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Ethnicity and Territory: Cultural and Political Autonomy for African Descended Colombians  
through Law 70

An Honors Paper for the Department of Africana Studies

By Ayana Opong-Nyantekyi

Bowdoin College, 2023

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## **Abstract**

Colombia has the second largest African descendant population in all South America due to the transatlantic slave trade that stripped millions from their homeland and brought them to present day Colombia. While African descendants have been a part of the region's history for over five centuries, it was not until 1993 with the establishment of Law 70 that the Colombian government acknowledged the culture and rights of African descendants. This thesis analyzes the historical, social, and political underpinnings of Law 70, its implementation, and aftereffects. I argue that Law 70 acknowledges a lived identity of rural African descended Colombians as the mechanism for Black communities to obtain rights. The thesis addresses the deep connection between ethnicity and territory, and how Law 70 recognizes that, for rural African descendants, ancestry, culture, and territory, cannot be separated. Law 70 codified a legal transition from a racial to an ethnic frame, which was necessary for African descendants to live their difference and be recognized by the nation.

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## Prologue San Cipriano



Photograph by Ayana Opong-Nyantekyi on March 28, 2022

A brown, shaky, wooden walking bridge dangling above the Danubio River connects the highway from the major port city of Buenaventura to San Cipriano, a small all-Black community of about 300 people in the Colombian Pacific region. The bridge seems endless as I walk across. One step at a time. Each step induces another creek and another sway. My heart is pounding knowing that with one misstep I can plummet into the river. One step at a time. All that is keeping me alive is the floor of the bridge and the rails on both sides. Amid worry about the potential outcomes of this situation, the sounds of the waves from the river ring in my ears. Looking down, I see white and brown waters flowing and colliding into large rocks. Looking ahead, I see a welcoming group of community members. I can get there... one step at a time. I get closer to the beautiful nature that encompasses San Cipriano. Plenty of people have made the journey before me—just look at the people in front of me. They created the bridge to invite me, to grant me and others access to their cherished space. *The bridge*—a connection to difference.



Photograph by Ayana Opong-Nyantekyi on March 28, 2022

In front of a group of community members at the end of the bridge is a railroad track. The train service was discontinued years ago, but the people of San Cipriano created a unique vehicle, called a brujita (which directly translates to “little witch”), which is a motorcycle affixed to a flat wooden cart that uses the train tracks. To enter the town itself, one must travel about twenty minutes on these highly powerful brujitas. We load our belongings on the back of the brujita and travel quickly through the incredible rainforest.



Photograph by Ayana Opong-Nyantekyi on March 28, 2022

Enormous green leaves surround me. I am overwhelmed by the lush jungle. I inhale breathable air, and the flowing Danubio River contributes to the tranquility. Tourists are attracted to the incredible waterfalls and tubing activities on the river where they peacefully observe the surrounding foliage. Snuggled within the greenery lies a plethora of insects and organisms. Small creatures—birds, butterflies, and frogs—fly and scurry around in the wonderful ecology that defines the land of San Cipriano. As the vehicle winds through bridges and tunnels, I hand over

my trust to the driver. Adrenalin pumps through my system as I am whisked through the winding paths toward the town.



Photograph by Ayana Opong-Nyantekyi on March 28, 2022

Once in San Cipriano, I see about ten men playing card games as well as two men and a woman getting their hair done. A few street dogs and a rooster roam around. In a nearby field a few children play soccer and others play tag. I learned that the local schoolhouse accommodates children until 7<sup>th</sup> grade, then they go to schools outside of the community. In local schools, they learn the history of their ancestors to maintain traditions and histories across generations.

I met a woman and a man who sold Viche, which is a traditional alcoholic beverage made from sugar cane mixed with local fruits and vegetables and created by Black people along the Pacific Coast. People in San Cipriano, and other communities, use the drink for medicinal and leisure purposes. The government just legalized Viche in 2021, even though it was a part of Black communities' cultural practices for over three centuries.<sup>1</sup> There are different concoctions of Viche. Women use one variation to help conceive and have healthy pregnancies.<sup>2</sup> Other variations help with infections, like snake bites.<sup>3</sup> Now with the legalization of Viche, production

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<sup>1</sup> Joe Parkin Daniels, "African-Colombian Moonshine Gets Official Seal of Approval as Heritage Drink," *The Guardian*, September 19, 2021, sec. World news, <https://www.theguardian.com/world/2021/sep/19/viche-afro-colombian-liquor-heritage>.

<sup>2</sup> Seth Kugel, "Once Colombia's 'Deadliest City,' Buenaventura Is Coming Back," *The New York Times*, July 9, 2018, sec. Travel, <https://www.nytimes.com/2018/07/09/travel/buenaventura-colombia-pacific-coast.html>.

<sup>3</sup> Daniels, "African-Colombian Moonshine Gets Official Seal of Approval as Heritage Drink."



companies commercialize the product and expose foreigners to this ancestral culture, even outside of San Cipriano, without financial compensation to the villagers of San Cipriano.

For the most part, in San Cipriano, women and men adhere to gender specific social roles. Women prepare and cook delicious cuisines from water and land resources they cultivate on their collectively owned land, like pescado frito con patacón o sancocho (fried fish with twice-fried plantains or stew and soup mixture). After the women cook and serve visitors, they eat themselves, typically at a distance from the visitors they just served. Women are often seen at the entrance of the food shops, many of which are located under the living quarters. Men are designated as tour guides to provide visitors a comprehensive history of San Cipriano and identify the various sites they can explore. Young men ride up and down the roads on motorcycles transporting large, inflatable tire inner tubes for tourists' water recreation. Motorcycles seem to be the quickest mode of transportation. I see no cars, and most people travel by foot.

Villagers wear similar, simple, clothing—white tank tops, shorts, t-shirts, and off-brand crocs. No one appears to be homeless. No one wears business attire or fancy clothing either. The only people I see in uniform are the leaders of the tourism center of San Cipriano and the President of San Cipriano, and their uniform includes a shirt embroidered with the San Cipriano logo. The singular police guard wears a polo shirt, jeans, and a baseball cap and does not carry a gun or baton. He explains that the community only needs one officer because few situations need official police interference. Everyone typically works together, and people rarely break established laws. Furthermore, members protect their territory from outsiders who may look to exploit their precious land through land grabbing.

Locals ensure that everyone in the territory is identified and understands the significance of their cultural territory. Visitors pay COP\$5,000 a day (Five thousand Colombian pesos), which, as of February 1, 2023, is equivalent to about \$1.08 U.S. dollars, to enjoy their lively community. An unequal trade off, in my opinion, because of the beautiful nature, the community's rich history, and the engaging activities within the territory that visitors can access. The people of San Cipriano work diligently every day to make tourists' experience exceptional.

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My trip to San Cipriano was an incredible experience. I met new people, heard new accents, ancestral songs, and a variety of sounds of nature. Despite tourism being central to daily life, I felt that our presence and loud voices disrupted the sincere, tranquil ambience of the town. This was one of the few places—and the only educational environment—where all the people looked like me. Local people, of course, knew I was a visitor, an outsider, regardless of our apparent shared racial identity because of my accent, clothes, and general persona. As a visitor, I was challenged to navigate my own identity—a non-Native dark-skinned Black woman of African descent—in unfamiliar territory.

Like me, tourists are attracted to the beautiful natural reserves in San Cipriano. And, like me, some want to learn about the people who inhabit the territory, their culture, history, and the unique legal status that protects their way of life—Law 70. In 1993, with the passage of Law 70, San Cipriano became a legally recognized collective Black territory. The Law establishes Black communities' political autonomy and the right to cultural difference. It designates specific historically Black rural areas in Colombia, for protection of cultural practices, like the production of Viche, and the granting of collective land titles—an official “gift” from the government to the community. San Cipriano is legally recognized as an independent, collective territory making it

different from much of Colombia. Law 70 provides economic, environmental, and social protections, with guidelines for communities to follow when advocating for their rights. The combination of their ethnicity and territory in Law 70 reflects a new legal status for African descendants, granting them political and cultural autonomy.

## Introduction

My life, as an African descendant, has exposed me to how people of brown skin color with ancestral connections to Africa are perpetually disenfranchised by political, economic, and social institutions. Overtime, I developed a simple framework in which I believed that everything—every thought, every word, and every action—was influenced by relationships to three categories: race, money, and education. As an Africana Studies and Economics double major and Hispanic Studies minor interested in healthcare, I focus my studies on the intersections of culture and human societies to expand my understanding of the impact that institutions have on the lives of African descendants. As an African descendant with my maternal ancestry rooted in the history of United States slavery and my paternal ancestry rooted in Ghana, I have often thought of the relationship between African descendants in the United States and in African countries. But what about the millions of African descendants across the rest of the world? Through my increased curiosity to learn more about the African diaspora beyond my experience, I decided to explore more about the African diaspora in Latin America, as I had limited exposure to those communities in my academic experience.

Focusing on Law 70 in Colombia, I argue that Law 70 acknowledges a lived identity of rural African descended Colombians as the mechanism for Black communities to obtain rights. The thesis addresses the deep connection between ethnicity and territory, and how Law 70 recognizes that, for rural African descendants, ancestry, culture, and territory, cannot be separated. Law 70 codified a legal transition from a racial to an ethnic frame, which was necessary for African descendants to live their difference and be recognized by the nation.

Throughout history their identity as a people has been based on their connection to or dispossession from land. The slave trade stripped them of their homeland. Enslavers deemed

them “property,” like land, while forcing them to cultivate land. Post-slavery, Black advocacy led to the eventual shift to an ethnic identity. The ethnic shift was necessary for the foundations of Law 70 to disassociate themselves from being the property, and instead being stewards of the land with the capability to govern their communities, to preserve the land, and, eventually, to exercise their culture with the resources included in their territory.

Law 70 addresses the rights of rural Black Colombians. It serves as the government’s acknowledgement of the cultural and territorial rights of Black people who have resided in rural regions for centuries. Sociologist Tianna S. Paschel, who studies politics, race, and globalization in Latin America, coined the phrase “right to difference,” which exemplifies Law 70.<sup>4</sup> Extending upon that claim, this thesis explores how the Law grants Black communities, protected under it, their right of cultural and political autonomy through their collective land titling rights within the context of ethnicity rooted in their ancestral background.

The government established the Law because of centuries of advocacy by African descended Colombians to obtain cultural and political autonomy—the earliest being seventeenth-century maroon communities. African descendants have been in present-day Colombia over five centuries (before Colombia was a country) and have contributed to the economy and infrastructure since their arrival. Colombia’s Law 70 serves as a pivotal piece of legislation for Black communities and all Colombians, as it is a federal law. The thesis strives to gain a comprehensive understanding of Law 70, through analysis of the history leading to the law; the ethnic and territorial framework and resulting rights gained by rural Black communities; and the law’s implementation and impact over the last thirty years of its existence.

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<sup>4</sup> Tianna S. Paschel, “The Right to Difference: Explaining Colombia’s Shift from Color Blindness to the Law of Black Communities,” *American Journal of Sociology* 116, no. 3 (2010): 729—69, <https://doi.org/10.1086/655752>.

Chapter 1 provides a historical analysis, beginning the 16<sup>th</sup> century, of slavery, gradual manumission, and complete manumission, examining the transformations of Black rights. It continues with a historical and contemporary analysis of ethnicity, race, color, and identity to understand the complex racial and ethnic ground that preceded Law 70. Key questions that I address include: *How does Law 70 reflect Colombia's unique history regarding colonization and emancipation for African descendants? What led to the continual transformation of race and ethnicity, and how do Black leaders amplify ethnicity for their cultural and political rights? How does Colombia's relationship with race and identity project an identity distinctive to rural African descendants?* This chapter concludes with an examination of the relationship between African descendants and Indigenous populations, as it pertains to Law 70, and the ethnic, not racial, framework employed by Indigenous people for cultural and territorial autonomy.

Chapter 2 explores the journey leading to Law 70 with a particular focus on the 20<sup>th</sup> century. The chapter commences with Black activism in the 1930s, highlighting Black leaders and organizations that worked towards increasing ethnic and territorial rights for Black communities through the establishment of Law 70. The chapter examines Colombia's five decade long armed conflict between guerilla groups and paramilitary forces that contributed to extreme violence and persecution endured by African descended Colombians from the 1960s to 2010s. Rural African descended Colombians particularly endured utmost violence and exploitation due to their land's resources. Their forced deracination and displacement, often to cities, created links between rural and urban African descended populations. Leaders in both rural areas and cities worked to gain political agency and rights that had been denied. Following an analysis of the geography of the Caribbean and Pacific regions as they relate to Law 70, the chapter continues with a focus on territory and how ancestral history fostered connections to the

land. The chapter examines the geographical distinctions and restrictions of Law 70, leading to uneven distribution of land titling rights, which is the legal deed for the Black communal territory. Afterwards, I introduce Dr. Karl Offen's framework of examining territory. Key questions include: *What is the difference between territory and land? How did this difference advance the rights of Black communities?* Offen argues that territory is more than land. Territory is defined by land *plus* people's historical, cultural, and personal relationships with the land. Rural Black communities needed the government to make this pivotal distinction for Law 70 to be established. The chapter closes with an analysis of two laws foundational to Law 70—Law of 1959 and the Constitution of 1991.

Chapter 3 focuses on Law 70 itself. Before exploring the Law, the chapter provides a general overview of the legislative process in Colombia to give context for the passage of this law. Examining the articles in the law shows how the identity of African descendants is rooted in ethnic and territorial rights. Key questions that I undertake include: *What is Law 70? What are the objectives of the chapters and articles included in Law 70?* The chapter examines the process for gaining collective land titles in Black communities and its significance for political and cultural autonomy. It concludes by highlighting Paschel's concept of Law 70 as advocating for a "right to difference," the framework that Black communities use to gain their rights through Law 70.

Exploring the impact of Law 70, chapter 4 begins with financial and legal changes needed to actualize the right of collective Black territories promised in Law 70, including the international influence of funding Black communities and Decree 1745. It continues with the process of collective land titling and the impact of territory. The section on migration and urbanization examines the Black Colombians' movement from rural communities to cities in

hopes for economic opportunities. Since Law 70 only protects specific Black communities, it neglects those who are not in protected rural areas or in cities. Therefore, the chapter investigates: *What is the experience of Black Colombians who are not protected under Law 70? Why are rural areas protected, and how does that influence the experience of all African descendants in Colombia? How have Black Colombians expressed race or ethnicity since Law 70?* Many Black communities needed to leave their communities for survival. As a result, the chapter also explores the impact of forced displacement and deracination due to extreme violence even after Law 70 by highlighting the Bellevista-Bojayá massacre in Chocó. Extending upon Paschel's "right to difference" framework for Black Communities in Colombia, I include her findings that focus on the progress for acknowledging the social and political agency of Black populations in Colombia by highlighting the "Beautiful Faces" campaign and the changes to the 2005 national census. Since Law 70, Black activists have promoted expanding the Black identity to encompass more people because the law does not protect all Black communities. The chapter concludes by highlighting three African descended women in national leadership positions, bridging the gap between the local Black communities and the national Colombian society through increased awareness about Black rights and territories. It shows the constant evolution of identity for African descended populations to be more inclusive.

The thesis concludes with an epilogue—my ethnographic account about San Basilio de Palenque. San Basilio de Palenque, located in the Caribbean region, is the first free Black town in all the Americas, and a popular tourist destination. My stay across multiple days allowed me to connect with some of the community members and to learn more of their community's culture that is wrapped in their Palenque identity and territory.



Each chapter begins with a poem, spoken word, or section of a speech by a Black African descended Colombian. The works connect with the theme of the chapter and highlight how a Black Colombian elevated their voice to speak about culture, territory, identity, or Law 70. I include the texts in their original Spanish language followed by English language translations to proclaim the authors' authentic voices while also providing translations to communicate the significance to English speakers.

**Chapter 1**  
**The Historical Foundations of Law 70: Slavery, Emancipation, Race, and Ethnicity**

*Negro Soy*<sup>5</sup>

Jorge Artel

Negro soy desde hace muchos siglos.  
Poeta de mi raza, heredé su dolor.  
Y la emoción que digo ha de ser pura  
en el bronco son del grito  
y el monorrítmico tambor.

El hondo, estremecido acento  
en que trizca la voz de los ancestros,  
es mi voz.

La angustia humana que exalto  
no es decorative joya  
para turistas.

¡Ya no canto un dolor de exportación!

**I am Black** (my translation)

I have been Black for many centuries  
Poet of my race, I inherited his pain.  
And the emotion that I say must be pure  
in the rough sound of the yell  
And the mono rhythmic tambor drum.

The deep, quivering accent  
in which the voice of the ancestors' cracks,  
is my voice.

The human anguish that I exalt  
it is not decorative jewel  
for tourists.

I no longer sing an export pain.

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<sup>5</sup> Jorge Artel, "Negro Soy," Antonio Miranda, accessed February 24, 2023, [http://www.antoniomiranda.com.br/iberoamerica/colombia/jorge\\_artel.html](http://www.antoniomiranda.com.br/iberoamerica/colombia/jorge_artel.html).

## **Introduction**

African descendants advocated for Law 70 based on their historical attachment to land and their identity within an ethnic frame. To begin, the chapter analyzes the evolution of African descendants' rights since the 16<sup>th</sup> century. It continues by revealing the differing definitions of ethnicity and race as they changed overtime in Colombia. This leads to an analysis about color and colorblindness in a Colombian context and how these concepts have influenced African descendants. The section ends highlighting the way Indigenous groups influenced Law 70, as well as specific Black people and organizations that worked for the advancement of African descendants' rights in Colombia, leading to Law 70. The historical analysis of the legislation and political landscape, the identifying terms, and the people who influenced Law 70 enhance one's understanding of why African descendants intertwined ethnicity and territorialization to gain political and cultural autonomy in Law 70.

## **Slavery and Emancipation**

Spain colonized the land now recognized as Colombia in the early 16<sup>th</sup> century. The Europeans did not understand the civilized structure of the Indigenous population, determined that they were not worthy of respect, and enslaved them to gain wealth from their free labor.<sup>6</sup> Due to innumerable deaths from diseases and extreme violence, the Indigenous population rapidly declined. With the increased labor demands from the Spanish Crown, colonists began enslaving Africans in the mid 1500s.<sup>7</sup> Slavery promoted social, legal, political, and economic hierarchies based on physical and cultural characteristics, and its effects have remained in the

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<sup>6</sup> Vincent C. Peloso, *Race and Ethnicity in Latin American History* (Routledge, 2014), 3-4.

<sup>7</sup> Peloso, *Race and Ethnicity in Latin American History*, 35; "Trans-Atlantic Slave Trade - Database," accessed May 3, 2023, <https://www.slavevoyages.org/voyage/database#tables>.

country long after the Spanish monarchy. Spanish history, language, and culture are integral to present-day Colombian society. Like how the Spanish language influences the everyday Colombian culture, so too does the legacy of slavery.

Spaniards brought African descended people to Colombia for a system of labor—permitting racialized economic exploitation. Their skin color, classified as “negro” (black), and ancestral origin still coincide with economic, legal, and cultural status in Colombia today. Thus, as a result of Africans being stripped of their homeland and forced to labor in a foreign land, their identity is rooted in their connection to land. Over time their culture and ethnic identity allowed them to push their ethnic framework forward with Law 70.

Historian and anthropologist Natalia Botero Jaramillo incorporates Antonio Galvis’ *The abolition of slavery in the New Granada, 1820-1832* in her analysis of the history of slavery, in which Galvis identifies three periods within Colombian enslavement and abolition: the colonial period from 1524-1809, the independence period from 1810-1818, and the republic period from 1820-1852.<sup>8</sup> The Spanish imported Africans for their massive production to enhance the economy and personal wealth, and cultivate a culture of social hierarchy based on cultural, racial, and ethnic distinctions: “Slavery during the colonial period in the New Kingdom of Granada and in the first years of the republic strengthened the mining economy, extractives, and plantations. The slaves were the manpower, organized in groups and serfdom, under the guardianship, vigilance, and punishment of an owner.”<sup>9</sup> Enslaved Africans endured heavy labor in mining and food product cultivation, and the economy grew exponentially at the expense of enslaved African and Indigenous people. The effects of the hierarchy of subordination based on

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<sup>8</sup> Natalia Botero Jaramillo, “El peligro de los otros: represión de esclavos en el suroccidente colombiano durante la primera mitad del siglo XIX,” *Maguaré* 31, no. 2 (July 1, 2017): 101-2, <https://doi.org/10.15446/mag.v31n2.71526>.

<sup>9</sup> Jaramillo, “El peligro de los otros,” 101.

their difference continued into the late 20<sup>th</sup> century when African descendants fought to gain ethnic recognition and collective land rights through Law 70.

While Galvis outlines a structure for navigating history of this era, there are other crucial parts during the colonial and emancipation period that highlight the advancement of African descended Colombians towards their goal of political, economic, and social liberty. For the purpose of this study, periodization maps: 1) 1524-1600: the beginning of the colonial period, 2) 1600-1715: the rise of palenques—free Black towns amid colonialism, 3) 1715-1770s: continued colonial period with the initial wave of free African descendants, 4) 1770-1810: the rise of African descendants in the militias and increased political status, 5) 1810-1820: the independence period, 6) 1821-1852: the republic and manumission period, and 7) 1852-1993 the beginning of African descendant liberation.

The colonial period began with the search for gold. In 1525, Rodrigo Bastidas established Santa Marta which is in the northern region of present-day Colombia.<sup>10</sup> Spaniards enslaved Indigenous and African people to grow cacao, sugar, and tobacco in addition to extracting gold to stimulate their economy.<sup>11</sup> Cartagena de Indias—the Caribbean coast’s most prominent city—was the primary port of entry for enslaved Africans into Colombia. Africans and their descendants on the Caribbean Coast primarily worked on sugar plantations and cattle ranches.<sup>12</sup> While enslaved Africans entered through Cartagena, Spanish colonizers in Colombia relocated them to other regions throughout the country depending on the economic need. Regions, particularly along the Pacific Coast, including Valle de Cauca, Chocó, and Nariño, became

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<sup>10</sup> “Colonization of Colombia - Colombian History - Don Quijote,” accessed October 21, 2022, <https://www.donquijote.org/colombian-culture/history/colonization-of-colombia/>.

<sup>11</sup> “Gold, Silver and Sugar | South America | The Places Involved | Slavery Routes | Bristol and Transatlantic Slavery | PortCities Bristol,” accessed February 23, 2023, <https://www.discoveringbristol.org.uk/slavery/routes/places-involved/south-america/gold-silver-sugar/>.

<sup>12</sup> Aline Helg, *Liberty & Equality in Caribbean Colombia 1770-1835* (The University of North Carolina Press, 2004), 7.

prominent areas for enslaved Africans to labor in gold mining in addition to sugarcane and cocoa production, due the resources in that geographic location. Thus, labor created cultural differences, coinciding with existing ethnic (and racial) differences. Since those in leadership were Europeans and those subjected were African and Indigenous, the hierarchical differentiation based on racial and ethnic distinction as well as economic exploitation was clear. People of African, Indigenous, or mixed descent were subjected to the lowest rank in society and perceived as dangerous, lazy, and barbaric.<sup>13</sup> Despite colonists' misperception of African descended people, they were, and still are, very much essential to Colombia's economy and culture. Colonizers stripped Africans of their homeland, attempted to strip their identity and culture, and forced them into a new territory to serve others. Cultural differentiation is engrained in Colombian society.

In the seventeenth century, fugitives began forming maroon communities, which became known as Palenques:

... several palenques had existed since the early seventeenth century, when heterogeneous groups of Kongo, Angola, Arará, Mina, and Karabalí runaway slaves formed them around Cartagena, in lower Cauca River, and in the vicinity of Valledupar and Riohacha. Although by the 1690s many palenques had been destroyed by military expeditions, some became officially recognized as peaceful hamlets of free blacks.<sup>14</sup>

Europeans despised palenques because fugitives decreased their inventory, labor, production, and income, and promoted ideas of freedom. As a result, angered enslavers destroyed many Palenque communities. Despite this, fugitive Africans created more palenques across Colombia, even though they were not officially recognized by the colonial government as legitimate settlements until the beginning of the eighteenth century. For instance, in 1603, the formerly enslaved Africans and the Spaniards signed a document representing the 'capitulation of peace'

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<sup>13</sup> Jaramillo, "El peligro de los otros," 105.

<sup>14</sup> Aline Helg, *Liberty & Equality in Caribbean Colombia 1770-1835*, 24.

for San Basilio de Palenque.<sup>15</sup> Domingo Benjos Biohó — recognized as the founder of San Basilio de Palenque — escaped from a shipwrecked boat with other enslaved Africans in the Magdalena River and settled in the Serranía de San Jacinto, which is a mountainous region near the Caribbean.<sup>16</sup> The Africans in this palenque lived under a sovereign, peace agreement. However, it was only in 1713 that Spain officially acknowledged the agreement, and the Spanish officially freed the town from enslavement.<sup>17</sup> Subsequently, colonialism persisted as did the rise of new palenques.

The 1770s marked another important time in which some African descendants in Colombia gained limited political opportunities. Colonists recruited enslaved Africans during their wars: “The first step toward racial equality was the royal extension of military privileges to militiamen of African descent in the 1770s.”<sup>18</sup> Nevertheless, in the 1770s, about one fifth of Colombia’s population lived in the Caribbean, the same region of San Basilio de Palenque, and the population was predominantly free Black people, *mulatos* (European and African ancestry), and *zambos* (Indigenous and African ancestry).<sup>19</sup> Colonists enjoyed an economic advantage by using enslaved Africans for militias since they did not have to compensate them.

During wars against the Spanish government, from 1791 to 1819, colonists in Colombia enlisted African descended people to fight against the Spaniards, framing service in the militia as an honorable, patriotic duty with the promise of freedom and emancipation if the colonists won.<sup>20</sup>

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<sup>15</sup> “Palenque, the First ‘Free Town’ for Africans in America | Brand Colombia,” Colombia Country Brand, December 7, 2018, <https://www.colombia.co/en/colombia-country/environment/caribbean-region/san-basilio-de-palenque-first-free-town-africans-americas/>.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Helg, *Liberty & Equality in Caribbean Colombia 1770-1835*, 7.

<sup>19</sup> Ibid.

<sup>20</sup> Jaramillo, “El peligro de los otros,” 106; “Colombia - History,” Colombia, accessed March 23, 2023, <https://www.colombia.sk/en/colombia-history>.

Government records and scholarly sources provide limited information about debates regarding race and inter-ethnic conflicting ideas about slavery.<sup>21</sup> Marixa Lasso, a prominent researcher and professor of Latin American studies, argues that the lack of information regarding the independence period, particularly with literature around nationalism and race, was an intentional ploy of the elite Colombians: “This lack of attention derived in large part from the notion that racial equality was empty rhetoric that served the needs of elites to attract the black population to their side during the struggles.”<sup>22</sup> However, one exception to the lack of attention towards Black Colombians is the information that historian Yesenia Barragan reveals about Simón Bolívar’s leadership because of the access to military service that he granted to African descendants.<sup>23</sup>

In 1819, Simon Bolívar, military and political leader, ordered 3000 enslaved Africans (1000 from Antioquia and Chocó and 2000 from Popayán) to be in his army after the fight of Battle of Boyacá, which liberated all of New Granada from Spain.<sup>24</sup> The following year he increased the request to 3000 from Antioquia and Chocó.<sup>25</sup> His recruitment of enslaved Africans again came with a promise to liberate them: Bolívar reiterated that such conscripts “shall be offered their freedom from the moment they leave their país (country), and two years after having served, they shall be given absolute permission to enjoy their full freedom.”<sup>26</sup> Bolívar only supported freedom for enslaved male African descendants who served in his army. In fact, the conditions of enslavement made African descendants more attractive to Bolívar: “In a letter

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<sup>21</sup> Jaramillo, “El peligro de los otros,” 106.

<sup>22</sup> Marixa Lasso, “Race War and Nation in Caribbean Gran Colombia, Cartagena, 1810-1832,” *The American Historical Review* 111, no. 2 (2006): 337-38, <https://doi.org/10.1086/ahr.111.2.336>.

<sup>23</sup> Yesenia Barragan, ed., “The Gradual Emancipation Law of 1821 and Abolitionist Publics in Colombia,” in *Freedom’s Captives: Slavery and Gradual Emancipation on the Colombian Black Pacific*, Afro-Latin America (Cambridge: Cambridge University Press, 2021), 119, <https://doi.org/10.1017/9781108935890.006>.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*



to Santander on April 20, 1820, Bolívar stressed that the rapidly deteriorating insurgent armies desperately needed ‘robust and strong men accustomed to harshness and fatigue...’<sup>27</sup> Bolivar took advantage of these enslaved African descendants and their cruel conditions in enslavement for his political advancement.

Finally, in 1821, the new Colombian republic established the Law of 1821 that provides guidelines for manumission. Once the Spaniards left, slavery was at the forefront of politicians’ minds because of a changing political and economic landscape. The governing body had to craft legislation addressing the continual presence or abolition of slavery. Prior to 1821, liberty for the enslaved came through self-purchase or an owner granting them freedom.<sup>28</sup> After much debate at the constitutional convention at Cúcuta in 1821, the gradual manumission law, also known as the “free-womb law,” was passed.<sup>29</sup> The law guaranteed that no more slaves would be born on Colombian soil, but that children “libertos” (freed people) born to enslaved mothers worked for their mother’s owner until they were eighteen years old.<sup>30</sup> It was a step towards liberation and exemplified how Europeans still had “power over enslaved women’s reproductive faculties” because they still owned enslaved mothers’ children during their transformative years.<sup>31</sup>

The Law of 1821 was primarily influenced by Antioquia’s gradual emancipation Law of 1814.<sup>32</sup> The gradual law in Antioquia, a department in Northwest Colombia, stated that all children were bond to their mothers’ masters until age 16 when they were “freed.”<sup>33</sup> Antioquia’s gradual emancipation law was attractive to other African descended Colombians: “As news of the Antioquia law traveled west to the humid rainforests of Chocó, it destabilized the political

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<sup>27</sup> Barragan, “The Gradual Emancipation Law of 1821 and Abolitionist Publics in Colombia,” 120.

<sup>28</sup> Jaramillo, “El peligro de los otros,” 106-7.

<sup>29</sup> Lasso, “Race War and Nation in Caribbean Gran Colombia, Cartagena, 1810-1832,” 347-48.

<sup>30</sup> *Ibid*, 348.

<sup>31</sup> Barragan, “The Gradual Emancipation Law of 1821 and Abolitionist Publics in Colombia,” 116.

<sup>32</sup> *Ibid*, 110.

<sup>33</sup> *Ibid*, 114.

order of slavery.”<sup>34</sup> Enslaved African descendants throughout the country began to protest because they also desired the freedom granted to enslaved people in Antioquia. Politicians could not ignore the protest, and they created Law of 1821.

The Law of 1821 contributed to the emergence of African descendants as political figures since they were freed after age eighteen: “...the aftermath of the independence wars, [led to] the emergence of a powerful black political and military class...”<sup>35</sup> Colombians recognized the contribution that African descendants made towards helping gain Colombia’s independence. Yet, they did not value them enough to deem them all worthy of immediate emancipation.

Despite the progress of Law of 1821, abolitionists and formerly enslaved people desired complete liberation. Finally in 1852, Colombia abolished slavery completely through Law 21.<sup>36</sup> From 1852 until Law 70 in 1993, there was no legislation, or economic policies directed toward Afro descendants’ political or cultural advancements, which led to them living in impoverish, abandoned, and marginalized communities.<sup>37</sup>(my translation) Despite complete freedom from institutional slavery in 1852, African descended Colombians remained of little political importance to the rest of Colombia and the focus on promoting a national identity over a racial identity rose to prominence.

### **Race, Color, Ethnicity, and Identity**

Forming a national identity, after gaining independence from Spain, became essential to the new Colombian government and a national identity framework emerged in Colombia and

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<sup>34</sup> Barragan, “The Gradual Emancipation Law of 1821 and Abolitionist Publics in Colombia,” 115.

<sup>35</sup> Lasso, “Race War and Nation in Caribbean Gran Colombia, Cartagena, 1810-1832,” 339.

<sup>36</sup> José Eulícer Mosquera Rentería, “La Ley 70 de 1993 Ó Ley de Comunidades Negras: Antecedentes y Desarrollos,” Agosto 1993, 5.

<sup>37</sup> Ibid, 5-6.

across Latin America. Colombia, and most Latin American countries, did not explicitly reference ethnicity and race in much of their political legislation prior to the late 20<sup>th</sup> century.<sup>38</sup> After gaining independence from Spanish rule, Latin American countries embraced the concept of a national ethnicity, ignoring the racial and ethnic differences among people, as a strategy for national unity.<sup>39</sup>

Colombia adopted the notion of “mestizaje” as the principal way to promote a uniform racial and ethnic history.<sup>40</sup> In Spanish, *mestizaje* means miscegenation. Colombia, and other Latin American countries, formulated a national identity by creating a dominant racial group based on racial and ethnic mixing. *Mestizo* describes those mixed with European and Indigenous ancestry. Some Colombians of European ancestry took pride in distinguishing themselves from Spanish colonizers because of the history of colonization. Many Colombians of European ancestry and with light skin color did not perceive themselves as white because they associated whiteness with the wealthy, Spanish rule. However, they desired to maintain the power of the colonizers since the *mestizo* group dominates decision making in Colombian politics, economy, and society in Colombia. Mestizo ideology promotes an ethnic mixture close to whiteness to cultivate a “national imaginary” of a homogenous race while excluding those of African descent.<sup>41</sup> The *mestizaje* rhetoric failed to establish an inclusive society.<sup>42</sup> The rhetoric of one unified Colombian ethnicity ignored the legal restrictions and social customs that continue to disenfranchise African descendants and Indigenous groups. African descendants in Colombia

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<sup>38</sup> Paschel, “The Right to Difference,” 732.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid, 736.

<sup>42</sup> Ibid, 732.

lived within the confines of the social structure based on skin color that negatively impacted their political and economic power.

The Colombian mestizaje ideology proved to be a mechanism to perpetuate the narrative that African descended and Native people were inferior to the mestizo group.<sup>43</sup> The focus on the miscegenation of Spanish and Indigenous people ignored the visible Black population and prevented those with African ancestry from attaining much political, economic, and social power or recognition until Law 70.<sup>44</sup> Social conventions identified by ancestry and color demonstrate a failed project of nation over ethnicity. The Inter-American Commission for Human Rights described the condition of African descendants as “an ongoing ‘pattern of racial discrimination and systematic historical exclusion’ as civilians and the media present offensive stereotypes about them that manifest in peoples’ perceptions of African descended people.”<sup>45</sup>

Colombia’s mestizaje national rhetoric reflects the differentiation based on race since the beginning of the colonial period. Skin color and ancestral history determined one’s racial category, social, and legal status. As enslaved Africans arrived in Colombia, they and their descendants transformed from being from a member of an African ethnic group to one that fit in Colombia’s categorization: negro, zambo, mulato/pardo.<sup>46</sup> Skin color and the amount of visible African ancestry differentiated these categories and predetermined social and political status. If one’s maternal and paternal ancestors descended from Africa, society deemed the “negro/a” (“black”) person as the most subordinate.<sup>47</sup> “Zambo” characterized a person whose ancestry

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<sup>43</sup> Paschel, “The Right to Difference,” 736.

<sup>44</sup> Ibid.

<sup>45</sup> “‘Territory Is Everything’: Afro-Colombian Communities, Human Rights and Illegal Land Grabs - Columbia Human Rights Law Review,” 301, accessed October 29, 2022, <https://hrlr.law.columbia.edu/hrlr-online/territory-is-everything-afro-colombian-communities-human-rights-and-illegal-land-grabs/>.

<sup>46</sup> Alfonso Múnera, *El fracaso de la nación: Región, clase y raza en el Caribe colombiano (1717-1821)*, (Bogotá, Colombia: BANCO DE LA REPÚBLICA I EL ÁNCORA EDITORES, 1998), 25.

<sup>47</sup> Múnera, *El fracaso de la nación*, 25.

included both Indigenous and African people.<sup>48</sup> People mixed with both African and European ancestry and had lighter skin were known as “mulato or pardo.”<sup>49</sup>

The Spanish elite initiated a distinction within the African descended population based on skin color and ancestry in which the Spanish and colonists favored those with lighter skin. In general, they favored the “mulatos and pardos” because they had European ancestry in their blood compared to the “negros”. While “mulatos and pardos” were still enslaved, their lighter skin tone had the potential to “elevate” their social status, as they had visible European ancestry.

Colombia’s attempt to perpetuate a national ethnicity and deflect the ongoing ill-treatment of African descendants relied on a myth of colorblindness. Paschel argues, “Prior to the 1990’s, the legal and decisive context in Colombia, much like the rest of Latin America, was historically ‘color-blind’ . . . .”<sup>53</sup> The term “color-blind” in the discussion of racial politics refers to people or institutions that claim they disregard color — essentially, ignoring differences in race, ethnicity, and culture, which dismisses the complexities of a person’s socialized race or ethnicity and the experiences that the person has as a result. Paschel’s observation indicates that Colombia’s government blatantly disregarded the histories and cultures of African descended Colombians. Yet, skin color in Colombia, like in many (formerly) colonized lands, is a part of how everyday Colombians navigate society. To this day, family, friends, and even strangers refer to each other by the color of their skin. For instance, in a few cities in Colombia, strangers called me *negra* or *morena* because of my dark brown skin and black hair. Also, I heard people calling others “blanquita or blanco” (little white girl or white man). These accounts represent how people’s skin color impacts how they are perceived in society and how they navigate their surroundings as beings that display their different ethnic and racial identity over a national one.<sup>54</sup> Therefore, a true

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<sup>48</sup> Múnera, *El fracaso de la nación*, 25.

<sup>49</sup> Ibid.

national ethnicity cannot include everyone without acknowledging the color distinctions of the entire population based on differing ancestries, which Colombia did not do. Moreover, Colombia, as a supposedly “color-blind” country, wanted to assert that its policies did not explicitly discriminate against or disenfranchise Afro-Colombians. African descendants’ push for Law 70 embraced ethnic identities and called attention to inequality based on socially constructed categories of color and race.

### **An Ethnic Framework**

For Law 70 to acknowledge ethnicity, formal guidelines around the socialized definition of ethnicity needed to be established: “... the present legal framework of ethnicity in Colombia rests on two crucial ideas: first, a racial concept that is defined in part as cultural difference from the ‘national culture;’ and second, a connection to land as a constitutive feature of this kind of difference.”<sup>50</sup> Contrary to African descended and Indigenous populations, whose identities were rooted in their connection to land, the mestizo and white Colombians do not have their ancestry tied to a specific land or country embedded in their ethnic and racial names.

Ethnic claims enhanced African descendants’ advocacy of territorial claims. While the national identity claim still holds sway in contemporary society, African descendants’ ethnic identity is tied to a specific region. Instead of identifying as “Black” or “Afro-Colombian,” some people identify as being from places like San Cipriano, Buenaventura, or Chocó as these are predominantly Black regions. Therefore, people identify ethnically based on their intergenerational connection to a geographical location.

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<sup>50</sup> Bettina Ng’weno, “Can Ethnicity Replace Race? Afro-Colombians, Indigeneity and the Colombian Multicultural State,” *The Journal of Latin American and Caribbean Anthropology* 12, no. 2 (2007): 421, <https://doi.org/10.1525/jlat.2007.12.2.414>.

One day my class and I visited a juvenile center for boys in Cali, Colombia. Upon our arrival, we asked the leader of the center if there were any “Black” or “Afro-Colombian” boys in the center, and she said that there were none. However, she added that there is a decent number of boys from Buenaventura. Colombians know that most people from Buenaventura are Black. Evidently, “race is often spoken of in a locative voice... and this is because racial identities are broadly regionalized.”<sup>51</sup> Thus, location serves as a replacement for race: “... though race, and specifically ‘blackness,’ was absent from official state discourse, it persisted both in institutions and in society through the use of region as a proxy for race.”<sup>52</sup> In spite of what the leader told us, as I walked through the detention center with my group, I saw numerous boys who could be categorized as “African descended,” “Black,” or “Afro-Colombian.”

### **Indigenous Influence**

Similar to the African descended people, Indigenous populations in Colombia, and throughout Latin America, speak various languages and represent differing cultures and ancestral histories which are tied to territorial distinctions. During colonization, Europeans and mestizo Colombians perceived Indigenous communities as a racial group.<sup>53</sup> Through their advocacy of claims to land, especially in the late 1890s with Law 89, Indigenous communities transformed their recognition as an ethnic group.<sup>54</sup> Law 89 acknowledged Indigenous rights to reservation lands. Law 89, which focused on the Indigenous populations’ culture and territory, promoted the separation of Native populations from the “national” culture constructed by the mestizo

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<sup>51</sup> Peter Wade, *Blackness and Race Mixture: The Dynamics of Racial Identity in Colombia*, Johns Hopkins paperback ed, Johns Hopkins Studies in Atlantic History and Culture (Baltimore: Johns Hopkins University Press, 1995), 54.

<sup>52</sup> Paschel, “The Right to Difference,” 737.

<sup>53</sup> Ng’weno, “Can Ethnicity Replace Race?,” 421.

<sup>54</sup> *Ibid.*

population.<sup>55</sup> Colombian identity became based on nationality. Colombians of European descent created the Constitution and selected similar looking individuals to work in the government, which perpetuated a social distinction based on that specific phenotype that differed from the “other” people who were the Indigenous population. This “us” versus “them” mentality only included the descendants of the Spaniards born in Colombia (“us”) and the Indigenous population (“them”). What about the descendants of the over 1,000,000 enslaved Africans the Spanish brought to the Colombian territory?

African descendants’ claims to territory proved to be more difficult: “... ties to ancestral land, or more specifically in this case the supposed absence of, or detachment from, such ties is precisely what is embedded in the racialization of Afro-Latin Americans in general.”<sup>56</sup> Non-Black Colombians believed that African descendants did not have an ancestral connection to Colombian land since their ancestors were from African regions. Additionally, non-Black Colombians did not perceive Black Colombians as worthy owners of land because they were not descendants of colonizers who took over the land of the Indigenous population.

The history of colonization, slavery, and the rigorous practice of miscegenation led to a complex relationship, in general, between the Indigenous populations and the African descended populations in Colombia. Political scientist, Juliet Hooker, who focuses on racial justice, claims, “... as the case of Colombia will demonstrate, black populations were not the automatic, or even likely subjects, of multicultural reform.”<sup>57</sup> The Indigenous populations’ claims in the 1890s established the idea of connecting ethnicity and land, contributed to the multicultural shift in the 20<sup>th</sup> century, and proved foundational to Law 70.

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<sup>55</sup> Ng’weno, “Can Ethnicity Replace Race?,” 419-420.

<sup>56</sup> Ibid, 422.

<sup>57</sup> Paschel, “The Right to Difference,” 734.



Over 80 years later, the 1970s saw a resurgence of organized Indigenous movements, particularly around land rights and affirmation from the government about their cultural identity.<sup>58</sup> Throughout the 1980s, the movements pushed for legislation recognizing the territorial rights and culture of indigenous groups.<sup>59</sup> The Constitution of 1991 granted a decent number of rights for the Indigenous population, and the government granted them three seats in the Senate of Colombia — two elected by the Indigenous communities and one through the national vote.<sup>60</sup> The leadership of the National Constitutional Assembly was shared by three politicians in 1991: Horacio Serano (Liberal party), Alvaro Gomez (Conservative party), and Antonio Navarroz (The Alliance Democratic M-19). It was monumental to have all three of these leaders with different backgrounds and political agendas to work together regarding the state of the multicultural country.<sup>61</sup>

Indigenous history proves to be important because their political alliance around multicultural, and specifically Black rights, contributed to Black communities' ethnic frame. The Indigenous frameworks that are grounded in the understanding of ethnicity and land influenced African descendants' political strategy. Political and social advancements for the Indigenous during the 1970s to 1980s were crucial to the ethnic framework, in addition to the Black organizations that started to mobilize towards the beginning of 20<sup>th</sup> century.

The Black movements towards the end of the 20<sup>th</sup> century, which I detail in chapter two, coincided with and depended on those Indigenous movements because of their recognition by the

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<sup>58</sup> Carlos Efrén Agudelo, *Multiculturalismo en Colombia: Política, inclusión y exclusión de poblaciones negras*, 2005, 124,  
<https://blog.utp.edu.co/etnopediatria/files/2015/03/MULTICULTURALISMOENCOLOMBIAcarlosagudelo.pdf>.

<sup>59</sup> Ibid.

<sup>60</sup> United Nations High Commissioner for Refugees, “Refworld | Chronology for Indigenous Peoples in Colombia,” Refworld, accessed February 23, 2023, <https://www.refworld.org/docid/469f387b1e.html>.

<sup>61</sup> Pedro L. Cortes-Ruiz, “[La Ley 70: un análisis sobre su historia y su impacto]” (presentation, CET Center, Cali, Colombia, December 28, 2022).

government: “The legitimacy and acknowledgment of the indigenous cause becomes a factor that supports the recognition of Black populations.<sup>62</sup>” The 1988 International Work Conference (OIT), which was for Indigenous towns, included the concerns of the Black movement for the first time.<sup>63</sup> In the convention, Indigenous leaders argued that Black populations originated from tribes in Africa, and thus, their cultural differences should be supported in the national law and passed in this international convention.<sup>64</sup> The Asociación campesina integral del Atrato (ACIA) (the Integral Peasant Association of Atrato), proposed to defend the rights of Black populations for the first time in their convention, regarding the territorial claims to the land they inhabit.<sup>65</sup> Indigenous peoples’ support helped spread the knowledge about the advocacy of Black rights and the push for legislative changes regarding Black rights. Their connection with territory helped African descendants make claims that link ethnicity and territory.

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<sup>62</sup> Carlos Efrén Agudelo, *Multiculturalismo en Colombia: Política, inclusión y exclusión de poblaciones negras*, 125-26.

<sup>63</sup> *Ibid.*, 126.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

## Chapter 2 The Road to Law 70: Activism, State Instability, and Territory

### *Afrodescendencia*<sup>66</sup>

Lucrecia Panchano

Afrodescendencia, inevitable consanguinidad  
que atravesó, distancias y fronteras...  
que desafío, pigmentación e identidad,  
que superó, escollos y barreras.

Sangre que quema, corazón que aprieta.  
Es África que grita entre las venas,  
ancestro que aprisiona, que sujeta,  
que exige libertad y no cadenas.

Madre África distante y latente,  
grito sin eco, rabias contenidas...  
siempre y por siempre estarás presente,  
eres parte vital de nuestras vidas.

Madre África, somos tu descendencia  
Y en la sangre llevamos tu presencia.

### **African descendant** (my translation)

African descendants, inevitable consanguinity  
that crossed, distances and borders  
that challenges, pigmentation, and identity  
that exceeds, obstacles and barriers.

Blood that burns, heart that tightens  
It is Africa that yells in the veins  
ancestor that imprisons, that subjects,  
that demands liberty and not chains.

Mother Africa distant and latent,  
I yell without echo, restrained rages ...  
now and forever, you will be present,  
you are a vital part of our lives.

Mother Africa, we are your descendants  
And in the blood, we carry your presence.

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<sup>66</sup> *Antología de mujeres poetas afrocolombianas*, vol. 16 (Biblioteca de Literatura Afrocolombiana: Ministerio de Cultura, n.d.), 108.

## **Introduction**

The support of Indigenous populations, whose identity is rooted in both ethnicity and territory, contributed to the demand for Law 70, also rooted in ethnicity and territory. The political organizing of Black communities and Black people across the country proved to be vital for the Law to pass. Concurrent with late 20<sup>th</sup> century Black activism, the country experienced over five decades of armed conflict, leading millions of people to be forcefully displaced from their communities. Black activists took advantage of State instability to further push for political and cultural autonomy. As well, forced displacement of African descendants across urban environments revealed similarities and differences in the African descendent experience. The chapter specifically focuses on the two regions most populated by the African descended population and most impacted by Law 70: the Caribbean Coast and the Pacific Coast. Importantly, this chapter explores the significance of territory versus land as it relates to Black communities, and how they access territorial claims under the rights granted in Law 70. The chapter concludes with analysis of Law 2 of 1959, which focuses on territorialization without referencing African descendants, showing an example of legislation about land rights prior to Law 70. It also ends with an examination of the Constitution of 1991, which serves as the precursor to the Law 70 through its inclusion of the Transitory Article 55.

### **Black Political Organizing: Leadership comes in many shapes and sizes**

Numerous African descendants influenced the Law's establishment. During the 1930s and 1940s, intellectuals like Delia Zapata, Manuel Zapata Olivella, Marino Vivieros, Nataneal Díaz, and Helices Martán Góngora, denounced discrimination and used their presence in the academic space to organize the first "Día del negro" (Black people day) in celebration of Black

rights and culture in 1943.<sup>67</sup> They also advocated for academic institutions to study the history and lived experiences of Black populations in Colombia because to understand Colombian history one cannot neglect the influence of the Black population.<sup>68</sup>

During the 1970s, Black leaders developed spaces for Black people to meet and organize, which importantly provided a safe space to gather in community and share thoughts about how to proceed into an ethno-racial social movement. In 1975, the first annual “Encuentro Nacional de Población Negra Colombiana” (National Meeting of the Colombian Black Population) occurred in Cali.<sup>69</sup> One hundred eighty-three young delegates from around the country gathered to discuss the agenda focused on racism, colorism, ancestry, and regional distinctions.<sup>70</sup>

Continuing in the 1970s, political organizations surrounding the “movimientos negros” (Black movement) became more prominent.<sup>71</sup> Formed in the mid-1970s because of the work of Amir Smith Córdoba—who also directed the newspaper publication “Presencia Negra” (Black Presence)—the Center for Research of Black Culture (CIDCUN) consisted of Afro-Colombian students and intellectuals, determined to study more about Black culture.<sup>72</sup> Additionally, Juan de Dios Mosquera, a sociology student from the University of Pereira, created the “Círculo de estudios Soweto” (Circle of Soweto studies) in 1976, which was a group of Black students, mainly from Chocó, the department with the largest African descended population.<sup>73</sup> The group studied African history, culture, and politics. They also researched Black leaders around the world like Frantz Fanon, Malcom X, Dr. Martin Luther King Jr., and Amílcar Cabral to further enhance their studies on race, ethnicity, and the international tactics of Black mobilization.<sup>74</sup> In

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<sup>67</sup> Agudelo, *Multiculturalismo en Colombia: Política, inclusión y exclusión de poblaciones negras*, 121.

<sup>68</sup> Ibid.

<sup>69</sup> Pedro L. Cortes-Ruiz, PhD, “Reclaiming Blackness: Social and Political Movements in Colombia.”

<sup>70</sup> Ibid.

<sup>71</sup> Agudelo, *Multiculturalismo en Colombia: Política, inclusión y exclusión de poblaciones negras*, 121.

<sup>72</sup> Ibid.

1982, the group founded *Cimarrón* (runaway slave) from the Movement of Human Rights of Black Communities in Colombia.<sup>73</sup> The group made *Cimarrón* their name to remember the history of enslaved people who rebelled against slavery to gain their rights.<sup>74</sup> The principal objective of the group was to educate and create awareness of Black rights.<sup>75</sup>

In 1990, young students at the University of Buenaventura developed the monumental project “Proceso de Comunidades Negras (PCN).”<sup>76</sup> The PCN expanded into an umbrella for Black organizations in Colombia. Currently, PCN strives to improve the “political, social, economic, and territorial” rights of African descended Colombian communities through a network of over 120 different grassroots organizations and community councils.<sup>77</sup> PCN includes “regional palenques,” or regional communal groups, where a large population of Black individuals and communities participate.<sup>78</sup> Named after San Basilio de Palenque, palenques are recognized as safe haven towns or villages for Black communities.

Black activists were also inspired by movements abroad. In 1999, Gladis de Nariño, a liberal community leader spoke in Buenaventura about what was happening there regarding the larger Black movement: “A finales de los años 60 llegó a Buenaventura alguna influencia de la lucha de los negros en Estados Unidos.” / In the end of the 1960s, Buenaventura had some influence from the Black fight in the United States.<sup>79</sup> (my translation) In his speech, Gladis de Nariño acknowledges the impact Dr. Martin Luther King Jr., Malcom X, and the Black Power movement in the United States had on the Black movement in Colombia. The anti-apartheid

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<sup>73</sup> Agudelo, *Multiculturalismo en Colombia: Política, inclusión y exclusión de poblaciones negras*, 121.

<sup>74</sup> *Ibid*, 123.

<sup>75</sup> *Ibid*, 122.

<sup>76</sup> *Ibid*, 129.

<sup>77</sup> “Proceso de Comunidades Negras (PCN) | LADI,” accessed January 25, 2023, <https://ladi-prod.lib.utexas.edu/en/pcn>.

<sup>78</sup> *Ibid*.

<sup>79</sup> Agudelo, *Multiculturalismo en Colombia: Política, inclusión y exclusión de poblaciones negras*, 122.

movement in South Africa, as well, influenced the movement of Black populations' rights in Colombia.<sup>80</sup> Black people across the diaspora connected through similar struggles regarding Black recognition, anti-Black racism, and discrimination fueling an international wave of multiculturalism.<sup>81</sup>

African descendants in Colombia, as with African descendants of other countries in Latin America, also utilized the momentum of societies worldwide toward multiculturalism. Due to the increase of multiculturalism in the political sphere worldwide Nicaragua, Bolivia, Ecuador, Guatemala, and Honduras all developed multicultural constitutions and legislations highlighting the rights of their African descended and Indigenous populations beginning in the 1980s.<sup>82</sup> Specifically, in Colombia, "Afro-Colombian activists were able to seize upon changes in global policy norms around multiculturalism and state disequilibrium both by deploying traditional social movement strategies and by framing their demands in terms of ethnic difference."<sup>83</sup> Black Colombians tapped into the shifts toward multiculturalism throughout Central and South America to push for political and social changes.

### **Armed conflict and national instability**

Coinciding with the activism leading to Law 70 was the country's armed conflict. Colombia experienced over 50 years of an internal armed conflict that culminated with the 2016 Peace Agreement between the guerilla and paramilitary groups. While Colombian elites have fought smaller scaled civil wars over liberal and conservative ideologies since the 1850s, 1964 initiated the massive conflict over conservative and liberal political agendas. The conflict

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<sup>80</sup> Agudelo, *Multiculturalismo en Colombia: Política, inclusión y exclusión de poblaciones negras*, 121.

<sup>81</sup> *Ibid*, 122.

<sup>82</sup> Paschel, "The Right to Difference," 733.

<sup>83</sup> *Ibid*, 729.

impacted everyone in Colombia and created political chaos. Yet Black organizations took advantage of the national disequilibria to promote their ethnic agenda because the government needed to make radical changes in the political and economic systems to diffuse the conflict.

Guerilla groups, primarily composed of peasant, low-income people in favor of communism, formed because of their desire to attain more political power from the wealthy elite.<sup>84</sup> Paramilitary groups—representing elected officials in favor of the unitary republic government, landowners, and business leaders—worked to counteract the attacks of guerrilla groups and maintain dominance. The primary tension during the multi-decade long armed conflict was between the guerilla and paramilitary groups.<sup>85</sup> The two major guerilla groups formed in 1964 were the Revolutionary Armed Forces of Colombia (FARC) and the Army of National Liberation (ELN). Each used their power to fight for poor, country peoples’ rights.<sup>86</sup> Tensions between the wealthy and the poor fueled the armed conflict, and guerilla and paramilitary groups committed murders, massacres, kidnappings, and sexual violence throughout the armed conflict: “Civil conflict in Colombia...has left 220,000 dead, 25,000 disappeared, and 5.7 million displaced over half a century.”<sup>87</sup>

Paramilitary and guerilla groups comprised of mestizos treated African descendants terribly: “Colombia’s decades-long conflict with the far-left guerrilla group the Revolutionary Armed Forces of Colombia (FARC) had a disproportionate impact on Afro-Colombian communities, which were affected by systemic violence and related activism including drug

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<sup>84</sup> Human Rights Watch, “Colombia: Events of 2019,” in *World Report 2020*, 2019, <https://www.hrw.org/world-report/2020/country-chapters/colombia>.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> “Colombia’s Civil Conflict,” Council on Foreign Relations, accessed April 18, 2023, <https://www.cfr.org/backgrounder/colombias-civil-conflict>.



trafficking, illegal crops, and illegal mining.”<sup>88</sup> Paramilitary and guerrilla groups pressured some African descendants to leave their traditional livelihood and territory to participate in illegal activities that the groups would present as opportunities:<sup>89</sup> “Afro-Colombian communities have suffered land grabbing due to illegal mining, illicit drug cultivation, and government approved mega projects including agri-business and infrastructure.”<sup>90</sup> All this led to extreme violence and forced displacement, primarily from rural areas to cities, like Cali, Bogotá, and Medellín, while others would move to other communities outside of their town. Displacement forced African descendants to leave their territory, a piece of their identity, as they transitioned to their new residence. Displacement occurred across all ethnic groups in Colombia. However, the disproportionate amount of Black people forced to leave their territory imposed additional emotional, social, and physical burdens on Black communities in cities.

Forced displacement meant leaving behind territory to relocate to another unknown region. Sociologist Aurora Vergara-Figueroa explores the impact of deracination which signifies the unrooting from one’s social environment or natural geographic location—essentially one’s territory.<sup>91</sup> Deracination uprooted African descendants from their territory, which included their culture and ancestral rituals that connect to their resources and livelihood in their territory. Vergara-Figueroa identifies three elements “...of socio-historical analysis... of deracination: power, knowledge, and liberation, along with the four dimensions underlying them: history, representation, memory, and mobilization.”<sup>92</sup> These components connect to the principal idea

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<sup>88</sup> Caroline White-Nockleby et al., “Advancing the Land Rights of Afro-Colombian Communities,” 2021, 9.

<sup>89</sup> “Colombia: Urgent Government Action Needed as Rising Violence in Rural Areas Gravely Impacts Human Rights — UN Report,” OHCHR, accessed March 30, 2023, <https://www.ohchr.org/en/press-releases/2022/07/colombia-urgent-government-action-needed-rising-violence-rural-areas-gravely>.

<sup>90</sup> “‘Territory Is Everything’: Afro-Colombian Communities, Human Rights and Illegal Land Grabs - Columbia Human Rights Law Review.”

<sup>91</sup> Aurora Vergara-Figueroa, *Afrodescendant Resistance to Deracination in Colombia*, 1st ed. (Palgrave Macmillan Cham, 2018), 33, [https://doi.org/10.1007/978-3-319-59761-4\\_2](https://doi.org/10.1007/978-3-319-59761-4_2).

<sup>92</sup> *Ibid*, 29.

that for African descendants in Colombia ethnicity and territory are intertwined, which Law 70 promotes. Law 70 represents *power and liberation* through the proclamation of collective territorial rights by promoting specific Afro-Colombian ethnicities. Law 70 embodies the *history, knowledge, and memory* of the trauma African descendants faced prior to its passage due to the lack of representation in the government. Law 70 shows how the *mobilization* and partnering with the Indigenous population led to *representation* of African descendants in rural and urban regions.

### **Opportunities amid disequilibria**

Although no one could see an end to this long violent conflict, Black Colombians did see a silver-lining within this crisis to gain political leverage for their ethno-racial legislation. A prominent guerrilla group, M-19, which stands for the *April 19<sup>th</sup> Movement*, formed in 1974. Members pressured the Colombian government to demobilize and integrate demands for constitutional reform.<sup>93</sup> The instability of the Colombian state “provided a political opening, the structural foundation upon which actors could successfully push for democratic and constitutional reforms in Colombia in 1991....”<sup>94</sup> Colombia suffered from a “crisis of legitimacy” leading up to and during the 1990s.<sup>95</sup> The government lost credibility because of great chaos from the armed conflict. The extreme violence from the war caused citizens to question their government’s effectiveness to lead: Who or what is keeping us safe? What are my rights? The “crisis of legitimacy” prompted people to voice their opinion about the political and social policies surrounding the war, but also policies that had previously been unacknowledged,

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<sup>93</sup> Paschel, “The Right to Difference,” 746; “M-19 | Members, Leaders, & Bolivar Sword | Britannica,” March 10, 2023, <https://www.britannica.com/topic/M-19>.

<sup>94</sup> Paschel, “The Right to Difference,” 746.

<sup>95</sup> Ibid.

like recognition of ethnic difference and protection of culture and land.<sup>96</sup> Black Colombians capitalized on the vulnerability of the Colombian state to push their agenda advocating for Black rights.

Law 70 grants rights to African descended Colombian communities protected under the law through prioritizing their identity rooted in territoriality through autonomy over collective land tenures. Although Law 70 did not end the violence and discrimination against African descendants, it allowed more African descendants to obtain political and cultural recognition. The pain and trauma of forced displacement, historically and contemporarily, also prove to be a pivotal part of their identity and their political agenda. African descendants worked within Colombia's democratic government structure to pass Law 70.

### **From rural Black Colombians to city dwellers**

Black communities disheveled by the armed conflict often dispersed to towns outside of their communities or large cities. Unable to live in their home territory, they carried with them memories and cultural traditions. As they navigated Black social movements, Black communities and African descendants across the country worked to gain more political leverage through the emphasis of their cultural identity connected to territory.

Most of these cities are segregated, and Black populations inhabit specific neighborhoods. For instance, Cali, a city in the Pacific Coast region, which currently contains the second largest African descended population by city in all South America, has a sizable Black neighborhood, Llano Verde. The neighborhood contains a large population of those who were internally displaced, primarily from the Pacific Coast, and is home of AFRODES (Asociación

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<sup>96</sup> Paschel, "The Right to Difference," 746.

Nacional de Afrocolombianos Desplazados / National Association of Displaced Afro Colombians). Founded in 1999,

... [AFRODES] rises to defend displaced Afro-Colombian rights searching first for conditions of “dignified existence” for people during the “transitory” condition of displacement and in its place to demand necessary conditions for them to return to their own territories: unseizable, inalienable, and imprescriptible territories ....<sup>97</sup> (my translation)

Segregated cities also coincide with a divide in resources and violence, as Llano Verde is densely populated with African descendants experiencing impoverished conditions and higher rates of violence.<sup>98</sup> African descendants in rural lands were—and still are—targeted by mestizo people because of the rich land that they inhabit. The rural and urban connection was organic as many urban dwellers came from rural regions, some of which were protected by Law 70. These organic connections were key to gaining Black rights under Law 70.

### **The rural and urban bond across African descendants in Colombia**

In large cities along the Pacific containing majority Black populations, like Buenaventura and Quibdó, local communities’ introduced initiatives to include in Law 70, as did Black university students and people influenced by the international Black movement.<sup>99</sup> Carlos Efrén Agudelo, an expert in Black social movements and advocacy in the late 20<sup>th</sup> century, states,

We understand that the Black Communities Social Movement was led by organizations and their respective social bases that developed collective actions with the purpose of social recognition, economics, politics, and cultures instrumentalized as... legitimizing the fundamental identity of the Black ethnicity or Afro-Colombian shared identity.<sup>100</sup> (my translation)

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<sup>97</sup> “Historia de afrodes Colombia afrocolombianos desplazados de Colombia,” accessed February 23, 2023, <http://www.afrodescolombia.org/historia/>.

<sup>98</sup> “Social Leaders, Government Representatives, and Regional Institutions Make Proposals for Justice and Violence Prevention after the Llano Verde Killings,” *Race and Equality* (blog), September 4, 2020, <https://raceandequality.org/english/social-leaders-government-representatives-and-regional-institutions-make-proposals-for-justice-and-violence-prevention-after-the-llano-verde-killings/>.

<sup>99</sup> Agudelo, *Multiculturalismo en Colombia: Política, inclusión y exclusión de poblaciones negras*, 122.

<sup>100</sup> *Ibid*, 121.

The relationship between Black Colombians in rural areas and Black Colombians in urban environments proved to be crucial to cement the “right to difference” frame established in Law 70.<sup>101</sup> The commitment of African descendants across the country strengthened the process legitimizing the ethnic identity.

### **Black Regions: The Caribbean and the Pacific**

Most of Colombia’s rural Black communities reside along the Caribbean or the Pacific Coasts. Colombians identify the population from the Caribbean region as “costeños,” which fortifies their identity based on their geographical location and does not recognize anything about skin color, race, and ethnicity. Cartagena de Indias (Cartagena) is a major city in the Caribbean coastal region that attracts a large amount of national and international tourism. Cartagena, once a principal slave port, is about an hour and a half drive to San Basilio de Palenque: “In addition to the riverine dwellers of the Pacific Basin, who gained an avenue to communal land ownership, in Caribbean Colombia the descendants of Palenque de San Basilio, a former maroon community near Cartagena, have secured the exclusivity of the region’s *negritud* (blackness).”<sup>102</sup> San Basilio de Palenque is just one community, of over 4,000 African descendants, living in the Caribbean.<sup>103</sup> People with ancestry from San Basilio de Palenque are known as the Palenqueros and protected by Law 70.

The Pacific region hosts the largest number of African descendants in Colombia. The Pacific Coast’s natural resources, including the plant ecology, animals, natural water sources,

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<sup>101</sup> Carlos Efrén Agudelo, 121; Paschel, “The Right to Difference.”

<sup>102</sup> Aline Helg, *Liberty & Equality in Caribbean Colombia 1770-1835*, 2.

<sup>103</sup> Blanca Camargo and Alain Lawo-Sukam, “San Basilio de Palenque (Re)Visited: African Heritage, Tourism, and Development in Colombia,” *Afro-Hispanic Review* 34, no. 1 (2015): 26.

provided an opportunity for colonizers to enhance their economic opportunity during the colonial era, leading to an increased number of African descendants in the Pacific region: “The sparsely inhabited Pacific lowlands are Colombia’s ‘blackest’ region, where about 90 percent of the population is of full or [visibly] mixed African origin. Black communities and people of mixed African descent are also numerous in the south, particularly in the upper Cauca Valley and along the Patía River, and along the central Magdalena River.”<sup>104</sup> After emancipation, African descendants stayed in these areas forming their own culture, economy, and way of life without official territorial rights. Until the Constitution of 1991, African descendants lived in these regions unrecognized by the State as political agents.

The Pacific region of Colombia includes three types of land: plains, hills, and mountains.<sup>105</sup> It can be divided into three areas: north, middle, and south. The north includes the long Río Atrato (Atrato River) that stretches through the Serranía de Baudó (Baudó mountains) and the low level of the Colombian Andes in the Cordillera Occidental.<sup>106</sup> The Río Atrato continues along the middle region of the Pacific in addition to the River of San Juan. The south consists of a large plain including the Micay, Mira, and Patía rivers and numerous side streams that travel through the region to Buenaventura. Dispersed throughout the region are rainforests as well contributing to its great biodiversity. The political geographical distinction in the Pacific includes four departments: the coastal and western sections of Nariño, Cauca, Valle de Cauca, and the entire department of Chocó.

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<sup>104</sup> Aline Helg, *Liberty & Equality in Caribbean Colombia 1770-1835*, 2.

<sup>105</sup> Karl H. Offen, “The Territorial Turn: Making Black Territories in Pacific Colombia,” *Journal of Latin American Geography* 2, no. 1 (2003): 52.

<sup>106</sup> *Ibid.*

## Natural resources and the economy

Many rural areas in the Pacific developed as the population increased. African descendants in Colombia live in rural communities throughout the land beyond the riverbanks.<sup>107</sup> They developed an economy based on labor whether that be through “wage labor and self-employment, or collective extraction.”<sup>108</sup> The latter two refers to cash-generating activities like fishing, timber extraction, palmito harvesting, gold panning, and harvesting other aquatic organisms such as snails, oysters, fish, and bivalves.<sup>109</sup> Gold mining and extraction have been important aspects of the region’s economic growth. In the colonial period, gold was plentiful the Magdalena River, the Cauca Valley, and the Pacific foothill gravels.<sup>110</sup> In the 1600s, Africans and Indigenous groups were forced to mine gold from Barbacoas (which is now a municipality in the Nariño department) all the way to Buenaventura, which is 718 km away.<sup>111</sup> As with any economic system, as the demand for labor increased, the European colonizers increased the demand for African labor.<sup>112</sup> During the 1700s, the region now recognized as Chocó became largest producer in gold.<sup>113</sup> From 1680 to 1810, Chocó was the main gold mining region for all of Colombia.<sup>114</sup> After 1810 until the late 1800s, the production of gold mining decreased. Subsequently, international powers infiltrated Chocó, including US Granger Mining Company and British Anglo Colombian Gold Development company.<sup>115</sup> In 1916, these two companies combined to form *Compañía Minera Choco Pacifico*, which increased mining activities to help

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<sup>107</sup> Offen, “The Territorial Turn: Making Black Territories in Pacific Colombia,” 54.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*, 55.

<sup>111</sup> *Ibid.*, 56.

<sup>112</sup> Offen, 56.

<sup>113</sup> *Ibid.*, 55.

<sup>114</sup> *Ibid.*, 56.

<sup>115</sup> Frédéric Massé and Jeremy McDermott, “Due Diligence in Colombia’s Gold Supply Chain: Gold Mining in Chocó” (OECD, 2017), 6.

support both World War I and II.<sup>116</sup> The U.S. and England maintained control until 1974 when they sold it to Colombian investors.<sup>117</sup>

### **Territory, not just land**

The geographical regions outlined in the Law represent physical land, but the regions carry so much more value to the Black communities than the land itself. Dr. Karl Offen, a researcher who focuses on geography and environment especially in Latin America, coined the term “territorial turn” to expand our understanding of “land” in the context of Black communities.<sup>118</sup> “Territorial turn” refers to the territorial rights as distinct from land claims and rights.<sup>119</sup> According to Offen, “... a land claim does not challenge the existing rules and regulations that govern property rights.” Offen suggests that claiming land does not reveal the historical or cultural connection that a person or group of people have with the land. African descended Colombians associate rituals, materials, and symbols with the land that strengthen their connection it.

Offen contrasts land claims with territorial claims by arguing, “[a territorial claim] demands an alteration of the rules. Territorial claims are not simply a land or collective property claim that seeks to ‘plug into’ the existing institutional arrangements governing private property. Territorial claims are about power, an assertion of identity, autonomy, and a measure of control over encompassed natural resources.”<sup>120</sup> The “alteration of the rules” comes from the peoples’ ability to have control over the land and make decisions about it. Black communities that sought

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<sup>116</sup> Massé and McDermott, “Due Diligence in Colombia’s Gold Supply Chain: Gold Mining in Chocó” (OECD, 2017), 6.

<sup>117</sup> Ibid.

<sup>118</sup> Offen, “The Territorial Turn.”

<sup>119</sup> Ibid, 47.

<sup>120</sup> Ibid.



territorial rights were not just talking about protection of the land they and their ancestors lived in for centuries. They advocated territorial claims based on their ethnicity because they were not only on the land, but they were of the land. A territorial claim merged land and ethnicity, paving the way for political and cultural autonomy.

Generally, African descended and Indigenous communities live in different areas due to their different histories and relations with the government. Prior to and during the late 20<sup>th</sup> century, Black communities occupied the lowlands and river areas while Indigenous communities lived in the higher land areas, ‘refugee areas,’ in regions that were not already occupied.<sup>121</sup> Yet, there were no specific guidelines demarcating which areas were exactly for which ethnic group. During the armed conflict, tensions developed between African descendants and the Indigenous population due to displacement of Indigenous groups to lowlands that Black communities occupied, even though those were the regions which Indigenous people lived prior to and during African enslavement, during the armed conflict.<sup>122</sup> Yet despite these tensions, overtime, they developed strategies to coexist and build positive relationships evident in the support of Indigenous leaders during the National Constitutional Assembly in the early 1990s.<sup>123</sup>

Territory proves to be one of the most important attributes to Black Colombian communities. Anthropologist Peter Wade claims, “To make sense of Colombia, the visitor, or the reader, must acquire a sense of place, not just in the physical sense of mountains, valleys, savannas, and jungles, but in the other aptly captured by the phrase ‘a sense of place,’ as in ‘to know one’s place.’”<sup>124</sup> Territorialization for African descendants extends beyond the physical

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<sup>121</sup> Enrique Sánchez, *Derechos e Identidad: Los Pueblos Indígenas y Negros En La Constitucion Politica de Colombia de 1991* (Bogotá, Colombia, 1993), 155.

<sup>122</sup> Ibid.

<sup>123</sup> Sánchez, *Derechos e Identidad*, 155-56.

<sup>124</sup> Wade, *Blackness and Race Mixture*, 51.

geographic locations into a personal understanding of belonging and acceptance to the region. “Sense of place” means having the ability “to see the old roots embedded in the lines, colors, and contours, roots still flowing with colonial sap despite the burgeoning of gaudy modernity.”<sup>125</sup> Wade illustrates how roots, as in ancestral origin, metaphorically intertwine with the roots of plants, symbolizing the importance of nature, and how the history of the two manifest in a contemporary context. History—enslavement, manumission, forced displacement—is rooted in the narrative of African descendants in Colombia today.

### **The invisibility of Black communities through Law 2**

The Colombian government did not acknowledge the significance of territory to Black Colombians prior to Law 70. Despite the economic production of Black communities along the Pacific, they were not recognized by the government. Prior to Law 70, however, Colombia created legislation that provided definitions of natural reserves and forest regions. In 1959, the Congress of Colombia passed Ley 2 “Sobre Economía Forestal de la Nación y Conservación de Recursos Naturales Renovables” (Law 2 On the Forestry Economy of the Nation and Conservation of Renewable Natural Resources).<sup>126</sup> Law 2 provided a mechanism for the government to outline economic opportunities that rural land in Colombia provided. In Article 1, the Law establishes the development of the economy through the forest areas and establishes zones protected as forest lands.<sup>127</sup> Articles 6 and 7 grant permission to exploit the forest areas and “balídos,” which are state-owned natural reserves, or a direct translation is “waste lands.” Article 7 states that the government has complete control to regulate the natural reserves and

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<sup>125</sup> Wade, *Blackness and Race Mixture*, 51.

<sup>126</sup> “Ley 2 de 1959 - Observatorio Ambiental de Cartagena de Indias,” accessed March 12, 2023, <https://observatorio.epacartagena.gov.co/ley-2-de-1959/>.

<sup>127</sup> Ibid.

resources.<sup>128</sup> Many Black communities inhabited government-controlled land, yet they did not have input into Law 2.

While Law 2 promoted the protection of land, it did not protect the people within the territories nor recognize the intergenerational presence of African descendants in these territories. Afro-Colombians populate a substantial portion of the rural lands along the Pacific Coast, but Law 2 did not give them legal control over governance of the land. To the contrary, “The passage of Colombia’s Law 2 of 1959, which established a forest reserve area in Colombia’s Pacific Coast, put in place an additional obstacle preventing the substantial Afro-Colombian communities in this region from receiving formal land titles.”<sup>129</sup> The Law outlines the guidelines for the protection of forest areas, without mentioning Black populations at all. Additionally, Indigenous groups inhabited the land recognized as Colombia years before the Spanish infiltrated the land. However, it was only in 1961 that Colombia’s agricultural reform provided a formal process of land titling for Native populations and the government acknowledged the presence and political agency of Native communities.<sup>130</sup>

Law 2 fails to recognize the different Black and Indigenous communities living on the State’s land. The invisibility of African descended Colombians politically and socially does not correspond to their dense population. Out of all the countries in the Western Hemisphere, Colombia contains the third largest population of African descendants after Brazil and the United States of America.<sup>131</sup> Dr. Pedro Cortes-Ruiz, a researcher on Black Social Movements in Colombia and the history surrounding Law 70, argues that Law 2 represents the structural racism

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<sup>128</sup> “Ley 2 de 1959 - Observatorio Ambiental de Cartagena de Indias.”

<sup>129</sup> White-Nockleby et al., “Advancing the Land Rights of Afro-Colombian Communities,” 5.

<sup>130</sup> Ibid.

<sup>131</sup> Aline Helg, *Liberty & Equality in Caribbean Colombia 1770-1835*, 2.

in the country in specific regards to the territoriality claims for different groups.<sup>132</sup> At the time, legislation ignored the presence of African descended and Indigenous groups focusing only on the process of economic integration and regulation of economic competition in these government owned rural lands.

Law 2 highlights the historical discrimination and tensions based on race because it fails to acknowledge the Black and Indigenous people residing in the region. While African descended and Indigenous communities lived and worked in these territories for generations, the government disregarded their economic needs and cultural autonomy. It was not until Law 70's Agrarian Reform that Black communities were legally recognized as groups inhabiting the natural reserve forest land. Law 70 extends beyond just protecting the territories to the people that encompass them as well.

### **Disparity in land grants**

The amount of land granted through land titling for Indigenous groups (reserves) and African descendants (Black communities) differed likely because people recognized Indigenous people as an ethnic group before African descendants. The size of Indigenous and Black populations in Colombia do not correlate to the amount of land the groups respectively regulate. In 1991, two to three percent of the population was Indigenous and gained land titles to more than 24 percent of the national land under the new Constitution.<sup>133</sup> Afro-Colombians represented about 10-26 percent of the national population while only gaining about two percent of the national land, a majority of which is located along the Pacific basin region.<sup>134</sup> The estimated

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<sup>132</sup> Cortes-Ruiz, Presentation, CET Center, Cali, Colombia, December 28, 2022.

<sup>133</sup> Ng'weno, "Can Ethnicity Replace Race?," 416.

<sup>134</sup> Ng'weno, 416; Paschel, "The Right to Difference," 735.

percentage of Afro-Colombians by the National Administrative Department of Statistics ranges from 10-26 percent due to the government's and society's shifting definitions and understandings of race and ethnicity during the 1990s wave of multiculturalism.<sup>135</sup> The disregard for African descended people and land rights reveals how the State actively excluded them. The disproportionate distribution of land the same year as the Constitution of 1991 fueled the push for Law 70 and subsequent decrees, like Decree of 1745, which granted African-descended Colombians more control in the territories they already inhabited.<sup>136</sup> Despite the large Black population, historical discrimination from the past continued to manifest in a contemporary way through limited access to land titling grants.

### **A legislative partnership: The Constitution of 1991 and the Law 70 in 1993**

To understand Law 70, one needs to understand its connection to the Constitution of 1991. The Constitution of 1991, also known as the Constitution for Human Rights, was the first time that the Colombian government recognized the multiracial and multiethnic composition of the country. In the 1991 Constitution, Transitory Article 55 lays out the foundation of Law 70.

The entire Transitional Article 55 is outlined below:

*Within the two years following the entry into effect of the present Constitution, Congress shall issue, following a study by a special commission that the government shall create for that purpose, a law which shall take cognizance of the Black communities which have come to occupy uncultivated lands in the rural zones adjoining the rivers of the Pacific Basin, in accordance with their traditional cultivation practices and the right to collective property over the areas which the same law shall demarcate.*

*In the special commission referred to in the previous clause, representatives elected by the communities involved shall participate in each case.*

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<sup>135</sup> Paschel, "The Right to Difference," 735.

<sup>136</sup> "Colombia," *Tenure Facility* (blog), accessed December 14, 2022, <https://thetenurefacility.org/timeline/colombia-2/>.

*The property thus recognized shall only be transferable within the limits stipulated by an Act.*

*The same law shall establish mechanisms for the protection of the cultural identity and the rights of these communities and for the progress of their economic and social development.*

*Paragraph 1*

*Provisions in the present article may be applied to other zones of the country that have similar conditions through the same procedure, following a study and the favorable opinion of the special commission prescribed here.*

*Paragraph 2*

*If at the conclusion of the deadline stipulated in this Article Congress shall not have issued the Act to which it refers, the government shall proceed to do so through a decree having the force of law 4.<sup>137</sup>*

Law 70 was in direct response to the legal commitment proposed in the 1991 Constitution's Transitory Article 55. Paschel argues that the Law was "arguably the most comprehensive legislation for black populations in Latin America" due to its focus on geographical and cultural distinctions pertaining to the Black people in Colombia.<sup>138</sup>

The Constitution of 1991 serves to dismantle the ethnic monolith within Colombia, "allow[ing] Colombians to exercise their citizenship by displaying cultural diversity rather than by concealing it as required by the previous political charter."<sup>139</sup> Law 70 provided the guidelines for African descended citizens to exercise their freedom. Every Colombian should recognize the legal and cultural autonomy of Black Colombian cultures, the intellectual abilities of these people to govern their own territory, and the politics that permit expressing difference based on a particular ethnicity, should there be any disputes or issues.

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<sup>137</sup> "Colombia 1991 (Rev. 2015) Constitution - Constitute," accessed December 11, 2022, [https://www.constituteproject.org/constitution/Colombia\\_2015?lang=en](https://www.constituteproject.org/constitution/Colombia_2015?lang=en).

<sup>138</sup> Paschel, "The Right to Difference," 730.

<sup>139</sup> Jaime Arocha, "Inclusion of Afro-Colombians: Unreachable National Goal?," *Latin American Perspectives* 25, no. 3 (1998): 70.

Anthropologist Jamie Arocha's work focuses on Colombia's shift from a monoethnic to multiethnic societal framework resulting from the 1991 Constitution which strives to "pursue unity through the preservation of ethnic diversity."<sup>140</sup> The Constitution did not intend to promote integration or segregation, but to promote inter-ethnic unity under Colombian nationalism. Article 7 of the Constitution declares: "The State recognizes and protects the ethnic and cultural diversity of the Colombian Nation."<sup>141</sup> However, there needed to be a "radical change in the way in which Afro-Colombians [were] perceived" because it was the first time that the Black population was finally welcomed into the political discourse regarding rights.<sup>142</sup> The radical change refers to a national responsibility to recognize the human rights of African descendants in Colombia: "Afro-Colombians became visible after more than 100 years during which their territorial domains were denied and their demographic, cultural, and historic presence was concealed."<sup>143</sup>

The Constitution of 1991 initiated the "radicalization" of the Colombian State focusing on the ethnic and cultural diversity of the country.<sup>144</sup> The Constitution of 1991 recognizes Black people as part of ethnically diverse populations. It legally dismantles the idea of a national ethnicity and strives to show the value of all Colombians. Article 2 of the Constitution states: "The authorities of the Republic are established to protect all individuals residing in Colombia, in their life, honor, property, beliefs, and other rights and freedoms, and to ensure the fulfillment of the social duties of the State and individuals."<sup>145</sup> It protects *all individuals*—including people

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<sup>140</sup> Arocha, "Inclusion of Afro-Colombians," 71.

<sup>141</sup> "Colombia 1991 (Rev. 2015) Constitution - Constitute," 5.

<sup>142</sup> Arocha, "Inclusion of Afro-Colombians," 71.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> "Colombia 1991 (Rev. 2015) Constitution - Constitute."

who descended from enslaved African captives, people with dark-brown skin and tightly curled hair, and people with ancestral traditions tied to a specific territory.



**Chapter 3**  
**Law 70: Ethnicity, Territorialization, and Limited Rights**

*Untitled Spoken Word*<sup>146</sup>

María Elcina Valencia Cordoba

Fuimos abriendo caminos de identidad.  
Fuimos abriendo la cara a la miseria,  
con las manos duras de los leñadores,  
con las atarrallas de los pescadores,  
con la espalda al sol de los palanqueros.  
Nosotros, que crecimos juntos,  
testigos de la miseria,  
nacidos de la tierra,  
somos los mismos luchadores,  
somos los mismos pescadores y palenqueros,  
somos los mismos testigos de vividores enriquecidos,  
testigos de sabios empobrecidos.  
Nosotros, los hijos de mandingas,  
los primos de congos, hermanos de lucumíes.  
Somos ahora, inquietos por herencia.

**Untitled Spoken Word** (my translation)

We were opening paths of identity.  
We were opening the face of misery,  
with the strong hands of the lumberjacks,  
with the nets of the fishermen,  
with the back to the sun of the palenqueros.  
We, who grew together,  
witnesses of misery,  
born of the earth,  
we are the same fighters,  
we are the same fishers and palenqueros,  
we are the same witnesses of enriched freeloaders,  
witnesses of impoverished wise people.  
We, the children of the Mandika,  
the cousins of the Congo, siblings of the lucumíes<sup>147</sup>  
We are now, restless by inheritance.

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<sup>146</sup> Ministerio de Cultura-CorpoCurrulao- Qubilo, “María Elcina,” Mujeres Narran su Territorio, accessed March 12, 2023, [https://corpocurrulao.org/mujeres\\_narran/maria-elcina.html](https://corpocurrulao.org/mujeres_narran/maria-elcina.html).

<sup>147</sup> Lucumí refers to the religious belief and language of African descendants in Cuba based off the Yoruba culture.

## **Introduction**

Law 70 is a pivotal piece of legislation pertaining to acceptance of cultural diversity and economic justice in Colombia: "... Law 70 set a historic precedent. Colombia was the first country to encode the ability for non-indigenous ethnic minority groups to receive collective land titles, specifically African descended communities in the Amazon and along the Pacific Coast that had been established as early as the 16<sup>th</sup> century."<sup>148</sup> The chapter provides an overview of the governance and legislative process in Colombia before it examines Law 70. The Law acknowledges the territorial rights and cultural autonomy of African descended communities. African descendants embraced the line of difference: a physical line—through geographical distinctions—and a mental separation, from the false reality that other Colombians created by disregarding the complex history and culture of diverse African-descended groups. The chapter refers to collective land titling for Black communities—their significance, the amount granted, and the process of titling, which was a process granted under Law 70. The chapter continues with an examination of the articles and chapters included in the Law from which the Black communities claimed their cultural, ethnic, and territorial difference.

## **The governance of Colombia**

Before exploring Law 70, it is important to understand the government structure and legislative process that permitted Law 70. The 1886 Constitution established the three branches of the Colombian government that still exist today: legislative, executive, and judicial.<sup>149</sup> All of these branches contribute to the political stability of the country. Colombians are encouraged to

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<sup>148</sup> White-Nockleby et al., "Advancing the Land Rights of Afro-Colombian Communities," 5.

<sup>149</sup> "Constitutional History of Colombia," ConstitutionNet, accessed November 8, 2022, <https://constitutionnet.org/country/constitutional-history-colombia>.

participate in electing the president, within the executive branch, and the representatives, in the legislative branch, allowing them to utilize their voice and influence legislation through their elected officials. Adults born in Colombia or born of parents from Colombia who settled in Colombia are granted citizenship.<sup>150</sup>

The democratic republic government structure on the national level extends to the regional and local government systems. Currently, Colombia consists of 32 departments divided into 1,123 different municipalities.<sup>151</sup> Each of the 32 departments are led by an elected governor who governs the department utilizing the resources that are allocated by the federal Colombian government.<sup>152</sup> The 1,123 municipalities are politically led by mayors who have support from other representatives specifically working in each town office. The creation of the government structure cemented citizens' national identity and connection to the country because of their involvement in both the political and social process.

All of Colombia adheres to the government structure outlined in their Constitution. However, there are other geographical regions including those recognized as Black collective territories and Native resguardos (reserves) that also exist within the political system. Collective territories and resguardos are essentially municipalities, specifically in the territories of African descended people and Indigenous people, respectively. Yet, while these communities live within the confines of Colombia, they do have a distinctive role within the system. In 1993, the government officially recognized Black collective territories with the passage of Law 70, giving them the legal right to autonomously rule their designated territory. Law 70 acknowledges the

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<sup>150</sup> Bernard Moses, "Supplement: Constitution of the Republic of Colombia," *The Annals of the American Academy of Political and Social Science* 3 (1893): 1-70.

<sup>151</sup> "Political and Administrative in Colombian State," Colombia Country Brand, January 18, 2017, <https://www.colombia.co/en/colombia-country/colombia-facts/how-the-colombian-state-is-composed/>.

<sup>152</sup> Ibid.

“gift” of the land that the government granted to Black communities, land they had inhabited for generations.

Colombia’s Law 70 grants rights to African descendants through recognition of identity rooted in territoriality and autonomy over collective land tenures. Although Law 70 did not end the violence and discrimination against African descendants, it allowed more African descendants to obtain political and cultural recognition. The pain and trauma regarding forced movement, historically and contemporarily, also proved to be a pivotal part of their identity. African descendants worked within Colombia’s democratic government structure to pass Law 70.

### **Legislative process to implement Law 70**

The Colombian government established four kinds of law: framework law, ordinary law, organic law, and statutory law.<sup>153</sup> Statutory law, which the Law 70 represents, indicates a written law passed by Congress, which will be executed or “operationalized” through various executive orders that the President and a Minister jointly provide.<sup>154</sup> The executive orders explicitly define how the law will be implemented. “Reglamentación” is the process in Spanish and while there is not explicit translation in English, it is important to recognize that Law 70, like other statutory laws, had to undergo a thorough legal process around operationalization and implementation.<sup>155</sup>

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<sup>153</sup> White-Nockleby et al., “Advancing the Land Rights of Afro-Colombian Communities,” 7.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

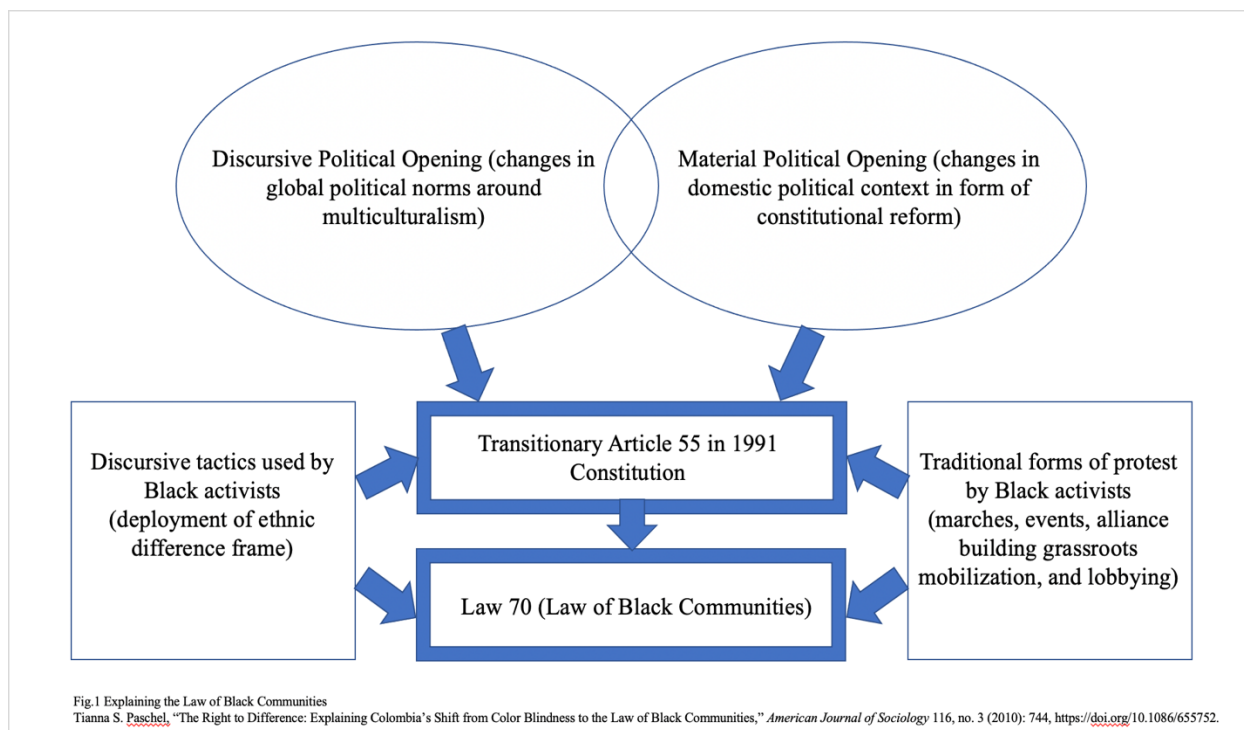


Figure 1: Explaining the Law of Black Communities<sup>156</sup>

### The Breakdown: What is the Law 70?

Law 70 of Colombia officially recognizes the rights of Black Colombians to collectively own and occupy lands, which they have inhabited for generations since their ancestors arrived through the slave trade. Established in 1993, the English translation of the law’s title reads: “Law 70 of Colombia (1993): In Recognition of the Right of Black Colombians to Collectively Own and Occupy their Ancestral Lands.”<sup>157</sup> Including “recognition of the right” shows that the Colombian government officially acknowledges the presence of African descended Colombians as a distinct population within the State. By indicating Black ownership and autonomy over ancestral lands, the Law identifies the presence of Black communities within specific regions

<sup>156</sup> Paschel, “The Right to Difference,” 744.

<sup>157</sup> “Law 70, Protecting Afro-Colombian Rights (English Translation),” WOLA, accessed October 14, 2022, <https://www.wola.org/analysis/law-70-protecting-afro-colombian-rights-english-translation/>.

along the Pacific Coast of Colombia, an area spanning 1,392 kilometers, approximately the length of the state of California.

Law 70 advocates for the protection of Black rural Colombian rights and codifies federally recognized rights of Black Colombians, like any other citizen in the country. In recognizing Black communities, the government indirectly admits its failure to protect the Black population prior to the Law's implementation. Black rural communities can hold the government accountable for the promises outlined in the Law.

### **Right to territory: Collective Land Titles**

Law 70 grants Black communities the right to request a collective land title. The collective title granted through Law 70 recognizes their presence and political and cultural rights: “The groundbreaking law offered an innovative way to advance four key goals: racial justice, economic autonomy, biodiversity conservation, and climate change mitigation.”<sup>158</sup> These four goals can be simplified into two main objectives: to recognize the rights of Black Colombians and to protect the traditions that Black Colombians value.

*Article 1: The object of the present Law is to recognize the right of the Black Communities that have been living on barren lands in rural areas along the rivers of the Pacific Basin, in accordance with their traditional production practices, to their collective property....*<sup>159</sup>

Law 70 recognizes Black communities as having a traditional practice based on the regions they inhabit. The “traditional production practices” of rural Black communities, recognized in Law 70, include the language spoken within the territory, music, and gastronomy. Additionally, the social networks and local sovereignty are distinct to each Black community. The law, however,

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<sup>158</sup> White-Nockleby et al., “Advancing the Land Rights of Afro-Colombian Communities,” 5.

<sup>159</sup> “Law 70, Protecting Afro-Colombian Rights (English Translation).”

is restricted to the rights of those in rural areas; it does not apply to all African descended Colombians.

The collective land territories, under Law 70, serve as the primary organizing mechanism in protecting rural Black Colombians. Each Black collective territory establishes a unique set of cultural, social, and legislative regulations and practices. For instance, comparing two Black communities—San Cipriano and San Basilio de Palenque—shows two different systems of protective services. In San Cipriano, there is one “police” guard for the entire community who does not dress in uniform, while San Basilio de Palenque established a well-respected, formal guardia (police force) that protects the town. Examples of other differences are outlined in the ethnographic observations for San Cipriano and San Basilio de Palenque that begin and end the thesis. As a result of their differing histories, San Cipriano and San Basilio de Palenque hold to differing cultural norms, social practices, legislation, and identity.

Collective territories allow Black communities to unite under their own regulations and preserve their culture and identity.

*Article 1 Continued: Similarly, the purpose of the Law is to establish mechanisms for protecting the cultural identity and rights of the Black Communities of Colombia as an ethnic group and to foster their economic and social development, in order to guarantee that these communities have real equal opportunities before the rest of the Colombian society.*<sup>160</sup>

Historically, Colombia provided limited legal protection for African descended individuals facing legal and economic exclusion and persecution. Framing the law in terms of collective rights now allows entire communities to be protected and gives them the mechanisms to hold the government accountable for the economic and social mobility they should attain as citizens of Colombia and of their territory.

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<sup>160</sup> “Law 70, Protecting Afro-Colombian Rights (English Translation).”

Collective territories are a part of the physical land mass under the Colombian government, but they do not follow the same legal systems of governance. Black collective communities are a part of the election process—should they choose to vote—but they are separate because these rules are not the sole, or even the most important, laws that govern their community. They are a part of the full Colombian society but separate from the organizational structure by geography and social systems that govern most of the nation. For instance, Black communities are allowed to participate in national elections in addition to their internal government elections for community councils discussed later in this chapter.

Collective land titling serves as a legal framework for ownership in recognition of the cultural practices, and the community councils' autonomous leadership allows the creation of laws internal to the community. Through Law 70, the government granted autonomy to the African descendants and ownership of titled Black communities. The Black communities inhabited land that the government owned and it was through their government's "gift" from Law 70 that they now inhabit the land legally:

Instead, what both Provisional Article 55 and Law 70 make clear for the case of Afro-Colombian land claims is an occupation of public lands (*tierras baldías*) which pertain to the state and lack any other owner. The occupation of public land is a very different concept and legal category — one preceded by the state — from the idea of indigenous lands that extended the state backward into the past. In sum, the state does not visualize Afro-Colombians arising from their territories as they do for indigenous communities.<sup>161</sup>

The government had a double standard regarding territorial rights for African descendants and Indigenous groups. Black communities understood their rights through an ethnic and territorial frame. Law 70 recognizes the presence of African descendants in the regions they have inhabited for centuries. The Black communities did not pay the Colombian government to live in those lands and have the geographical territories. Therefore, the "ownership" indicates that "el estado

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<sup>161</sup> Ng'weno, "Can Ethnicity Replace Race?," 427.



les adjudica” (the State awards them) the land.<sup>162</sup> The Black communities did not purchase the land as in a typical transaction, but instead it was a “gift” from the government in recognition of their cultural identity tied to the land for generations. In principle, the “gift” of the land and recognition of ownership through collective land title serves as an act of reparations for the extreme persecution African descendants have faced in Colombia since colonization.

Communities protected under Law 70, and thus recognized as collective land territories have autonomy over land. Environmentalist Johana Herrera Arango addresses a principal objective of Law 70: “The policy of collective land titling for Black communities was addressed as a strategy for the recognition and protection of the ethnic and cultural diversity of these communities, and as an opportunity for organizational strengthening to ensure their participation, autonomy, and the self-government of their traditional lands.”<sup>163</sup> To ensure formal governance within the territories, community councils serve as “the legal entity that exercises the highest level of authority for internal administration in black communities’ lands.”<sup>164</sup> The council members, who are elected by the community, deal with internal regulations regarding “land claims, access, and resource management.”<sup>165</sup> Only with the government ministry’s approval can the council create contracts with private entities to exploit the natural resources of their community.<sup>166</sup>

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<sup>162</sup> Informal Conversation with Joaquín Garzón of Bogotá, April 12, 2023.

<sup>163</sup> Johana Herrera Arango, “Collective Land Tenure in Colombia: Data and Trends” (Center for International Forestry Research, 2018), 2, <https://www.jstor.org/stable/resrep16257>.

<sup>164</sup> Ibid.

<sup>165</sup> Offen, “The Territorial Turn,” 62.

<sup>166</sup> Ibid.

## **The Value of the Collective**

The collective titling of the rural land in Colombia serves as an extended apology by the country for the extreme damage done to the African descended community. Colonizers and mestizo Colombians excluded African descendants from political, social, and civic life for centuries. The push for collective land titling exemplifies the response of African descendants to years of political, economic, and social exclusion. Liz Alden Willy, a political economist who specializes in land, argues that land restoration to ethnic groups was useful for mestizo Colombians while also serving to advance ethnic groups for the following reasons: 1) Legislation for collective land titling and autonomy over governance serves as reparations for enslavement and years of discrimination and invisibility in post-slavery Colombia; and 2) if the approach to restitution for African descendants is based on property, then the Colombian government does not need to undergo a formal process of reparations for all land in Colombia and the processes of reparations can exclude areas of land not historically inhabited by African descendants prior.<sup>167</sup> (my translation) Therefore, Colombia did not give complete reparations through collective territorial claims, as evident in the specific regions that Law 70 protects.

### **Inside the Law 70**

Law 70 emphasizes ethnicity, culture, and geography to communicate who the Law protects. It contains eight chapters with sixty-eight articles. The first chapter clarifies definitions of terms and communicates the law's objective. The sections in the first chapter focus on geography, Black identity, and Black cultural practices in general stating, "... the object of the Law is to recognize the right of the Black communities that have been living in barren lands in

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<sup>167</sup> "Observatorio de Territorios Étnicos -," 13, accessed March 10, 2023, <https://etnoterritorios.org/es/centro-de-documentacion/a9e134ab7a2303df9d8d88446ce3a70d>.

rural areas... in accordance with their traditional production practices, to their collective property...”<sup>168</sup> The first four sections of article two identify the Pacific Basin, Rivers of the Pacific Basin, Rural Riparian lands, and barren lands, where a significant number of Black communities historically reside.<sup>169</sup> Explicitly naming the places and regions shows the restrictions of the law because it does not apply to every Black citizen in Colombia.

Subsequently, article two of chapter one focuses on the ethnicity of the group protected under the law. The heading, “Comunidad Negra,” (Black community) is only followed with one brief sentence, which in the English translation states: “It is the group of families of Afro-Colombian descent who possesses its own culture, shares a common history and has its own traditions and customs within a rural-urban setting and which reveals and preserves a consciousness of identity that distinguishes it from other ethnic groups.”<sup>170</sup> The language regarding what defines territories and geographical restrictions far exceeds the language defining Afro-Colombian descent. The “Comunidad Negra” (Black Community) section, following the sections about geography, shows how ethnic identity is linked to the territory for African descended Colombians. The two respective sections reveals that the land, and thus the economy, are an important aspect of identity for Black communities and the Colombian government: “...Pacific lowlands became the spatial referent of Afro-Colombian identity.”<sup>171</sup> The identity of African descendants reflects their cultural and geographical distinctions. Intentionally, the law does not separate the two.

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<sup>168</sup> “Law 70, Protecting Afro-Colombian Rights (English Translation).”

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> Kiran Asher, “A Retrospective Look at the Winding Paths to Legalizing Afro-Colombian Rights in Law 70 of 1993,” no. 47 (2016): 67.

Law 70 names “Black” people, “families of Afro-Colombian descent,” and “distinguishes [this community] from other ethnic groups.”<sup>172</sup> Instead of incorporating Black communities in a national ethnic frame Colombians worked to obtain, as discussed in Chapter two, the country brought Black people into a rhetoric of nationality through the fusion of “Africa” and “Colombia.” The Law states, “Black Community: It is the group of families of Afro-Colombian descent...”<sup>173</sup> Black communities are represented as one African ethnicity under the law, even though Black communities have differing cultural practices and distinct ways of expressing connections to Africa.

The following sections entitled “Collective Settlement” and “Traditional Practices of Production” acknowledge the history of African descendants’ settlements in Colombia and agricultural practices for their economy, respectively.<sup>174</sup>

The subsequent sections of Law 70 include chapter two entitled “Principios” outline the principles upon which the law is based, including respect of the populations, identification, and protection of ethnic difference in Colombia.<sup>175</sup> It begins with the promise: “to recognize and protect the ethnic and cultural diversity, and equal rights for all cultures that compose the Colombian nationality.”<sup>176</sup> The promise shows national shift toward accepting a multiethnic nation, and how important it is to valuing the nation’s diversity. It further states that the Law needs to “respect the integrity and dignity of Black communities’ cultural life.”<sup>177</sup>

Chapter three, “Reconocimiento del derecho a la propiedad colectiva,”<sup>178</sup> (Recognition of the Right to Collective Property) grants Black communities the authority to govern their own

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<sup>172</sup> “Law 70, Protecting Afro-Colombian Rights (English Translation).”

<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

<sup>175</sup> Government of Colombia, “Ley 70 de 1993,” September 27, 1993.

<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid.

land within the definitions outlined prior, primarily rural areas along the Pacific Basin. Additionally, it provides guidance on the role of the Community Council, which is the governing body for each collective territory.<sup>179</sup> First and foremost, the councils are to protect the rights of the collective territory and preserve the cultural identity and natural resources of the land showing the importance of cultural identity and land.<sup>180</sup> Also, the councils are elected by members of the community to solve internal conflicts.<sup>181</sup> To continue the importance of land, chapter four, “Uso de la tierra y protección de los recursos naturales y del ambiente,” (Use of the Land and Protection of the Natural Resources and the Environment) defines how Black communities utilize their land, protect the ecosystems in the region, and provide resources for the sustainability of the natural environments:<sup>182</sup> “... title grantees must be responsible for protecting the environment and for the renewal of natural resources, and they must assist the authorities in protecting that patrimony (Article 19).”<sup>183</sup> Chapter five, “Recursos mineros,” (Mining Resources) identifies the mining activities that can take place within the Black communities by the government through the Ministry of Mines and Energy to extract nonrenewable natural resources or other minerals.<sup>184</sup> Article 26 declares: “The Ministry of Mines and Energy dutifully or by petition from the Black Communities to which this Law refers may choose to identify and delimit in lands adjudicated to the Black Communities, mining zones where the exploration and technical conditions for their protection...”<sup>185</sup> Therefore, the Law protects the residents from outside third parties infringing on their mining zones and encourages the Black communities to preserve their culture and economy.

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<sup>179</sup> “Law 70, Protecting Afro-Colombian Rights (English Translation).”

<sup>180</sup> Ibid.

<sup>181</sup> *Afro Colombians y la Protección de Sus Derechos: “Guía de abordaje práctico a la Ley 70 de 1993,”* n.d., 16.

<sup>182</sup> Government of Colombia, “Ley 70 de 1993.”

<sup>183</sup> “Law 70, Protecting Afro-Colombian Rights (English Translation).”

<sup>184</sup> Government of Colombia, “Ley 70 de 1993.”

<sup>185</sup> “Law 70, Protecting Afro-Colombian Rights (English Translation).”

Chapter six, “Mecanismos para la protección y desarrollo de los derechos y de la identidad cultural” (Mechanisms for the Protection and the Development of Human Rights) explains how the Colombian government vows to support their education and protect Black communities from harm inflicted due to ethnic discrimination and support their education.<sup>186</sup> The government acknowledges that Black communities’ education should relate to their specific cultural goals to maintain significance of history and culture. This section also commits the State to “[preventing] all acts of intimidation, segregation, discrimination or racism against Black Communities in all social spaces, at high decision-making levels of public administration... in mass communication media and in the educational system.”<sup>187</sup> The government does recognize the oppression Black communities endure based on their ancestry and skin color, but fails to explicitly state how the government plans to combat discrimination towards the Black communities showing a limitation. Acknowledging “racism” also expands the ethnic identity framework for racism to include discrimination of ethnicities, as Black communities framed their identity in this context.

Chapter seven, “Planeación y fomento del desarrollo económico y social,” (Planning and Promoting Economic and Social Development) measures how the government will help the development and prosperity of Black communities in line with their culture.<sup>188</sup> The government promises to contribute to the environmental and economic structures of the communities through programs. Article 51 states, “The State entities in agreement with the Black Communities will further research activities, training, promotion, extension and transfer of appropriate technologies for the utilization and economic sustainability... to strengthen the economic and cultural

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<sup>186</sup> Government of Colombia, “Ley 70 de 1993.”

<sup>187</sup> “Law 70, Protecting Afro-Colombian Rights (English Translation).”

<sup>188</sup> Government of Colombia, “Ley 70 de 1993.”

patrimony of the Black Communities.”<sup>189</sup> The government vows to not overstep Black authority in the economic development of the communities but promote their development as the members best see fit.<sup>190</sup> Chapter eight, “Disposiciones finales,” (Final Dispositions) presents the final remarks of the legislation highlighting how the Law developed and the potential future steps that may come into place after its implementation.<sup>191</sup>

### **La familia y la tenencia** (The family and the possession)

Law 70 recognizes collective “ownership” in which groups control the territories that the community inhabits. Within each community, different families own plots of land decided by the community members and the council, which are designated as “áreas familiares” (family areas).<sup>192</sup> Outsiders of Black communities cannot buy property and live there: “... titled lands cannot be sold, nor can specific property rights be transferred to other holders.”<sup>193</sup> There is a specific process for community members to transfer territory internally and impossible for outsiders to purchase property in the community. It is within the community’s right to create a system that empowers them to determine and maintain their values, culture, and governance structure. Only those with a cultural and historical connection to the space can reside permanently.

Community ownership of land discourages the possibility of outsiders taking over the land. As a result, to transfer land within the community, members rely on strong interpersonal relationships: “The territorial transactions in the Pacific were by word of mouth. There exists,

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<sup>189</sup> “Law 70, Protecting Afro-Colombian Rights (English Translation).”

<sup>190</sup> Ibid.

<sup>191</sup> Government of Colombia, “Ley 70 de 1993.”

<sup>192</sup> Sánchez, *Derechos e Identidad*, 161.

<sup>193</sup> White-Nockleby et al., “Advancing the Land Rights of Afro-Colombian Communities,” 6.

then, the value of the word. But there needs to be some consensus or recognition by the community.”<sup>194</sup> (my translation) Black communities establish a strong connection from their ancestral history, shared experience, and familial relationships so they do not depend on formal legal contracts or lawyers regarding their family’s territorial area. When internal conflicts arise, as family members and friends do not always get along, the elders of the community help settle disputes about territorial possession.<sup>195</sup> The Organización de barrios populares y comunidades campesinas de la costa pacífica chocoana / Organization of popular neighborhoods and rural communities of the Pacific Coast of Chocó (OBAPOCH. Ponencia), a Black organization, states, “Throughout the centuries, we have had the land as family property, which has been transmitted by inheritance, from generation to generation. They were oral commitments and without writing.”<sup>196</sup> (my translation)

### **Visibility of African descendants**

The colonial enslavement period left Black Colombians to live in a constant state of invisibility and hypervisibility, which continued with emancipation. They were invisible in the political rhetoric and legislation. A principal goal of Law 70 was to make African descendants recognized as political agents in Colombia.<sup>197</sup> Due to their consolidation in the Pacific region, other Colombians did not interact with them much. Yet, their dark-skin and tightly curled Black hair among mestizo individuals with lighter skin and hair color makes them very much visible—indeed, hyper visible. Prior to 1991, non-Black Colombian government officials and citizens willingly exercised political and social exclusion. One does not just forget thousands of people,

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<sup>194</sup> Sánchez, *Derechos e Identidad*, 160.

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> Pedro L. Cortes-Ruiz, PhD, “Reclaiming Blackness: Social and Political Movements in Colombia.”



especially of a group so deeply ingrained in the nation's pre- and post-emancipation history and economy. It was an active choice of exclusion and a choice that just started to be dismantled through the Transitional Article 55 in the Constitution of 1991, which led to Law 70.

Silvio Garces, an Afro-Colombian leader, and government official who co-authored Law 70, believes that the Law is structured on four pillars: 1. Afro Colombian territory; 2. the development of communities through politics and the new development of education; 3. the politics of ethnic and cultural identity; and 4. the politics of participation.<sup>198</sup> (my translation) The focus on territoriality, ethnicity, and cultural identity ties them together as principal attributes of Law 70 relating to the political and social engagement by the Black communities. Delineating “Blackness” from race required some work: “... ethnicity was something that had to be proved while race was treated as self-evident.”<sup>199</sup> Black communities could “prove” to be an ethnicity through their territorial claims and knowledge, having been a part of their distinct regions for generations. The ethnic and territorial aspects of their identity impact their personal identity, which serve as key attributes for Black communities to bond together in the lead up to and under Law 70.

### **Right to Difference: Framework of Race and Ethnicity in connection to the Law**

Paschel argues that Law 70 is the “right to difference” in her scholarly article *The Right to Difference: Explaining Colombia's Shift from Color Blindness to the Law of Black Communities*.<sup>200</sup> Yet, from whom are Black Colombians different? What are the specific

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<sup>198</sup> “Se Conmemoraron 22 años de la promulgación de la Ley 70,” *CNC Chocó* (Colombia: CNC Noticias, September 1, 2015), [https://www.youtube.com/watch?v=efyKRAp9R4A&ab\\_channel=CNCCHOC](https://www.youtube.com/watch?v=efyKRAp9R4A&ab_channel=CNCCHOC) percent93.

<sup>199</sup> Ng'weno, “Can Ethnicity Replace Race?,” 427.

<sup>200</sup> Paschel, “The Right to Difference,” 729.

distinctions exhibited in this population contrasted to others? Initially, one especially with a North American perception of racial categories and relations may be inclined to perceive that Law 70 recognizes Black Colombians to be different from White Colombians. However, the history of Colombia, as with most countries in Latin America, prevents a binary analysis between White and Black people. Law 70 reaches beyond the binary to a broader context—culture and land within rural coastal populations.

Beyond the White and Black binary, there are several ethnicities even under the overarching Black ethnicity in Law 70. Black people are of many different colors and from many territories showing that there can be differences within the large “Black” identity and that the cultural distinctions represented deserve to be recognized. The population with predominately African ancestry is divided into four different categories: Negra/o, Afrocolombiana/o, Palenqueros, y Raizales (Black, Afro-Colombian, Palenqueros, and Raizales). Black and Afro-Colombian refer to all the other African descendants not represented as Palenqueros or Raizales. Palenqueros refer to people from San Basilio de Palenque. The legacy of San Basilio de Palenque, being the first Black town in the Americas, lives in people from this region who embody the history and culture of their ancestors. Raizales are native to San Andrés and Proviencia, which are islands near the Caribbean Coast of Colombia.<sup>201</sup> Palenqueros and Raizales are ethnic groups that explicitly connect to a specific geographical location. All these categories differ but, under Law 70, all can express their cultural and ethnic differences through the political autonomy of their communities. Linking ethnicity and territory through the collective land titling rights for African descended groups granted in Law 70 shift the notion of

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<sup>201</sup> Peter Wade, “Defining Blackness in Colombia,” *Journal de La Société Des Américanistes* 95, no. 1 (July 23, 2009): 174, <https://doi.org/10.4000/jsa.10783>.

“Black” as a racial category to an overarching category under which multiple ethnicities of African descendants can unify.

African descendants in Colombia transformed their relationship with the nation “from a legal rubric of race to one of ethnicity” as a mechanism to advocate for their rights through Law 70.<sup>202</sup> The term “Afro-Colombians” refers to people from or with ancestry from the African continent. Many African descendants do not know which country in Africa their ancestors were from due to the limited information because of the harsh slave trade. Yet, they still have this connection to Africa that is reinforced by terms like “Afro-Colombians” and the social hierarchy based on skin color and ancestry that differentiated them from the dominant mestizo group. Thus, Law 70 acknowledges distinctions between ethnicities and cultures based on location. Due to the territorial restrictions, not all Colombians of African descent are protected under Law 70. However, the identity of African descendants in Colombia is based on their connection to land (Africa and parts of Colombia) since their ancestors’ arrival.

African descended Colombians protected by Law 70 cultivated an ethnic frame to achieve the legislation. African descendants could not unite under the framework in which to be “Black” meant to be of a “race” due to society’s mal-perceptions of race: “... the racial equality frame is often associated with claims of integration, sameness, and equality stemming from the fact that such a frame typically perceives the ethno-racial problem as an issue of racial discrimination and inequality...”<sup>203</sup> While “Black” is the term used in Law 70 to reference the protected ethnic group, the concept of “Blackness” was not supported by the Colombian government and society just years prior to the 1990s.<sup>204</sup> In a nation that claimed to focus on the

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<sup>202</sup> Ng’weno, “Can Ethnicity Replace Race?,” *The Journal of Latin American and Caribbean Anthropology*, 12, no. 2 (2007), 415.

<sup>203</sup> Paschel, “The Right to Difference,” 741.

<sup>204</sup> Pedro L. Cortes-Ruiz, PhD, “La Ley 70: un análisis sobre su historia y su impacto” (Cali, Colombia, n.d.).

national identity rather than phenotypic characteristics, like skin color, race disrupts the country's narrative that there is no race-based discrimination. Despite the nationality-over-race rhetoric, discrimination and racism persisted, and they persist in society today.

To advance the political and economic agenda, African descendants adopted an ethnic frame that had been established by the Indigenous populations. Paschel claims, "multiculturalism binds Afro-Colombian and indigenous communities together in new ways and divides them as well."<sup>205</sup> Both populations, in general, connected because of their historical connection of forced labor and displacement. They supported each other through a multicultural political agenda as the Indigenous leaders in the Asamblea Nacional Constituyente (ANC) (National Constitutional Assembly) advocated for Black territorial rights.<sup>206</sup> Like the Indigenous population, Black populations have different "sub-ethnic" groups within the overarching Black or Indigenous groups based on the subgroup's ancestry and geographic connection. Colombia's African descendants focused on their "culture, traditions, and knowledge of the environment" rather than their marginalized group status, and the "deracialization" of the Black communities allowed them to benefit from policies advocating for multiculturalism.<sup>207</sup>

Law 70 was a pivotal piece of legislation acknowledging cultural diversity and the need for economic justice in the country: "... Law 70 set a historic precedent. Colombia was the first country to codify rights for non-Indigenous ethnic minority groups to receive collective land titles, specifically Afro-descendant communities in the Amazon and along the Pacific coast that had been established as early as the 16<sup>th</sup> century."<sup>208</sup> The law acknowledges the territorial rights and cultural autonomy of African descended communities. African descendants embraced the

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<sup>205</sup> Ng'weno, "Can Ethnicity Replace Race?," 432.

<sup>206</sup> Enrique Sánchez, *Derechos e Identidad*, 155–56.

<sup>207</sup> Paschel, "The Right to Difference," 758.

<sup>208</sup> White-Nockleby et al., "Advancing the Land Rights of Afro-Colombian Communities," 5.

line of difference: a physical line—through geographical distinctions—and a mental separation, from the false reality that other Colombians created by disregarding the complex history and culture of diverse African-descended groups.

## Chapter 4 The Aftermath of Law 70: The “right to difference,” Uneven Implementation, and Political Advances

### Section of Speech by Vice President Francia Márquez

*Aprendí en el pueblo negro de lo que significa la familia extensa para nosotros. Familia extensa que se ha fracturado por múltiples razones, pero creo que llegó el momento de reconstruir nuestra familia. Llegó el momento de cogernos de la mano. Llegó el momento de construir en la diferencia y llegó el momento de hacer de la diferencia una virtud para cambiar. Pero sobre todo una virtud para garantizarle a nuestros nietos, a nuestros hijos, que nunca más en este país a ellos, a ellas se les va a discriminar por el color de su piel. Sé muy bien que, a lo largo y ancho de tantos años, un grupo de hombres y mujeres que empezaron han fraccionado. Se han fraccionado también por las dinámicas institucionales del estado por los entrampamientos que el estado nos ha colocado. Porque como en tiempos de esclavitud, el estado ha seguido la misma lógica de ofrecernos migajas y ponernos a pelear y ponernos a discutir por migajas. Mientras el verdadero poder para el cambio y la transformación no estaba en manos de ningún negro o negra de este país, y si no, que me digan y levanten la mano: ¿cuál es el negro o negra de este país que ha tenido el poder? Ni siguiera yo hoy siendo su vicepresidenta, siento que tengo el poder para transformar las injusticias e inequidades en las cuales ha estado sometido nuestro pueblo. Por eso considero que siendo una hija de la ley 70, parida en la ley 70, la vicepresidencia no es un fin para mí. La vicepresidencia sólo es un medio para seguir transformando...<sup>209</sup>*

### My translation

I learned in the Black town what extended family means for us. Extended family that has been fractured for multiple reasons. But I believe that the moment arrived to reconstruct our family. The moment arrived to hold hands. The moment arrived to build in the difference and the moment arrived to make from the difference a virtue to change. But above all, a virtue to guarantee to our grandchildren, our children, that never again in this country will they be discriminated against because of the color of their skin. I know very well that far and wide, for so many years, a group of men and women that have started have fractured. They have also fractured the State’s institutional dynamics for the entrapments that the State has placed on us. Because like the period of enslavement, the State has continued the same logic offering us breadcrumbs and making us fight between ourselves for breadcrumbs. Meanwhile the true power for change and transformation was not in the hands of Black men or Black women from this country. And if not, tell me and raise your hand: who are the Black men or Black women of this country who has had power? Not even me, today, being your vice president, feel that I have the power to transform the injustices and inequities in which our people have been subjected. For this reason, I consider that being a daughter of the Law 70, birthed from the Law 70, the vice-presidency is not the end for me. The vice-presidency is only a way to continue transforming...

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<sup>209</sup> *Conmemoración de un año más de la Ley 70 de 1993 sobre comunidades negras* (Bogotá, Colombia, 2022), [https://www.youtube.com/watch?v=OMna1wWljwg&t=4868s&ab\\_channel=VicepresidenciadelaRep percentC3 percentBAblica-Colombia](https://www.youtube.com/watch?v=OMna1wWljwg&t=4868s&ab_channel=VicepresidenciadelaRep+percentC3+percentBAblica-Colombia).

## **Introduction**

The chapter focuses on the impact of Law 70 regarding political and cultural autonomy for African descendants. It starts with an examination of the “right to difference,” a phrase coined by sociologist Tianna Paschel to capture the goal of Law 70.<sup>210</sup> This chapter continues with the international influence and supplemental legislation that contributed to the implementation of Law 70. To understand more about how Law 70 influences its citizens, the chapter analyzes political, social, and economic outcomes of Law 70. It explores the Office of Black Communities’ role in supporting the rights of Black communities with land titles. The chapter also examines the lived experiences of many Black communities through an economic lens highlighting the limited economic prosperity and perpetual violence despite the law. It includes analysis of the Beautiful Faces campaign which adapts the Black identity frame constructed in Law 70 to include more subcategories of the Black or Afro-Colombian ethno-racial framework. This campaign revolves around the 2005 census which seeks to provide a more accurate count of African descended Colombians residing in Colombia. The campaign challenges the Law 70 framework to provide a more inclusive acknowledgement of Blackness and expand those included within the Black ethnicities. The end of the chapter highlights three Black female Colombian leaders who utilize their voices and activism to elevate the cultural and territorial difference of Black communities on a national platform.

### **“Right to Difference”<sup>211</sup>**

According to Paschel, “... an ethnic difference frame relies on notions of the right to culture, the right to a cultural identity distinct from the dominant society, and it usually involves

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<sup>210</sup> Paschel, “The Right to Difference.” All uses of the phrase “right to difference” refer to this citation.

<sup>211</sup> Ibid.

claims to autonomy or self-government and to territory.”<sup>212</sup> Black Colombians’ advocacy for their “right to difference” allowed them to live out their cultural identity through an ethnic and territorial frame. For instance, in San Basilio de Palenque, the people speak a native *palenquero* language, keeping their linguistic heritage alive. Also, Zulia Mena, an Afro-Colombian activist, shares that rural Afro-Colombians bring their traditions from the Pacific Coast to perform serenades and other ceremonies in cities, like Bogotá, to demonstrate to the rest of the non-Black Colombian society that Afro-Colombians can exercise this “right to difference” nationwide.<sup>213</sup> Through the performances, they reveal an aspect of Afro-Colombian culture, while also demarcating their ethnic traditions, and its distinction from mestizo Colombian culture.<sup>214</sup> The nation should realize the rights that Afro Colombians worked so hard to achieve for generations. The law acknowledges the fusion of culture and territory as being principal parts of the identity for Black communities.

“The two main objectives of Law 70 were to (1) recognize and guarantee collective land rights to black Colombian communities living in a specific rural region on the Pacific Coast of Colombia and (2) establish mechanisms for the protection of the socioeconomic and cultural rights of black Colombians and of their equality.”<sup>215</sup> Law 70 does not eliminate the racial hierarchy that is ingrained in the fabric of the country. It grants legal protection for specific groups of African descendants to decide how they live their difference through their governance, land ownership, and culture.

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<sup>212</sup> Paschel, “The Right to Difference,” 741.

<sup>213</sup> Ibid, 760.

<sup>214</sup> Ibid.

<sup>215</sup> Ibid, 738.



## **International influence: Funding of the territories of Black community**

The Colombian government was not the only entity, aside from the African descendants themselves, that contributed to Black communities' "right to difference" through Law 70. The "right to difference" for Black communities reached global recognition, through organizations like the World Bank. The World Bank, which is an international financial institution, provides grants and loans to governments in need of assistance to finance capital projects. Colombia's government utilized assistance from the World Bank for the territorial rights of the Black communities. Financial backing was crucial in "legitimizing black demands" to ensure that the passage of Law 70 would come into fruition.<sup>216</sup> In 1994, the World Bank provided a \$39 million loan to Colombia's national government; yet only \$3.25 million of that \$39 million funded the process of establishing collective land titles.<sup>217</sup> A program that a small part of the \$3.25 million loan helped fund included the Natural Resource Management Program (NRMP) which grants collective land titles for Black communities.<sup>218</sup> The World Bank funded NRMP for nine years, and allowed for the land titling of Black communities, especially in the Pacific region.<sup>219</sup>

At the end of the 20<sup>th</sup> century, the World Bank was the lead investor in the Black and Indigenous land title claims in Latin America as well as the lead banker for projects focusing on biodiversity and environmentalism.<sup>220</sup> Yet, why did the World Bank invest so heavily in territorial rights based on an ethnic difference? During this time, the World Bank had a unique perspective of collective titles: "Simply put, the bank views collective titles as necessary to stabilize property regimes in developing countries, to remove biodiverse lands from the vagaries

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<sup>216</sup> Offen, "The Territorial Turn," 45.

<sup>217</sup> Ibid.

<sup>218</sup> Ibid, 45, 52.

<sup>219</sup> Ibid, 52.

<sup>220</sup> Ibid, 51.

of market forces (by insuring that collective properties can not be transferred), to foment foreign direct investment, and to attract appropriate technologies to biodiverse areas.”<sup>221</sup> The World Bank believed that the collective territories helped create a more just and stable environment. It hoped to encourage international investment, which in fact, destabilizes the ethnic communities, putting them at risk of other countries or institutions exercising economic control.<sup>222</sup>

The goals of the World Bank, and other institutions that financially contributed to ethnic communities, did not directly align with the goals of the Black communities. The World Bank supported both collective titles and foreign investment. The World Bank claimed that its goals limit the amount of environmental degradation in regions with great biodiversity and high poverty. However, critics, like Colombian anthropologist Arturo Escobar, assert that in the name of supporting biodiversity, global organizations seek to intervene to promote their industrial and economic interests, regarding profits they can gain from the natural resources available.<sup>223</sup> Additionally, critics of collective land territorial rights claim that territorial land rights rarely benefit Black or Indigenous populations in the communities and, in reality, the communities are in a “‘contractual relationship’ with the funding agencies supporting the collective territorial titling.”<sup>224</sup> Since the World Bank provided money to the government for the titling, the Black communities with land titling rights still have a contractual relationship with the government because the titling is granted by the government.

Despite his criticism of the World Bank’s economic agenda in mind, Escobar argues that the biodiversity rhetoric can allow these intervening organizations, like the World Bank, to reflect on the idea of “‘territory plus culture” and the impact of their investment on both “‘land”

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<sup>221</sup> Offen, “The Territorial Turn,” 51.

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

and “people.”<sup>225</sup> The combination of nature and culture reinforces the identity of African descendants under Law 70.<sup>226</sup> Organizations and institutions that help protect Black communities and the communities’ agenda through their financial support are helping to strengthen the identity of the Black communities under the jurisdiction of Law 70. Foreign investment is a double-edged sword: it is helpful only if the communities have a say in how the funding is used to help benefit their needs; yet the support of international agencies’ diminishes the self-sufficient nature of the community and infiltrates their international politics in their community.

### **The Process: Decree 1745**

The financial support of international organizations, like the World Bank, towards Black communities took time to implement in Black collective land titles. The government signed Law 70 into written proclamation in 1993 and international institutions began financially contributing in 1994, but Black communities, still, had not received land titles. Therefore, the government instituted additional measures to help ensure that regulations within Law 70 were implemented properly in every territory under its jurisdiction. In 1995, the government passed Decree 1745 that highlighted specific guidance for recognition. The decree acknowledges the rights that Black communities have over their land.<sup>227</sup> It provides greater clarification on the government office responsible for implementation of the protections of—African descended cultures, the General Assembly, the Community Councils, and the Commission regarding Agrarian Reform—to further emphasize the legal objective to pass Law 70.<sup>228</sup> (my translation) Decree 1745 mandates how the law would go into effect, showing that the translation from paper (through government

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<sup>225</sup> Offen, “The Territorial Turn,” 51.

<sup>226</sup> Ibid.

<sup>227</sup> Arango, “Collective Land Tenure in Colombia,” 2.

<sup>228</sup> Departamento Administrativo de la Función Pública, “Decreto 1745 de 1995,” n.d.

signage) to implementation is a process in itself. After the Law passed, the support from international institutions, and the additional mandate of Decree 1745, Black communities gained the collective rights the government promised.

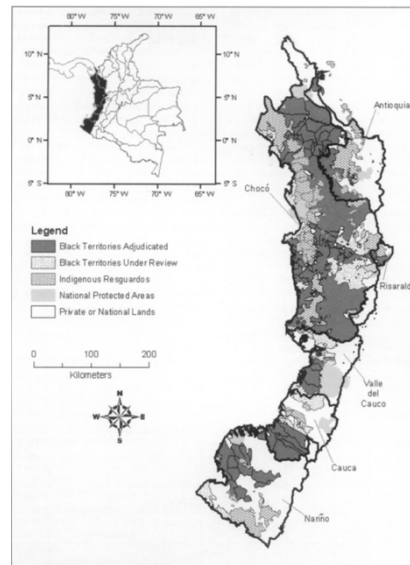


Figure 4. Map that shows the collective land titles in Pacific Colombia as of 2023.<sup>229</sup>

### The first of many Collective Titles

Finally, three years after Law 70’s establishment, the initial implementation of land titles for African descended communities occurred. In 1996, the government provided collective land titles in the region of Chocó.<sup>230</sup> The law’s implementation was gradual because a lack of urgency from the government: “The reasons for the delay in the Law’s implementation included, most prominently, a lack of political will and transparency among many of the stakeholders involved.”<sup>231</sup> Black Colombians had been advocating for a law like this for decades and were ready to see it become a reality once it passed. The government officials who officially signed the document were not African descendants and likely not too concerned with ensuring that the

<sup>229</sup> Offen, “The Territorial Turn,” 45.

<sup>230</sup> Ibid, 62.

<sup>231</sup> White-Nockleby et al., “Advancing the Land Rights of Afro-Colombian Communities,” 3.

Law would be enforced effectively. Over the next seven years after the first land titling in Chocó, “... the Colombian government demarcated and titled 122 black territories” across 4.5 million hectares (approximately 11.1 million acres) “contain[ing] 1,250 black communities and represent[ing] 270,000 people.”<sup>232</sup> Also, the size of the territories granted titles range drastically with some as small as approximately 30 individuals to those of over 30,000 individuals.<sup>233</sup> Communities are organized based on ancestral history and genealogy, geographic origin, language, and customs.

In order for Black communities to receive a land grant, the community must establish a community council and submit an application to INCORA (Colombian Agrarian Reform Institute).<sup>234</sup> The petition includes: community name, recognition of whether or not the land for the titling is currently vacant, the community’s history, the social structure of the community, demographic makeup, traditional practices, and any problems/conflicts regarding the land, such as boundary disputes.<sup>235</sup> INCORA visits the site within ten days of the filing of the petition.<sup>236</sup> Should INCORA approve the land title, the official titling will be instated within 60 days of the application.<sup>237</sup>

Through collective land titles, the government formally recognizes the current and historical presence of the African descended community in the particular territory. The collective land title establishes the Black communities’ right to exercise their traditional practices without fear of persecution. The collective land title grants the community councils jurisdiction within

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<sup>232</sup> Offen, “The Territorial Turn,” 44.

<sup>233</sup> Ibid.

<sup>234</sup> Global Legal Research Directorate, “Colombia: Land Title of Black Communities” (The Law Library of Congress, March 2004), 1.

<sup>235</sup> Ibid, 1-2.

<sup>236</sup> Ibid, 2.

<sup>237</sup> Ibid, 3.

the confines of the specific territory. Law 70 also contractually binds them to “maintain” and “preserve” the ecosystems of the lands that they inhabit.<sup>238</sup>

### **Caribbean and Pacific impact of Black communities**

Support from international organizations and Decree 1745, which supplemented Law 70, helped protected Black communities legally execute their ethnic and territorial difference through collective land grants. The government, however, does not support all Black communities that want land titling and disparities exist in the number of titles granted for Black communities in the Pacific versus the Caribbean. A majority of rural areas protected under Law 70 are in the Pacific while the Caribbean region does not have as many communities protected.<sup>239</sup> The primary Black community protected under Law 70 in the Caribbean is San Basilio de Palenque, but “... the vast majority of blacks in Caribbean Colombia have been excluded from *palenquero* ‘ethnic’ blackness and from the benefits of Law 70, and they continue to face racial discrimination without legal protection.”<sup>240</sup> Law 70 primarily includes regions in the Pacific Coast, and many Black communities in the Caribbean Coast do not benefit from the Law 70, like San Basilio de Palenque and its nationally recognized palenquero ethnic identity.<sup>241</sup>

The lack of protection for some Black communities puts them at great risk of losing their territory. The limited collective land rights in the Caribbean impacts the Black communities who face additional hardship as a result of them not being protected by Law 70. For instance, Barú and Montes de María, respectively, encounter environmental conflicts around the tourist centers

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<sup>238</sup> “Law 70, Protecting Afro-Colombian Rights (English Translation).”

<sup>239</sup> Ibid, 2

<sup>240</sup> Aline Helg, *Liberty & Equality in Caribbean Colombia 1770-1835*, 2.

<sup>241</sup> Aline Helg, 2.

and disputes with commercial farming businesses.<sup>242</sup> In Barú, tourism led to companies privatizing land and monopolizing coastal areas, and Montes de María area, the palm oil production increased.<sup>243</sup> Without a collective land title in place, international companies infiltrate land that African descendants consider their territory and a part of their identity.<sup>244</sup>

While both Caribbean and Pacific regions include unprotected Black communities, the disparity in the number of land titles hurts the Caribbean region the most. Data available as of 2017 shows that Black communities who are collective territories only make up 4.7 percent of the total national area, which constitutes 5,396,376 hectares of land.<sup>245</sup> Law 70 only protects the Black populations that live on this 4.7 percent of Colombian soil. As of 2020, 132 of the 286 unresolved collective claims were in the Caribbean region.<sup>246</sup> By 2020, about 81 percent of the total collective land titles granted were in the Pacific region leaving about 19 percent of the Black communities in the Caribbean region with access of collective titles.<sup>247</sup> As of 2020, there were only 13 Black communities in the Caribbean granted collective land titles and thus protected under Law 70.<sup>248</sup> Therefore, the government's selective process for land title rights prevents many rural communities in the Caribbean from having opportunities to access the rights under Law 70 compared to those in the Pacific Coast.

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<sup>242</sup> Omaira Bolaños, Johana Herrera Arango, and María José Arrieta, "Collective Land Tenure in Island Areas of Colombia: Legal Challenges and Obstacles," *Institutions for Equity & Resilience*, Annual World Bank Conference on Land and Poverty, March 2020, 8.

<sup>243</sup> *Ibid.*, 11.

<sup>244</sup> *Ibid.*

<sup>245</sup> Arango, "Collective Land Tenure in Colombia," 2.

<sup>246</sup> Bolaños et al., "Collective Land Tenure in Island Areas of Colombia: Legal Challenges and Obstacles," 3.

<sup>247</sup> *Ibid.*

<sup>248</sup> *Ibid.*, 9-10.

## Impact of Territory

Territorial rights and claims permit Black communities to autonomously govern their territories and engage them to think about their position in a national society. They occupy land funded by an international organization and under the jurisdiction of the national government. Yet, their ancestors had been living in the territory and created an identity around the territory since before Colombia was established. Now, under Law 70, Black communities—having formulated an ethnic identity—must reckon with how their identity with the territorial rights influence their relationship with the nation state. Offen states, “Territorial claims, thus seek to impose a new territoriality within ‘national space’ to redefine a people’s relationship to the state. The legal recognition of territorial rights and a territorial title promise to enact this new relationship.”<sup>249</sup> Black communities understand their existence within the nation as well as their position as co-governors of a specific geographical location. They are within the nation and a product of the nation and its history, but each Black community has its own identity and culture separate from that of the mestizo identity of Colombia’s majority populations. The co-leaders and citizens of Black communities represent others of similar ancestral and historical connection, while simultaneously being citizens of the Colombian state with limited political and social leverage.

Territory represents a sense of place, history, and belonging. It also represents value—cultural, sentimental, and, of course, financial with plentiful natural resources. The coastal wetlands and riversides in the Pacific serve as good locations for communities to thrive due to the plethora of natural resources that help them stabilize their economy.<sup>250</sup> Territoriality

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<sup>249</sup> Offen, “The Territorial Turn,” 48.

<sup>250</sup> Enrique Sánchez, *Derechos e Identidad*, 154.



represents social connections interwoven into the fabric of the group's culture.<sup>251</sup> It includes politics and social practices as collective territory rights are based on their autonomous government and culture. Law 70 reveals how territorialization involves not only land but also ethnicity as well. For instance, in Colombia—as well as other countries in Latin America—non-Black people who live in rural lands have experiences in their territory rooted in “struggle, conflict, and violence” while Black people in rural areas additionally carry the history of “slavery, self-liberation, and ‘invisibility’ in the national identity and within the space.”<sup>252</sup> Therefore, the history of the people combined with their current culture and geographic region shows the complexity of their identity in relation to space and territory. Offen quotes anthropologist Arturo Escobar's *Whose Knowledge, Whose Nature? Biodiversity, Conservation, and the Political Ecology of Social Movements*: “the concept of territoriality itself [is] a central element in the political construction of reality.”<sup>253</sup> Black communities established a reality by fusing culture and land to form territories based on their ethnicity and African ancestry.

### **Migration and Urbanization**

Law 70 only protects Black communities in rural areas, predominantly in the Pacific Coast Region, that apply and receive a collective territory titling. But, what about the African descendants who do not live in rural areas? As a result of the country's armed conflict, extreme violence and persecution forced many Black people to move from rural areas to cities. However, others migrated to cities for work opportunities. Even before Law 70, starting in the 1970s, many Black Colombians moved to cities for economic and social mobility and Black migration has

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<sup>251</sup> Offen, “The Territorial Turn,” 48.

<sup>252</sup> Ibid.

<sup>253</sup> Ibid.

continued post Law 70.<sup>254</sup> Typically, the migration pattern includes Black people from the Pacific Coast, primarily from the Valle de Cauca department, moving to Cali or even leaving the country to Ecuador or Panama. People in Black communities from the Caribbean region tend to move to Barranquilla or Cartagena or farther into the country to cities like Bogotá or Medellín.<sup>255</sup>

In Bogotá and Medellín, a small Black migrant population exists within the dominant mestizo culture while remembering their culture primarily in private spaces or Black community gatherings.<sup>256</sup> They exist as strangers in this territory in which the mestizos and white Colombians hold political power and wealth.<sup>257</sup> In Cali—with the second largest African descended population by city in all South America—the large presence of Black people cultivates a different experience for Black Colombians. They form strong Black networks easier than in cities with very few African descendants. All this migration reveals how African descended people and cultures spread in Colombia.<sup>258</sup> African descendants moving across the country brought not only their ancestral histories but also their customs based on their originated territorial regions.

African descended migrants in every city face discrimination—in the workforce, housing, and in everyday life—and societal pressures that differ from their communities' origin because of the multi-ethnic nature of the population. For instance, in Cartagena the correlation between racial and ethnic identity and economic class is clear, in that, African descendants are the servant class while the mestizo population are the elite people who live in the suburbs.<sup>259</sup> They use a “Black ethnic network” to establish support from one another: “Black nuclei, temporary and

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<sup>254</sup> Luis Gilberto Murillo Urrutia, “El Choco: The African Heart of Colombia,” *The Journal of Pan African Studies* 8, no. 2 (2015): 258.

<sup>255</sup> Wade, *Blackness and Race Mixture*, 62.

<sup>256</sup> *Ibid*, 63.

<sup>257</sup> *Ibid*.

<sup>258</sup> Urrutia, “El Choco: The African Heart of Colombia,” 258.

<sup>259</sup> Wade, *Blackness and Race Mixture*, 63.

permanent, form in certain neighborhoods and become points of congregation.”<sup>260</sup> These groups establish a support system for African descendants in the city ensuring that one can never truly lose their culture and identity.

### **Economic disparities**

Law 70 gave some Black communities rights over the land they inhabited, but it did not lead to a wave of economic prosperity for those communities. Geographic isolation from the urban industrial economy limits employment opportunities. Black communities utilized the natural resources to sustain themselves and survive. From an outsider’s perspective, many of the rural Black communities are living in poverty, compared to other societies in Colombia. Over 90 percent of Afro-Colombians live in the Pacific region which is “one of the most impoverished regions in the country.”<sup>261</sup> In 2005, 32 percent of the entire nation lived at or below the poverty line; yet, despite that national average, about 85 percent of people in the Pacific Region—composed of predominantly African descendants—lived in poverty.<sup>262</sup> Similar statistics prove true for Spanish illiteracy. In 2005, 38 percent of people in the Pacific Coast were categorized as illiterate compared to the 11 percent national average. Additionally, statistics about basic sanitation reveal that 41 percent of Pacific Coast inhabitants live without basic sanitation services compared to 10 percent of the nation.<sup>263</sup> Yet, despite the land being full of natural resources, which the communities take diligent care of, why are most of them impoverished?

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<sup>260</sup> Wade, *Blackness and Race Mixture*, 63.

<sup>261</sup> Juliet Hooker, “Indigenous Inclusion/Black Exclusion: Race, Ethnicity and Multicultural Citizenship in Latin America,” *Journal of Latin American Studies* 37, no. 2 (May 2005): 288, <https://doi.org/10.1017/S0022216X05009016>.

<sup>262</sup> *Ibid.*

<sup>263</sup> *Ibid.*

Why does Law 70 not address the issue of poverty? Where did the other \$35 million go from the World Bank in which a fraction went toward the collective territories? <sup>264</sup>

## **Violence**

Economic hardship is exacerbated by violence. The armed conflict continued well after Law 70, and African descended communities suffered greatly as a result. Violence included murders, sexual abuse, forced displacement, and deracination: "... Afro-Colombians account for 17 percent of the total number of displaced persons, roughly one and a half times their population share. Afro-descendant women have been particularly impacted, with sexual and gender-based violence used as a tool of displacement...."<sup>265</sup>

The Bellevista-Bojayá massacre in Chocó marks one of the most horrendous cases of deracination during the armed conflict in a Black community. On May 2, 2002, the FARC murdered one-hundred and nineteen innocent, African descended people, in a church, leaving the survivors as displaced victims.<sup>266</sup> The massacres happened nine years after Law 70 and shows the perpetual persecution of African descendants despite the cultural and territorial rights they were granted in Law 70. The massacre in Bellevista-Bojayá is only one example of a Black community that needed to uproot itself to survive. The power dynamics between the predominantly mestizo populated FARC group and the Bellevista-Bojayá population reveals an ongoing imbalance of power, despite the Law 70's mandate to protect the territorial and cultural rights of Black people.

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<sup>264</sup> Offen, "The Territorial Turn," 45.

<sup>265</sup> "'Territory Is Everything': Afro-Colombian Communities, Human Rights and Illegal Land Grabs - Columbia Human Rights Law Review," 298.

<sup>266</sup> Aurora Vergara-Figueroa, *Afrodescendant Resistance to Deracination in Colombia*.

## Political agents: Office of Black Communities

Continued violence and displacement alongside rights granted in Law 70 inspired more Black Colombians to become involved in politics and create more organizations.<sup>267</sup> Several grassroots organizations and community councils of collective territories have worked to promote the traditions of Black communities. Law 70 led to the creation of “over 300 formal spaces for political participation for black communities.”<sup>268</sup>

After Law 70, the government established the Office on Black Communities as a section of the Ministry of Justice and the Interior. On paper, the government agency works to implement the rights of Black communities through land titling, traditional agricultural practices, and educational protection. Additionally, it supports the execution of policies included in the Law that impact daily life. In reality, however, the Office serves as “a precarious space between the movement and a Colombian state that showed little interest in implementing Law 70.”<sup>269</sup> The government created the Office in response to Law 70 although, according to Paschel, “the office [has] little power to craft or implement policies, or to make any decisions related to the big issues affecting black populations, including land titling, illegal mining, development projects, guaranteeing free and informed prior consultation (*consulta previa*), or combating institutional ethno-racial inequality.”<sup>270</sup> Unfortunately, the Office on Black Communities is an entity in between the government and the Black movement with limited power.<sup>271</sup> Esildo Pacheco, a Black activist from a community along the Baudó River shared in 2009 that the Office did “absolutely nothing” and expressed his desire for it to change and “mobilize things.”<sup>272</sup> Despite

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<sup>267</sup> Tianna S. Paschel, *Becoming Black Political Subjects: Movements and Ethno-Racial Rights in Colombia and Brazil* (Princeton University Press, 2016), 157, <https://hdl.handle.net/2027/heb34127.0001.001>.

<sup>268</sup> *Ibid.*

<sup>269</sup> *Ibid.*

<sup>270</sup> *Ibid.*

<sup>271</sup> *Ibid.*

<sup>272</sup> *Ibid.*, 158.

the limitations, however, “the office did serve one important purpose: it officially registered black community councils and grassroots black organizations with the state.”<sup>273</sup>

### **Increased awareness of difference: Beautiful Faces**

Prior to 1991, national documents included limited information about race, ethnicity, and “blackness,” which makes it difficult to accurately measure the ethnic and racial diversity of Colombia during that time.<sup>274</sup> According to the macrotrend data, the Colombian population in 1993 was 34,614,735 people.<sup>275</sup> The 1993 census reveals the advancements in navigating the new awareness of the new multi-ethnic and multi-cultural state the country recently embraced. However, it also proved to reveal some challenges regarding the perceptions and experience of African descendants. Many understood “ethnicity” as referring to Indigenous populations and those specific Black communities under Law 70. Since not all Black people resided in communities protected under Law 70, some African descended Colombians perceived their identity as excluded from political discourse since they were not protected. Two questions on the 1993 census pertaining to ethnicity were: “Do you belong to an ethnic group, an indigenous group, or black community? If so, which one?”<sup>276</sup> Only 1.5 percent of Colombians in 1993 identified as being a part of a Black, Indigenous, or ethnic group.<sup>277</sup> Government officials and social activists agreed that the 1.5 percent was an undercount.<sup>278</sup> The inclusion of these questions is the government’s acknowledgement of Colombia’s multi-ethnic population. It also prompts all

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<sup>273</sup> Paschel, *Becoming Black Political Subjects*, 158.

<sup>274</sup> Paschel, “The Right to Difference,” 737.

<sup>275</sup> “Colombia Population 1950-2022,” accessed October 20, 2022, <https://www.macrotrends.net/countries/COL/colombia/population>.

<sup>276</sup> Tianna Paschel, “‘The Beautiful Faces of My Black People’: Race, Ethnicity and the Politics of Colombia’s 2005 Census,” *Ethnic and Racial Studies* 36, no. 10 (October 2013): 1551, <https://doi.org/10.1080/01419870.2013.791398>.

<sup>277</sup> *Ibid.*

<sup>278</sup> *Ibid.*

citizens to think about ethnicity and the multicultural nature of the country. While the ethnic questions helped supplement the political recognition of Black communities and promote ethnic diversity within the country, greater comprehension of what constitutes as Black identity is still needed to acquire a more accurate count of the population.

According to the 2005 Census, which does include racial and ethnic categorizations, Colombians of African descent were 10.6 percent of the population,<sup>279</sup> which was then over 42 million people.<sup>280</sup> The 2005 data and the continual increase of the nation's population reveals the significance of how a smaller percentage of the population was able to mobilize for the recognition of their human rights. Law 70 is not purely a race issue, an ethnicity issue, or a geography issue. It is the acknowledgement of human rights violations against a geographically and ethnically distinct population.

After Law 70, the awareness of ethnic differences within the African descended population increased among the Colombian population. The ethnic and territorial identity that African-descended leaders and organizations advocated for in Law 70 transformed overtime. By 2005, the concept of Blackness widened to incorporate an ethno-racial framework of categorization, based on culture and territory, and socially constructed "race" based phenotype.<sup>281</sup>

Black individuals and organizations worked diligently to get the Colombian government and society to recognize their presence and cultural differences. Law 70 marked an incredible achievement that protected some of African descendants' territory and the traditional practices of

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<sup>279</sup> United Nations High Commissioner for Refugees, "Refworld | World Directory of Minorities and Indigenous Peoples - Colombia: Afro-Colombians," Refworld, accessed October 20, 2022, <https://www.refworld.org/docid/49749d3cc.html>.

<sup>280</sup> "Colombia Population 1950-2022."

<sup>281</sup> Paschel, "'The Beautiful Faces of My Black People,'" 1545.

the community members who inhabit them. Law 70 transformed the lives of millions in Colombia, particularly the Black communities protected under collective land titles. The Law of Black Communities (another title for Law 70) does not even apply to every African descendant in Colombia, so it certainly does not pertain to most of the Colombian population. The ethnic questions on the census provide an additional level of recognition for Black and Indigenous communities. It forces every citizen to think about their ethnic identity and their cultural practices that they embody. It also validates the members of Black communities as autonomous within the national identity.

To continue the awareness of ethnic difference and include more people within Black identity, organizations like the PCN and governmental agencies like DANE (Colombia's National Administrative Department of Statistics) work to expand definitions of Blackness, hoping to encourage more people to feel included in the ethno-racial framework. For instance, instead of the term "negro" (Black) as the sole ethnic identifier on the census for African descended people, as it is in Law 70, the PCN advocated for other categories to be included—moreno (dark-skinned), mulato (mixed African and European ancestry), and trigueño (olive skinned).<sup>282</sup> Increasing the number of categories increases the connection that people have under the umbrella of Black and Afro-Colombian.

In the early 21<sup>st</sup> century, organizations within the Afro-Colombian Black movement created a "Beautiful Faces of My Black People campaign" to advocate for more people to identify within the Black and Afro-Colombian overarching identity.<sup>283</sup> Activists wanted to expand the population who identify as "Black" and/or "Afro-Colombian" to include anyone with African ancestry. The Law of Black Communities excluded some Black communities, and this

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<sup>282</sup> Paschel, "'The Beautiful Faces of My Black People,'" 1554.

<sup>283</sup> Ibid, 1554.



campaign attempts to mitigate that exclusion. Additionally, most Black communities protected under Law 70 are communities in which the members are completely or predominately dark-skinned individuals. The dark-skin color of Black communities in the Pacific Coast is not representative of all African descended people.

The organizers of the “Beautiful Faces” campaign worked to broaden the category of “Black” and “Black communities” to “Afro-Colombian.” The goal of the campaign follows: “This campaign is a proposal to achieve a higher number of blacks, mulatoslas, morenoslas, zamboslas, Afro-descendants, Afro-Colombians, palenqueros, raizales, in other words, everyone that feels black—African blood run through their veins, even if it is only a drop, to identify themselves when they respond to the census form.”<sup>284</sup> The changes in the terminology to include more subcategories within the Afro-Colombian and Black categories were to make others feel a part of the large comprehensive identity. The campaign promotes difference. Some of the subcategories focused less on Colombian territories and more on skin color. Yet, territorialization is still embedded in it because of the emphasis on a connection to Africa.

The “Beautiful Faces” created a commercial that aired on regional and national stations according to DANE (2006).<sup>285</sup> The thirty-second commercial states: “I am negro, morena, mulata, zamba. I am Afro-descendant. I count. Palenquero, raizal, mulato, negra, I count. Afro-descendant, morena, negra. I’m zambo, raizal. I count. Palenquero, negro.”<sup>286</sup> The phrases coincided with images of people in various skin colors and clothing to provide more representation of the diverse population of people with African ancestry.<sup>287</sup> The campaign looked

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<sup>284</sup> Paschel, “The Beautiful Faces of My Black People,” 1555.

<sup>285</sup> Ibid, 1554.

<sup>286</sup> Ibid.

<sup>287</sup> Ibid.

to embrace internal differences within the Afro-Colombian identity. Yet, within their difference, they were all “Afro-Colombian” and united as such.

Historically, colonizers and enslavers used the term “Black” to categorize all the enslaved Africans. As racial mixing increased, the number of terms regarding ethnicity and race increased as well. Yet, the “Black” identity used in Law 70 indicates an ethnic framework specifically tied to African descendants whose territory is protected. The term “Afro-Colombians,” used by organizers of the Beautiful Faces campaign represents more African descendants because it includes those excluded from Law 70’s protection. “Afro-Colombian” is an ethno-racial identity that still relates to territorialization through the explicit naming of Africa and Colombia to provide that sense of land and location.

The campaign expands Black consciousness from the ethnic framework within the Law 70 to Blackness as it relates to more territories and cultural backgrounds as well as differing African ancestry in Colombia. To pass Law 70, Black advocates focused on an ethnic framework. The lived reality of African descendants since then shows a shift that broadens the perception of Black identity outside the explicit ethnic and territorial framework.

### **Difference in ethnicities among collective land titling**

The Law provides the guidelines for the population affected by the changes in the national Constitution of 1991, evident in this Law, based on naming “blackness in terms of culture and ethnic difference.”<sup>288</sup> Creating the Law with an ethnic frame grew out of claims that Indigenous populations made regarding their culture and territory. Overtime, and especially apparent in Law 70, African descendants recognized difference to be a source of power and

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<sup>288</sup> Paschel, “The Right to Difference,” 736.

agency, transforming their history of enslavement to a people recognized as political agents within the country. Their ethnic identity is protected by the government if they stay on protected territory. Law 70 marks a critical step recognizing the advocacy and mobilization of African descendants across the most recent decades and the evolution of their identity to reflect ethnicity and territorialization. Yet, African descended communities still live in impoverished conditions under constant fear of violence. African descendants' advocacy will persist until they are recognized everywhere, and all acknowledge the value of difference within society.

### **Colombia's recognition of Black communities**

Law 70 calls attention to ethnicity and territory for African descended populations. It expands the discourse regarding rights because of African descendants' claims to ethnic difference. Black communities granted land titles under Law 70 have collective ownership of the land. In accordance with a collective title, everyone in the community strives to protect their territory. The social and political structures of these Black communities primarily focus on just that—the importance of community. Unity in the community serves as a core value, and everyone has a responsibility to contribute to the collective endeavor.

Unfortunately, despite the work that African descendants have done for centuries leading up to the Constitution of 1991 and Law 70, many Colombians still do not care about Black rights or understand the amount of work that went into achieving these advancements. According to Wade, "In Colombia, very few people among the political and intellectual classes have had much interest in romanticizing or glorifying the African or black heritage of the nation's culture; very

few were concerned with black communities, past or present....”<sup>289</sup> Therefore, much of the country can live bliss, ignoring the advances in ethnic and territorial rights for Black populations.

## **Leadership**

Nevertheless, Law 70 promoted the visibility of Black Colombians as political and social agents of Colombia.<sup>290</sup> Since Law 70, there have been several national leaders who have made significant political advancements around culture, ethnicity, and territory. The following highlights the work of Paula Moreno, Zulia María Mena García, and Vice President Francia Márquez.

Paula Moreno served as Colombia’s Minister of Culture between 2007-2010, making her the first Afro-Colombian woman and youngest person, at age 28, to hold that position, or any cabinet position.<sup>291</sup> The government established the Minister of Culture position in 1997 to advise the president on policies, activities, and programs related to culture. The department works to ensure that in Colombia’s multiethnic society, all cultures are protected and valued. Moreno led “Colombia Diverse, Culture for All,” a program that equates the necessity of cultural rights for all Colombians with other recognized fundamental social structures in society like education and health.<sup>292</sup> In her tenure, she promoted initiatives and legislation pertaining to Native languages, film, archival collections, and music, such as the Social Entrepreneurship program Laboratories (LASO), which highlights music making practices in cities.<sup>293</sup> Moreno works to improve ethnic communities, biodiversity, and international collaboration through her

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<sup>289</sup> Wade, *Blackness and Race Mixture*, 35.

<sup>290</sup> Aline Helg, *Liberty & Equality in Caribbean Colombia 1770-1835*, 2.

<sup>291</sup> Paula Marcela Moreno Zapata and Michael Berimbaut-Quintero, “The Place of Expressive Culture in Policy,” lecture, Bowdoin College, March 6, 2012, Brunswick, Maine, video.

<sup>292</sup> Ibid.

<sup>293</sup> Ibid.

organization “Manos Visibles” (Visible Hands) that connects leaders around Colombia who work toward improving their territories and increasing inclusion.<sup>294</sup> Her life focuses on expressive culture, which she exclaims means an “active and alive culture. Culture for change and culture for national active process for building sense.”<sup>295</sup>

Zulia María Mena García served as the mayor of Chocó in 2016 and during a celebration of Law 70, she shared her perspective about the impact of Law 70 and hopes for the future:

The most important thing about the Law 70 is the visualization of the Afro communities in Colombia (as a part of the national people in Colombia). The African descended population still is marginalized because the judicial administration and the legislation has not articulated the achievements of the 91 Constitution. A lot of them are not in high political positions to guarantee that the towns that make up part of the country really benefit from equal conditions that the rest of the country realizes.<sup>296</sup> (my translation, paraphrase)

María Mena García called for the country to recognize the great achievements of Black communities and how there needs to be a greater representation of people from Black communities in national governmental positions, so people of their communities can help them acquire all the rights promised.

Inaugurated in 2022, Vice President Francia Márquez currently represents the highest political position attained by an African descendant in the nation. She is the first Black person in this position—in a nation that, just 29 years prior, did not consider Black Colombians as political agents. Márquez’s political activism regarding territorial rights began when, as a young child, she protested the construction of a dam not wanted by the community.<sup>297</sup> In 2014, she organized a 350-mile march for women across the nation, from Suárez to Bogotá, to pressure the

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<sup>294</sup> “What Is Visible Hands?,” Manos Visibles, June 21, 2019, <https://www.manosvisibles.org/en/about-us/what-is-visible-hands>.

<sup>295</sup> Paula Marcela Moreno Zapata and Michael Berimbaut-Quintero, “The Place of Expressive Culture in Policy.”

<sup>296</sup> “Se Conmemoraron 22 años de la promulgación de la Ley 70.”

<sup>297</sup> “Francia Márquez - Goldman Environmental Prize,” March 18, 2022, <https://www.goldmanprize.org/recipient/francia-marquez/>.

government to remove all illegal mining in her community, la Toma.<sup>298</sup> Her work led her to win the Goldman Environmental Prize. Born in Yolombó, a Black collective territory protected under Law 70, Vice-President Márquez is a product of Law 70, and her political accomplishments were once impossible for Black Colombians. In her position, she bridges the Black community and national politics. Contrary to Black communities, she does not hold power over an autonomous community but over an entire nation. Her identity, her Black ethnicity that coincides with her relationship with her territory, contributes to her national politics and the legislation that she promotes. She embodies a symbol of hope for the Black communities that still endure persecution. Currently, Colombia has the second largest African descended population in Latin America, and she serves as a representative for all of them through her position as vice president.<sup>299</sup>

The impressive political achievements of Paula Moreno, Zulia María Mena García, and Vice President Márquez are the result of Law 70. The law opened a national discussion of ethnicity, territory, and identity of Black Colombians. Despite the political advancement for Black Colombians and society's increased multicultural awareness through Law 70, the law still has its shortcomings, a principal one being that it does not protect all African descended Colombians. National organizations like the census agency and Beautiful Faces campaign have worked to create a more inclusive Black ethnicity that can be protected under Law 70. The law achieved a great feat through the recognition of Black ethnic and territorial rights. However, it represents one step forward in Black rights and not the end.

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<sup>298</sup> “Francia Márquez - Goldman Environmental Prize.”

<sup>299</sup> “Afro-Latinos in Latin America and Considerations for U.S. Policy,” accessed October 20, 2022, <https://www.everycrsreport.com/reports/RL32713.html>.

## Conclusion

This project explores the many political and social developments in Colombia leading up to and following the codification of rights claimed by Black communities through Law 70. For Black communities to gain cultural and political autonomy through the law, the government had to shift its classification of rural Black populations from “race” to one based on ethnicity and territory. Black communities embraced their “right to difference” through distinctive cultural, social, and economic structures. I argue that the fusion of ethnicity and territory was necessary for Black communities to gain the rights in the law because, through this framework, the government recognized them as political agents with cultural backgrounds that should be recognized.

Through my analysis of the history of enslavement and emancipation for Black people in Colombia, I hope to shed light on how the events and legislation during these periods influence the lives of Black Colombians today. I believe it is important to recognize how social identifiers shift overtime, while they are still rooted in ancestral and territorial difference. Highlighting different racial and ethnic categories over the last five centuries emphasizes the complexity of developing an ethnic frame for Black Colombian communities. Since Law 70 only protects some rural Black communities, especially in the Pacific region, I strive to provide a comprehensive analysis of the significance of territory and how territory is rooted in ethnic, cultural, economic, and social structures for Black communities, while also analyzing the government’s rationale for only protecting rural communities.

I want to acknowledge the limitations of my research. As an African descendant born and raised in the United States, I learned about Colombian legislation, Colombia’s Black communities, and the country’s history from an outsider perspective. I recognize that my

semester-long study abroad experience and two-week research trip provided a restricted time frame to research, conceptualize, and include all the scholarship related to the thesis in entirety. Therefore, I include a series of questions that I longed to answer but was unable to due to the scope and time of my project. Questions and ideas for future scholarship include: *How do Black communities protected under Law 70 interpret the Law? What do they think is the impact of Law 70? Do the general perspectives of the effect of Law 70 differ between the Pacific and Caribbean regions? How do Black Colombians in the cities feel about Law 70? How do local committees function in relationship to both the nation and the local community?*

Law 70 changed the political landscape of Colombia due to its support of Black cultural and territorial rights. This legislation represents progress towards acknowledging the past and a transition to increase rights for rural African descendants. Law 70 is a monumental step towards recognizing Black Colombians' rights. Yet, this law is only a step forward towards recognizing the rights of all African descendants in Colombia. The advocacy for Black and African descendant rights will continue until all African descended Black Colombians gain cultural, territorial, social, and economic rights. African descendants have made tremendous political and social advancement due to their perseverance amid their disenfranchisement, and that shall continue until all African descended rights are acknowledged and protected.



**Epilogue**  
**San Basilio de Palenque: the first free Black town in the Americas**



Translation: Palenque, first free Black territory of America.  
Photograph by Ayana Opong-Nyantekyi on April 24, 2022

As soon as I walked out of the air-conditioned van during the ride from the airport to San Basilio de Palenque, sweat beaded up on my face and my body. The ride from the Cartagena de Indias airport to San Basilio de Palenque was about an hour and a half inland. In Cartagena, I saw skyscrapers, plenty of cars and restaurants. There were paved highways, roads, and sidewalks with many pedestrians. Most of the people I saw in Cartagena appeared to be of mestizo origin. As the journey continued, the skyscrapers turned into small colorful homes, the number of cars decreased, the highways transitioned to dirt roads, and the number of visibly African descended people increased. My group and I were leaving the bustling metropolitan city, famous for its beaches and tourism, for a historically significant Black community recognized as the first free Black town in the Americas.

Upon our arrival, we were welcomed by leaders in the community. We were not the first group of people to drive up in a nice, air-conditioned van to observe and learn about their community, and we would certainly not be the last. I learned that the constantly populated, big,

colorful town's pavilion area at the center of the plaza was recently constructed highlighting the importance of community and human interactions in the town, and I saw palenqueros chatting with one another in it. Next to the pavilion was the famous statue of Benkos Bioho, the acknowledged founder of San Basilio.



Benkos Bioho statue.

Photograph by Ayana Opong-Nyantekyi on April 24, 2022

We spent four days there, and my friend and I stayed with a family in the community—consisting of a mother, father, one elementary aged girl, and one middle school aged boy. As soon as I walked into my host family's house, I felt a sense of familiarity—the small tightly packed home, the extreme clutter of papers on shelves and tables, random items and toys scattered, a stocked kitchen with a lingering smell of homemade food, and the TV playing. This made me think about potential similarities of home-life across the diaspora. Yet, the lack of running water distinguished this place from my home. Every household relied on water from streams people accessed through wells. Thankfully, every day, a bucket of water appeared in the house, but I never saw where my host mom went to get it.

There were no cars, no trucks, no buses, besides the vehicles which brought tourists. People mainly traveled on foot. Some of the men traveled on horseback. The street dogs, for the most part, are very tame. There was only one main paved road on which some trucks would enter to import goods for the community. It connected the outside of San Basilio to the center of the

plaza. The remaining roads are dirt roads. Roads symbolize transportation and access to and from a community. The one paved road revealed the economic disparity in their community due to the limited access outside of the community.

Community appeared to be a principal aspect of San Basilio de Palenque. I always saw people in small groups hanging out together. I believe this stems from their kuagro system. Every palenquero/a around the age of ten becomes a member of a kuagro based on age and gender, that serves as a non-genetic family for the rest of their life. In addition to the larger, internationally recognized palenquero identity, rooted in their ethnicity and territorial location, they also each had an internal identity rooted in their kuagro. Kuagros are a social system unique to San Basilio de Palenque, revealing the autonomy of their community council to create this system.



Photograph by Ayana Opong-Nyantekyi in San Basilio de Palenque on April 24, 2022

I always observed both women and men on the streets and near their homes whenever I walked around town. A few of their community organizations—like Kombilesa Mi musical group, the Guardia (the town’s guards), and men and women who serve the community through tourism or agriculture—explained what they do in the community and beyond. For instance, a group of palenquera women shared their work as artisans, chefs, and cultural icons. Some of them displayed artisan items like necklaces, bracelets, earring, or sculptures. Others produce

specialized candy and sell that along with fruits. A woman sells head wraps with beautiful prints that are recognized as “African” prints, which women across the African diaspora use for their hair.

Additionally, and most recognized, is the palenquera woman who is commercialized in Cartagena particularly but also throughout the entire country. Generally, these women wear vibrant colored dresses with distinctive patterns. When they visit other communities, they sing chants about their territory and culture in beautiful and powerful voices, attracting people to take pictures with them and buy any of the items they are selling. These women leave San Basilio de Palenque—their community, their family, their comfort—, for typically months at a time, to play the role of the nice, docile woman who sings. The government and businesses exploit them because they promote tourism and create merchandise with the “palenquera woman” in a bright colored palenquera dress on it for people to buy. The palenquera women also produce merchandise to promote their cultural identity and earn money. Sometimes the women pose as statues for people to take pictures with them (like in the photo I took above). In San Basilio de Palenque, the women share how physically demanding it is to travel by foot and catch rides to different cities. They transport what they sell on top of their heads in a basket. The women need to do this as a source of income, but it also gives other people exposure to San Basilio de Palenque.

Furthermore, I saw children go to school in the community, which required uniforms. Classes were in Spanish and the Palenque language as well. I saw many children out and about during the weekend and after school hours during the weekday. They played with other children, especially those in their kuagro. They entertained themselves through games, TV, or games on cell phones. Almost all the children, even as young as eight years old, always had a smart-phone

device with them. Just a few minutes from the town's center is the town's courts where I saw a group of boys about middle school to high school age play games. I also observed a group of young girls laughing and dancing to music together on the street.

The men seemed to have a decent number of economic opportunities in the town. The father in the family I stayed with was a schoolteacher. Men worked in the stores selling items to tourists. A few men focused their work on ancestral herbs that help for healing. These men also created beads, necklaces, bracelets in patterns that correlate to a particular ancestral history and help the person wearing them with their particular issue. The Guardia—which is their protective service or police unit—was male dominated. Some men farmed, spending all day in the hot sun working. One day we went to help them, and we saw livestock, plants, and fisheries which are the source of food for the town. We concluded our experience with the farmers with *sancocho*, which is a traditional dish in Colombia that is a mix between soup and stew that includes meat and vegetables.

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I am beyond grateful for my experience in San Basilio de Palenque. I learned a lot about their way of life and values—like community, connection to Africa, and distinction from other Black ethnic groups. The ethnic makeup of the community not only supports the historical truth of being the first town freed from slavery, but also their commitment to continue their connection to Africa through ancestral practices, music, distinctive language, and attire. The community leaders I met dressed in African print clothing. The town portrayed many images of the African continent on walls and articles of clothing. They sold items that had African prints on them or represented an aspect of African culture from their perspective. Palenqueros valued people from

African countries or people with direct lineage to an African country because of their proximity to the land from which colonizers stripped their ancestors.

San Basilio de Palenque opened their community to allow outsiders to get a glimpse of the experience of living in the first free Black town, and a Black community protected by Law 70. The strong community environment and the value of Blackness through a diasporic lens relating to Africa proves to be prominent. The future holds more opportunities for political, social, and economic advances for the town, African descendants in Colombia, and beyond across the African diaspora.

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