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A Retrospective Look at the Winding Paths to Legalizing Afro-Colombian Rights in Law 70 of 1993

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Abstract

August 2013 marked twenty years since the passing of Law 70, which legally recognizes the ethnic, territorial, and socioeconomic rights of black communities in Colombia. In the past two decades its implementation has been mixed at best, and the actual political and economic status of most Afro-Colombians remains grim. Yet this flawed law remains an important icon and political instrument of Afro-Colombian struggles. A retrospective look at the processes and peoples that led up to Law 70 may be useful in the context of ongoing Afro-Latin(o) struggles to obtain real and sustained cultural, political and economic rights.

Keywords: Law 70, Afro-Colombian rights, cultural politics

Resumen

El mes de agosto de 2013 marcó los veinte años de la aprobación de la Ley 70, la cual reconoce legalmente los derechos étnicos, territoriales y socioeconómicos de las comunidades negras en Colombia. En las últimas dos décadas su implementación ha sido desigual, en el mejor de los casos, y el estatus económico y político real de los afrocolombianos continúa siendo desalentador. Sin embargo, a pesar de sus fallas esta ley sigue siendo un ícono e instrumento político importante para la lucha de los afrocolombianos. Una mirada retrospectiva a los procesos y personas que llevaron a la Ley 70 puede ser útil en el contexto de la lucha afro-latina, que aún continúa, para obtener derechos verdaderos y sostenidos en lo cultural, político y económico.

Palabras clave: Ley 70, derechos afro-colombianos, política cultural

Black communities in Colombia have gained remarkable national and global visibility in the last two decades thanks in part to Law 70 of 1993, which legally recognizes their ethnic, territorial, and socioeconomic rights. The actual implementation and gains of Law 70 have been mixed at best, and the political and economic status of most black communities or “Afro-Colombians” as they began being called after the 1990s remains grim.¹ Yet, this flawed and incomplete law serves as an important icon and political instrument of Afro-Colombian rights. It also serves as a model or inspiration to other Afro-Latino groups seeking legal recognition of their rights. It is within such a context that this article reviews the complex and contradictory processes that led to the legalizing of Afro-Colombian rights in Law 70 of 1993.

In the 1990s, I heard many diverging and fragmented versions of how this legal victory was attained and how the Pacific lowlands became the spatial referent of Afro-Colombian identity. For many ordinary Colombians and state officials, the recognition of black ethnic rights was an extension of Article 7 of the 1991 constitution, which declares Colombia to be a multiethnic and pluricultural nation. But in a nation where culture is equated with indigeneity, there was widespread ambiguity about conceptualizing black rights in cultural or ethnic terms. Indeed, many anthropologists and other advocates of indigenous rights have argued that black leaders were being instrumental in claiming a distinct ethnic status so that they could gain access to land rights. While black activists did not speak in one voice, their narratives emphasized their own role in resisting this opposition and mobilizing to claim their rights. These early accounts suggested that the legal recognition of Afro-Colombian rights in Law 70 was the result of discontinuous and contingent organizing that came together within particular political economic conjunctures. These suggestions were confirmed with my sustained engagement with black social movements, and indeed continue today.

What follows is a retrospective sketch of the processes that led to the legalization of black rights in Colombia. While black struggles have a long history in the country, most movements and demands were local rather than national. Bringing together heterogeneous and multiple black identities and interests to argue for Afro-Colombian ethnic and territorial rights was riddled with tensions and contradictions. These were exacerbated by that fact the Colombian state was ambiguous at best about granting specific rights to black communities. Its priorities lay with political modernity and economic development. The

logic of these imperatives was then threaded through the struggle for black rights and was often anchored by the very forces that resisted them. A retrospective look at the Afro-Colombian efforts may help us to better understand the complex interconnections between cultural politics and global political economy, while steering us clear of binary explanations of contemporary Afro-Latin American struggles that romanticize resistance or reduce it to structural effects.

1. Transitory Article 55: A Dubious Recognition and an Afterthought

One of the many paradoxes of blackness in modern Latin America is its present absence. Afro-descendent peoples tend to be “invisible” in popular and official imaginaries, even as they are subject to various forms of racial discrimination. Blackness remains symbolically and materially constitutive of the nation, yet denied. Why this is so is linked to the complex interaction of a number of factors—histories of nationalism, the perception of blacks and blackness within prevailing ideologies of “race” and culture, and the structures and dynamics of political economy (Leys Stepan 1991, Appelbaum 2003, Applebaum et al. 2003, Sanders 2004, Cárdenas 2010). At the end of the 20th century, the configurations of these interactions shifted in ways that were particular key for the visibility and meanings of blackness in the continent.

In Colombia, which has the second largest black population in the continent (after Brazil), the interaction of cultural politics and political economy took a distinct turn. In the 1980s, many Latin American nations, from Mexico to Chile, adopted political and economic reforms following the end of military regimes and debt crises. Over a dozen Latin American countries either substantially modified their constitutions or adopted new ones.² Colombia was one of them. After a long and contentious constitutional reform process, a new Constitution was ratified in 1991. The document is an ambitious political charter that aims to expand democratic participation, strengthen civil society, decentralize elite-dominated political administration, and promote economic growth and development.

Ethnic and cultural issues were not a part of the constitutional reform agenda initially. But the presence of indigenous representatives in the Constituent Assembly and discussions about the changing nature and meaning of national identity and citizenship led to the inclusion of Article 7 in the new Constitution. Under Article 7, the state recognizes and protects the ethnic and cultural diversity of the nation. But this official multiculturalism played out differently for indigenous versus black communities. This is because of a variety of different reasons key among them was the different nationalist ideologies governing “culture”

versus “race”. For example, since colonial times indigenous peoples have been perceived as culturally distinct entities, whereas black communities are discriminated against or exoticized because of their “racial difference,” but not considered sufficiently distinct from Colombia’s *mestizo* population. These differences have had major implications for land rights.

Its indigenous groups were promised expanded control over their communal lands, and administrative autonomy in judicial decisions, finances, and development policy. There was only one reference to black rights in the 1991 constitution, and it is in a cryptic and ambiguously worded Transitory Article (AT 55). AT 55 notes that the need for a timely adoption of a law recognizing

the collective property rights of black communities that have inhabited the empty lands [*tierras baldías*] in the rural riparian zones of the Pacific coast, in accordance with their traditional production practices [and establishing] mechanisms for the protection of the cultural identity and rights of these communities, and to promote their economic and social development. (Republic of Colombia 1991)

The tellingly misnamed “empty lands” in question are Colombia’s Pacific lowlands, geographically the largest area of black culture (Afro-Colombian communities make up 90% of the region’s population) in the country. Part of the Chocó biogeographic region, the lowlands extend 1,300 kilometers from southern Panama to northern Ecuador along the Pacific coast. A global biodiversity “hot spot,” the region is also home to a variety of ecosystems (coral reefs, mangroves, rock and sandy beaches, coastal forests, high- and lowland tropical moist forests) and a myriad of plant and animal species, many endemic.

At first glance, the granting of collective land titles seemed at odds with global, Latin American, and indeed national trends, all emphatically in the direction of privatization. But it soon became clear that collective land rights for black communities were marginal to the state’s agenda. A quick perusal of the National Planning Department’s report (1992) for the region revealed that its natural resources—timber, gold, platinum, silver, oil, and natural gas—that were at the forefront of economic development and modernization plans. Colombia wanted to usher in a new era of political economy and resource-rich areas such as the Amazon and the Pacific were key to this endeavor. Given the 1991 Constitution call for the protection of Colombia’s environment, the diverse and fragile ecosystems of these regions were also the focus of extensive biodiversity conservation measures. However, the environmental conservation was conceptualized as instrumental for future economic development. Black ethnic and territorial rights were an afterthought at best. So to understand how AT 55 made it into the new constitution requires a sense of two sets of issues. One, the role of race and culture in Colombian nationalism, and two, the intersection

of geography, demography, and political economy in the Pacific region. The former has been discussed at length elsewhere (Wade 1993a, Friedemann and Arocha 1995, Whitten and Torres 1998, Asher 2009). For that reason and because of the exigencies of space, I focus on the latter. Suffice it to note that until the end of the 20th century, blacks communities had no special land rights. Nor were they considered a culturally distinct group either legally or in the national imagination.

2. Geography, Demography, and Political Economy in the Pacific Region

In addition to a substantial representation in the Colombian metropolises (Bogotá, Medellín and Cali), there are six regions of important black presence in Colombia: the Atlantic/Caribbean coast; the Magdalena river valley, the Cauca and Patía river valleys in the Andean region; the San Andrés and Providencia archipelagos; and the rural riparian zones of the Pacific Littoral.

As noted previously, the latter region is the largest contiguous area of black presence in Colombia. As such, it has played a crucial role in shaping notions of Afro-Colombian identity. In the colonial era, Spanish invaders decimated or dislodged the vast majority of the region's indigenous inhabitants, replacing them with African slaves brought to work in the gold mines. Through the collapse of Spanish rule in 1810 and the arrival of manumission in 1851, blacks and the surviving indigenous peoples formed the backbone of the region's political economy.

Escaped and freed blacks continued to arrive and settle in the Pacific lowlands throughout the nineteenth century. Alongside Embera and Waunana Indians, these newcomers farmed, fished, hunted, mined, logged, and engaged in other subsistence activities. Over decades, culturally vibrant black settlements developed along the extensive river valleys and the littoral. Yet the Pacific remained subject to capitalist economic forces. Particularly transformative were the various boom-and-bust cycles of resource extraction. Both forest products (timber, rubber, tagua, etc.) and minerals (gold, platinum, silver) provided lucrative trades for outsiders (Friedemann and Arocha 1986, Whitten 1986, West 1957).

Under Law 2 of 1959, vast areas of the country, including extensive swathes of the Chocó, were declared state forest reserves and *tierras baldías* (empty or uninhabited lands). While the Chocóan Indians had a semblance of control over their communally-owned *resguardos*, blacks inhabitants of these rural zones became *de facto* squatters or *colonos*. The Pacific economic "frontier," at the geographic and economic periphery of the Andean centers of commerce, also became the focus of major development interventions in the 1950s. As I discuss below, these interventions intensified following Colombia's "economic opening" in the 1980s, and the neoliberal reforms ushered in by the 1991 Constitution. While Afro-Colombian communities were not explicit

targets of these interventions, their mere presence required that the state do something beyond the longstanding habit of neglect. Moreover, given their own ambitions, these communities became central actors in the unfolding drama in the region.

While there are significant black communities in all four Pacific departments, only Chocó has a black majority (in the other three, nonblacks in the interior outnumber coastal blacks). Since the middle of the twentieth century, a black elite based in Chocó's capital, Quibdó, began dominating the department's political administration, including CODECHOCO, the Chocó Regional Development Corporation. Rural communities and other poor groups remained on the margins of this patron-client system of politics and were exploited within the parameters of an extractive economy. In the 1980s, the precarious livelihood of black peasants came under increased pressure as CODECHOCO handed large concessions to private logging and mining firms. With the help of the Catholic Church, black peasants in the Atrato region organized to contest these giveaways (Arocha 1994, Pardo 1998, Wade 1995). It was during this period that ACIA (*Asociación Campesina Integral de Río Atrato*, the United Peasant Association of the Atrato River) emerged as one the largest associations of black peasants in the Chocó. Their emergence coincided with the launching of several forestry and "sustainable" resource management initiatives under the Forestry Action Plan for Colombia (PAFC, *Plan de sustainable resource use and integrated rural development Acción Forestal para Colombia*). As the acronym of the plan indicates, these projects meant to address deforestation and land degradation problems in the region by promoting "sustainable development" with the help of groups such as ACIA.

In the 1980s, ACIA members consulted with OREWA (the regional organization of the Embera Indians), which had been working to gain and expand control over their communal *resguardos* since the 1970s. Agudelo (2001) argues that ACIA's earlier claims for property were classical peasant demands for land, though they were couched in terms of access to forests for collective logging and other uses. However, these claims were largely unsuccessful and ACIA refined its strategies. Probably inspired by their alliance with OREWA, ACIA henceforth couched its claims in ethnic and environmental terms: language, which would become increasingly significant in the ensuing black struggles.

First, ACIA argued that according to International Labor Organization accords on the rights of ethnic minorities, black communities had the right to use, manage, and collectively own the lands they occupied. Unlike indigenous communities, they could not make claims to originary rights over this land. However, as one ACIA member I spoke to in 1995 told me, the black communities had rights to land *por transcendencia*; that is, as a consequence of having settled and lived in the region for almost 500 years.

Second, they linked their land claims to the state's prevailing policies to promote "sustainable development" in the Pacific region. ACIA members argued that the economic or subsistence livelihood strategies of black communities were environmentally friendly and that granting them land and resource rights (as opposed to concessions to private firms) would aid the state's mandate to promote sustainable development. Officials involved in the PAFC projects attested that local communities engaged in "ecologically sustainable" forestry practices, and supported ACIA's proposal for land ownership and communal resource management. ACIA members also argued that their economic practices were based on the specificities of black cultural and social life. Thus, they added a social component to sustainable use and management arguments that had heretofore focused on technical (ecological and later economic) aspects of resource use.

ACIA's efforts bore mixed fruits. ACIA members were not granted land titles nor were their ethnic claims recognized. However, federal officials reiterated the ban on commercial logging. Despite these guarantees, commercial logging operations in the region continued. In response, these groups began broadening their base and joined popular organizations such as Quibdo's *Organización de Barrios Populares y Comunidades Negras del Chocó* (OBAPO, the Organization of People's Neighborhoods and Black Communities of the Chocó) to draw attention to the neglect of poor black communities and gain visibility for their social and economic struggles.

In 1989, black peasant associations and indigenous groups organized a biethnic meeting in the region. According to Pardo (1998), a proposal to establish an immense biethnic territory in the lower San Juan region was aired at this meeting for the first time. While no such territory was established, the meeting provided ACIA with yet another opportunity to broaden its alliances. Such encounters, impelled by the deepening land struggles in the northern Chocó, often served to unite the efforts of previously disparate groups. The immediate aims of these groups were not met, yet such activism was a crucial precursor to the eventual AT 55 debate.

3. How AT 55 Becomes a Part of the 1991 Constitution

While arising from specific socioeconomic conditions in the northern Chocó, the struggles of ACIA and other peasant groups were not aberrations. From independence forward, Colombian political history is marked by a series of violent conflicts and a multitude of protests against the inability of the Colombian government to meet people's basic needs. Ruling elites (from both political parties) were not interested in sharing power with the poor and ignored their concerns (Palacios 2006). The rural poor were particularly marginalized and poor rural dwellers became targets of political violence during the decade of La Violencia (1948-

1958). The Pacific region remained on the margins of this particular wave of armed violence and the guerilla activities that emerged subsequently (in the 1960s). Nonetheless, the poor in the Pacific suffered from state neglect. Neither the state's half-hearted land reforms policies in the 1960s nor its agricultural modernization measures (both undertaken in the middle of the 20th century, in the 1960s) significantly benefitted poor rural communities in the Pacific. Black and indigenous groups were among those who protested against this neglect and were active in varying degrees in the National Association of Peasant Producers (ANUC). For these groups, poverty combined with ethnic or racial difference to magnify their marginalization, albeit in different ways. Since the 1970s, various indigenous organizations and movements arose to assert cultural and territorial rights (Findji 1992, Gros 1991, Jackson 2002, Dover and Rappaport 1996). Black groups also organized around their particular concerns.

The constitutional reform process that began in the late 1980s was a response to both accelerating violence, and increasing socioeconomic and political marginalization of large sectors of the populace. The reform process involved grappling with many issues—yet another peace accord including the complex and incomplete process of demobilizing guerilla and other armed groups, economic opening, environmental conservation, restructuring the state, reconstituting civil society, changing notions of citizenship and national culture. A National Constituent Assembly was elected to change the constitution and help usher in a more peaceful national era where the needs of all Colombians would be met. Numerous peasant and ancestral groups, including Afro-Colombians, also brought their concerns to this forum. They articulated their claims in terms of territory and administrative autonomy and linked them to concerns over environmental conservation and cultural rights (which were fast becoming part of development lexicons).

There is little evidence that ethnic or cultural rights appeared on the Constituent Assembly's list of concerns before black and indigenous activism pressed the organization for their inclusion—from the outside, during the Constituent Assembly elections, and later as a result of indigenous representation within it. Whether forced or reluctantly persuaded to consider ethnic rights, the initial response of the Constituent Assembly was to attempt to address them (and particularly black rights) as a subset of its modernizing, state-building project via an extension of citizenship rights (Agudelo 2001:12). Indeed the Colombian state revealed a marked preference for assimilating the rights of black communities within its neoliberal economic agenda, principally through the delineation of property rights. Rather than claim what most considered an unhealthy compromise, black groups from the rural Pacific steered a complex obstacle course to push for territorial and administrative autonomy along the lines of what was being discussed for indigenous groups.

Afro-Colombians have a long history of organized resistance (Wade 1993b, 1995; Villa 2001). But before the 1990s most black groups in modern Colombia were local rather than national in orientation. In the 1970s and 1980s urban blacks formed study and research groups, as well as small professional foundations (Rosero 1993). Among the oldest and most well known of such groups was the *Movimiento Nacional Cimarrón*, which emerged from a radical leftist study group. Led by longtime member Juan de Dios Mosquera, Cimarrón focused on fighting discrimination and oppression amongst blacks as marginalized groups.

Cimarrón had international alliances with other black struggles, such as the anti-apartheid movement in South Africa, civil rights efforts in North America, and *negritude* movements in the Caribbean and Francophone Africa. Thus, it gave Afro-Colombian issues a new visibility overseas. Within Colombia, Cimarrón attracted a small following among youth or cultural groups in urban centers (Wade 1995, Rosero 1993). But in rural areas, where black communities traditionally organized around specific labor and social activities, Cimarrón's discourse of international black solidarity and universal human rights had little resonance. Black peasants, including women producers, were more likely to be part of cooperatives initiated by state-sponsored development programs than to be aligned with political activists, regardless of ethnic focus.

Since the mid-1980s, black identity and practices were also becoming the foci of cultural revindication and celebration among various black communities but not yet a political force. For example, since 1986 the Cali-based NGO Fundación Habla/Scribe had been running innovative literacy campaigns in the Pacific such as the *Gente Entintada* (literally "people stained with ink") project in which participants were trained to use block printing techniques to record and retell oral histories. According to Fundación Habla/Scribe's director Alberto Gaono, the NGO did not engage in "adult literacy" or teach community organizing. Rather they trained community members to use various media and communication tools—producing low cost radio programs, using videography, or simple printing and publishing techniques—which the communities then used to organize themselves around issues that were important to them. Fundación Habla/Scribe's training among youth, women, students, peasants, etc. helped these groups to organize around cultural and community issues.

During the constitutional reform process, Afro-Colombian leaders and activists sought to unite such disparate black groups into new national-level coalitions. In Chocó, OBAPO mobilized Quibdó shanty-dwellers and several coastal communities. In the southwestern Pacific, a group of students and intellectuals (many with prior links to Cimarrón) from Buenaventura, Guapi, and Tumaco began linking the struggle against socioeconomic inequalities and racial discrimination with work on recognition of black identity and cultural practices. These intellectual activists

began mobilizing peasants, artisanal fisherfolks, loggers, and miners living along the Anchicaya, Naya, and Cajambre rivers of coastal Valle del Cauca. Several activists from the Atlantic coast and Bogotá joined this group from Valle del Cauca, Cauca, and Nariño, and collectively called themselves the *Organizaciones de Comunidades Negras* (OCN, the Organization of Black Communities). While mobilizing rural communities in the Pacific, OCN members began developing a different understanding of Afro-Colombian reality and a new vision for a national black movement within the context of the political and economic changes that were sweeping the country. The OCN's political vision was also influenced by intellectual debates about the role of culture and cultural politics in contesting development and state power (Grueso et al. 1995).

Among the rural, riverine communities of the Pacific Littoral there was a proliferation of new peasant associations, even as older organizations expanded their reach. Along with ACIA, OBAPO, and Cimarrón, the OCN was a nucleus around which Afro-Colombians rallied. Even black politicians linked to the two main political parties came together for workshops and seminars to discuss the needs and interests of Afro-Colombian communities. This too was an unusual development. Although political offices in the Chocó were occupied by black or mulatto politicians since the 1950s, they had heretofore shown little interest in black resistance and protest. Rather as Wade (1993a) details, Chocóan politics are marked by clientelist struggles for black votes and for meager resources such as education and access to bureaucratic and political posts. At the local, municipal, and regional levels, various NGOs and the Catholic Church (which had long enjoyed an important presence in the region) played key roles in rallying communities.

In the wake of the constitutional reform process Afro-Colombians organized in unprecedented numbers. But there was no consensus regarding the parameters of black rights, nor any common strategy for framing black demands on the national stage. Chocóan proposals were couched in ethnic terms but centered on demands for land ownership and resource control; in this way they hoped to increase community influence in political and developmental circles that were long dominated by black elites in Quibdó. While not necessarily allies, urban groups and black politicians argued for anti-discrimination and anti-racist policies to specify socioeconomic and political equality for Afro-Colombians.

In contrast to both factions, a broader vision of black rights was articulated by the Organization of Black Communities (OCN), a loose coalition of activists and intellectuals from three southern coastal Pacific states (Valle del Cauca, Cauca, and Nariño). Several key individuals and interest groups from Bogotá and the Departments of Atlántico and Antioquia were also part of the OCN. The OCN proposal centered on two related issues: first, respect for black difference and recognition of culturally-based

economic practices of production, and, second, territorial control (rather than land titles) over their Pacific homeland. Despite these differences, the loosely aligned black factions put forward two candidates for election to the National Constituent Assembly, the body that was to frame or draft the new constitution. One was the OCN's Carlos Rosero from Buenaventura; the other was Cimarrón's Juan de Dios Mosquera. Many other black candidates appeared on the ticket for the seventy-member Constituent Assembly. Most were linked to the Liberal party and had not participated in grassroots mobilizations among black communities. However, during the Constituent Assembly elections of 1990, a slim majority of the black vote went to two indigenous representatives: Francisco Rojas Birry, an Emberá Indian from the Chocó region; and Lorenzo Muelas, a Guambiano from the highlands of the Cauca state.

This was not as startling an outcome as it might appear. The Constituent Assembly was a unique legislative body in Colombia in that it was the first to include representatives from indigenous, religious, and political minorities.³ According to Arocha (1992) and Wade (1995), the black vote was split because indigenous representatives were seen to have more political experience, and hence a better chance of defending black interests in the framing of the new constitution.

In 1990, several national meetings were held among various black sectors with the aim of developing and presenting a united proposal for black rights to the Constituent Assembly. At a meeting in Cali, a National Coordinator for Black Communities was formed to work on such a proposal (Arocha 1994, Grueso et al. 1998). However, the fledging Coordinator for Black Communities could not accommodate the vast differences in experiences, agendas, interests, and strategies among the various black sectors and remained riddled with internal divisions. According to Agudelo (2005), ACIA and the rural contingent from the Chocó were suspicious of urban, intellectual activists and it was at the Cali meeting that the Siglo XXI group became the OCN.

Afro-Colombian activists eventually came up with proposals for ethnic and territorial rights for black communities and put them forward to the Constituent Assembly. However, proposals for black rights framed in ethnic terms were met with hostility by Constituent Assembly members (Arocha 1994; Grueso et al, 1998; Wade 1995). The expansion of ethnic and cultural rights was a contentious one from the outset. Many Constituent Assembly members were deeply uncertain about the granting of such rights to indigenous people. Widening the discussion to encompass Afro-Colombian demands only enhanced their doubts.

As part of the Constituent Assembly's Subcommission on Equality and Ethnic Rights, the indigenous delegates did attempt to broaden discussions about the meaning of ethnicity, culture, and national citizenship. But the Subcommission's proposals were ignored, and as a consequence the term "ethnic" remained synonymous with

"indigenous." Subsequently, the issue of black rights was conspicuously absent in the initial roundtable discussions to draft a new constitution (Arocha 1992, 1994; Wade 1995).

Black mobilizing intensified in light of what many considered willful neglect. A massive telegraph campaign was launched to urge the President Gaviria to support black demands: 25,000 telegraphs were sent to President César Gaviria urging ratification of a black law. To add visibility to black struggles, activists organized several strikes and peaceful protests, including the takeover of mayors' offices in Quibdó and Pie de Pato in the Chocó, and of the Haitian embassy in Bogotá (Agudelo 2001, Arocha 1994). At local and regional levels, black groups engaged in extensive conversations about the meaning of black identity and rights. Many of the participants later became representatives of the Congress-appointed special commission for black communities, which was established after 1991.

Concurrent with these efforts, discussions raged within both the Subcommission and the wider Constituent Assembly regarding the ideological and practical implications of "multiethnicity" for cultural groups, other social actors, the state, and the constitutional reform process itself. Especially bitter debates ensued in the Subcommission over the definition of "ethnic groups" and the granting of territorial rights to Colombian blacks. Some members of the Constituent Assembly argued that only indigenous people were ethnically "different" and thus deserving of territorial, historical, and cultural rights. Afro-Colombians did not have the recognizable markers of "difference"—language, costumes, or religion—that distinguished indigenous communities. Their perceived or real assimilation into mainstream Colombian society, fraught as it had always been with discrimination and resistance from white Colombians, was now held up as the very reason they could not be afforded special rights.

Yet, after much stalling, objection, and evasion, Article 7 was included in the Constitution. It declares the multiethnic and pluricultural nature of the Colombian state and allows for a broader concept of "citizen," by virtue of which ethnic groups have the right to govern themselves according to their own cultural criteria (Dover and Rappaport 1996). As a result of black lobbying, the Subcommission also came up with a document aimed at doing away with the practice of equating "ethnic" with "indigenous." Amid these debates Rojas Birry and Orlando Fals Borda consulted with various black leaders, and in conjunction with other delegates drafted a proposal for black rights. Lorenzo Muelas presented this draft to the Constituent Assembly. At the last hour—and only when Muelas and others threatened to refrain from approving the constitution—the proposal was accepted.

Under the new constitution, indigenous groups were granted greater administrative, financial, and territorial autonomy through the proposed creation of special jurisdictional units termed *Entidades Territoriales Indígenas* (ETIs, Indigenous Territorial Units). Special rights for black

communities were stipulated under the brief and ambiguously worded *Artículo Transitorio 55* (AT 55, Transitory Article 55). AT 55 charged Congress to appoint a commission—the Special Commission for Black Communities (CECN, *Comisión Especial para las Comunidades Negras*) to study the circumstances of black communities and to draft a law to grant all such communities in the *tierras baldías* of the Pacific zone rights to collective titles to their lands. The Special Commission was charged with drafting a law for black communities within two years, by July 1993. According to the tenets of AT 55, this proposed law would also establish mechanisms to protect black cultural identity and promote socioeconomic development among black communities in the Pacific, and those living under similar conditions in other parts of the country. Nevertheless, the focus on cultural rights and socioeconomic development, and the concerns of blacks living in other parts of the country, remained secondary to the issue of clarifying property rights for black communities living in the rural Pacific.

4. The Long, Winding Road from AT 55 to Law 70

Law 70, the stipulated two-year successor to AT 55, was passed in August 1993—just slightly late. From 1991 to 1993, mobilization to turn the transitory article into law intensified at two levels: among black sectors, and between black sectors and the state. In July 1992, the first *Asamblea Nacional de Comunidades Negras* (the National Conference of Black Communities), was held in Tumaco, Nariño, in another attempt to form a broad, unified black coalition. Representatives came to Tumaco from all over the Pacific, as well as from other areas of black concentration. A stated aim of the Asamblea was to lay the groundwork for a black law, which expanded the mandate of AT 55 to recognize and include the rights of diverse black communities, not just those along the Pacific rivers.

But this is as far as the agreement went. Beyond it, divisions among the communities revealed a major rift. On one side, were those who saw a law for black communities primarily as a means for obtaining extended political participation and equality within established institutions. On the other, were the southwestern factions, who wanted to go beyond electoral participation and equality in state institutions to draft a proposal, which built on AT 55's stipulation of traditional, collective land rights. The OCN in particular aimed to build on the momentum of black grassroots mobilization to redefine the terms of political power and economic development in the Pacific region. The OCN's objective was to propose culturally-appropriate models of politics and development from an "ethnocultural" perspective with the Pacific region as the territorial fulcrum, and the "everyday practices of black communities" providing the cultural base from which to construct these alternatives. According to Grueso (1998), the OCN wanted to emphasize the importance of "... maintaining social control of territory and natural resources as a precondition for survival, re-

creation, and strengthening of culture" (200).

The dynamics within the Special Commission were similarly riddled with conflict. The Special Commission got off to a late and rocky start due to government foot dragging, lack of communication, and misunderstandings—both between members and between the Special Commission and the wider black activist community. One challenge was interfacing with the state. Until 1991, black groups had funded the mobilization process with "soft" money from the Church and various non-governmental entities. After AT 55 there was a growing dependence on state funds, with their predictable assortment of bureaucratic strings and roadblocks. Travel funds for black Special Commission members were over a year in being released. A lack of basic demographic information, and political maneuvers to include black politicians who had played no previous role in organizing efforts, also bogged down the Special Commission. But the most contentious elements within it were the disagreements over how to define black identity and territorial rights. It was not until August 11, 1992, that the Commission was finally established.⁴

Debates regarding black identity, reminiscent of those of the Subcommittee on Equality and Ethnic Rights, raged within the Special Commission's Subcommittee on Ethnic and Cultural Identity. Some Commission members argued that black communities had assimilated culturally and materially into Colombian society to the point of denying their African past and therefore were not a distinct ethnic group. Others suggested that Afro-Colombianness was being falsely invented as an ethnic and cultural identity based on "racial" characteristics. Jaime Arocha, the Commission's academic delegate, strongly denounced such positions and blamed them on the tendency of Colombian scholarship and society to conflate ethnicity with indigenous identity (1994: 98). Arocha argued that the "invisibility" of black communities—despite many contributions to Colombian history, economy, and culture—was a historical wrong that needed redress. Besides, he noted the constitution's mandate was clear: the ethnic claims of black communities had full legal sanction.

The issue of territorial rights was equally contentious, with state officials and black representatives accusing each other of wanting strategic control over the economic and ecological resources of the Pacific. The OCN's proposal (inspired in part by the plan of ACIA and northern Chocó groups) was to establish a collective, biethnic Pacific territory under the control of indigenous and black communities. Like ACIA before them, the OCN claimed territorial rights over the Pacific, arguing that black communities had lived in the region for half a century and developed culturally distinct ways of living in, and relating to, their environment. Far from being uninhabited (*tierras baldías*), the Pacific region was the traditional homeland of black communities in Colombia. The OCN further argued that the ability of black communities to sustain their ethnically distinct and

ecologically sound livelihoods depended on autonomous control over land and natural resources. They held that ethnic rights for black communities were inextricably linked to a home territory where they could “be black” and live as a community.

State officials, mindful of their own development agenda for the region, opposed such an ethnic/ecological basis for territorial control. Their proposals framed the issue either as one of property rights or in terms of collective land titles with rights to “communal” or “traditional” management of only those natural resources considered necessary to meet subsistence needs. The OCN rejected such ideas. Its leadership claimed that property rights proposals were being offered by the state as a way of incorporating black communities into its broader capitalist interests in the region.

In the Special Commission, as in other fora, accommodating the heterogeneity of black identity and interests was proving difficult. A law recognizing Afro-Colombians as ethnically different found little favor among middle class blacks, for whom such notions as collective land ownership could seem backwards and discriminatory. The black position within the Special Commission became polarized between those who wanted to focus on getting all that was possible within the terms of existing laws, and those who wanted to revise laws and redefine politics to accommodate ethnic and cultural diversity.

In late 1992, over massive black activist opposition, CODECHOCO distributed logging rights to several private interests and tried to replace its regional black delegates with traditional party stalwarts. The move broke the patience of the Commission members. In a short communiqué they declared that they would resign unless the government fulfilled its obligations and sought the real participation of black communities (Arocha 1994, Wade 1995).

Meanwhile several versions of a black law were being circulated and discussed. Some of these drafts intentionally reflected the OCN’s political principles.⁵ At a second Asamblea Nacional of Black Communities held in Bogotá in May of 1993, a draft text to be carried to the government’s negotiating table was revised, discussed, and approved (Grueso et al. 1998). Grueso et al. note that Piedad Córdova, the black senator from the Liberal party, received a copy of this draft—the product of immense debate and toil among black activist sectors—and presented a version of it to the Colombian Congress as her own. After another three months of negotiations and foot dragging, President Gaviria signed the draft of Law 70 on August 27, 1993.

5. Law 70: A means not an end

Law 70’s eight chapters and 68 articles focus on three main issues: ethnic and cultural rights, collective land ownership, and socioeconomic development. Law 70 does expand the terms of AT 55 to recognize the rights of all Afro-Colombians, but in restricted terms. These rights are modeled on the perceived realities of black communities

of the Pacific and emphasize collective property titles for groups living in rural areas and engaged in subsistence production. Moreover, black communities were not, as the OCN proposed, granted autonomous control over the Pacific region. Rather in response to their pressure, the collective titling of ethnic lands, local participation, and the preservation of traditional knowledge of natural resource management became subsidiary goals of the state’s economic development and environmental conservation mandates.

The passing of Law 70 and the provisos to address black rights within the state’s agenda was a time of significant victories. However, it did not unite black struggles under a single organizational umbrella. On the contrary, in the aftermath of the law’s passage the differences among the various black factions became further entrenched. Mainstream black politicians capitalized on the national momentum around Afro-Colombian rights to seek support of the black electorate for their candidacy to political offices at national and regional levels. Chocóan groups asserted the primacy of ethnic and territorial rights to break into the clientelist stronghold of department politics dominated by black elites. The OCN, renamed the *Proceso de Comunidades Negras* (PCN, the Process of the Black Communities) called for an autonomous black “ethnocultural” movement and culturally-appropriate alternatives to the economic development agenda. Alongside these factions came a burgeoning of wider activism, as increasing numbers of black groups—peasants, urban squatters, women, youth groups—turned to Law 70 to stake claims on the state or draw support for specific local struggles, which were increasingly framed in ethnic terms.

But while Law 70 helped ameliorate the official invisibility regarding black identity, demography, and culture, it made little immediate difference in state policies and practices toward black communities. Even as several tenets of Law 70 began being implemented, black communities became caught in the crossfire of the accelerated armed conflict that overshadowed the region and became specific targets of violence, death, and displacement. Since the late 1990s, Afro-Colombians have been facing homelessness, an exacerbation in existing inequalities, and renewed forms of social exclusion.

6. Concluding Remarks

Twenty years after the passing of Law 70, the actual gains for Afro-Colombians are mixed (Asher forthcoming). There have been important gains such as the granting of collective land titles, official Afro-Colombian representation in various government entities, inclusion of black culture and history in education curricula, among others. But there are been many setbacks. There is continued ambiguity about recognizing black ethnic and territorial rights, and black communities suffer from renewed forms of racism, discrimination and exclusion. Various attempts have been made to roll back Law 70 and black communities are continually displaced

from their land even when it is titled. The state, forces of private neoliberal growth and armed actors of many stripes are now entrenched in the region. This means expanding infrastructure projects and “land grabbing” for oil palm plantations, mining or growing illicit crops. Within this context Afro-Colombian activists and Afro-Colombian women in particular face high rates of gruesome death, especially in Buenaventura.

Black struggles in Colombia continue at multiple fronts including with international allies. But black organizations

and movements remain split and splintered over how to confront the violence facing their peoples and strive for genuine cultural, economic and political justice. In sum, the new strategies and configurations of black social movements are no less heterogeneous, contradictory or intertwined with state- and market-led changes than those which emerged at during the Law 70 process. This article has revisited the trajectory of past efforts in the hopes that the insights from the past will inform and inspire the continuing struggles for Afro-descendant rights in Colombia and beyond.

Notes

- 1 There is much disagreement over nomenclature or what is the most appropriate term by which to refer to the black communities in Colombia. The term “Afro-Colombian” came into circulation during the 1990s to stress the African descent of black communities and their connections to the Colombian nation-state. After the United Nations World Conference against Racism held in Durban in 2001, the terms “Afro-Latino” and “Afro-descendant” also began to be used by those involved in Afro-Colombian movements. In this chapter, I use the terms “black communities” and “Afro-Colombians” interchangeably as was done (though not without contention) during my fieldwork in the 1990s. For a discussion of some of the changing terminology see Asher (2009; forthcoming).
- 2 These included Nicaragua (1987), Argentina and Bolivia (1994), Brazil and Ecuador (1988), and Venezuela (1999).
- 3 This 70-member body included in addition to two indigenous candidates an evangelical pastor, over 30 ex-guerrillas from the M-19 Alliance, The Popular Liberation Army (EPL), the Revolutionary Workers Party (PRT), and an indigenous representative from the armed indigenous group, Manuel Quintín Lame (Arocha 1992).
- 4 Among the 28 members of the Special Commission were 12 black representatives, two each from the departments of Atlántico, Antioquia, Cauca, Chocó, Nariño, and Valle del Cauca; two scholars on Afro-Colombian issues; and representatives of the following State agencies: the Ministry of Government, IGAC (The Agustín Codazzi Geographic Institute), INCORA (The Colombian Agrarian Reform Institute), INDERENA (The Institute for Natural Resources and the Environment), ICAN (The Colombian Anthropological Institute), DNP (the National Planning Department). In addition, certain members of the Chamber of Representatives and the Senate, as well as certain Pacific region politicians, participated in Special Commission discussions. See Vásquez (1994: 51-52) for the text of the decree and further details on the members of the Special Commission.
- 5 Although much has been written about this period of black mobilization, authorship of these drafts and the final law are not attributed to a single person or entity. On 14 January 1995, I spoke to the now-deceased Miguel Vásquez, an indigenous rights lawyer who had worked with the Awa in Nariño and who served as a legal advisor to Zulia Mena. According to him, it was he who drafted Law 70 with some key leaders of the OCN and members of the Special Commission who were in solidarity with black struggles for ethnic and territorial rights.

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