

7 Titling collective lands of the black communities in Colombia, between innovation and tradition

Odile Hoffmann¹

Introduction

The 1990-91 Colombian constitutional reform was conceived as one step in the peace process.² The objective was to “put an end to the place violence has taken as the central reference in social relations and political representation,” and to create “spaces for the political solution of conflicts in order to restrain recourse to violence as the privileged form of doing politics” (Valencia, 1998:75). The 1990-91 Constituent Assembly also endorsed proposals on human rights in general as well as on the rights of minorities and the defense of the environment that were being defended in international fora (cf. Van Cott, 1994). Specifically, the reform redefined the official identity of the country which now was declared to be pluriethnic and multicultural. At the same time positions were taken that tended to redefine the overall framework for political and economic relations. In broad terms, they aimed to reduce the role of the national state, to identify interlocutors closer to local realities, to foster new configurations (regional, ethnic, etc.) as spaces for new solidarities and, lastly, to accelerate a generalized opening of economic frontiers.³

To a certain degree, indigenous organizations, having some experience in the political-legislative field, managed to influence the content of the reforms (Wade, 1994; Baron *et al.* 1995). In fact, the 1991 constitution opens a specific space for indigenous communities (about 2% of the population) and, for the first time, also for black communities (10% to 12 % of the population).⁴ In territorial terms this implies a confirmation and expansion of indigenous *resguardo* (reservation) lands so that they will cover about a quarter of the national territory, and the institution of new territorial rights in the form of collective property titles to the benefit of black communities.

1 Institut Français de Recherche Scientifique pour le Développement en Coopération (ORSTOM), Paris. E-mail: <hoffmann@bondy.ird.fr>

2 This text takes up part of the argument developed in a larger study by M. Agier and O. Hoffmann (in press). Research was conducted in the context of the Orstom-Univalle project “Movilidad, urbanización e identidades de las poblaciones negras del Pacífico colombiano” carried out by Cidse (Centro de Investigación y Documentación Socio-Económica) of the Universidad del Valle in Cali. We would like to thank the members and leaders of the *Consejo Comunitario del Bajo Mira y Frontera* and of the *Palenque regional Nariño* for their hospitality and cooperation.

3 For more information on the debates concerning the constituent assembly and Law No. 70, see Wade (1992), Arocha (1994) and Hoffmann (1998).

4 Reliable data on the racial or ethnic composition of the national population do not exist. Academic and official (DANE) documents use questionable and rather general figures (e.g. for the Pacific: 90% black, 5% indigenous and 5% white, or 90%-2%-8%) since up to the present this dimension was never taken into account in censuses. Registration of the ethnic composition of the population, attempted for the first time in the 1993 census, ended in complete failure due to generalized underreporting.

Law No. 70 of 1993 recognizes the territorial rights of black populations that for centuries have lived in western Colombia in areas considered "National Lands," in most cases not subject to legalization according to property laws. These populations are the descendants of *cimarrones* (runaway-slaves) who found refuge in these isolated tropical forests, of slaves emancipated in 1851 and of individuals who were free long before manumission. During the second half of the 19th century large-scale migration brought them to these scarcely occupied lowlands where *mestizaje* (with the indian or white minorities) is still uncommon today.

As a matter of fact, the law does not apply to the totality of black populations in Colombia. Only "the rural black communities of the Pacific coast" are concerned. The urban populations, those of the interior of the country and those of the Atlantic coast, who historically are more developed and integrated into national society, are not included. Of the approximately 900,000 inhabitants of the Pacific coast⁵ some 550,000 live outside the urban areas and meet the criteria established by Law No. 70. That is about a fifth or a sixth of the estimated black population of the country.

In political terms, the black populations of the Pacific coast, that were still "invisible"⁶ two decades ago, have made their entry into the governmental institutional setup. The Law and the regulatory decrees that gradually are issued effectively provide for reserved spaces for the black communities in various ways: territorial property (Decree 1745), higher education through the establishment of a specialized research institute (the F. Neuman Institute), and basic education with ethno-education programs (Decree 2249), as well as through representation in development agencies (Decree 2314) and participation in research programs on the Pacific Coast (Decree 2374). At a more general level a space for negotiation was created with the establishment of a High Level Consultative Commission (departments and national) conceived as a "space for interlocution between territorial and national authorities" (Decree 1317).

The collective titling of lands raises a series of questions regarding the way social actors define their strategies when faced with institutional innovations which are likely to prompt new social dynamics and to change the logics of interaction between actors. The central issue addressed in this article is how different social groups involved do -or do not- appropriate the new legal framework, and to what purpose? Though the legislation furnishes the general idea of collective titling, on a number of points it is particularly vague (e.g. the prerogatives of Communitarian Councils) or ambiguous (as regarding private holdings within the collectively titled lands). Confronting such new situations, and in an ongoing process influenced by multiple economic and political forces, social actors forge the concepts and actions they consider appropriate in function of their own interpretation of the Law, their collective or individual interests, and the contingencies of the moment.

5 This is the population which, according to the 1993 DANE census, lives in municipalities potentially affected by Law No. 70. As in many other Latin American countries recent censuses are questioned by local authorities who denounce the underregistration of the population. The city of Tumaco, for example, counts 60,000 inhabitants according to the 1993 census but 100,000 according to local authorities. For the Chocó Department the 1993 DANE census gives a number of 340,000 inhabitants but in another DANE document of 1990 a number of 520,000 is mentioned, etc. On the other hand, not one official document hazards to calculate the populations that might appeal to Law No. 70 to claim territories.

6 The notion of the invisibility of black populations to the eyes of governments and of national society as a whole has been developed for Colombia by Friedemann (1994), but has been more widely applied to similar circumstances in other Latin American countries. See, for example, Martínez Montiel (1997) on Mexico or Grosso (1997) on Argentina.

The history of the settlement and occupation of these regions, for a long time virtually ignored by the central government and where occidental concepts of property had not made an entry, gave rise to specific modalities of territorial occupation. On the Pacific coast, individual appropriation of certain terrains, the *colinos* or cultivated parcels generally located on the riversides, combined with the collective use of other areas, the woodlands or *centros* in the forests with little or no agricultural potential. Modalities of appropriation partly depended on the nature of the terrain and, on the other hand, on the objective for which they were used. Access to the forests would be free for hunting, gathering or certain extractive uses as far as these were subsistence oriented, but individual appropriation occurred rapidly when pressure on resources mounted or commercial values rose. Traditionally, access to land was no big problem for new claimants (whether migrants or new generations of locals) as land was abundant, but this no longer is the case. Nowadays in many settlements, villages and along most of the rivers all lands have been demarcated and individually appropriated. Free lands, even for collective use such as the *montes* and *cerros*, do not exist anymore.

The variety of local social actors of the coastal zone of Nariño (businessmen, politicians, groups related to the Catholic church, the NGOs and cultural movements and, not to forget, the guerrilla groups and drugtraders) have different viewpoints in relation to the process of collective land titling. Local political elites show little interest in the issue, although they make an exception at election times when ethnic appeals can be heard that soon recede to the background again. It is as if on the Pacific coast the new spaces for negotiation opened up by Law No. 70 are not taken seriously by the traditional leaders whose logic of action remains captive to the narrow two-party framework established a century ago. The emerging ethno-territorial organizations do not represent a real threat to their field of action nor to their capacities for electoral mobilization or their sources of financial support. The business sector neither favors nor opposes the process in principle, but keeps a watchful eye on what is happening. In fact, the titling process will call into question cases of rent collection over lands that have been appropriated or usurped, with or without legal support, and this may lead to conflicts between plantation-owners and black *campesinos* as has already happened.⁷

Paradoxically, the process of titling collective territories which constitutes an enormous challenge to various social actors as well as the state that prepares itself to delegate its authority over a large part of the Pacific coast region, thus generates little interest among established local social actors. On the other hand, quite a few institutional *acompañantes* to the process have made themselves present. In some cases their role is explicitly defined by Law No. 70 (Incora, Ican, Igac⁸). Others were already present in the region and pursue their previous commitments to the population of the Pacific region (e.g. the Church and some NGOs). Finally, there are those interested in the titling process insofar as it interferes with their own ventures (*Proyecto Biopacífico*, *Plan Pacífico*, Ministries) or who by virtue of their vocation consider it an essential concern (researchers and development workers).

7 Francisco Hurtado, peasant leader and representative of a community council, was killed in february 1998 in the Tumaco region by *sicarios* probably hired by large plantation owners.

8 INCORA, *Instituto Colombiano de Reforma Agraria* (Colombian Institute for Agrarian Reform); ICAN, *Instituto Colombiano de Antropología* (Colombian Anthropological Institute); IGAC, *Instituto Geográfico Agustín Codazzi* (Geographic Institute Agustín Codazzi). The Law also specifies the participation of the environment and planning branches of the *Corporaciones Regionales* (Regional Development Corporations).

The institutional innovations contained in the law are relatively simple in the sense that there seems to be little competition from local actors, but at the same time they are rather complex when it comes to their effective implementation in view of the intervention of a large number of external actors. The Black Movement that emerged through the mobilization that accompanied the adoption of the law and the grassroots organizations that are involved in its implementation face the challenge of managing this process of social and political innovation which requires a redefinition of their attitudes and roles in a variety of new arenas. Such redefinitions imply the adaptation or re-elaboration of discourses and the invention of mechanisms for their adequate diffusion among inhabitants, and among local, regional and national level leaders. In the following section I shall examine some of the contradictions that emerge in this context with special attention to the achievements and limitations of the initiatives that have developed so far.

Achievements and internal contradictions of ethno-territorial mobilization

The political openings of the constitutional process of the early 1990s prompted new efforts among militants to construct the bases for a Black ethnic movement to participate in the elaboration of Law No. 70. In the Nariño Department in southwestern Colombia they came from various backgrounds -popular education, cultural promotion, the civic movement, peasant unions, and, though rarely, political party militancy-. Mostly they did not have any antecedents of ethnic discourse (though they might have been involved in struggles against discrimination or in defense of regional culture). After debate among the various groups that alternatively expressed their involvement in terms of traditional partisan militancy, in terms of class and agrarian struggles, as a struggle against racial discrimination or as a movement of ethnic-cultural vindication, not to forget a recent preoccupation with the environment and biodiversity, a group calling itself *Palenque Nariño* gradually coalesced around a platform of ethnic and cultural demands and began to participate in the national level movement *Proceso de Comunidades Negras* (PCN).⁹ Besides a few peasant leaders many young people, mainly from urban areas and relatively educated¹⁰, employed or unemployed, joined the *Palenque Nariño*.

From that moment, 1993, on the organization has become the leading force in the mobilization process and presents itself as the privileged interlocutor in the Department in relation to the *Dirección de Asuntos sobre las Comunidades Negras* (Bogotá). It also came to represent the Nariño Department in the national-level *Comisión Consultativa de Alto Nivel* and it became a member of the regional commissions charged with the accompaniment of procedures for the titling of collective territories (Igac, Ican, Incora, etc.) as well as the other agencies created for the implementation of Law No. 70 in the areas of education, research, health care, development programs, and bi-national cooperation with Ecuador, etc.). The regional-level organization thus became strongly inserted into the newly created institutional space, but in the field things were rather more complicated.

9 In other Departments (Cauca, Valle, Chocó) such *Palenques* also emerged but they soon disappeared, divided or changed their name as a result of internal conflicts and schisms (*Mesa de trabajo, Cocola*).

10 Many local leaders received some training in Church related institutions and had an experience of community work through the largest NGO in the region (International Foster Parents Plan, present in Tumaco since the 1970s).

At present, Law No. 70 is directed above all to rural populations where, with the exception of a few cooperatives that were created in the 1980s¹¹ and some Church-related groups, organizational structures are virtually absent. So the first task for *Palenque* is to promote the creation of "grassroots-organizations" that are to facilitate the constitution of Community Councils which will be the official interlocutors in the process of titling and in the future are to manage the area they control. Many grassroot organizations succumb rapidly, others never even get off the ground and a few have finally reached the point of consolidation as a result of frequent and active intervention on the part of the Church. Thus by 1997 an organizational network had been put together which covers most of the Nariño coast and the northern and central part in particular.

The construction of this political-organizational network has been an intricate and tortuous process that has met with a series of obstacles and contradictions. On the initiative of *Palenque Nariño* frequent meetings are called, followed by assemblies and workshops, while committees and commissions are created to tackle issues like the divulgence of the Law and the discussion of its implications and to provide for guidance and consciousness-raising in the settlements that now are called "communities". Once a Community Council has been constituted a series of tasks has to be carried out. A file has to be prepared containing the geographic and economical description of the territory, a complete census of its inhabitants and so forth (Decree 1745). The file then has to be presented at the Incora and Igac offices so as to start the procedure for official delimitation.

Practical problems abound during the constitution of the community councils as can be illustrated by the case of the *Consejo Comunitario de Bajo-Mira y Frontera*, located on the lower Mira river in the south of Tumaco. This council represents sixty *veredas* (valleys) with a total of 9,000 inhabitants (i.e. 12.5% of the rural population of the municipality), scattered over a territory of over 50,000 ha. This area, cut through by the Mira river and its many affluents and partly consisting of coastal mangrove swamps, is characterized by an absence of terrestrial communications and the dispersion of its population. Therefore, the organization of meetings and even the divulgence of simple information about the place and date is extraordinarily complicated and costly. Low educational levels among the rural population explain the rather limited number of potential leaders. Of the heads of households 42% of the men and 56% of the women never went to school.¹² Living conditions and livelihoods are precarious: half the adult population (56% of the total population) declares itself to be unemployed and the other half consists of agriculturalists or agricultural laborers on the plantations. The proportion of male against female population (108 to 100, against 88 in the city of Tumaco) suggests an intense outmigration of women. Nonetheless, the presence of women in the economic and political life of the region is outstanding. They represent a fifth of the heads of households, most of them with no partner (82%), and their participation in meetings is prominent. Generally speaking, cash income is rare and irregular and local resources are precarious (fishing, agriculture or day-labor on planta-

11 *Coopamalco* (1983) *Coagropacifico* (1989), *Asocarlet* and *Cooperativa Ser Mujer* (1988), *Anpac*, a fishermen's association created in the 1980s.

12 Illiteracy on the Pacific coast is as high as 39% of the population (against 11% for the country as a whole) while rural schooling rates are not above 41% (against 73% at the national level). Infant mortality also is high (110 per thousand, against 28 for the country according to data from the BID-Plan Pacifico, 1997). Data on the local situation are from a 1996 SISBEN-Municipality survey which covered half of the population.

tions). Moreover, the mobility of the population obstructs long-term planning and community organization as well as the elaboration of collective projects.

In 1994, *Palenque Nariño* organized its first large mobilizations in Tumaco. In Bajo Mira a first meeting in January 1995 brought together sixty persons appointed by their respective communities. The number increased at a second meeting in 1996 which was in preparation for a Plenary Meeting in February 1997 in which a *Consejo comunitario del Bajo-Mira y Frontera* was constituted. Five-hundred people attended this meeting in a village in the Mira and "people cried at seeing so many people united."¹³ From that moment, which consecrated the will of the inhabitants to demand collective ownership over the territory they inhabit, tasks were distributed among volunteers who set about the recuperation of village histories, the drawing of maps and the definition of perimeters, house-for-house censuses of inhabitants, organization of consciousness-raising meetings, the distribution of information and discussion at the level of villages or "sectors", the organization of adhesion and answering the doubts and questions of many inhabitants. This process of genuine local mobilization was facilitated by the *Palenque*-members, many of whom originated in Mira. They took the documentation to the department and national level and they sought -and obtained- financial support from Incora.

The excellent relationship between the grassroots organization, now converted into Communitarian Council, and *Palenque Nariño* gradually soured as the project broadened and became more concrete. When state funding finally arrived, conflicts of competence between the two organizations erupted.

According to some of the *Palenque* leadership "objective" conditions explain the tendency toward concentration of decision-making at the level of the regional organization leadership (*Palenque*); in the river-region communication problems would be of such magnitude that only a centralized structure in the city of Tumaco could assure the minimal efficacy required for handling the complex negotiations over the titling process with state agencies (Incora). In daily practice this is reflected in an increasing distance between the regional leadership and local leaders as well as between the latter and the *campesinos*. In this way a pyramidal structure -*Palenque Nariño*/Community Council/inhabitant(s)- is reproduced where only "those at the top" have access to the decision-making process and the management of funds and information. The opacity of the new organizational framework increases with the multiplication of misunderstandings and conflicts of competence among the three levels. To give one example among many; after a plenary meeting in July 1997 it became clear that *Palenque Nariño* (regional) kept the documentation regarding a Community Council (local) which publicly complained that the regional coordinators retained the information and used it without previous consultation. The coordinators sought to justify themselves arguing that rapid processing of information is indispensable and that this only can be done by concentrating the documentation in Tumaco. Local leaders took offense, feeling dispossessed of their own archive, and demanded its "repatriation" to the rural zone, the future "territory." The *campesinos*, for their part, observed the clash between regional and local leaders and above all condemned the form of the dispute -its verbal aggressions- rather than the substance -the concentration of information, which is inscrutable to most of them anyhow.

13 In fact, the process was a bit more complex, because since 1992 another organization, *Asomira*, existed to accelerate the titling process but this organization soon had split in two (Alto and Bajo Mira). The upper part of the Mira effectively confronts enormous problems (expansion of plantations for the production of palm oil and the drug trade) which, at the time, impeded further mobilization.

These difficult conditions are aggravated by the absence of their own monetary resources and the consequent extreme dependence of the grassroots organizations from *Palenque Nariño* which receives the funds but, in turn, also depends on the state agencies in charge of financing and "accompanying" the communities in the process of collective titling, or else on NGOs and similar institutions that provide support for peasant mobilization. Here too, tensions proliferate between local and regional ethnic-territorial organizations and with state agencies that are targets for accusations of delaying and obstructing the titling process.

The conflicts that erupt in the the process of constructing the ethnic-territorial structure foreseen in Law No. 70 are not merely of an operational or conjunctural nature. They reflect the fundamental contradictions of the Black Movement when it comes to defining itself and clarifying its political and ethical ambitions. The real problem of funding that the local and regional organizations confront is exacerbated by the at times unaccountable management of funds extended by the State, the Church, ONGs or other donors. The group of leaders that has direct access to such resources periodically becomes the theater for mutual recriminations or is accused by colleagues, the donors and/or the *campesinos* of mismanagement, if not embezzlement. However, though corruption worsens the present internal disputes, a more profound mutation is taking place. On the one hand, in the absence of a "culture of accountability," a leader or an association that suddenly benefits from the availability of millions of pesos to be spent within the next six months can be expected to confront management problems. On the other hand, in a context of generalized economic want money becomes the object of envy while counterbalancing or control mechanisms are absent. As a result, cash has become the new and only valid proof of concern with what is happening in the Pacific-region. At the national level, for instance, all negotiations with the state revolve around cash at the expense of broader debates over social or economic policies and this evidently raises suspicion among civil servants or politicians accustomed to dealing with matters of higher import.

The concentration of responsibilities in a small group of leaders is not limited to financial matters. Almost always the same people manage information and participate as representatives or negotiators in meetings with higher-level instances. Neither the scarcity of potential local leaders, nor the workload of regional leaders or the urgency of issues to be resolved can, by itself, justify this phenomenon. Information circulates scarcely and badly and most often in obscure ways, so that only certain leaders and their allies have access (informal meetings, restricted diffusion of documents, decisions made in small committees without public notice....). The control of such channels and the diffusion of information in practice comes to resemble the management of client groups and resources. Those who are excluded from information, however, do not fail to rebel and in the Nariño as elsewhere this triggers divisions and splits.¹⁴ New instances and organizations and even regional coordinations have emerged and demand participation in negotiations and a share in representation.

What should we make from such responses to Law No. 70 and its ambitions to facilitate the participation of the local population as expressed in its third paragraph? Viewed from the out-

14 The *Asociación de Consejos comunitarios* split off from the *Palenque Nariño* in 1997-98 and finds support among the Community Councils established or in the process of being established in the central and northern parts of the Nariño coast. The *Palenque Nariño* nowadays only controls the southern part of the Department (the municipalities of Tumaco and Salahonda) and has to share representative functions in the regional and national commissions of the various institutions working with the black communities.

side, the process appears to be slow and laborious but seems to be gradually advancing toward the constitution of a genuine local and regional organizational network as new leaders have emerged at the micro-local and regional level and have become the potential interlocutors for state agencies. Today the Nariño coast has some nineteen organizations that are to be transformed into Community Councils in charge of the collective territories.¹⁵ In most cases they followed the path outlined in the foregoing (see annex), whether within the *Palenque Nariño* or through other organizations that adhere to the ethnic discourse inscribed in the Law. In this sense the Law can be said to “work” on the Nariño Pacific coast. Along many a river the peasantry responded to the proposals brought forward by the state and the organizations, at times with support from the Church or other agents accompanying the process. The difficulties that have been mentioned do not impede the gradual elaboration among peasants who apply for a collective territory, and among their leaders, of a novel conception of their rights as a black population and of a new relationship with the national society and with the state and its institutions. If one looks at things from an inside perspective, however, the dynamics of political mobilization are far more complex and this gives rise to concern among observers as among the more perceptive leaders, regarding the future and the possibilities for sustaining *campesino* initiatives.

Some conflicts of interpretation

Dissimilar interpretations of the Law and the room for manoeuvring it opened up in relation to the titling of collective lands for the black communities derive from the confusions, vagueness or gaps in the legal framework. The latter should be revised to prevent further multiplication of disputes and conflicts that might contribute to an escalation of violence. Recent experiences with titling suggest three particularly debatable aspects of the present procedure: (1) a persistent confusion regarding the application of the Law in the case of already legally recognized plots; (2) the continual reference to “ancestral and traditional practices” as primary legitimation for collective titles; (3) the access to credit, which rarely is mentioned and still has not been regulated in further legislation.

The private and the collective...

At a plenary meeting of a Community Council in July 1998 in Tumaco, a peasant asked what was going to happen with already titled plots within the future collective territory. The reply by the leader was immediate and clear: either the owners of such plots renounce their title to the benefit of the collectivity or, if they hold on to their existing titles, they will be excluded from the territory and therefore also from the Community Council. Some months earlier, a bit further to the north, a number of peasants actually had renounced their individual private holdings to become members of the ACAPA Community Council. Others had done the same thing in the recently created UNICOSTA territory in the municipality of Iscuandé. However, in the latter case various other peasants preferred to keep their private titles without excluding themselves from the collective territory or from the Community Council since, besides their private plots, they were also users, and therefore “owners” like the other inhabitants, of the areas that were not yet titled or individually exploited (the forest, the mangrove areas, the rivers....). The issue keeps cropping up since no text whatsoever stipulates the “legal” procedure and both options derive

15 Moreover, some such organizations continue functioning after the creation of community Councils, thus constituting a political network of an ethnic character alongside the emerging territorial institutional structure.

from interpretations of Decree 1745 which regulates the collective property of the black communities:

Article 18.: "Areas that already have been titled individually to members of the community can be included within the collective title at the request of the interested party" (the text does not clarify whether this means renouncing the existing private property title).

Article 19.: "Areas excluded from adjudication. The titles the present Decree refers to do not include: areas reserved for public use, urban areas (....) privately owned areas..."

For the moment, each Community Council decides the procedure it follows according to internal relations of power between the leaders, who generally support the first interpretation, and the *campesinos* who tend to be concerned with maintaining their patrimonial autonomy. Leaders tend toward a "maximist" lecture of the Law since, in the end, the collective title is the only guarantee for popular participation in the organization process and commitment to a future Community Council. They rely on the collective territory to justify the formation of Community Councils and to assure their viability, whereas the *campesinos*, often with some apprehension, accept the new institution to make sure that they will have access to the territory. The assessment of ends and means from one point of view is inverted in the other. Whereas from the former perspective "the collective" becomes the justification for the new institutionality and the condition for its viability, the latter privileges individual and family patrimony and only accepts the collective statute as a means to protect them.

In the face of such emerging conflicts of interpretation a clear definition of the rules of the game is imperative. A legal construct that respects individual property while restricting some forms of alienation (sale, mortgage, concession) or use (e.g. mining or forestry) needs to be devised through deliberation in collective fora. Such a regulation should differentiate between land tenure arrangements and the institutional framework for managing these lands (the Community Council) and delimit the spaces of autonomy. The territory would constitute the jurisdiction of an authority (the Council) with faculties for management and regulation of uses, but without prerogatives regarding ownership. The challenge then would be to endow the institution with the consistency and legitimacy required to become a recognized and accepted authority without detaining the power of coercion derived from control over ownership. This, of course, is a question that goes far beyond the context of the black populations as it relates directly to the issue of institutional legitimacy which over the past decades has become a major issue confronting the Colombian nation as a whole. For the time being the Law of the Jungle prevails, above all in rural areas. To protect the more vulnerable from eviction from their lands, robust institutions with a certain degree of autonomy and decision-making power are vital. Conceivably, the 1991 Constitution and Law No. 70 in particular, in their ambiguity remain the best orientations regarding territorial authority and control over property, the latter sustaining the former.

The Legalization of "Ancestral Practice"

Numerous articles of Law No. 70 and its regulatory decree refer to "ancestral practices" that ensure "sustainable development" and the "conservation of the environment," a triad of concepts now systematically linked to the concept of "collective property," a point to which I will return below. My concern is not with the question of the real existence of such practices, nor

with the degree to which they may be considered ancestral, but rather with the consequences of this type of discourse for the construction of identity.

Law No. 70 (art. 2) defines collective occupation as the site of "historical and ancestral settlement of the black communities on lands for their collective use....on which they at present develop their traditional productive practices." The latter, in turn, are defined as "activities and techniques in agriculture, mining, forestry, animal husbandry, hunting, fishing and the gathering of products of nature in general, which the black communities have customarily employed to guarantee the conservation of life and self-sustaining development."

(art. 14) collective property is associated with "the obligation to observe the norms of conservation, protection and rational use of renewable natural resources and the environment."

(art. 20) "Collective ownership over areas to which this law applies is to be exercised according to the social and ecological function inherent in the concept. Consequently, the occupants shall comply with the obligation of protecting the environment and renewable natural resources and cooperate with the authorities in the defense of this patrimony."

(art. 21) the beneficiaries "shall continue to conserve and maintain or promote the regeneration of vegetation that protects waters and through an adequate use guarantee the permanence of particularly fragile ecosystems such as the mangroves and wetlands, and shall protect and conserve wild animal and floral species which are threatened or in danger of extinction."

At Council meetings we saw how such notions were being appropriated by regional leaders, most of them from urban areas, and diffused among the *campesinos* who in this manner "learned" from the younger generation about often virtually forgotten or obsolete practices (the nowadays hardly usual collective work in forest clearing, labor exchange practices that have already been replaced by wage labor on the plantations, or collective hunting when in fact people go out individually with their traps and gun...). Though practices may have disappeared, they are revived in discourse and this entails an inversion of intergenerational authority. The elderly, though still respected for their wisdom and knowledge, have to condone this discourse and thus validate the positions of younger leaders who impose it as a condition for inclusion in "the community" and the future Community Council. We witnessed the case of an old man excusing himself during a plenary meeting for having voiced reservations about ancestral practices he had known when he was young but which, as he saw it, did not correspond to present circumstances and requirements anymore. Being a highly respected *anciano*, in voicing his doubts about such practices he cast doubt over the collective memory and identity under construction and, at the end of the meeting, felt obliged to take the floor again for a self-critique. On other occasions, *campesinos* or local leaders are being reproached for not knowing about some practice or even a word¹⁶ considered traditional and part of the cultural patrimony and the new identity discourse.

16 *Porfia* which is supposed to mean "collective debate to voice disagreements and to arrive at a consensus."

The appeal to ancestral tradition is indispensable to the claim for cultural specificity, to justifying the ensuing political-institutional arrangement and, in the end, for the very process of mobilization and ethnic-territorial organization. If not apparent, "ancestrality" has to be invented. A jurist attentive to the exact wording of the law even might call into question claims to collective title for non-observance of "ancestral practices." Lawmakers and leaders of the black movement, however, have joined in the construction of a particularistic discourse that often only increases the distance between *campesinos* and their leadership and leads to discursive schizophrenia in the black movement.

Credit

The question of credit hardly is mentioned in debates, as if state agencies and the ethnic-territorial organizations had reached a tacit agreement to defer this thorny issue. In discussions among peasants, by contrast, the problem is frequently mentioned. Banking institutions do not accept collective lands as collateral and, given its neoliberal orientation, the national government is little inclined to invent flexible systems for collective credit at low interest rates for peasants that do not possess individual property as collateral. Even if they would consider taking action on the issue, the Community Councils and the Black Movement would have to exert strong pressure in order to gain forms of credit that are not contradictory to the conditions of collective property. However, the leadership seems to be more concerned with the recuperation of ancestral and traditional practices and does not feel the urge to work on this economic aspect which would imply an integration of people and communities in the global economic system and modernity.

Conclusion

As a result of the 1991 Constitution territoriality has become the decisive criterion for the newly officialized ethnic identity.¹⁷ For the various reasons mentioned in the introduction, territoriality has been defined as collective in Law No. 70 and this decisively conditions the strategies to be pursued by inhabitants, ethno-territorial organizations and the Black Movement in general in their struggle for rights. In fact, if the titling of lands were not collective and ethnicized (in the holistic sense that the whole prevails over the parts and the collective over the individual) the whole edifice of legal arrangements and territorial property contained in the law would fall apart. The defense of the rights of black communities thus comes to be framed on a discourse elaborated *ad hoc* to conform to this logic. For some of the leaders and peasants and in some situations -specifically but not only in the Chocó- this does not pose a particular problem since the discourse reflects theoretical and political views and social-economic logics with which they are familiar and which, in fact, provided the starting point for the elaboration of the new legal norms (they participated in the drafting of Law No. 70). In this case the diffusion and application of these norms does therefore not give rise to significant conflict. In other parts of the country such as Nariño, the economic, political and territorial configurations are different and,

17 This is also the case with the indigenous peoples. Outside their territories they are considered acculturated and do not count as ethnic population. Without doubt, this conception goes back to the colonial logic that only recognized the taxpayers in the communities as *indígenas*, whereas the others fell into the category of "free coloured people" together with freed African slaves and mestizos.

moreover, no ethno-territorial mobilizations have occurred. Here, the appropriation of discourse by the peasant population is a complex process, not exempt from conflict between leaders and bases, indigenous and black neighbors, or within the black population itself.

Confounding ethnicity and territory by itself is a potential source of violence. As Badie argues in relation to the separatist movements in European nation-states, "the linkage between identity and territory is forged in an extremely ambiguous way. On the enuciative plane it is unavoidable: in a world governed by the territoriality principle identity discourse cannot sidestep this reality at the risk of marginalizing itself, of losing its audience, and therefore its credibility. But when it comes to practice aporia do not fail to manifest themselves; because identities are volatile, because they hardly ever involve a geographic projection that meshes with their history, because they are abused through subtle strategic manipulation that by itself only is momentarily, and because they exalt separatisms of circumstance" (Badie, 1995:107-108).

On the Colombian Pacific coast the ambiguities Badie indicates have, as we saw, begun to provoke controversy among the black population itself but also, in some regions, between the black inhabitants and their indigenous neighbors who share the same regional space which occasionally has given rise to territorial disputes. The increasing rigidity of norms for the use and appropriation of lands, as an inevitable corollary of the delimitation of collective territories, generates friction between users who earlier shared the area according to more flexible arrangements in which the ethnic factor hardly ever played a role as prime and ultimate criterion of legitimation. Nevertheless, at the same time, we can not discount the fact that under the difficult conditions of the struggle over lands that nowadays prevail on most of the Colombian Pacific coast, the discursive articulation of defense of identity and territory is the most potent driving force behind mobilization and the construction and consolidation of discourses or political-theoretical elaborations (cf. Grueso *et al.*, 1998) as well as for actions in favor of the black populations of Colombia.

BIBLIOGRAPHY

- Agier, M. & O.Hoffmann (en prensa), "Les terres des communautés noires dans le Pacifique colombien, interprétation de la loi et stratégies d'acteurs". In: *Problèmes d'Amérique Latine*, Documentation française, Paris.
- Arocha, J. (1992) "Los negros y la nueva Constitución colombiana de 1991". In: *América Negra*, N°3, Bogotá.
- Badie, B. (1995) *La fin des territoires. Essai sur le désordre international et sur l'utilité sociale du respect*, Paris: Fayard.
- Barón, C.A., E.Reichel D., C.Pinznón & C. Perafán S. (1995) "Diversidad étnica, cultural y Constitución colombiana de 1991; legitimidad de las diferencias: realidades, retos y respuestas". In: Angarita, C., L.Caballero, B.Restrepo & M.E.Rueda: *Derecho, etnias y ecología*, Colección Documentos de la Misión Ciencia, Educación y Desarrollo, tomo 6, Santa Fé de Bogotá: COLCIENCIAS.
- Derechos de las comunidades negras en Colombia; Compendio Legislativo sobre la población afro-colombiana* (1996), Santa Fe de Bogotá: Ministerio del Interior, Proyecto Biopacífico, Departamento Nacional de Planeación.
- Friedemann, N. S. de (1994): "Estudios de negros en la antropología colombiana". In: Arocha, J. & N.de Friedemann (eds.): *Un siglo de investigación social: antropología en Colombia*, Bogotá: Etno.
- Gros, C. (1994): "Noirs, indiens et créoles en Amérique latine. Identité sociale et action collective". In: *Cahiers des Amériques latines*, N° 17, Paris, IHEAL.
- Grosso, J. L. (1997): "Identidades y diferencias, las complejidades identitarias subalternas en las sociedades nacionales". In: *Hacia el fin del milenio, V Jornadas regionales de filosofía del NOA*, Salta (Argentina): Victor Manuel Hanne Editor.
- Grueso, L., C. Rosero & A. Escobar (1998) "The process of black community organizing in the southern Pacific Coast Region of Colombia". In: Alvarez, S.E., E. Dagnino & A. Escobar (eds): *Cultures of Politics, Politics of cultures: re-visioning Latin American Social Movements*, Oxford: Westview Press.

- Hoffmann, O. (1998): "Políticas agrarias, reformas del Estado y adscripciones identitarias: Colombia y México". In: *Análisis Político*, N°34, IEPRI.
- Martínez Montiel, L. M. (coord.) (1997): *Presencia africana en México*, México: CNCA.
- Rosero, C. (1996): "Análisis del proceso organizativo de las comunidades negras." Reunión de Tumaco (manuscr.).
- Valencia, A. (1998): *Violencia en Colombia, años ochenta, y reforma constitucional*, Cali: Editorial Universidad del Valle.
- Van Cott, D.L. (1994): *Indigenous peoples and democracy in Latin America*, Houndmills, Basingstoke, Hampshire and London: MacMillan.
- Wade, P. (1994): "Identités noires, identités indiennes en Colombie". In: *Cahiers des Amériques latines* N°17, Paris, IHEAL.

Annex: Titling of collective territories, situation in Nariño as of 28 March, 1998

Concluded titling process: Consejo Comunitario Unicosta, neoliberal tendency: 16,063 hectares. Municipalities of Santa Bárbara and Iscuandé. Localities of Sanquianga, Tierra Firme, Chanzará, Chico Pérez. 245 families, 1352 persons. Resolution No. 0158 (09/02/98).

Titling processes in course:

Communitarian Council	Type of action	Localization	Area
Progreso río Patía	Enterprise, neoliberal tendency	Roberto Payán	30,000 hectares
Unión Patía Viejo	Palenque dissidence	Magui-Roberto Payán	80,000 hectares
Acapa	Church-Palenque	Pizarro	110,000 hectares
Veredas Unidas Un Bien Común	Incora	Tumaco and Mosquera	12,000 hectares

Titling expected in 1999:

Communitarian Council	Type of action	Localization
Campesinos del Río Patía	Palenque dissidence	Roberto Payán
Taganguero	Palenque	Roberto Payán
El Gran Rosario	Incora	Tumaco
Bajo Mira Frontera	Palenque	Tumaco

Applied for titling:

Communitarian Council	Type of action	Localization
Alto Patía	Palenque dissidence	Tumaco
Cortina Verde-Nelson Mandela	Palenque-neoliberal tendencies	Tumaco

Source: Incora - Pasto, March 1998.

Post data: Between March and October 1998 six new Communitarian Councils were created in the municipality of Tumaco, following one or two logics described in this article (Mejicano, San José del Guayabo, Imbipí, Tablón Dulce, Tablón Salado, Gualajo).



The Challenge of Diversity

THELA THESIS LATIN AMERICA SERIES

Willem Assies
Gemma van der Haar
André Hoekema (eds.)

The Challenge of Diversity

Indigenous peoples and reform of the State in Latin America

Willem Assies
Gemma van der Haar
André J. Hoekema

(eds.)

THELA • THESIS



ISBN 90 5538 045 8

NUGI 653/654/698

© Willem Assies, Gemma van der Haar & André Hoekema (eds.)

Omslagontwerp: Christina Hallström

Vormgeving binnenwerk: Textcetera, Oegstgeest

All rights reserved. Save exceptions stated by the law, no part of this publication may be reproduced, stored in a retrieval system of any nature, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, included a complete or partial transcription, without the prior written permission of the publisher, application for which should be addressed to the publisher:

THELA THESIS, Prinseneiland 305, 1013 LP Amsterdam, The Netherlands.

Tel. +31 (0)20-625 54 29; Fax +31 (0)20-620 33 95; E-mail: office@thelathesis.nl

2000