them in practice. It should be little surprise that this generated resentment, especially given these populations' long histories with the Costa Rican state's "inclusions" in national society and citizenship being almost always partial, conditional, and paternalistic (see e.g. Harpelle 2001; Meléndez & Duncan 2011; Ornes 1980). These histories create warranted sensitivity to the feeling of being administered.

Yet neither can black and indigenous Costa Ricans' experiences of that feeling in 2012 be pinned entirely on the particular consultant in question. They arose as well from the very decision to use a consultant – any consultant – to mediate between long-marginalized groups of citizens and the state. Indigenous and Afro-Costa Rican leaders expressed dissatisfaction that they were not given an audience with government officials themselves; this, they considered, would have been the proper avenue for genuine citizen participation in policymaking. Any mediator who was not a member of their communities constituted a barrier and a filter, distorting their voices and relationship to the state. As subjects of rights, they deserved for their voices to be heard directly by "the state." To use a consultant was instead to turn them into objects spoken about, and accounts relayed, to the state by *his* authoritative voice. Finally, the structure and timeline of the consultancy and its "participatory workshops" made "participation" appear

limited to only designated spatio-temporal moments rather than immanent to the policymaking process. Thus, in addition to being carried out through imposed and patronizing methods, these workshops also appeared *extractive* in spirit (cf. Perreault 2015) – all despite the aforementioned efforts to facilitate civic groups' direct and meaningful influence over policy prescriptions.

"Participation" Not Conceded

I have discussed a number of reasons for disenchantment and criticisms that indigenous and Afro-Costa Ricans expressed concerning the 2012 consultant-led approach to public participation in action planning. These alone, however, could not have changed the course of this policy process, at least not dramatically. To air them to the project's leaders likely would have prompted further meetings, and thus spaces of influence, for the specific complainants. But it would not have led to their affirmation or enactment of the conception of participation that black and indigenous leaders envisaged. For these leaders – who had considerable experience with such participatory processes already – "participation" seemed to be something state institutions undertook only to the depth necessary to secure a given project's legitimacy vis-à-vis some target domestic and/or international audience. From this perspective, what "the state" really needed to produce was not actual inclusiveness, but evidence for a plausible claim thereto. Yet this did not make indigenous and black communities cynical to the entire enterprise. Instead, they created practices of resistance aimed at negating such evidence, and which simultaneously proposed alternative conceptions of participation.

During my fieldwork, for example, one such type of practice that was circulating across black- and indigenous-community forums was to challenge a mundane document ubiquitous in those forums: the sign-in sheet. At myriad types of public events, state agencies were known to send around sheets of paper on which attendees were to enter their names, and sometimes other

personal data. Increasingly, community leaders noticed that agencies often reproduced the resulting lists as appendices in their reports on past activities or plans for future ones. Many saw the publication of these lists as constituting a perverse implicit claim – minimally that the process was inclusive, but possibly even that those listed underwrote the product. In response, they began to confront agency personnel about whether these records of presence would later be misrepresented as something more, and threatened to withhold – and indeed sometimes actually withheld – their names from it.

It is hard to say how widely these challenges were orchestrated for strategic leveraging versus more spontaneous manifestations of protest. But they did tend to get the attention of the state actors and/or consultants confronted with them. This is likely in part for the reasons suspected by indigenous and Afro-Costa Rican leaders: These lists index inclusiveness, and are thus apt tools for state institutions interested in "bullet-proofing" their projects by anticipatorily "reflecting back" the desires of potential domestic "opponents" or international assessors (see Strathern 2006). Yet where convenors of public forums quickly react by promising *not* to use sign-in sheets in this way in exchange for attendees' cooperation, we are reminded that there can also be more to the story. Among other things, more mundane forms of bureaucratic accounting may be at stake, such as needing a head count to justify expenses for this or that number of box lunches, trays of snacks, or cups of coffee.

In any case, there is reason to believe that Afro-Costa Rican community leaders with whom I interacted were coming to recognize the sign-in sheet as a trap that could be harnessed as a strategic tool. The topic came up, for example, in a meeting subsequent to the 2012 consultant-led workshop in Limón, in a discussion about the shortcomings of the participatory component of the action-plan project. On that occasion, one Afro-Costa Rican activist said that participation

was being conducted improperly because it was based on invitations sent to a select group of leaders, and not a more general call for attendees. Others pointed out that this was what "always happens": The government invites people to serve as representatives, holds a meeting, calls it a consultation, and then leaves community members to argue over who might have purported to represent whom. Finally, one community leader interjected that they all must recognize their own fault as well: "Friends, we have erred/sinned [*pecado*] [by] putting our names on their documents." He proceeded to insist that they should no longer do this as matter of course just because state agencies invited them to the table.

On December 14, 2012, this resistance to making community leaders' documented presence in "participatory forums" a sign of approval reached its dramatic apogee for the anti-discrimination policymaking process. On that day, the state Human Rights Commission held its "national workshop" for civil-society organizations on the draft action plan, inviting indigenous, Afro-descendant, and migrant and refugee rights advocates from around the country to an exclusive hotel conference center in San José. The goal was for these advocates to work in small groups on the text of the draft document, which was at that point based upon the work of the consultant – especially input from the regional workshops – and subsequent revisions by the Commission.

During the working session, I sat with the 19 Afro-Costa Rican leaders present, crowded around two tables to review the draft plan's proposed measures related to their communities. The group discussed some issues that they felt were missing from the draft document. But more than that, they systematically analyzed the language of different action points, using annotated copies of the draft that some participants had prepared for the workshop. For example, one man took issue with the use of the words "it is recommended that… [*se recomienda*]" preceding

many of the action points. He pointed out that this may compromise the points' enforceability. Another suggested that "values" be added to the list of aspects of Afro-descendant culture to be incorporated into "intercultural" curriculum, while someone else contended that Afro-Costa Rican communities themselves – and not state schools – should remain the guardians of their values.

The Afro-Costa Rican attendees at the national workshop discussed these types of details with much seriousness and precision well into the working session's lunch period. This made it all the more surprising that after lunch, when the groups reconvened briefly to decide who would report back to the full group, they decided not to relay the results of their deliberations. Instead, by the initiative of a few leaders, they decided to announce simply that they would not "validate" the draft action plan due to dissatisfaction with the breadth of the public-consultative process. This response took Human Rights Commission members completely off guard, not least because they had made no request that anyone "validate" the document. I was less shocked as, by happenstance, I was privy to the conversation in which an indigenous leader explained to two Afro-Costa Rican leaders that this would be his group's position, and the latter agreed to take the same stance. Both groups of leaders were uncomfortable with the potential finality of the day's work, and thus chose to go on record stating what their presence and participation there did *not* do, and should not be used to signify.

This was in large part a principled stance, with black and indigenous leaders alike insisting that "participation" could not be reduced to the reception of inputs from a few pre-selected voices, no matter whose voices they were. These leaders argued that participation was an *alternative* to this type of representation; in withholding their input, they essentially chose to negate their own voices in order to prevent their being used to collapse the distinction. Here we

should appreciate a practical dimension to this principled stance as well. Besides a contest with the state over the rightful meaning of "participation," indigenous and Afro-Costa Rican leaders also wanted to avoid having their communities feel that they had usurped their voices. More specifically, they did not want to return to their communities or constituencies *appearing* to have claimed to speak on behalf of the collective when the collective had not authorized them to do so. No matter that they were national- or community-organizational leaders; the workshop attendees could not feel comfortable speaking for anyone but themselves. So though they did not know where the decision might lead, black and indigenous leaders refused state policymakers a compromised concept of participation – and with it, any room to plausibly claim that 2012's work on the action-plan project was underwritten by "civil society."

Performing the State for (its) Others

In late-January 2013, Costa Rica's Inter-Institutional Human Rights Commission met to chart a way forward for the anti-discrimination action-plan project. Their period of OHCHR funding had lapsed, and some wondered whether December's indigenous and Afro-Costa Rican protest foreshadowed a broader obstructionism. Yet members showed considerable optimism, perhaps re-energized by the long holiday break. One of the project's leaders – a lawyer from the MRE who I will call Azalea – spoke of the positive steps they had made in the of the previous year, and reminded her colleagues that relationships like those between the central government in San José and indigenous and Afro-Costa Rican communities were not the type that were remade overnight. All of those present agreed that a new phase in the project was necessary, but were equally hesitant about a "re-start" that could mean "losing" the work already done. Several stressed that what black and indigenous leaders rejected was 2012's *methodology* – not its product. The somewhat odd insinuation here was that they could hold a new "participatory

process" without deeply altering the existing draft of the plan. In any case, Commission members agreed that they must do better by the indigenous and Afro-Costa Rican communities the plan was meant to benefit; a new sub-committee was established to hammer out the details.

The sub-committee began meeting the following week, and its evolving cast would indeed spend much of the next eight months engaging civic organizations and local communities in a new, more robust policy dialogue. The cornerstone of "participation" in this second year was a series of trips by small groups of state-institutional actors to locales across the country where large Afro-Costa Rican and indigenous populations were known to reside. These actors conducted site visits, public forums, workshops, and occasionally one-on-one meetings, all allowing interested community members the opportunity to voice their perspectives on the policy project.[165]

The design of these "encounters" (*encuentros*) was clearly meant to respond to black and indigenous leaders' criticisms from the previous year. Indeed, what the failure of the 2012 effort seemed to occasion above all was a shift in policymakers' focus, away from the substantive content of participation and towards seeing the *process* as a product in itself. First, rather than employing a consultant, each participatory forum was moderated and attended by state personnel.[166] Instead of opening with "ground rules" for participation, the floor was quickly given to attendees, who were invited to speak on whatever aspect of the project they wished. These encounters were also highly fluid, adaptive, and open-ended. If attendees knew of

[165] The sub-committee organized at least ten different such trips, most including multiple locales. Together with other forums involving organizations in San José, there were around 25 participatory events held between May and September 2013. For point of comparison, to undertake an effort proportional in population size in the United States would mean holding over 1400 such events.
[166] This always included at least one representative from the MRE's human rights division. State personnel were accompanied in around half of these events by the aforementioned human rights expert-advisor, Carlos Minott, and in nine cases by this anthropologist.

relevant local figures who were missing, Commission members often sought them out at their home or place of work, or planned return visits to meet with them.[167]

As this phase of "participation" progressed, leaders became increasingly cognizant of another demand upon the policy process, and it is the focus of the present section. It was that, in addition to inclusiveness, these leaders would also need to perform a particular vision of state. Anthropologists have done excellent work to show how "the state" and its boundaries with (civil) society are constructed not only through ritual and ideology, but also – and crucially – by everyday bureaucratic practices, public representations, interpersonal interactions, and experiences like filling out paperwork, or just waiting (Gupta 1995, 2012; Hull 2012b; Jansen 2015; Sharma & Gupta 2006; see also Fouratt 2016; Hetherington 2011). James Ferguson and Akhil Gupta (2002) point out that all of these produce among other things a popular conception of the state as "spatially encompassing" of the locales of a national territory. They argue that state actors' ability to impress this spatial imaginary upon the country's inhabitants is crucial to constituting state-ness and naturalizing the authority thereof.

I suggest in this section that, along with this spatialization, there is also an important temporal dimension to the production of state-ness. This became evident during anti-discrimination policymakers' 2013 trips to indigenous and Afro-Costa Rican communities, where they discovered many co-nationals who did not share their understanding of the "state" concept. These interlocutors lacked confidence that the drafting of the policy would ever be completed; or, if completed, adopted into law; or, if adopted into law, implemented and enforced. Merely invoking the state as source and guarantor of the policy failed to assuage their

[167] We should note that part of what this new approach to engaging civil-society voices did was to turn from the consultant's emphasis on (perhaps overly rigid) notions of what made for "quality" inputs to a "participation" conceived more in terms of quantity.

doubts. The policy team soon realized that, to many of those it sought to engage, this term referred to an array of institutions, but was fundamentally defined by a revolving door of elected and unelected individual functionaries. Black and indigenous communities' experiences did not lead them to expect institutional integration or temporal continuity in governance. Thus, they had little basis for conceiving of that to which policymakers gestured: a differentiable entity that withstood and transcended changes of personnel and presidents. Not that they would not have *liked* to imagine such a thing. As anthropologist Stef Jansen (2015) finds elsewhere, state aspirations are objects not only of resistance, but also often of the desires of those who yearn for predictability and "normalcy." In participatory forums, Costa Rican policymakers attempted to present such a state – discrete and coherent – and the anti-discrimination policy as implanted within its enduring protective shell. I end this section with thoughts on what the need to propagate this image teaches us about policymaking, and about linear policy narratives.

The issue of presenting state-ness emerged less than a week after the December 2012 national workshop, when I met with Azalea to reflect on that forum's outcomes. The workshop had been hard on Azalea; there was no doubting that. The indigenous and Afro-Costa Rican attendees' criticisms rejected work to which she had devoted enough time and energy that it was hard not to take them as a rejection of her personal efforts. At the same time, following their public disavowal of the project, some of the non-governmental leaders with whom she had worked over the previous months privately reached out to reassure her: It was not that they did not trust *her*. It was that they did not trust *the state*. "But I *am* the state," she told me. Maybe they don't realize, she continued, but when they meet with me, or when they contribute to my work, they *are* working with the state. "They don't see me as an enemy, even if they see the

state as an enemy." After pausing for a moment, Azalea concluded, "I have to turn the *state* into a *friend*."

The sub-committee got off on the right foot by deciding that Human Rights Commission members – and not a consultant – would be the ones to interface with black and indigenous communities in 2013. The project consultant's contract had expired months earlier anyway, but rumors that he had been "removed" certainly helped the sub-committee's cause. Yet a lingering challenge and paradox remained: How would the state be presented as impersonal, or personality *independent*, by the very people whose personal, embodied labor enacted and represented the state's reality? How should these actors stage interpersonal encounters such that they were experienced as transcending the immediate, phenomenological level – internalized as engagements with "the state"?[168]

For Azalea, one starting point was to insist – even as her face became more visible in the absence of a consultant – that this was not her personal initiative or pet project. The anti-discrimination policy and action plan was rather an undertaking of the state, fueled by its concerted commitment. Azalea stressed this point in participatory forums not only by stating it explicitly, and reciting the many public institutions involved in the project; though she did do that, and often. But her case was also made through the variety of faces that accompanied her to these forums, and by identifying them with their institutional acronyms as much as their surnames. This was meant to communicate to non-governmental interlocutors that it was not just the two or three bureaucrats before them who arrived to their communities and gave them an audience – it was their employing institutions as well. On some occasions, Commission members even touted their own replaceability, echoing the Weberian ideal-type of bureaucracy's

[168] These policymakers could have benefitted from reading anthropological literature on the state – not for theory, but for practical tips!

interchangeable cogs: It could be them present, but equally well anyone else from their institution; it did not matter, because the institutional *whole* would see the policymaking process through to completion, and later, to implementation.

In all of this, policymakers forged interesting double movements and balancing acts. Even as they sought to undo some common understandings of projects like this one – as being of particular state *persons*, conditional upon their individual involvement, and subject to the vagaries of workflows and changing personnel – they also needed to work *with* those understandings. Thus, for example, even while wanting to depersonalize the project, the policymaking team also sought to evince some stability in project leadership in an effort to reassure black and indigenous communities that the work was not going to fall through the cracks – it would indeed get done. As alluded above, members wanted to demonstrate commitment to the project, but simultaneously to externalize it such that it was not read as being, as Azalea often stated, limited to "a few good-hearted people." Commitment should be *institutional* – passionate only in its depth, dispassionate in its steady reliability. But the important point about the idea of "state" here is that it was represented largely as a function of institutional breadth: as a whole that is more than, but also evidenced through, the sum of institutions.

Costa Rica's anti-discrimination policymakers also conjured the presence of "the state" in public forums by lauding the material contributions different agencies had made to advance the project. Beyond actual functionaries, various institutions lent their "official [government] use" vehicles for transportation to these meetings; designed, laid out, and printed working documents

and promotional materials; and donated snacks, juice boxes, and pens, among others things.[169] Each of these implied an expense – personnel hours, fuel costs, and so forth – and thus a "commitment" above and beyond mere words. As Azalea attributed the 4x4 parked outside, the pen in an attendee's hand, and the plastic straws between others' lips each to one or another institutional acronym, suddenly the public forums seemed surrounded or "filled up" with state efforts. These donations were made largely to compensate for a budget decimated by the drying up of OHCHR funding, but virtue was cultivated from this necessity. The state in its entirety, and as one, was behind this project, policymakers emphasized – again pointing to support from across a broad range of institutions, this time backed explicitly by that highly resonant cultural symbol of support: money (see Nelms & Maurer 2014).

Yet beyond this matter of consistency across institutions, the policy team also confronted a challenge to public confidence related to another kind of (dis)continuity: the temporal. This issue came out in large part because, throughout the months of the 2013 participatory forums, a presidential election loomed less than a year away. The policy team learned that this was amplifying indifference towards state projects in the communities they sought to engage. These communities' experiences told them not only that such projects depend upon specific persons, but also that they have little continuity from one executive administration to another. At first, Azalea and her colleagues approached this as a simple misunderstanding, and attempted to clarify it by telling indigenous and Afro-Costa Rican interlocutors that this policy would not be "of *this government*," but rather "of *the state*." This conceptual distinction between government and state is commonplace in policy and international-law circles – indeed, it is intrinsic to the

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[169] It is probably worth pausing to reflect once again upon the fact that the Costa Rican Human Rights Commission had to make calls to colleagues in different ministries and state agencies to request such donations *for a project to implement fundamental human rights norms enshrined in the longest-standing UN human rights treaty.*

ontological landscape of both fields of practice.[170] However, the policy team and I learned that it was a distinction that many of the black and indigenous community members with whom they met – and at least one government driver who drove us to the meetings – were completely unfamiliar. For these non-governmental participants in the policy process, the notions of government and state were interchangeable, and there was neither a term nor a justification for speaking of a guardian or conduit of a trans-presidential administrative or policy platform concerning their communities.

Here there was no obvious trick by which the policy team might prove, or make their interlocutors *believe*, the contrary. As insiders to public policy, administration, and bureaucracy, the distinction between *a* government and *the* state was an engrained, taken-for-granted aspect of their worldview. They therefore assumed a basically didactic approach, trying to "teach" the difference as a fact – an existing reality – despite that clearly it had not impressed itself upon the community members with whom they engaged. Forum attendees were treated to a new refrain in the policy team's introductory comments: that while many policies are only of a government – i.e. a presidential administration – this would be among those that transcended these four-year cycles; it was "of the state."

This way of delineating the enduring from the ephemeral is here part of the boundary work that, as Timothy Mitchell (1999) argues, creates the effect of "state." It is hard to say how well it "took," but the emphasis policymakers gave it – and their reasons for devoting so much energy to the performance of state-ness in this context more generally – is telling. When members of the team spoke among themselves about the need to help non-governmental actors understand state-ness as sign and guarantor of something enduring, it was not just to secure their

[170] One could hardly imagine, for example, that multilateral treaties would continue to exist if countries needed to re-debate and re-ratify (or vacate) them every time there was a change of executive administration.

endorsement of the policy. It was because these actors were invested in the policy not only being approved, but actually *working*. They did not think it could "work" unless its intended beneficiaries treated it as what it professed already to be: a binding commitment of and by a unitary, enduring state. Only if rights advocates understood it as such would they later actively and resolutely demand implementation of the adopted policy, and on basis of claims that it was "of the state." Thus, the policy team on some level recognized that state policy is not actually made more lasting by its institutional definition as such – by a quality or functionality inherent to state or policy. It instead becomes such through belief within a broader "social" that those constructs are significant, and the willingness to act as though they are.

Here we find a somewhat underappreciated element in how public policy is made: the building of consensus or complicity around not only its substance but also its very form. To endow a "state's policy" with the characteristics which that phrase recommends does not happen by fiat. It involves an immense amount of social labor, in particular orchestrating the right constellation of actors and inducing them to play out their prescribed roles and responses. In the Costa Rican case, concepts and narratives about what policy is and does (as if automatically) here become more than "ideals" in that they are wielded by policymakers as tools of said inducement.[171] They are propositions, we might say, that must enlist rights claimants to deploy them, thus reifying principles of division while – as Mitchell (1999) insightfully points out – obfuscating the fact that they required reification. In this way, the propositions are made to become "true," at least in that pragmatic sense of truth as what "happens to" ideas as they pass tests of "working," or being "workable," in the field of experience (see James 1978a, 1978b). As I show in the next section, policymakers must likewise do considerable social labor in another

[171] Thus we should not gloss a distinction of "policy-in-books" and "policy-in-action," because actors quite often make the 'books" – i.e. the ideals or "policy's stories about policy" – part of the "action."

direction: disposing colleagues in state institutions to act out *their* parts to make policy act like "policy."

"Working Two Paths": State-Making Within

As previous sections explained, a second year in the anti-discrimination policymaking process only existed because of, and in response to, indigenous and Afro-Costa Rican leaders' refusal to legitimate the first year's process. This extension of the project sought more than the consensus-building and compromise on substantive issues that conventional policymaking narratives emphasize. Those might get a policy passed, Human Rights Commission leaders acknowledged, but this does not ensure that it will generate action as a consequence. Their experiences and perceptions told them that, alongside a policy document, they must produce the right arrangement and disposition of social actors to bring it to life.

This section shows that the efforts to compose this social constellation did not end at the boundary where state bureaucracy begins, but passed right through it. Indeed, soon after the policy's sub-committee was formed in 2013, Azalea and others began speaking of their work as reaching out in two directions, or simultaneously pursuing two paths. The first was towards the intended beneficiaries of the policy, as explored above; the second was towards actors who the policy would obligate: those "within" the state, i.e. in its employ and acting in its name. By closely attending to the social labor and messaging the policy sub-committee pursued vis-à-vis its state colleagues, I show that this team brought its own situated analysis of the Costa Rican state and its relationship to international obligations into the anti-discrimination policymaking process. It is an analysis quite at odds with the ideal-type of state bureaucracy as a predictable, automatic executor of rules, and also distinct from the horizontally integrated and temporally continuous state whole that the policy team presented to black and indigenous communities.

That state, we see, was an aspiration to be achieved *by* the policy and action plan, beginning with the drafting process itself. But rather than *resolving* the disjunctions, personalisms, and other practical barriers to human rights implementation identified by the Commission, the policy product would ultimately be *shaped by* these conditions – accommodating them and bearing their marks.

To Articulate "the State"

The vision that the leaders and most active members of the Human Rights Commission had for this young state entity and its first project – anti-discrimination policymaking – was indeed an ambitious one. They sought to make the Commission the launching point for progressively permeating offices across the institutional apparatus of the state with not only international norms themselves, but with that ethos of agile, reflective "obligated-ness" that I argued in Chapter 1 is central to the UN system's approach to monitoring and evaluation. These members hoped that the Commission's regular meetings would consolidate it as the nucleus that it was not quite yet, as even its membership still had a clear "center" and "periphery" based on varying levels of institutional engagement and individual interest in human rights. But, once won, this nucleus was to then extend outward, with Commission members becoming ambassadors to their home institutions on behalf of international human rights commitments made by the Costa Rican state.[172] What exact forms this proselytizing should take were left open, but it was increasingly regarded as essential to the anti-discrimination policy project and beyond that Commission members forge what Azalea called "a process of internal awareness-raising [*sensibilización*]" in each and every state institution.

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[172] Again, the institutions represented on the Commission range from ministries such as those on education, health, culture, and housing to Costa Rica's government-run electricity and telecommunications company and its Institute of Aqueducts and Sewage.

But the Commission would need to do more than spread throughout the state "the good news" – as evangelists say – of human rights commitments. It would also need to be a coordinator, building *coherence* in human rights activities across institutions. Indeed, the prevailing perception among Commission members already engaged with human rights and indigenous rights was that the greatest barrier to their realization was that the state was not sufficiently "articulated." Human rights-based programs were scattered, patchy, and often subject to the initiative and interpretation of specific institutional personnel – just as indigenous and Afro-Costa Rican communities perceived. Rogelio pointed out that the lack of a locus of coordination also allowed for duplications and divisions of labor in human rights efforts that inefficiently expended what resources were available. As human rights in general and discrimination in particular are "cross-cutting" issues, addressing them requires that one "articulate and coordinate" among all the institutions of state.

The use of the term *articulate* (*articular*) was so prominent among Costa Rican state actors speaking about the state that it merits a brief excursus. As is probably evident, my interlocutors were not using the term in the sense that is most common in American English – that is, as a synonym for "enunciate," or the act of putting something into words. The Spanish *articular* sometimes bears this meaning, but in Central America it is more often used to mean the linking together, or building of connection between, things not already "organically" attached.[173] This definition exists in English as well, of course, even if it is far less common. It will likely be most familiar to students of social theory versed in the French structural Marxists of the 1970s, or the work of cultural theorist Stuart Hall, who made *articulation* a key social analytical term in the 1980s. Contrary to scholarship positing the unity of "discourses" or natural belongingness of

[173] Accordingly, an *articulación* is the process or product of that work.

elements, Hall called for investigating the mechanisms and practices that connect different concepts, ideas, principles, or other objects together – that is, their processes of articulation. Understanding how this articulation happens inevitably reveals "linkage[s] that [are] not necessary, determined, absolute," and the contingent, conditional character of apparent unities (Hall 1986:53). To speak of "articulation" is to foreground that the connections in question must be *made* – that they are not guaranteed (see also Hall 1985).

I doubt very much if any of my interlocutors who spoke of *articulación* had read Hall, but their use of the term is apt, especially when interpreted through his elaboration of its implications. In expressing the aspiration to *articular* institutions and offices, the policy team acknowledged that it requires active effort to put these into alignment. Embedded in members' language is the fact that they did not take the coherence or integration of the state as a given, but as things that need to be achieved. This is in contrast to the way human rights treaty law casts its obligations, responsibility for which accrues to the imagined unitary state subject.

By the time the action plan project expanded to a national *policy* and action plan in April 2013, Human Rights Commission leaders spoke hopefully of it as a tool of articulation. Of the many conceivable metaphors – glue, thread, and so forth – for this intended function, these leaders usually spoke of the emergent policy as an "umbrella [*paraguas*]." In this metaphor, all state institutions would be given a clear, overarching agenda on racial discrimination, while existing programs pertaining to this subject matter would be tugged, squeezed, and fitted under its "parameters [*parámetros*]" – or perhaps we should say the umbrella's *perimeter*. The Commission's review of such extant programs and projects for indigenous peoples, Afro-descendants, and migrants and refugees confirmed that state institutions were indeed "disarticulated," lacking even a shared understanding of the body of international instruments

that bore upon this type of work. I noticed this in my own interviews, especially with those state functionaries who were of the aforementioned "periphery" of the Commission, not taking very active roles in its work. Among these individuals, when treaty obligations came up, most mentioned the ILO's *Convention (No. 169) concerning Indigenous and Tribal Peoples*; but almost none brought up the ICERD – the authoritative source of binding international legal norms on racial discrimination, and a treaty to which Costa Rica has been a party since 1967.

Commission leaders who were optimistic about making the policy an instrument of institutional articulation soon recognized however that this was an objective apart from the more immediate one: securing broad institutional support for the project in itself. Because its product would assign "actions" to specific state agencies, it would need to win adherents along the way – no matter that the relatively powerful Ministry of Foreign Relations was its driving force. Commission members regularly signaled as much in their meetings, asserting that this or that draft "action" would not be accepted by colleagues in their respective ministries. The policy sub-committee thus came to realize that even if they produced an overarching national agenda for combating discrimination that could gain passage by the Executive, it would take building good will within the agencies for the policy's directives to actually get done. But if gaining that "good will" meant compromising the policy's ramifications for each agency, this created a conundrum for their goals of orchestrating consistency and coherence. Indeed, from the starting point of institutional misalignment on anti-discrimination work, creating an "articulatory" policy would prove not only distinct from, but often at odds with, an *agreeable* one – and vice versa.

Commitments into Actions… and Back Again?

Through the many workshops, community visits, and various types of meetings held in 2013 with non-state and state actors alike, the policy sub-committee accumulated a great deal of

substantive input for the policy and action plan. The subject matter spanned issues from regional job-training initiatives to regional favoritism in government tourism promotion; the status of traditional medicines to the design of a pending local museum in Limón; how to improve Afro-Costa Rican and indigenous youth's self-esteem to how to conduct meaningful community consultations on mega-projects like hydroelectric dams;[174] and much, much more. It was then a truly broad, open, and rich dialogue, and one in which the sub-committee made great efforts to hear as many voices as possible.

It was notable however that during these many months in 2013, the sub-committee worked very little upon the actual text of the previous year's draft, until at least August. What became clear was that this was because, as the sub-committee received proposals about content, so too was it accumulating important wisdoms about what would ultimately make their product viable. I have described some ways in which members incorporated these wisdoms into their messaging and social labor as the process advanced, and how they did so "in two directions" – towards both communities who should benefit from, and institutions who should carry out, policy provisions. But if so far I have stressed these lessons' tendency to generate additional work alongside that of producing policy content, I should like to conclude with some ways in which they impacted that content itself. The sub-committee's analysis of, and engagement with, the sociality of state institutional life was particularly significant in this regard.

In said analysis, the policy sub-committee found that state colleagues and institutions needed a kind of "continuity promise" of their own from the process, but one quite unlike that directed at civil-society interlocutors. Whereas the latter required assurances about the policy's

[174] For then-UN Special Rapporteur on the Rights of Indigenous Peoples S. James Anaya's take on the last of these issues – following his visit to the country to investigate the extremely controversial El Diquís Hydroelectric Project – see Anaya 2011.

guarantee into the future, it seemed that state personnel needed to recognize its anchorage in the past, or at least in "what already was." The sub-committee considered that many functionaries were only ready to accept or concede obligations if they found them consistent with existing professional mandates and objectives. This was partially a matter of bureaucratic reluctance to allow thin resources to be stretched even further. But it was equally about professionals' resistance to impositions upon their competence – especially impositions implying that current operations were discriminatory. As Jorge, a mid-level technical professional on the Commission, explained, functionaries would not want a policy like this one to make them feel obliged, but rather willingly *committed*. If they did not, the Commission could expect that they would – at best – comply with it in only the narrowest of terms. Another similarly experienced functionary, Josefina, counseled the project's leaders to be careful that prescribed programs and "actions" did not overreach, or step on institutional toes. Even if the Commission was created and empowered to conduct state efforts to fulfill international human rights obligations, it was "very young," Josefina stressed. It still needed to earn credibility – to recognize and be recognized – within the state. Here the image of a predictable, continuous state returned, but as a kind of clunky old machinery, stubborn, set in its ways, and unwelcoming of energetic upstarts who want to rock the boat.

This machinery needed to be "converted," but by way of a conversion that obfuscated its demand for real change, real difference. Thus, a first strategy the anti-discrimination policy sub-committee took was to frame the policy and its implementing actions as essentially extensions of their institutions' existing mandates. The Commission member who proposed this strategic "awareness-raising [*sensibilización*] approach" to getting institutions on board with the project said that it involved reconnecting public servants with the core missions of their work. It meant

positioning proposals in terms of “our service role” in relation to, for example, housing, or whichever other subject matter a given institution treated. In a case like housing, when the anti-discrimination policy and action plan called for making services tailored and distinct to each target population, the policymakers must emphasize that this is not an aberrant or exceptional practice. The Ministry of Housing *already* provides particularized services to communities and individuals in a variety of situations, they should stress, and indeed doing so is part of meeting the institutional mission of equitable and inclusive access. In this way, talk of “affirmative actions” – a phrase relatively new to Latin American policymaking (see Crichlow & Gomez 2015), but whose use within the Commission was increasing dramatically in the final months of the policy process – could be skirted in favor of a framing that did not seem like special treatment, or was otherwise more comfortable to functionaries.

But can such an approach be said to create equivalent normative imperatives? To begin, we should note that this approach bypasses not only uncomfortable terminology; it also elides the issue that targeted programs *are* meant to be “special” in the sense that they respond not just to “things as they are,” but to effects of racism and discrimination specifically. This elision thus omits any affirmation of the connection to international human rights norms, or perhaps it does “articulatory” work in the opposite direction – retroactively endowing existing agendas and missions with human rights significance, without having “human rights” actually alter them fundamentally. It is therefore somewhat contrary to how accession to international norms is “supposed to” work, in that such norms are to trump other commitments and obligations – not merely to reinforce existing ones by burnishing them with a morally elevated sheen.

A next and related strategy arising from the Commission was to make the action plan support the continuity of existing, concrete institutional programs. As discussed above in the

section on diagnostics, many state personnel were proud of the work their institutions already undertook with indigenous, black, and migrant and refugee populations, and leery of a new initiative that might sweep that work aside. Josefina and others thus made the case for making the plan's "actions" coincide with existing institutional projects, and even inserting those projects directly into the plan. This ran somewhat counter to a struggle that other leaders, especially Azalea, had been waging to ensure that the policymaking process stimulated deep, even uncomfortable reflection within the corridors of the state, and did not degenerate into institutional actors only being willing to talk of "all the good they were doing."

Yet in the last weeks before finalizing the document, Human Rights Commission leaders sent a memorandum to all member institutions to request that they submit documents listing their own plans and programs aimed at benefiting ("*en favor de*") Afro-descendants, indigenous people, migrants and refugees for the coming years. The purpose was to integrate these into the action plan. This despite the fact that institutional programs were regarded as inconsistent – or "disarticulated" – and that programs benefiting said populations may not have anything to do with "discrimination" *per se*. Yet, merely for taking these populations into consideration, the programs could be re-encoded as "anti-discrimination" work. Together with the "awareness-raising" approach described above, these strategies' deference to intra-state socialities sidelines actual international norms on racial discrimination to the point that it is hard to speak of those norms as "originals" being "translated" anymore.

Lastly, when one reads the final version of the anti-discrimination action plan, it is striking how many of its "actions" in fact devolve to particular state institutions the very tailoring, translational, or "concretization" work the plan itself promised to do. That is, these institutions are not given a "manual" for fulfilling the rights of Afro-descendants, indigenous

peoples, and migrants and refugees, so much as they are assigned with *figuring out for themselves* what such a manual should look like for their own subject matter areas. In my analysis, of the 44 main actions assigned,[175] at least 18 call for further studies, plans, or proposals on very broad and general issue areas that one would expect the plan itself to specify. A representative example of such an "action" is: "Develop a multi-sectorial strategy for the creation of sources of quality employment in zones of residency of indigenous, Afro-descendant, and migrant women and men." Given the breadth of what is to be "strategized" here, the urgency of not only developing but executing said strategy, and the fact that the policymaking process was itself a multi-sectorial dialogue, it is hard not to wonder at why this action point – along with numerous others – was not made more specific and determinate. Another dozen or so of the 44 action points are noticeably more tangible in terms of the issues and objectives they identify, but while still conferring vast interpretive discretion upon the institutions involved. For example: "Elaborate and implement an environmental education program as a mechanism for the protection and management of the environment."

These and similar action points in part reflect drafters' wish for tangible, trackable metrics; it is easy to "count" whether "one multi-sectorial strategy" on employment or an "environmental education program" has been developed by the action plan's end date or not. But the trend I identify also evinces the Commission's acceptance that mandating more specific work and substantive outcomes could exceed what its institutional members will bear, and thereby turn the action plan into dead letter. So even 46 years after the Costa Rican state assumed legal commitments to the ICERD, and with the Commission empowered to say how it

[175] There are a total of fifty action points, but the first six essentially concern how to coordinate the implementation, monitoring, and evaluation of the anti-discrimination policy, the remaining action points, and future plans of action. They are follow-up work to be done largely by the Commission itself.

and related international norms should be implemented, there still appears the practical need to *coax* state institutions and personnel into acting upon those norms. Here that coaxing took the route of encouraging institutional *ownership* as opposed to any sense of *imposition*: first, by putting the plan's ethos and actions in continuity with existing agendas where possible; and second, by passing much of the all-important interpretive work of specifying international norms' concrete demands – the work of an action plan, that is – "outward" to the institutions that would subsequently execute them.

Some might counter that this is inevitable; how could a handful of policymakers themselves specify the tangible duties necessary, or outcomes plausible, across all of the subject matter covered in the anti-discrimination action plan? There is some sense to this, but the point is that in principle all state institutions are supposed to have been already "on board" with the policymaking sub-committee – not its fickle objects of courtship – during the action planning process itself. That would allow for the necessary transfer of expertise into the plan such that it was comprised of points that are truly "actions," and whose execution would directly diminish discriminatory phenomena.

But the inconsistent or "disarticulated" stances across "the state" vis-à-vis human rights or anti-discrimination work proved a resilient limiting condition upon the policymaking process rather than one to be erased by it. This led policymakers to settle for mandating many "concrete actions" that are in fact further *processes* – processes much like that which the action plan process initially set out to be: for finding problems, proposing and deciding upon the duties to be met to remedy them. The action plan multiplied these processes, and spread them out across state institutions, reproducing its own charge – including the demand for participatory dialogues with target populations – at smaller scales. To borrow an image and analytic familiar in

anthropology thanks largely to the work of Marilyn Strathern, the policymaking process generated fractals of itself.

Admittedly – and unfortunately – I cannot claim to know how the non-governmental actors most engaged with the policymaking process reacted to seeing that so many of the plan's "actions" were in fact further processes. Though the policy and action plan's passage was reported in the government's daily gazette in February 2014, the actual text was not printed therein, nor was it widely disseminated for many, many months after.[176] I have not been able to return to Costa Rica to hear from black and indigenous activists since that time. For my own part, I have called the policymakers' final work "settling" because, whereas these individuals promised and indeed sought to narrow and render predictable the range of ways in which international normative commitments could be discharged, to end by multiplying the spaces of translation (and participatory contestation over it) would seem to lead in the opposite direction. To return to the opening words of this chapter, where concrete obligations were supposed to have been finally made clear and unambiguous, policymaking instead inscribed an arrangement of actors, roles, and processes to be played out. Those looking for an authoritative script for realizing their fundamental human rights certainly gained a tool, but one that still required their ongoing vigilance, and still left them "without guarantees."

Conclusions

In September 2013, as Costa Rica's anti-discrimination policy and action plan neared a final round of revision, a leader of the Human Rights Commission sent an e-mail message to

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[176] Indeed, no Costa Rican government agency made the text of the anti-discrimination policy and action plan available online until *the day* the state underwent examination by the UN Committee on the Elimination of Racial Discrimination in August 2015. The state report at the center of the examination makes numerous references to the policy project, which apparently finally prompted someone in the MRE to deem it important to post the text.

fellow members summarizing points from the body's most recent meeting. Most of these recalled a question or concern a member had posed about a technical aspect of the policy or plan – a budgetary matter, the timeline for adoption, etc. – followed by an answer from either the Ministry of Foreign Relations or the policy sub-committee/drafting team. Thus, a large amount of the message was laid out in bullet points beginning with phrases like, "The observation was made that," "One question presented was," "A worry mentioned was," and so forth. This rhythm comes to an unexpected halt however when the e-mail's author moves out of the past tense for her final three bullet points. The first of these is particularly arresting, both for this sudden change of tense, but also the abrupt shift in the spirit of the content. The point reads:

> It is recalled that, with the approval of the Policy, a political, social, and cultural paradigm is being shattered and [also to be remembered is] the great significance of having the state recognize that there has been racism and racial discrimination in the country, and [that] it ought to be combated.

This point has an entirely different gravity than those preceding it. Its author beckons her audience of fellow Commission members to come back from technical details to "recall" the big picture: This policy is a landmark. It breaks with all earlier policies – be they the explicit or the implicit – of marginalizing non-dominant groups, attempting to assimilate them, denying ethno-racial difference exists, spurning tailored institutional programming as anti-egalitarian, and deriding affirmative actions as reverse discrimination. And she was right; for these reasons, the policy *was* a landmark.

I also highlight this quote because of the passion that bubbles forth from it, at least for me, perhaps because I spent so much time with its author. The point is completely out of place in the series in which it appears, but it is worked in anyway – unable to be restrained, even in its somewhat stilted phraseology. In reviewing my extensive archive of meeting notes, draft versions of the policy marked up with comment boxes and tracked changes, and group e-mail

correspondence, the point jumped out at me. For me what it "recalled" was the determination and sincere commitment to the aims of the policy process that animated those most responsible for the everyday work of keeping it on track and moving it forward.

Yet however committed these actors were to the "big" purpose and objectives of the anti-discrimination policy, this chapter has highlighted social conditions that policymakers found made it unviable to follow the linear ideal for creating the kind of holistic slate of interventions they envisaged. These conditions did not always have deleterious effects on policy work. For example, it is not clear that a more rigorous, temporally anterior and discrete "diagnosis" of the current state of discrimination in Costa Rica would have formed the foundation for better or more concrete "actions." In fact, were state and non-state actors to have submitted to such a thing, it likely would have reproduced some of the same power imbalances that their critiques – and indeed also international norms on combating discrimination – contest. But rather than a foundational one, the "situational diagnostic" or "current situation" section of the policy was one of the last to be completed, even if its location in the text suggests otherwise (see Clark n.d.). This structural organization, together with the predominantly statistical character of the section's content, could lead a textual-interpretive analysis to conclusions that my ethnographic work shows to be mistaken: a statistically determined translational process, reliance on a technocratic regime of truth, or an abiding focus upon only what can be made "hard facts," for example.

In fact, the everyday work of the policymaking process gave scant attention to unearthing "evidence" *per se* of discrimination, or to the characterization of the problems it attended as falling under one or another manifestation of discrimination proscribed by international norms. Indeed, those norms – that is, the specific content of international commitments entered into by the Costa Rican state – were themselves surprisingly absent from the day-to-day work of

designing tailored, contextually appropriate actions for their fulfillment. Again, this is not a criticism, but rather an insistent objection to any assumption of the formalistic character of such administrative policymaking. It further suggests that we cannot know in advance what will be the landscape or channels that prove decisive in such processes for adapting global norms to local circumstances (Clark n.d.). None of this is to say that the policy process did not have the effect of producing knowledge of what counted as racial discrimination and as obligations to combat it in Costa Rica. But these products were assembled along a line whose mediators were entangled more by social relations and demands than rigid logical or epistemological commitments.

Finally, I have shown that Costa Rican policymakers found themselves not only entangled in "socials," but also in need of creating socials as part of the policymaking process. They summoned constellations of actors, roles, and beliefs into existence, and where they found limits to their ability to do so, these limits in turn abridged the scope of the policy itself. Rather than being able to mandate that things happen through the policy and action plan's texts, policymakers had to create channels, or lay ideational and social groundwork, for actors to be disposed to play out the roles that the policy presumes they already inhabit. The necessity for all of this suggests an important point. We are familiar with thinking of human rights treaty commitments as aspirational with respect to the vision of the world that they promise. But here we see that even the kinds of political and legal beings they posit are less descriptive than aspirational propositions. We can say especially that human rights treaty commitments as *state* commitments or policies as *state* policies have not only normative but also ontological objectives yet to be met. In Costa Rica, the negotiation of what the state is, and the relationships to it of everyone involved in the process as individual persons or as mediators for wider communities

were all open to competing claims. Normally taken as a given in policy studies, "the state" that was allegedly authoring the policy and binding "itself" by it was also quite intentionally being produced as an effect of the policymaking process.

CONCLUSION

> *It has always to be remembered that implementation of the Convention is for the states themselves, so, if their ministers and officials do not fully understand their obligations, patience may be necessary.*
> - Michael Banton, *International Action against Racial Discrimination*, 98.

Throughout Costa Rica's 2013 anti-discrimination action plan and policymaking process, this effort's leaders at the Ministry of Foreign Relations (MRE) simultaneously worked to compile the state's overdue report to the UN Committee on the Elimination of Racial Discrimination (CERD). Notwithstanding many government colleagues' resistance to the feeling of being "diagnosed," the inter-institutional exchange taking place around the action plan was an auspicious occasion for the MRE to solicit relevant information from across the state apparatus to be included in this report. The document was ultimately submitted in January 2014 – four years behind the due date the CERD established in 2007. It would then take another year and a half for the CERD to finally hold its examination of Costa Rica's report in August 2015.

This lapse of time between submission and examination of reports has become normal for the CERD, due to the large number of reporting states and the limited amount of time the Committee sits in session each year. Still, I admit that I endured it with little patience. Having devoted myself to investigating the principal procedures the Costa Rican state undertook towards its obligations to monitor and combat racial discrimination – as well as the drafting of the report to the CERD itself, alongside the policy and action plan – the prospect of seeing Costa Rica come before the Committee held special interest for me. When the review date was finally scheduled, I pulled together the necessary resources to return to Geneva for this "conclusion" of sorts – at least to *this* round of the review cycle.

On a warm Tuesday morning, the Committee held its weekly meeting with representatives of NGOs that found it in their own limited budgets to travel to Geneva. The Committee then received Costa Rica's state delegation on Wednesday afternoon, listened to its oral presentation, presented it with a battery of questions, and engaged it in an "interactive dialogue" the following morning. By lunchtime on Thursday, it was all over. Aware that this was to be something of a culminating moment in my years of dissertation research, a committee member approached me during the lunch break to ask me what I had on several occasions asked him and his colleagues: "So what did you think?"

It was difficult to answer. First, I had spent the past days so focused on substantive details of the issues being discussed and debated that I had not begun processing the "big picture" analytically. What I had so far was more of a feeling. That feeling also made it difficult to answer the committee member's question, because it was a sense of letdown, disappointment. After stumbling for a moment, I kept my answer to some very specific remarks – on issues I was glad the Committee pursued, others I wished that it had – together with the non-committal platitude, "We'll see what happens."

After being asked by other friends and colleagues over the coming days how the CERD meetings with Costa Rica had "turned out," I began to reflect on this feeling of disappointment.[177] Why disappointment? Why my frequent use of the term *anti-climactic*? Were the proceedings a letdown to me as an analyst who needed to uncover something theoretically compelling in them? Or had I come to identify with some party to the review – be it state functionaries, civil-society activists, or even the Committee – that I felt had not gotten its due? Might some of them also have been disappointed, and if so, were our reasons the same?

[177] I thank Miia Halme-Tuomisaari for encouraging me to do so.

Recalling Disappointment at the CERD

Disappointment, I began to remember, is not so uncommon at the CERD, or perhaps at any UN human rights treaty body for that matter. Of the attendees present at any given examination, the feeling is surely most acute and widespread among NGO representatives and advocates, especially those making their first trip to Geneva. Thanks to changes that have been made since I began observing the CERD in 2010, this disappointment at least is not usually for want of a voice in the process. As mentioned above, the Committee now holds meetings at the beginning of each week in which individuals representing accredited non-governmental organizations can present their own information and grievances about countries set to undergo examination in the coming days. Committee members also routinely host announced – though officially "informal" – meetings with these representatives during lunch breaks immediately preceding their reception of the state delegation.

NGO and activist disappointment is instead a common outcome of what I would characterize as the "normal arc" of CERD examinations. This arc begins in a first meeting with the state delegation that almost inevitably inspires first-time non-governmental attendees' confidence and excitement. In this meeting, they witness the Committee unleashing a flurry of questions at their government's representatives, expressing doubts about the content or omissions of its report, and sometimes doing so in quite pointed language. This opening salvo has increasingly come to consume most if not all of the nearly two hours following the state delegation's initial presentation and the CERD country specialist's (or rapporteur's) initial response during the first day's meeting. Granted, committee members spend some of this time on formalities, which, it bears mentioning, soften the bite of their questions. Each one begins by welcoming the esteemed delegation, congratulating it on its report, and often complimenting

some element of the report, the state's engagement with human rights, or the country in general.[178] Nevertheless, such comments are followed by extensive and earnest questioning, no matter which state is before the Committee.

Non-governmental advocates who travel to Geneva can also count on hearing their issues raised during this questioning, often in the exact language in which they have articulated them in the previous days' meetings with the Committee. Those NGOs most familiar with the treaty body system have begun to prepare written questions that they wish to have posed to their state representatives, and committee members commonly oblige by reading these as the CERD's own during review meetings. There should be little wonder as to why this practice in particular creates excitement at the CERD: Community- or national-organization leaders who have long felt disrespected and excluded hear their words – words that they might have fought for years or decades to have the state hear and take seriously – spoken to their government by the highest expert authority on racial discrimination at the United Nations. For this moment at least, and even with their reprimands formulated as questions, it feels as though "their truth" is finally validated as *the* truth, and that it is, as the old saw goes, being spoken to power.

More generally, the CERD's initial round of questioning gives the impression of a reversal of power, with "the state" in the hot seat, subject to judgment, and, at long last, made to assume responsibility – in both retrospective and prospective senses – for failing to secure the rights of minoritized groups. That impression is reinforced at the close of day one, when the CERD Chair frequently notes the large number of questions raised and the immense amount of work the delegation will need to do to prepare responses. Often this is followed by the Chair

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[178] Committee members have long noted that the amount of time "wasted" on these types of flourishes is a problem, but it is one that they have been unable or unwilling to shake (see e.g. Partsch 1992:365)

predicting that the delegation's members will have a "long night" or little time for rest between now – six o'clock PM – and the opening of tomorrow's meeting at ten.

But any sense of a state being chastened or besieged usually dissipates over the course of the examination's day two, and with it the enthusiasm of those seated in the room's NGO section. That enthusiasm, after all, is fed primarily by the very things that both CERD members and most state delegations hope to exorcize from their dialogue by its end – tension, overt disagreement, and conflict. The state delegates have the floor for the first hour or more, taking turns reading written responses to CERD members' questions into the small microphones mounted into the conference room tables. Whether due to the abundance of information offered, its often very technical character, the monotone in which it is read, or the fact that it is mediated by a headset – if not also a simultaneous interpreter – this round of answers can quickly reset the pulse of the room to a resting rate. Some content of state delegations' responses reaches a degree of excess that seems intentional – recitations of long passages of statutes and project statements; laundry lists of names and dates of human rights trainings held for public functionaries, to name a few. These perform a kind of "information potlatch" that is an offering to CERD members but also a subtle challenge to them to process as much as they requested.

At least some on the Committee always navigate this information deluge for the final round of questioning – an "interactive dialogue" in which two or three CERD members speak, followed by the state delegation, and so on until meeting time runs out. Members identify inconsistencies or reasons to doubt the state's claims, reiterate day-one questions the delegation overlooked or avoided, or use delegates' responses as a springboard for queries delving still further into institutional or social life in the country. As I hope was clear in Chapter 5, I do not paint this exchange as shallow, "weak," or devoid of debate, conflict, or unresolved issues left on

the table. But it is nonetheless the case that, given some poise and astuteness, the cards favor state delegations being able to mollify the Committee with a mix of admissions of failure, statements of committed resolve, concrete plans for improvement, and ideally, reports of the initial fruits of efforts already underway. Any given dialogue does indeed usually include some amount of each of these, and thus the normal arc of the examination is one that witnesses many inspired and sharp questions, from the pens of NGO leaders to the lips of CERD members, essentially disappearing into the ether.[179]

In this regard, I am reminded of two soft-spoken Aboriginal leaders who I happened to sit with during the examination of Australia in 2010. After watching their government subjected to exceptionally probing and critical scrutiny during the first day of questioning, I overheard one telling the other, "I feel [*pause*] *so happy* right now." By the end of day two, the same leader removed her headset and looked at her companion to wonder aloud, "What just happened?" What had happened was that the normal arc had run its course – one determined not by cold structures or proceduralism, but by members' strategically informed practices of inquiry, non-confrontation, and deferral, as analyzed in Chapter 5. This arc bends above all towards harmony, and if ever towards justice – or an outcome that vindicates non-state activists' hopes rather than disappointment – it is perhaps only in the *longue durée*, and with acceptance of justice as residing in steady, but always-incomplete, steps towards a receding horizon (see Derrida 1992).

Disappointment on the part of state delegations is much less pervasive at the CERD, but still worth considering. For most delegates, I suspect that the normal arc of the review is felt in reverse relative to their non-governmental counterparts. The opening barrage of questions that

[179] In August 2015, I noticed one young, energetic activist who was apparently unprepared for this. With the clock on the examination of his government nearing expiration, he raised and even briefly waived his hand from the NGO section of the room, naïvely thinking (or just wishing) that the CERD Chair would cede him the floor to advance the questioning of the state delegation himself.

meets even those who are quite confident of their government's record on racial discrimination often has at least a deflating effect on delegates that is manifest in their sobered faces and posture. We should remember that, after all, many of these functionaries have not fully internalized the scope of the racial discrimination concept used in the human rights sphere, and were raised on national narratives of ethno-racial homogeneity or equality, and immunity to racism – a malady found in South Africa and the United States, but not "here." What, for some, amounts to a week or so of "cramming" for the dialogue with the CERD may not prepare them for the breadth of interrogation and abundance of doubt with which their report is greeted. But in many if not most cases, these same delegates will, in less than 24 hours, be smiling comfortably in group photos with their CERD counterparts. They will leave the Palais Wilson's back exit congratulating one another, play-wiping feigned sweat from their brows, or, in a memorable instance I witnessed in 2010, bear-hugging a fellow delegate who was particularly effective in deflecting questions and criticism for his state delegation. These are all genuine emotional responses that are the typical culmination of reporting experiences, which, as Miia Halme-Tuomisaari (2014) has explained, always oscillate between feeling special and mundane; exciting, anxious, and boring.

This brings us to the final category of actors at the examinations – human rights treaty-body members themselves, in this case those of the CERD. In their case, one must be very careful in seeking to pinpoint and analyze sources of disappointment, because expressions thereof are often more tactical than genuine reflections of members' cognitive or affective responses. But here we might do well to pause for a moment to ask: Of what, precisely, does disappointment consist? As yet there is not an established anthropological literature devoted to theorizing the concept directly, but it nonetheless has an important place in analyses of desire,

hope, and longing. Disappointment appears in Hirokazu Miyazaki's (2004) work on hope, for example, by way of philosopher Ernst Bloch's contention that hope is predicated upon the condition of "disappointability." According to Bloch (1998), hope is entangled with disappointment because it is always addressed towards indeterminacy – both in the sense that its eyes are upon "the not-yet" of a future moment that is without guarantees, and also because the object of desire upon which they fix is substantively under-determined (see Miyazaki 2004:69-70). Miyazaki emphasizes that Bloch's account sees hope as being not extinguished by disappointment but actually fueled by it: The object that disappoints helps the hopeful subject refine her vision of what would constitute hope's fulfillment moving forward.[180]

We can glean from Miyazaki's reading of Bloch some lessons on how to think about disappointment. Perhaps the simplest is that genuine disappointment would seem to require the perception that an alternative experience preferable to the one actually lived had been possible. By this criterion, most of CERD members' public assertions of disappointment in meetings with state delegations probably do not reflect their actually having been disappointed, at least not in the dialogue itself. I say this because the Committee generally professes said disappointments upon learning of outstanding problems or obligations still unmet in the country, and such discoveries are both expected and – in that they indicate state cooperation and disclosure – a sign of a successful round of dialogue. Certainly most committee members genuinely wish that the problems broached did not exist, but they would feel deceived if none were disclosed. Indeed, they want to, and are confident that they will, find reasons to express disappointment. As explained in Chapter 5, if Committee members express disappointment about troubling reports or

[180] In her more recent ethnography on post-revolutionary Serbia, Jessica Greenberg (2014) likewise argues that disappointment is not the same as the absence of hope or possibility, and that it is not merely an end product of "the action," so to speak, but a generative form in its own right.

accounts, it is largely because such verbiage allows them to spotlight the issue and implore the state in question to address it, but without unequivocally denouncing or naming a violation.

What Committee members express as disappointing outside the actual examination meeting rooms is more revealing of the expectations and aspirations that animate what happens within CERD dialogues. It also reinforces my argument in Chapter 5 about the Committee's iterative, long-term approach to extending its authority, and that of the entire dissertation in which I claim that assessment is about cultivating obligated states. In interviews and informal conversations, committee members spoke of disappointment and indeed frustration when state delegations proved evasive in their responses to questions, or otherwise seemed to bring "bad-faith" tactics into their dialogue with the CERD. They mentioned, for one, that during the round of interactive dialogue in which delegations are to provide immediate responses to two or three members' questions, delegates usually pick and choose which to answer. Often in doing so they deliver long-winded responses on topics on which they prefer to speak, appearing to knowingly obfuscate their lack of substantive comprehensiveness by way of their responses' length. Another bad state practice mentioned by a committee member clearly familiar with U.S. legislative procedure was characterized as "filibustering." This involves speaking excessively in order to game the forum, specifically its relatively restrictive time limits, and the Committee's practice of allowing every member the opportunity to pose questions before any is given the floor a second time. The result is that time can run out before a member is able to press a question that she previously asked but that went unanswered.

CERD members' disappointment about such state tactics is sometimes directed at their colleagues. In these cases, one committee member might feel that others were less diligent in their preparation or insufficiently perceptive of the delegation's apparent tricks. A member

whose question delegates dodged might be disappointed that her colleagues do not pursue it on her behalf, but instead turn to their own pre-decided questions. Finally, committee members occasionally feel disappointed when their fellow experts request certain information seemingly out of habit, or "without knowing why," as one put it to me. Here "why" was meant in a strategic sense, with the committee member's frustration targeting what he saw as shortfalls in some colleagues' careful, critical, and situational astuteness. In fact, all of these intra-Committee frustrations refer to members' perceived strategic or tactical failures, and all tread the same course: from disappointment with state delegates for games of evasion to disappointment with fellow-CERD members for not "catching" them.

Thus we find that the hope with which CERD members approach a dialogue is that the state delegation will be forthright and self-disclosing, but while recognizing they may end up in a chess match. In that case, the hope is that their fellow-Committee members will prove perceptive and adept partners in the strategic play of question and response. Here again though, disappointment is possible: There is after all, as one CERD member told me, a "steep learning curve" to the unstated rules of the Committee's "constructive dialogue" with states.[181] But absent these disappointments, it is worth stressing again that committee members usually walk away satisfied – even if a state's substantive record on issues of racial justice, equality, and inclusion is far from stellar.

The Disappointed Ethnographer of Human Rights Law

Now let us return to my own disappointment during this final stint of fieldwork in August 2015. Did it share much in common with these other actors' experiences thereof? Or was there

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[181] If Bloch is correct, perhaps those disappointments nonetheless serve to refine the ideal of said rules, or of strategic CERD dialogical practice, even for the shrewdest disappointed committee members.

something unique arising from my position as ethnographic researcher? As George Marcus (2009:22-23) has noticed, there exists a kind of model disappointment narrative related to ethnographic fieldwork, which he aptly terms the "expected derailment" or "correction" story. In it, the discovery of something important and unforeseen "in the field" necessitates scrapping the original research plan and embarking upon a dramatically different course. My disappointment in seeing Costa Rica before the CERD was not this exactly. But I can recognize that part of it had to do with my having indulged certain expectations – derived in part from my specific object of study but also from general narratives about the life course of the ethnographic fieldwork project.

With respect to my ethnographic fieldwork imaginary, in essence, I expected to find in Geneva something like a continuation or "next step" following from my work in Costa Rica. Instead, I found myself disappointed by the palpable lack of continuity between my ten months of engagement with Costa Rican anti-discrimination efforts and the CERD's review of such efforts more than two years later. To begin, none of the functionaries with whom I had worked were among the delegates chosen to speak and answer questions on behalf of the state. This was disappointing on one hand simply because I would have loved the opportunity to "reconnect" face-to-face with some of these individuals, with whom I had formed real bonds during what was a relatively short but intense period for all of us. For them to have been there also would have fit into a certain ideal image of the final short-term fieldwork experience closing the loop, or providing a final "mop-up," as James Faubion (2009:163) says, to assure the anthropologist that the project is indeed complete. If missing this disappoints us, however, perhaps we do well to remember with Marcus (*pers. comm.*) that it is not for the ethnographer to pursue "the mastery of a story," but to write "with 'options' always kept open."

Still, there are a number of ways in which seeing my Costa Rican interlocutors – who were, after all, the most important actors in the government's anti-discrimination assessment and implementation work – before the CERD would have been analytically quite valuable. For one, they likely would have introduced many of the problematics I discussed in Chapters 4 and 6 into this site, allowing for direct comparison of engagement with those problematics across actors, sites, and scales of assessment. More generally, they surely would have reached a level of depth in presenting to the Committee that far exceeded that of the delegation that was sent to Geneva, which would in turn have generated more of substance to analyze. Instead, the holes in the actual Costa Rican delegation's knowledge reminded me once more how untenable is the premise of this forum: that "the state" is to speak, to give an account, to take stock reflexively, and to respond coherently of "itself" – in fact an unsettled and non-unitary subject (cf. Butler 2005:10-14).[182]

Beyond – and probably also above – these thwarted possibilities for a tidy "wrap up" on my project, I admit to feeling genuine disappointment at the substance of the work of international human rights legal governance that had unfolded before me. Had I observed with complete detachment, I should not have held any hope that CERD experts' questioning of the Costa Rican state would reflect a depth of understanding remotely approaching the ethnographic. I also could not reasonably expect them to have devoted attention to each problem they discussed proportional to its import; they were after all trying to catch up on eight years in just a pair of three-hour meetings. And I understood when one CERD member admitted during the review

[182] If I expected Costa Rica's Executive to compose a delegation for the CERD that performed state coherence through depth of institutional knowledge, it instead showed another strategy for the same effect – a state that "is one" through a delegation that spans the main ethno-racial groups in the country, the different branches of government, and ruling and opposition political parties, as well as having an equal balance of men and women (see also Halme-Tuomisaari 2014).

that he had difficulty following who was what, and who did what, among the assortment of institutions with similar-sounding names and/or mandates – a human rights commission, sub-committee, standing body, and so on.[183] At the same time, his mentioning how these details of the Costa Rican report can confuse and mystify its examiners was an unwelcome reminder of just how intangible the contexts they try to review appear to them. There is not even the need for what I earlier referred to as an information potlatch; simply reporting in a technically thorough and precise manner is already effortlessly opaque. So how could I hope for the Committee to rigorously interrogate the report, turning over most of the stones I would have, and a few more too? I had every reason not to, and yet I did, just as I sustained hopes for all the other things I say I shouldn't or couldn't have in this paragraph.

I implied above that it is *first-time* attendees to human rights treaty bodies' examinations who hold such expectations, but here is the point at which I want to arrive: No matter how much you know what these examinations are, you almost can't help but await something else – something "more." We might think of the consequent letdown as largely a *voluntary* disappointment, in that it would seem to be premised on a space of disappointable indeterminacy that had to be *willed* open in the first place. Winifred Tate's (2007:192-208) findings among Colombian activists engaging UN human rights forums reflect as much. In a particularly telling quote, one of these activists remarks that, though one can perfectly easily read what the different UN forums are, "you have to live it there [in Geneva]" to really appreciate what does and does not happen (*ibid.*:202). This comment responded to having "lived" a human rights review procedure that did not consider actors' conflicting accounts, did not deliver a judgment, and otherwise did not operate at all like a tribunal. By 2015, I had certainly been to enough CERD

[183] Readers of the previous chapter will no doubt empathize with this as well!

meetings that I knew I should not expect any of that. Indeed, I had been presenting some core points of Chapter 5 – that the CERD in fact avoids positioning itself to adjudicate fact claims or to "name and shame" by exercising for veridiction – for four years already. Yet I still kept the possibility open for myself that the CERD would deliver some definitive assertions, affirm unequivocally some of indigenous and Afro-Costa Rican activists' claims or denunciations, or otherwise provide bits of resolution or closure.

But I think that this dissonance, my own basically "voluntary disappointment" with the CERD, speaks to how near to inevitable it is to find its work – and perhaps all of human rights treaty law – disappointing. The CERD is after all the entity empowered to provide "authoritative guidance" (OHCHR 2005: para. 95) on a widely ratified treaty named nothing less than the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The ICERD in turn is celebrated at the UN as the paramount source of global norms on racial discrimination that are "binding" in force under international law. Here I see a parallel with Greenberg's (2014) excellent exploration of disappointment in a very different context: Serbian young people's transition from revolutionary activism to administrative and policy work following the ouster of Slobodan Milošević. Greenberg looks closely at both the activists' own disappointed state of "living in contradiction" between lofty aspirations and pragmatic institutional engagement, and their being *objects* of disappointment from other Serbians. The latter disappointment is cast upon "the youth" or "their" revolution because of the grand expectations that young activists themselves popularized and promulgated, now seen giving way to decidedly post-utopian goals pursued strategically and incrementally (Greenberg 2014: esp. 8-17, 35-39).

The UN human rights treaty system likewise disappoints by promoting ideas about what it will achieve that, despite being somewhat utopian, create real expectations that hardly even resemble its institutions' work. But I make this comparison to draw attention to the distinction that negates the two cases' equivalency: The UN human rights treaty system claims to be *the law*. For being endowed with a legal character, UN human rights norms are a kind of double pronouncement in which what are deemed "rights" thereby become not only what should be, but what also *already will be*.[184] This is a kind of promise that is distinct to law, and its cultural resonance makes the expectations and disappointments human rights law engenders, to my mind, more inevitable than those following from revolutionary promises or slogans (to recall the above comparison).

Law's authority is supposed to be a given. Some would add that by definition its dictates are settled, compulsory, and with clear consequences for non-compliance. But even if we are wise enough to doubt such strong determinacy in law, most of us probably expect those who act on its behalf to assert law with confidence and under an assumption of its basic foundational authorization (cf. Derrida 1992). Among other things, we expect that, even if law is not being followed exactly, its agents will act as though they expect it to be, without hedging, bargaining, or needing to continuously win the acceptance of its subjects. The fact that this type of negotiation – and so many measured, strategic practices – are needed to advance the broad UN normative framework on racial discrimination again raises questions about the tenuousness of the bounds of "legally binding" international norms. As UN human rights actors experiment with

[184] I am here thinking with Foucault's theorization of veridictory discourses as those that not only make a statement – which alone is not "to pronounce the truth" – but which also simultaneously posit that statement as a statement of truth. Veridiction is thus a distinct phenomenon involving an affirmation that is paired with some practice affirming its character as affirmation (Foucault 2010: esp. 62-66).

the means of making these norms *do*, the framework remains in some ways not-yet law, or as I said in the Introduction, a project in law.

In the meantime, this "not-yet" cannot, or should not, be admitted by those engaged in the project. This is because the assertion of human rights law's already-binding character is part of – perhaps even the lynchpin of – any strategy for making it so. Were it to be posited as anything less than binding or obligatory, there would seem to be very little hope of convincing its subjects to act bound by it. There is perhaps an irony here in that those subjects – states – are nominally the very ones that created legally binding human rights treaties, accepted their obligations by ratifying them, and empowered UN bodies to monitor their implementation. Yet it is not as simple as that states are therefore duplicitous – a criticism that would reify the myth of the inherent unity of "the state" as a subject. In order to "bind" states, many actors must receive and reproduce the message that human rights treaty norms are law, and as I showed in Chapter 6, often state administrative actors are among the experimenters, tinkering "from the inside" at building obligated-ness into the state subject. It would be hard to guess how many of these count as "true-believers" in the state's already-bound-ness versus how many are "in on" the strategic project to make it so. But the presence of the latter category reminds us that our analyses – whether for theory or advocacy – should be careful not to paint too dichotomized a portrait of state versus UN actors. In any case, if the question is at whom to target our disappointment, it probably is not that important; certainly not as much as allowing this disappointment to help refine our idea of what it is for which we might continue to hope, and how better to get there.

Without Conclusion

This dissertation has suggested that even as the actors who steer assessment procedures seek to make the human rights framework on racial discrimination ever more "binding," they

accept and even find a kind of success in the perpetual "not-yet" of its implementation. Certainly few if any would expect to find that all of a state's obligations have been fulfilled. Neither, as I have shown, do they effect universal checklists or metrics, and then pursue comprehensive accountings for each state in its terms. I have argued that instead, assessment is oriented towards cultivating dispositions and practices of what I have characterized as a more dexterous "obligated-ness" in states. The obligated state is one that evinces earnestness and vigilance in monitoring discrimination, creativity and rigor in tailoring global norms and procedures to national particularities, and reflection, dialogue, and self-criticism regarding its efforts. Through all of this, assessment actors continuously construe new problems and implications of human rights norms on racial discrimination – and indeed obtain the latitude to elide or explain away others – thus leaving the "all" in "all of a state's obligations" subject to constant revision.

Indeed, to some extent the instability in any hypothetical "compliance" endpoint is a function of conscious prescript as much as unwitting practice. As I showed in Chapter 3, UN agencies attempt to train state actors to know racial discrimination through methods and metrics tailored and repeatedly re-tooled in relation to underdetermined concepts of context, difference, and the participation of non-state activist counterparts. In Chapter 4, I demonstrated that the foregrounding of the human rights cause as reason *to* produce ethno-racial statistics has led to rights imperatives finding their way into the production line itself. In Costa Rica and elsewhere in Latin America, this cause is interpreted and mobilized in unforeseen ways that alter what is ultimately counted as knowledge of discrimination "in effect," and the collectivities visible as subject to it and therefore entitled to remedies.

Chapter 5 argues that these numbers nonetheless do not cohere into semiotically determinate "black boxes" any more than any other form of information that finds its way into the dialogical exchange between a reporting state and its CERD expert-examiners. Rather, above all such information must offer a kind of second-order "indicator" of precisely the characteristics of obligated-ness noted above. It achieves this largely through its conformity with committee members' pre-existing understanding of what a self-disclosing state *could* find if indeed it has accepted the broad human rights conception of racial discrimination and undertaken the reporting procedure in good faith. To be sure, this involves demonstrating tangibly that some obligations have been met. But it also means that the course of the "normal arc" discussed above will arrive at not only "good relations" but also acknowledged challenges that the state in question still must address; "no discrimination" is definitively not an option. Together, these two ingredients – good relations and pending problems – form foundation and rationale for a future review dialogue, which should in turn follow the same trajectory. Demonstrating obligation thus fuels a cyclicality in which assessment continuously induces progress in vanquishing manifestations of discrimination, but always without completion – a pattern reproduced as well by the form and practice of national action plans like that of Costa Rica analyzed in Chapter 6.

Thus it is that human rights assessment, at least where racial discrimination is concerned, governs states' normative commitments above all by striving to make states' engagement with them – and with inter-governmental monitors and non-governmental advocates around them – unfinalizable. In none of my research did I find those who championed evaluation procedures implying that states could expect to arrive at a point of final stasis, their obligations to norms on racial discrimination met. This can have the troubling effect of offering "cover" to state actors

that want to push particularly challenging or politically unpopular racial-justice work off into the future. That is, it does not "firm up" this law that is so often called "soft" (see Merry 2014).

But what it *does* do is *spread out* human rights treaty law. It spreads it indefinitely over time and – by way of time – progressively across new issue areas or matters of concern. As I have noted throughout the dissertation the UN human rights framework on racial discrimination is broad and open-ended, both in the subject-matter areas it addresses and in its conception of discrimination's "forms." Despite that ICERD – the human rights treaty in which the framework is anchored – is among the most ratified of all such treaties, it is in effect still a challenger, vying to re-define accepted views of what "counts" as racial discrimination. Lacking the tools of force normally at legality's disposal, this framework's advocates use time; they press states to engage with the framework in certain ways that keep it in circulation, interpretation, variable application, or even just discussion – to extend and expand where speaking of "enforcing" is probably too much. It has its successes – often in conjunction with complementary social or political forces that mobilize or converge with it – but it also chronically fails. Perhaps this has become, for such an ambitious and all-inclusive anti-discrimination platform, part of the point. On one hand, for those of us who find such a sense of satisfaction and promise in this framework, how could this not be disappointing? With it, we are the ones most surely bound – bound to wait. On the other, unless we accept a more finite, fixed set of anti-discrimination obligations on which to adamantly and exclusively press states – foreclosing some of the framework's interpretive potential, surely towards a more minimalist view – how could it be any other way?

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