Autonomy, Self-governance and the Status of Afro-Colombian Collective Territories

by

Bettina Ng’weno

African American and African Studies
University of California, Davis

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Introduction

Today Colombia is often held up as a model example of the possibilities of titling land for African descent communities in the Americas. Between 1997 and the present over two point three million hectares of land were titled to Afro-Colombian communities living in the Pacific basin of Colombia. These lands were titled as “Collective Territories of Black Communities” under the rubric of the new 1991 Colombian Constitution and the subsequent Law 70.

The ability of communities to make successful claims to collective territories rests on their definition as ethnic groups. The 1991 Constitution is the first Colombian constitution to recognize the notion of ethnicity as part of the discursive framework of the nation-state. It declares Colombia an ethnically and culturally plural society. At the same time it creates a new property category: the ownership of collective territories by ethnic groups. Both Afro-Colombian and Indigenous Colombians were recognized being able to claim ethnic status.

Recognition as ethnic groups by the state both enables and limits Afro-Colombian claims to collective territories. Afro-Colombians make up 26% of the population of Colombia and reside all over the country, with the majority living in the Valle-Interandino zone (the Andes and their interlocking valleys) and in the Caribbean coast. However, under the 1991 Constitution not all Afro-Colombian communities are automatically recognized as ethnic groups – rather, principally those living in the rural riparian zones of the Pacific basin. Consequently, while over two point three million hectares of land have been titled to Black communities in the Pacific since 1997, (Sanchez Gutierrez and Roldán Ortega, 2002), none has been titled outside the Pacific to date.

Colombia, then, has on the one hand the largest amounts of collective land titled to African descent communities in the Americas, while on the other hand, Colombia has pretty much restricted this titling to an area where 20% of the Afro-Colombian population live. While the success of titling in the Pacific basin has definitely influenced the process and possibility of titling outside of the Pacific, legal and financial constraints have greatly limited the success of claiming collective lands in these areas.

Because Collective Territories for Black Communities were created through a limited concept of ethnicity based on a model of Indigenous communities and Afro-
Colombians were regarded as not retaining a distinct culture separate from other Colombians, Collective Territories for the two ethnic groups – Indigenous and Afro-Colombians – are considerably different. Afro-Colombian titles have a limited autonomy, authority and self-governance that affects their ability to deal with local government institutions and problems such as violence that arose after they received titles for territories in the Pacific basin.

Additionally as indicated in the above box, the total amount of land titled to Afro-Colombian communities as compared to their population is a lot smaller than territories titled to Indigenous communities relative to their population. What are the factors leading to these discrepancies? What are the consequences of differing status of ethnic territorial units? What are the underlying conceptualizations of Afro-Colombians that limit both their autonomy and the spatialization of collective territories?

In an attempt to answer these questions this paper focuses on the construction of race and ethnicity in regard to Afro-Colombian communities, and it investigates the consequences of the legal and administrative status of Afro-Colombian territories in relation to other territorial entities such as local government or extra-governmental armed groups. It is here in the lines of territorial conflict, which have devastating consequences for communities, where the effect of status is most felt. As such, the paper argues that lay, academic and legal conceptualizations of ethnicity profoundly affect the kinds of territorial entities possible and the lives of those living with ethnic territories.

**Afro-Colombian Populations**

Making up over 26% of the national population, Afro-Colombians are dispersed throughout Colombia but have higher populations in the Valle Interandino zone (the

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1 The 1998 National Development Plan for the Afro-Colombian Population (Plan Nacional de Dessarrollo de la Población Afrocolombiana) estimates that Afro-Colombians make up 26% of the national population, from data compiled, amplified and projected from the National census of 1993 (Censo DANE 1993) with information submitted by “grassroots organizations (organizaciones de base), individual informants and regional coordinators.” Other official data from the Colombian government ranges between 4% and 34% of Colombians as Afro-Colombian or what is sometimes termed Afro-Caribbean (see for instance “Briefing Paper: AfroColombian Communities and Ethnic Minorities in Colombia”, July 2001, and “Indigenous Communities / Minorities” on the Embassy of Colombia web page http://www.colombiaemb.org/indigenous_communities_minorities.htm.
Andes and their interlocking valleys), where the majority live, and the Pacific and Caribbean coasts. The largest numbers of Afro-Colombians live in the departments of Valle, Antioquia and Bolivar and are primarily urban populations.

Cali, for instance, has over a million Afro-Colombian inhabitants, which is about half the population of the city. The department of Chocó on the Pacific coast has the highest percentage Black population (85%), followed by Magdalena (72%) and Bolivar (66%) both on the Caribbean coast. Although the Pacific littoral running from Panama to Ecuador is the main region where Afro-Colombians form an absolute majority, in areas such as northern Cauca and southern Valle they make regional majorities.

Importantly, however, the Pacific basin is the only area of predominantly Black population in Colombia where Afro-Colombians make up over 85% of the population (Comisión para la Formulación del Plan Nacional de Desarrollo de la Población Afrocolombiana, 1998). It is also a historic center of a kind of Black politics and diverse active community organizations. Such politics included the Cordobismo movement of the thirties and forties. Diego Luis Córdoba started his own party that had the support of the predominately Afro-Colombian masses. He integrated schools, increased the number of educated Afro-Colombians in government, and managed to make the Chocó a department of its own (Wade, 1993). He made the majority Black vote count as it never had before. Because of migration out of the Pacific zone to the interior from 1950, people from the Pacific had an effect in cities such as Medellin, Cali and Bogotá. As such, the Pacific remains crucial to the articulation of categories of ethnicity and race and territorial politics that affects all Afro-Colombians.

**Background to Titling in the Pacific**

The Pacific region is considered a frontier zone made up primarily of dense tropical rainforest (nine point one million hectares or 77% of the land) and large rivers. It is also known as the poorest area of Colombia. Because of the poverty of the Pacific region there has been a large migration of people out of the region to the interior from 1951 onwards. By 1964, twenty thousand people had moved and there was a steady decline in the population of the Pacific until 1985. The eighty-three municipalities that make up the bio-geographic region of the Pacific basin now have a population of two point three million people that represent a little more than 6% of the total population of Colombia, 90% of whom are Afro-Colombian and 4% Indigenous. If both Indigenous and Afro-Colombians are considered to have ancestral rights to land, then 94% of the inhabitants of the Pacific region are entitled to land based on historic occupation.

In addition to the poverty of the area, land insecurity also led to migration out of the region. In the late 1950s the state played a crucial role in destroying Afro-Colombian tenure security in the area. In 1959 the state passed Law 2 that classified all of the Pacific basin, including the lands occupied by (and often previously titled to) Afro-Colombian communities, as forest reserves or unowned public lands known as *baldios*. Law 2 had the effect of dispossessing most Afro-Colombians in the Pacific region of the land they owned, lived on or worked. This expropriation by the state included lands that had been previously titled to Afro-Colombian families and communities making them illegal occupants of their ancestral lands.

Thus, Law 2 ignored and invalidated the legal battles won by Afro-Colombian small farmers (*campesinos*) for land prior to the 1930s, and meant that Afro-Colombians...
living in the Pacific basin could not profit from the Land Reform Law 135 of 1961. Although unstated in law, the lack of recognition of the ownership of land by Afro-Colombian *campesinos* in the Chocó amounted to a categorization of them as expendable and citizens without the rights (including rights to private property) of other citizens of Colombia.

In the 1980s economic investment and development was promoted by the macro-economic policy of *Apertura*, designed to open up the frontier of the Pacific to commercial interests and Colombia to the Pacific Rim economy. This resulted in the appearance of multiple extractive industries, state infrastructure development projects, agro-business of banana plantations and cattle ranches in the north and of African oil palm plantations and shrimp aquaculture in the south. Between the 1960s and 1990s the proposed mega development projects included a naval base, the completion of the Pan-American highway, the expansion of the ports of Buenaventura and Tumaco on the Pacific and Turbo on the Caribbean, a planned inter-oceanic canal to replace the Panama Canal, hydroelectric dams and large forest and mineral commercial concessions. Local Indigenous and Afro-Colombian residents demanded legal protection of their lands as they saw them disappear into such projects, and they began to organize social movements in defense of territory and culture.

More recently in the last three decades, different community organizations put the issue of land at the forefront of the struggle for their rights. Two good examples of such organizations are the Indigenous organization, OREWA (the Regional Organization of the Embera and Waunana) and the Afro-Colombian organization, ACIA (the Integral Peasant Association of the Middle Atrato) both of whom represent a number of different communities of the Middle Atrato River, have existed for over fifteen years and were involved in struggles over territorial definition and legalization long before the titling of the Pacific region.

Started in 1979, OREWA, originally a student organization in Quibdó with missionary direction, argued for land, cultural respect, autonomous self-government and the capacity to define and orient their own development options for the Embera and the Waunana Indigenous peoples. Born in 1986 and comprised of three thousand five hundred members, ACIA came into being in opposition to two land and timber concessions in the Middle Atrato and was formed through small neighborhood associations working to attain basic necessities assisted by a group of missionaries from the Dioceses of Quibdó. They pushed for an integrated solution to the problem of the legalization of land in the Pacific and were instrumental in structuring the demand for collective rather than individual titles.

In 1988 ACIA and the Regional Autonomous Corporation of the department of Chocó – CODECHOCO – signed an accord that awarded to ACIA 800,000 hectares of land for use and management, in an unofficial agreement. This large territory was later the base of their collective claim and title, which is the largest single territory titled to Black communities in Colombia. In 1990 at the Meeting in Defense of Our Traditional Territory of the Pacific, ACIA claimed their territorial rights: as a minority ethnic group, as part of the patrimony they are entitled to historically and through labor, and as a responsibility of state duty. They demanded that these rights be fulfilled through the collective titling of the space in which they live.

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2 Stefan Khittel, 2001 personal communication.
The politics of land and the focus of land rights mobilization in the Pacific has for the most part been structured to correct the dispossession by the state created by Law 2 of 1959, and to counter loss of property to mega developments projects and private property in the Pacific zone. The influence of this concern and perspective on the 1991 Constitution and Law 70 and the conscious attempt to redress the dispossession, has resulted in limitations to claims outside of the Pacific that have arisen under different historical contexts of land conflicts and political positioning.

**Legal Framework**

Recent Afro-Colombian land claims have been made under the rubric of the 1991 Constitution. Of course without implementation laws and legal change mean little; however, the enabling legal framework in Colombia greatly enhanced the possibilities of success for those making territorial claims. At the same time the legal framework delimited the kinds of claims possible and the kinds of people who were able to claim.

In response to intense public pressure, the new Constitution was created by a national Constituent Assembly in which no political party had the absolute majority of delegates, but which included Indigenous groups, Protestants and reconfigured guerrilla movements. The 1991 Constitution provided a space in which, for the first time, Afro-Colombians could organize and claim land legally as ethnic groups. Facilitating such a move to territorial concessions is a combination of a process of globalization and multilateral agreements and conventions on the place of community, participation and Indigenous peoples. This combination has meant on the one hand, there is a new space for the recognition of diversity, and on the other, specific legislation based on indigeneity.

In Latin America the political reforms, influenced by International conventions such as International Labor Organization (ILO) 107 and 169, that have recognized multicultural, pluri-ethnic nations, such as the 1987 Constitution of Nicaragua, the 1991 Constitution of Colombia, the 1992 National Constituent Assembly of Paraguay, the 1994 reformed Constitution of Bolivia, or the 1998 Constitution of Ecuador, have invariably recognized special territorial and property rights for specific groups defined by cultural distinction. The Colombian Constituent Assembly, elected by a national vote, was the first major legal negotiation of the categorization of Afro-Colombians as ethnic groups, and thus as communities with rights to collective territories, albeit in a different form than the other people who fall under the category of ethnic groups – Indigenous peoples.

Subsequent laws and legal ruling retain the tension and ambivalence towards the categorization of Afro-Colombians expressed in the Constituent Assembly, putting the burden of proof of ethnicity in the hands of claimants. This tension also has administrative consequences that limit the autonomy of Collective Territories for Black Communities. As such Afro-Colombian territorial claims demonstrate the dynamic and limitations of ethnic categories within Latin America in relation to Afro-Latin peoples.

Specific recognition of Black communities in the 1991 Constitution came in the form of **Provisional Article 55**, which states:
“the government will create a law that recognizes, for Black communities that have come to be occupying public lands (tierras baldíass) in the rural riparian zones of the rivers of the Pacific basin, in accordance with their traditional practices of production, the right to collective property over the areas that will be demarcated by the same law”

With the backing and funding of the World Bank, in August 1993 Law 70 came into being, followed by Decree 1745 in October 1995, which defines the process of administering the law. Law 70 of 1993, which puts Provisional Article 55 into law, recognizes Black communities as ethnic groups (Articles 2, and 7). It defines Black communities based on ideas of ethnicity that are framed with four criteria in mind: culture, history, occupation and location:

The group of families of Afro-Colombian descent that possess their own culture, share a history and have their own traditions and customs within a rural-urban relation, that reveal and conserve identity consciousness that distinguish them from other ethnic groups (Article 2.5, 1993)

That is to say they must have a distinct culture, history and identity that distinguish them from other Colombians. The law continues to distinguish traditional practices, and the Pacific basin as other factors of identification. Law 70 and Decree 1745, along with other decrees concerning the implementation of Law 70 that were put out between 1993 and 1997, stipulate how ethnic claims by Black communities can be made. They outline how collective territories shall be recognized by the government, what methods shall be implemented in determining culture and what constitutes an Afro-Colombian ethnic group.

3 “These are the lands situated within the limits of the national territory that pertain to the state and that lack any other owner, and those that, having been adjudicated with this character, have returned to the dominion of the state, in accordance with that which was set out in article 56 in the law 110 of 1913, and the norms that were added, developed and reformed of it.” (Law 70, 1993, Article 2.4)

4 Decree 2374 of 1993 concerns the study and preservation of Afro-Colombian culture by anthropologists. Decree 1371 of 1994 sets up the High Level Consultative Commission of representatives of Black Communities from the departments of Antioquia, Valle, Cauca, Chocó, Nariño, the Caribbean coast and the islands of San Andrés, Providencia and Santa Catalina. Decree 2313 of 1994 sets out the functions of the Division of Black Community Affairs within the Ministry of Government. Decree 2314 of 1994 constitutes the Study Commission to form the Development Plan for Black Communities. Decree 2248 of 1995 establishes the parameters for the registration of Black Community Based Organizations. Decree 2249 of 1995 establishes the Pedagogic Commission for Black Communities. Decree 1627 of 1996 addresses the disparity in educational opportunity with government grants to Black communities of limited resources. And Decree 2344 of 1996 facilitates the institutional cooperation of the Technical Secretariats of the regional and departmental Consultative Commission for Black Communities through the Division of Black Community Affairs in the Ministry of the Interior.
Afro-Colombian Collective Titles

Under these statutes Afro-Colombians (nationally, but with the principal activity in the Pacific) began making claims to collective territories. From 1994 World Bank funds were used to contract Afro-Colombian and Indigenous community organizations in the Pacific to inform rural peoples about these new laws, as well as to set the groundwork for the granting of collective titles. The government produced handouts and booklets.
about the process, which spread from the Pacific to the rest of the country, and they organized regional meetings to negotiate land claims and territorial disputes.

Once Decree 1745, which defines the process of administering Law 70, was in place titling could begin in earnest. The first Afro-Colombian collective title was issued in 1996 and was the title to La Madre, in the Lower Atrato River area. It was the only title issued that year as the process of titling Afro-Colombian land was not yet established nor accepted within state institutions. Another six titles were issued in 1997 including the title to ACIA for a territory of 695,254 hectares, in the Middle Atrato River basin. The pace of titling picked up after a shakeup in INCORA (Agrarian Reform Agency responsible for titling land), the creation of inter-ethnic regional committees that negotiated ethnic boundaries, and the creation and implementation of an Action Plan on Titling in 1998. Most collective titles for Black communities were issued between 1998 and 2000.

These titles are legally recognized, demarcated and registered rights to specific territories awarded to Afro-Colombian communities who hold these territories as an ethnic group. The territories are immutable, inalienable, unmortgageable and unrentable, which removes them completely from property markets. They include rights to resources found in these territories with the exception of oil and coal and public use goods. The titles also stipulate the preservation of the environment.

The state recognizes a community council (consejo comunitario) as the governing body of the Collective Territories for Black Communities, and its legal representative is the president of the council. The council is elected by the general assembly, which is a quorum of community members. Its functions are to delimit and assign areas interior to the territory and to watch over the conservation and protection of rights of collective property, the preservation of cultural identity, the utilization and exploitation and conservation of natural resources and to resolve disputes. The council can define internal regulations and laws that will operate within the territories.

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<tr>
<th>Collective Titles for Black Communities</th>
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<tr>
<td><strong>First Awarded:</strong> 1996</td>
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<tr>
<td><strong>Governing Body:</strong> Community Council (consejo comunitario)</td>
</tr>
<tr>
<td><strong>Conditions of Rights</strong></td>
</tr>
<tr>
<td>Immutable – fundamental and unalterable</td>
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<tr>
<td>Inalienable – can not be sold</td>
</tr>
<tr>
<td>Unmortgageable – can not be used to secure credit</td>
</tr>
<tr>
<td>Unrentable – can not be rented to outsiders</td>
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<tr>
<td>Includes environmental preservation</td>
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The process of obtaining the titles included negotiating meetings and contracts for the mobilization and training of the communities, as well as consulting and agreeing with Indigenous, private and other organizations holding property, with other Black communities and with the state about the boundaries and composition of collective
territories. Consequently, titling of collective territories for Indigenous and Afro-Colombian communities was not without conflict. Importantly, the exercise of titling itself produced an escalation in ethnic conflict over territory.

Conflicts During Titling

Some of the inter-ethnic conflicts had existed prior to the process of titling, especially where Black communities had particularly insecure rights to land, while Indigenous communities held specific legal rights over neighboring and at times coterminous land, and where both communities were poorly organized. As the possibility of titling collective territory for Black communities became a reality, conflicts arose over territorial boundaries and over the process and rapidity of titling.

Under the 1991 Constitution Indigenous Colombians are recognized as ethnic groups and have the right to Ethnic Territories as administrative units of the state. Since the 1970s, through a process of land occupation, social movements, agrarian reform and the new Constitution, Indigenous Colombians, who make up 1-2% of the population, have won title to over 24.5% of the national territory (Colombian Embassy 2001). In other words twenty-seven point nine million hectares, part of which is in the Pacific basin. The recognition, demarcation, and titling of Indigenous lands has increasingly been dependent on the recognition of Indigenous communities as ethnic groups.

The government policy of “cleansing” of resguardos (Indigenous territories) through the removal of non-Indigenous populations increased the friction between Indigenous and Black communities. With the possibility of obtaining legalization of their own territory, some Black communities no longer accepted the principle behind “cleansing” arguing that these lands were traditionally ancestral lands of Black communities. These pockets of land within resguardos became bones of contention.

The context of ethnic conflict and its relation to the titling process is complex and depends on the prior relationship between Indigenous and Black communities, their relative participation as functionaries of the state, and their unequal legal access to secure title to land. On the one hand, Indigenous communities accustomed to a certain process of titling resisted new restrictions and procedures for titling, such as environmental restrictions or having to consult with Black communities over boundaries. On the other hand, in certain areas of the Pacific such as the Chocó, as the main functionaries in government institutions or politics, Afro-Colombians used these positions to secure rights they deemed appropriated from them.

In 1997 the first Inter-ethnic regional committee was held in Perico Negro, in the municipality of Puerto Tejada in the department of Valle del Cauca (Ng’weno, 2000). It was organized by INCORA to review tensions and possible inter-ethnic conflicts. Afro-Colombian and Indigenous organizations participated and so did national and regional implementing entities. From that time the inter-ethnic regional committees became an important part of determining boundaries, composition and status of territories. Through such committees, community organizations were able to demarcate territorial limits, consolidate territory, exchange pieces of land and jointly manage others.
Problems After Titling

While Afro-Colombian communities in the Pacific basin succeeded in gaining titles to their territories, after titling new problems arose in which the territories were intimately involved. The most disturbing of the new problems has been the increased violence where Afro-Colombians live and the displacement of Afro-Colombians from their territories.

By 2002 there were over two million internally displaced peoples in Colombia (doubling from 1999,) more than in any other country in the world. Strikingly, Afro-Colombians, who make up only 26% of the Colombian population, make up 49% of the internally displaced. That is to say that a million Afro-Colombians (10%) are displaced. As a result Afro-Colombians are increasingly making up the urban poor and rural destitute populations in Colombia (Ng’weno 2003).

For instance, by 1999 many of the members of ACIA were internal refugees in urban centers, and extra-governmental armed groups had imposed control over parts of their territory, negating their hard won autonomy and self-governance. In other parts of the Pacific basin where collective territories had been titled to Afro-Colombian communities similar events were taking place. Shortly after the collective titles of the Black communities of La Nueva, Dos Bocas, Taparal, Clavellino and Chicao of the Lower Atrato River were issued in 1997 the populations were displaced by the paramilitary. Violence in the Rio Sucio area in 1997 caused over twenty thousand people to flee. In 1998 other displaced communities of the Lower Atrato River sent a letter to the World Bank (who had funded land titling), requesting the participation of the International Red Cross, the office of the High Commissioner for Refugees of the UN and delegates from the Dioceses of Apartado and Chocó to form part of a high-level commission to look into titling and violence. They demanded collective entitlement as part of their proposal for a dignified return to their territories (Ng’weno, 2000).

There are three main reasons for the increased violence within and displacement from Collective Territories. First, the internal war is moving to areas where Afro-Colombians have territories – that is, the Pacific basin. Since the 1980s the Pacific region, which used to be on the margins of Colombian violence, has entered dramatically into the internal war. The internal conflict shifted geographically as the guerrilla, the paramilitary and drug traffickers strategically took over areas near borders, lines of communications, coasts and frontier regions to facilitate the production of and trafficking in drugs.

Secondly, these territories could be used for the production, transportation or processing of drugs. However, the authority of community councils over the territories hinders such practices by the paramilitary, guerrilla or drug traffickers. Some community councils have, for instance, declared their territories to be drug free zones and have gone as far as demolishing processing plants found within the territories. Others have tried to pacify a greater area. For instance, Indigenous and Afro-Colombian organizations in 1998 proposed the declaration of the department of the Chocó a “Territory of Peace” calling for armed groups to leave their region in the Pacific and the Andes and for the region to be a drug free zone.

Lastly and most importantly, the control of territory itself is now a political tool used by extra-governmental armed groups in negotiation with the state. Ethnic territories thus break up the power of armed groups to control territory and reduce their strategic
negotiating positions. These territories also provide alternate entities to which the local population can pledge their allegiance and defend their territories.

<table>
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<tr>
<th>Violence, Displacement and Afro-Colombian Territories</th>
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<tbody>
<tr>
<td>Afro-Colombians make up 49% of the 2 million internally displaced Colombians because:</td>
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<tr>
<td>The internal war has moved to where Afro-Colombians live</td>
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<tr>
<td>Collective Territories are located in areas strategic for the production, processing and transportation of drugs</td>
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<tr>
<td>Community Council authority threaten extra-governmental armed groups authority over members of the community</td>
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<tr>
<td>Collective Territories fragment territorial control by extra-governmental armed groups, disrupting their strategic positioning</td>
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The fact that ethnic territories are self-governing units outside of the control of the armed groups makes them particularly vulnerable to violence. The move to claim authority over people and control of space and activities within territories, has made Indigenous and Afro-Colombian ethnic territories particularly threatening to extra-governmental armed groups. The tragic result has been the assassination or displacement of community leaders and political organizers, done both by guerrilla and paramilitary groups, and more recently the displacement of communities from their territories.

Displacement for rural Afro-Colombians has profound effects on communities and individuals. Displacement breaks up social networks and governing forms internal to communities, disturbs economic life and traditional forms of work, breaks up of traditional ways of managing nature, using natural resources and defending ecosystems and can often also break up families and generational and gender relationships. It also has profound effects on the possibilities of participation and action at the local level. The armed attack on Afro-Colombian territories and leaders disrupts the connection between territory and inhabitants and between territory and authority as people are displaced and it derails the process of forming political units.

Dynamics of Titling Outside the Pacific

Afro-Colombian groups outside of the Pacific have found it much more difficult to get responses to their claims to land. Although some of the first claims made by Afro-Colombian communities were made in the Andes they have not been able to gain title to their land to this day. This is due to a combination of three things: funding, available public land, and legal/political limitations.

Partly this difficulty is because the World Bank funding for titling of Afro-Colombian collective property was limited to the Pacific. As such, there is no readily available money to pay for the processes necessary to title land elsewhere. This lack of
funds has also affected titling within the Pacific zone from 2000 onwards once the World Bank funding ended.

Partly, claims are more difficult in areas such as the Andes because there is little official baldíos or public land left. Rather than being frontier zones, the Andes are the heart of Colombian agricultural zones having been farmed for centuries. Thus, most land in the Andes has already been allocated as private property and is highly productive and highly valuable. The Andes have also been the center of some of Colombia’s most bitter land fights. Afro-Colombian campesinos have struggled for land as campesinos using agrarian reform, occupation and social mobilization in the Andes for decades. The focus of their struggle until recently, however, has not been to secure collective territories but to secure private property and at times family land.

Partly, claims are more difficult outside of the Pacific because of the unwillingness of government institutions and ministries to implement the law outside of the Pacific basin. Outside of the Pacific it has proven much more difficult for Afro-Colombians to be accepted as ethnic groups. Those arguing against this categorization have argued that Afro-Colombians of the Andes or the Caribbean coast are not culturally distinct from other Colombians. This line of argument was already apparent at the Constituent Assembly that created the new 1991 Constitution.

The idea of ethnicity, beyond that conceptualized for Indigenous communities, was hotly contested in the negotiation of the new constitution. The National Indigenous Organization of Colombia (ONIC) argues that the Constituent Assembly refused to concede to Black or San Andres and Providencia Native communities the same rights as those recognized to Indigenous peoples because the former had not "retained their cultural identity" (1994:73). This argument rests on the prevalent Colombian conceptualization of Blackness that places the Black communities’ culture somewhere other than Colombia. ONIC stresses that "to the very end, the Assembly refused to recognize Blacks as a separate ethnic group. Only at the last minute were they acknowledged the right of ownership of their ancestral lands, but not as administrative political territorial entities" (1994:74 my emphasis). That is to say, this lack of recognition was translated into a limitation of the autonomy of community councils and the administrative position of Collective Territories for Black Communities.

### Limits to Titling Outside the Pacific

- Funding for titling process was limited to the Pacific
- Lack of baldíos or public land in the Andes and Caribbean
- Difficulty in proving ethnicity outside of the Pacific
- Legal preference for the Pacific area

At the same time, spatially, Black communities are legally confined to the rural riparian zones of the Pacific basin (Provisional Article 55, 1991, and Law 70, 1993, Articles 1, 4) and also to rural riparian baldíos of the rest of the country that have been occupied by Black communities with traditional practices of production (Law 70 Article 1). The rest of Article 1 goes on to define the Pacific basin, the rivers that count within
the Pacific, the rural riparian zones and so on. As such the Pacific basin is the center of
the law and the rest of the country an afterthought.

Future Considerations

While the Pacific basin provided a feasible space in a general struggle by Afro-
Colombian communities for ethnic territories and gave hope to other places, establishing
a precedent for government institutions, the Pacific basin also became a limitation for
those outside of the Pacific. Titling in the Pacific basin ended up centering Collective
Territories around activities and forms of production of the Pacific, especially forest
resources, fisheries and extractive industries. In order to understand how claiming might
play out in areas where the majority of the Afro-Colombian population live, more needs
to be understood about the relationship between the collective territories and agricultural
production. At the same time, the fact that Collective Territories are out of reach for the
large urban Andean Afro-Colombian populations, and difficult to successfully claim for
rural Andean or Caribbean populations, should be considered when thinking about the
future of Afro-Colombian territorial claims.

The problem of displacement from Collective Territories must also be considered
carefully as part of the results of titling. Most importantly, titles should be recognized
not only as a mode to recognizing rights for those who live in a specific place but also as
a way of claiming rights back once displaced. Titles allow a claim to land to continue in
the absence of the population’s presence in the territory itself.

An important future consideration is the relationship between the Collective
Territories and other government entities. There are two issues of consideration here:
first the status of the territories in relation to Indigenous territories and secondly the status
of the territories in relation to administrative entities of local government, in particular
the municipal jurisdiction.

In 1998 the communities of San Juan in the southern part of the Pacific region
requested a joint Afro-Colombian and Indigenous Territory – “Territorio Wounaan-
Negro.” This was an attempt to make a claim that represented their society and way of
living. However, the existence of separate forms of legislation granting rights to
Indigenous and Black communities over areas that they occupy did not allow for the
complex situations of shared territories and shared understanding and administration.
One of the reasons that this is particularly difficult is the different status of the governing
bodies of these territorial entities, and essentially the status of the territorial entities
themselves.

Although the 1991 Constitution declares Colombia an ethnically and culturally
plural society and at the same time creates a new property category, the ownership of
collective territories by ethnic groups, thus enabling Afro-Colombian to claim collective
territories, these territories do no hold the same political and administrative status if they
belong to Indigenous or Afro-Colombian communities.

The 1991 Constitution confers upon the Indigenous territories the status of
political and administrative institutions and *cabildos* are recognized as administrative
entities. This legal concept formally gives the Indigenous communities a high degree of
administrative and fiscal autonomy, allowing self-government including the provision of
services, taxation of members, as well as a share in the distribution of the national
income. They are thus independent of municipalities and local government.
No such jurisdictional and administrative status is conferred upon Collective Territories for Black Communities and community councils. Not part of the administrative setup of the nation, Collective Territories function more like corporations with a board of directors than self-governing autonomous territories. They receive no share of the national revenue and are dependent on the municipality for all services and inputs. At the same time they are exempt from the payment of property taxes but must construct and administer any development projects.

As such, Collective Territories for Black Communities retain an undefined and ambiguous autonomy because they pertain to the municipality and rely on the municipality for the transfer of resources and revenue as they do not receive funds from the central government, but are not within the authority jurisdiction of the municipality. In effect both the governing body – the community council – and the actual title for Collective Territories are highly limited. In areas where they encompass more than one municipality this is particularly problematic. With the proliferation of municipalities and territories under the control of extra-governmental groups, it would seem that the limitations of the Collective Titles for Black Communities as administrative units will produce new territorial conflicts with other territorial administrative units such as municipalities.

**Afro-Colombian Collective Territories in the Future**

1) What about urban Afro-Colombians? Can they be ethnic groups?
2) Is there a better definition of ethnicity available?
3) What is the relationship between agricultural land and Collective Territories?
4) Although they don’t protect against violence, can titles strengthen the possibilities and processes of return once displaced from Collective Territories?
5) How do Collective Territories for Black Communities relate jurisdictionally with Indigenous territories?
6) How do Collective Territories for Black Communities relate jurisdictionally with municipalities and local government?
7) What should be their relationship to the national disbursement of revenue and resources?
8) Considering their dependency on municipalities for revenue what is the basis of authority for community councils?

The questions of what Collective Territories provide to Afro-Colombians, how these provisions are structured and who can benefit, need to be further considered. In the future Afro-Colombian Collective Territories will need to address both present issues such as violence and displacement, the spatial feasibility of claiming, as well as possible new problems that arise from the legal and administrative form of the territories themselves.
References


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