

Unfulfilled Promises and Persistent Obstacles to the Realization of the Rights of Afro- Colombians

A Report on the Development of Ley 70 of 1993

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Introduction

A. Background

Through its 1991 Constitution and subsequent creation of Ley 70 in 1993, Colombia passed some of the most progressive legislation in the world for guaranteeing the collective property rights of its Afro-descendant minority population. However, the promises set out in Ley 70 are far from fulfilled, as years of armed conflict, the expansion of agricultural and tourist projects, and narco-trafficking have impeded the realization of the legislation's objectives. Ley 70 provides for the granting of collective title to Afro-Colombian communities along with protections aimed at the enjoyment and development of the land. Significant amounts of land have been titled under Ley 70 in Colombia's Pacific region, but many members of the groups possessing collective title have been displaced. In some cases, it is thought that violence aimed at Afro-Colombian communities is a result of claims made under Ley 70. In other instances, communities have secured both collective title and residence of the land, but appear to have little chance of achieving sustainable development. Moreover, many of Ley 70's provisions regarding education, economic development (including financial assistance), and local governance have yet to be implemented.

B. Delegation

In March 2007, a delegation comprised of a professor of law and graduate students of various disciplines from The University of Texas, including law, anthropology, public policy, and Latin American studies, traveled to Colombia on a fact-finding mission. (*For a complete list of participants and their biographies, please see Appendix A.*) With the assistance of academics and post-graduate students in Colombia,

the delegation investigated the existence of Afro-Colombian collective land rights, especially as stipulated in Ley 70.

Coincidentally, the delegation's arrival in Bogotá preceded that of United States President George W. Bush by one day. For this reason, the delegates' second day in Colombia was anything but a typical Sunday. The capital resembled a ghost-town, as closed-down streets and security checkpoints kept most *Bogotanos* shut up in their homes from dawn until dusk, except for that group involved in demonstrations and protests against Bush's visit. The chants in the streets that day were echoed in the concerns of various speakers the delegation interviewed throughout the week: that Plan Colombia and the pending free-trade agreement with the United States both further complicate the civil war and advance the wrong kind of development at the expense of locals whose livelihood depends on the land.

The initial mandate of the delegation seemed simple: to examine the implementation of Ley 70. It was only after interviews with actors from various sectors of Colombian society and government that the delegates realized that such a task could not be disaggregated from a plethora of other considerations concerning the prospects for peace, security, and human rights more generally in the country. Our research led us first to question the extent to which the Colombian government has fulfilled its commitment to implement Ley 70. Later, we came to realize that the law's scope and applicability must be questioned as well, as the land rights of Afro-Colombians outside the Pacific region are only addressed ambiguously, and protections for urban Afro-Colombians, many of whom once lived on lands potentially covered under Ley 70, are unmistakably incomplete. Finally, we found that collective title under Ley 70 cannot be divorced from

issues of economic development and pervasive and systemic discrimination against Afro-descendants.

C. Methodology and Meetings

From March 10-24, the multidisciplinary delegation from The University of Texas at Austin investigated the effectiveness of legislative measures meant to protect Afro-Colombians' collective rights. To outline and emphasize the obstacles faced by Afro-Colombians in exercising their communal rights to property, development, and non-discriminatory treatment, the following report details the delegation's findings.

In order to understand the multiple perspectives regarding the 1993 legislation, the delegation conducted interviews with a diverse group. *(For a complete list of interviewee biographies and the delegation's interview schedule, please see Appendix B.)* Beginning on March 12, the students spent a week meeting with Afro-Colombian and human rights organizations, representatives from non-governmental organizations, Colombian government officials, U.S. government representatives, and Colombian academics. The delegation also visited Soacha, a municipality on the outskirts of Bogotá, where a number of internally displaced Afro-Colombians are now living. During the visit to the massive settlement, delegates had lunch with a community organizer who had recently met with President Bush to inform him of the impact of the Colombian internal conflict on Afro-Colombians. Finally, a part of the delegation traveled to Cartagena to meet with Afro-Colombian community leaders and residents in the Caribbean, where communities are beginning to consider options for claiming collective territorial rights. All interviews were conducted in Spanish.

The delegation met with non-governmental organizations (NGOs), including the *Asociación de Afrocolombianos Desplazados (AFRODES)*, *Consultoría Para Los Derechos Humanos y el Desplazamiento (CODHES)*, *Jenzera*, *Conferencia Nacional de Organizaciones Afro-Colombianas (CNOA)*, *Planeta Paz*, *Proceso de Comunidades Negras (PCN)*, and *Instituto de Estudios para el Desarrollo y la Paz (Indepaz)*.

Delegates also met with community and grassroots organizations. Among these were representatives of the *Red de Consejos Comunitarios del Pacífico Sur*, *Federación de Asociaciones por los Derechos de las Comunidades Afro del Putumayo (FEDECAP)*, *Surcos en América Latina*, Soacha's *La Palma Negra* youth dance group, and a number of Afro-Colombian leaders from Caribbean communities in Barú, La Boquilla, the Islas del Rosario, and Palenque de San Basilio.

The delegation conducted interviews with representatives from both Colombian and U.S. governmental organizations as well. These included the *Procuraduría General de la Nación*, *Departamento Nacional de Planeación*, the Colombian Ministry of the Interior, the Colombian Presidential Agency *Acción Social*, the *Instituto Colombiano de Desarrollo Rural (INCODER)*, the *Defensoría del Pueblo*, the U.S. Embassy, and USAID. It also met with a representative from the Food and Agriculture Organization of the United Nations.

Meetings with Colombian academics included faculty and staff from the *Universidad Nacional de Colombia*, the *Universidad de los Andes*, the *Pontificia Universidad Javeriana*, and the *Editorial Universidad del Cauca*.

The trip was supported by the Bernard and Audre Rapoport Center for Human Rights and Justice at the University of Texas School of Law as well as the Robert S.

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The views expressed in this report represent those of the members of the delegation and do not reflect the institutional position of the University of Texas.

D. Scope and Organization of the Report

Delegates asked interviewees questions about Ley 70's history, content, implementation procedures, and obstacles. The group gradually chose the concepts of collective title, development, and discrimination as a way to focus the discussions, as these issues repeatedly emerged in the course of the interviews. This report is organized into the following sections: (I) History and Content; (II) Implementation; (III) Obstacles to Implementation; (IV) Special issues pertaining to the Atlantic region; and (V) Recommendations.

I. History and Content

Communal land rights have a long and important history for Afro-descendants in Colombia. The country's African diaspora is descended from slaves that began to be brought to what was then called Nueva Granada in the early sixteenth century. Enslaved Africans were made to toil in industrial sectors ranging from plantations and ranches to gold mines and commercial fishing boats. In some cases, those slaves that were able to

escape from their captors or buy their freedom established fortified villages, called *palenques*, in and around coastal regions and rivers. There their lifestyles and cultural practices took on a distinct character influenced both by their African heritage and their new living circumstances and experiences.

By the time slavery was abolished in 1851, Afro-Colombian communities were located throughout the Pacific coastal region, the Caribbean region of Magdalena, Bolivar, and lower Sinú, and the upper-central Cauca Valley, including the northeastern Cauca and southwestern Valle del Cauca. Even though Afro-Colombian communities maintained a physical presence in these areas for centuries, they were almost never granted legal title to their land. From the vantage point of Bogotá, many of these lands were considered too peripheral to be of much concern to the state, an opinion that has recently changed dramatically. In any event, it is the result of this relative isolation (dating back to the strategic isolation of the *palenques*) from the majority society that has allowed many Afro-Colombian communities to develop unique cultural forms and beliefs. This type of difference is what has prompted Afro-Colombians to be identified as not only a racial but also an *ethnic* minority.

Currently, there is conflicting information about the exact size of the Afro-Colombian population. The 2005 Colombian Census reports that only 10.5 percent of the population is Afro-Colombian – just below 4.3 million individuals. While this number is significantly higher than the 1.5 percent figure produced by the 1993 Census, it is still challenged by many Afro-Colombian and human rights organizations, who estimate the number at around 10 million people or just below 25 percent of the country. Challenges are based on errors in reporting as well as the difficulty of relying on self-identification in

areas where “being black” is still strongly stigmatized. (*Appendix C includes a map from INCODER indicating the distribution of the Afro-Colombian population.*)

A. Development of Ley 70

In 1991, Colombia elected a National Constituent Assembly (ANC) that it hoped would reform its political system after a decades-long crisis of legitimacy.¹ The product of the ANC’s deliberations was one of the most progressive constitutions ever to be adopted in the Americas. Beyond recognizing the multiethnic and pluricultural character of the Colombian nation, the 1991 Constitution granted differentiated rights to minority groups and, through a transitory article, promised to produce follow-up legislation specifically aimed at improving the lives of those it referred to as *comunidades negras* (black communities). Transitory Article 55 (AT55) mandated that Congress enact a law giving *comunidades negras* collective title to the lands they occupied. AT55 designated unused public or state lands (*tierras baldías*) in the rural river zones of the Pacific Basin to be those eligible for communal titling. AT55 led to the drafting of Ley 70 in 1993.

Ley 70’s adoption led to the operationalization of Afro-Colombian communal land rights. However, it is important to emphasize that Ley 70’s provisions are not limited to land rights; the law also includes directives regarding the promotion of economic and social development for Afro-Colombians, and their rights to ethno-education and health services.² Additionally, a key focus of the law is to establish

¹ According to Van Cott, beyond the “urgent task of designing new institutions,” it was hoped that a constituent assembly would “provide a forum for national reconciliation between what Colombian commentators called ‘the political country’ and the ‘real country.’” See Donna Lee Van Cott, *The Friendly Liquidation of the Past: The Politics of Diversity in Latin America*, (Pittsburgh, 2000), 51.

² Cf. the American Convention on Human Rights, which recognizes the rights that flow from collective title such as rights to property, development, and freedom from discrimination. Regarding the right to property, Section 21 of the Convention provides that each person has a right to use and enjoy his or her property but

mechanisms to protect “cultural identity and the rights of the black communities of Colombia as [an] ethnic group.”³

B. Legal Guarantees of Ley 70

Chapter III of Ley 70 recognizes the right of Afro-Colombian communities to apply for collective title to the lands they occupy. However, eligible lands are limited to those defined in Article 2 in terms of their geographic relation to the Pacific Coast and other specifically articulated zones. Article 6 stipulates areas that are explicitly not within Ley 70’s land provisions such as urban areas, indigenous territories, national park areas, and areas reserved for national security and defense. Moreover, it excludes collective ownership of natural resources with the exception of the forests and soil for which there are specific provisions. Subsequent implementing regulations also explicitly exclude *baldíos reservados*, which has become significant in recent legal battles over the application of Ley 70 in the Atlantic.

Article 5 of Ley 70 specifies a framework for Afro-Colombian collective organization and representation called *Consejos Comunitarios*. These *consejos* are the only bodies permitted to submit applications for communal lands.⁴ Since the adoption of

that the law can subordinate this use and enjoyment for the public good. Regarding the right to development, Article 23 provides that all citizens enjoy the right to participate in the direction of all public affairs, whether directly or through freely elected representatives. Importantly, both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have recognized that the state is not only responsible for the actions of its agents, but also for actions committed by actors that rely on the tolerance or acquiescence of the state. States may not simply ignore violated rights, because their duty is a positive one. The Inter-American Court’s decisions uphold this responsibility. See *Case of Velásquez Rodríguez v. Honduras*, Inter-American Court of Human Rights, judgment of 29 July 1988 (Series C, No. 4), and *Case of Godínez Cruz v. Honduras*, Inter-American Court of Human Rights, judgment of 20 January 1989 (Series C, No. 5).

³ Ley 70, Article 1.

⁴ For an analysis of the role of Colombian law in the production of modes of social organization, see Mauricio Pardo and Manuela Alvarez, “Estado y movimiento negro en el Pacífico colombiano,” in *Acción colectiva, Estado, y etnicidad en el Pacífico colombiano* (Mauricio Pardo, ed.), (Bogotá, 2001).

Ley 70, many groups – both domestic and international – have worked to promulgate these community institutions in the interest of Afro-Colombian land titling.

Without a doubt, the most powerful provision of Ley 70 with regard to land rights is Article 7. It designates collective titles as inalienable (*inajenable*), protected from seizure (*inembargable*), and exempt from statutes of limitations (*imprescriptible*). This denomination of lands safeguards against the economic, governmental, and armed actors seeking to exploit Afro-Colombian lands by legally prohibiting individuals or community members from selling or otherwise ceding all or part of their land. However, as is discussed in greater detail below, the continued armed conflict, narco-trafficking, institutionalized discrimination, and large agro-business development projects like contract logging and palm oil cultivation have contributed to the frustration of Article 7's property rights.

Ley 70 also contains a number of environmental protections that limit land use and preserve traditional practices. Article 14 requires that the land be used in ways consistent with the conservation and protection of natural resources. Furthermore, the law specifies additional regulations for environmental protection including preference for traditional forms of hunting and fishing, protection of native waters and vegetation, and forest regulations.⁵ It awards a special license of exploration and operation to *comunidades negras* within mining zones, allowing them to continue traditional mining operations.⁶

In addition to providing communal land rights and environmental regulations, Ley 70 also asserts the importance of Afro-Colombian identity and culture. While the

⁵ See Ley 70, Articles 19, 21 and 24, respectively.

⁶ Ley 70, Article 27.

delegation's investigation used land rights as its starting point, several people with whom delegates spoke emphasized that identity and culture are inextricably linked to land. Ley 70 seems to recognize this link, as Article 32 provides for changes to educational curriculum under the auspices of Afro-Colombian ethno-education. Ley 70 also explicitly prohibits all acts of intimidation, segregation, discrimination, and racism against Afro-Colombian communities in the public sector, mass media, and education. Sanctions are stipulated for those who violate these norms.⁷ Rights to health, social services, and technical and professional training are also guaranteed.⁸

Afro-Colombian economic development rights are laid out in Articles 47-69 (Chapter VII) of Ley 70, as well as in Decretos 1745 and 1320.⁹ Together with provisions found in Articles 32-46 (Chapter VI), the law connects development to participation and planning through the following provisions:

1. The establishment of participatory mechanisms for environmental impact studies (Article 44);
2. Participation in the National Development Plan and Regional Development Plans (Article 48);
3. The participation of Afro-Colombian communities in the planning, design, and execution of international development projects (Article 49);
4. Stipulation for government funding, technical support, studies, financial credits, subsidies, technological transfers, and assistance in "appropriate design" of these instruments (Articles 47, 50-55, 58);
5. Participation in the *Corporaciones Autónomas Regionales* (Article 56); and,

⁷ Ley 70, Article 33.

⁸ See Ley 70, Articles 37 and 38.

⁹ The latter of these is titled "*por el cual se reglamenta la consulta previa con las comunidades indígenas y negras para la explotación de los recursos naturales dentro de su territorio.*" (The decree "by which the *consulta previa* with indigenous and black communities for the exploitation of natural resources within their territory is regulated.")

6. A government-conducted study for a development plan for *comunidades negras* (Article 57).

Articles contained in these chapters also authorize a variety of programs and incentives for development. Article 47 states that the law will provide methods to guarantee economic and social development, while Article 50 commits the government to promote and finance certain activities, identifying particular potentialities of Afro-Colombian communities. Article 52 stipulates that financial credits will be made available for the formation of cooperatives. Article 58 provides for state funding for training, identifying, formulating, executing, and evaluating projects relevant to *comunidades negras*. Article 54 outlines how vegetable, food, and medicinal products may become economically viable sources of community income.

Ley 70 thus mandates state, regional, and international collaboration with Afro-Colombian communities on lands that are subject to Ley 70, and creates mechanisms for Afro-Colombian participation in all levels and kinds of development projects. It also calls for the Colombian state to fund and support, at the community level, comprehensive studies and technical support for development. These measures are designed to function in conjunction with Decretos 1745 and 1320, which refer to the functioning of the *Consejos Comunitarios* and *consulta previa* (a doctrine of prior and informed consultation) directly. As will be apparent throughout the report, they are also only a few of the legal measures aimed at benefiting Afro-Colombians that have yet to be realized.

II. Implementation

While, as the next Section demonstrates, the promised rights enshrined in Ley 70 have only been partially implemented, a number of procedures have been put in place to

ensure titles for much of the land that was initially determined to be subject to collective titling. Ninety percent of the territory of the forty-five Afro-Colombian-majority municipalities in the Pacific, for example, has been formally ceded to Afro-Colombian communities.¹⁰ This Section outlines the titling process.

The first step for an Afro-Colombian community to make a claim for collective land is to form a *Consejo Comunitario* in accordance with the specifications detailed in Decreto 1745. *Consejos Comunitarios* are comprised of a General Assembly and a *Junta* that share the administrative and regulatory duties related to use of territory and governance in the community, including some measures of internal conflict resolution, planning of economic strategies, and cultural development. For most *consejos*, the largest task is representing communities through the process of collective land titling.

INCODER is the state administrative agency that oversees collective land titling. It was formed in 2003 through the consolidation of various state administrative agencies.¹¹ Decreto 1745, in conformity with Articles 8 and 17 of Ley 70, authorizes INCODER to issue *conceptos previos* (initial findings) over applications for the utilization, exploration, and exploitation of natural resources within these territories.¹² INCODER appoints a *comisión técnica* to produce each *concepto previo*.

A. Collective Property Rights

The American Convention on Human Rights provides in Article 21 that each person has the right to the enjoyment of his or her property. This provision has been read

¹⁰ Departamento Nacional de Planeación, *Plan Nacional Desarrollo, 2006-2010*, (Bogotá, 2006).

¹¹ These agencies include the Instituto Colombiano de la Reforma Agraria (INCORA), the Instituto Nacional de Adecuación de Tierras (IAT), the Fondo de Cofinanciación para la Inversión Rural, and the Instituto Nacional de Pesca y Acuicultura, INPA.

¹² Decreto 1745.

by the Inter-American Court to include protection of collective as well as individual property.¹³ At the same time, the International Labor Organization's Convention No. 169 explicitly affords "rights of ownership and possession... over the lands which they traditionally occupy" to those peoples covered by the Convention.¹⁴ Both of these conventions are quite important to Afro-Colombian land rights, especially since Colombian jurisprudence has definitively determined that Convention 169 should be applied to *comunidades negras*.¹⁵ Its rights are relevant to the processes that control the acquisition, use, and enjoyment of collective title of Afro-descendant communities.

Where domestic legislation is concerned, Decreto 1745 contains the specific procedures for the recognition of collective rights over *tierras de las comunidades negras*. Collective property is to be exercised primarily in *tierras baldías* within "zonas rurales ribereñas" in the Pacific.¹⁶ While Decreto 1745 suggests that "other zones of the country" might benefit from Afro-Colombian collective land titling, it also states that its procedural content applies to the region set forth in Ley 70 – that of the Pacific.¹⁷ To initiate the collective title of territory to *comunidades negras*, the *Consejo Comunitario* must present a written application before the regional INCODER office.¹⁸ The application should contain the following information: a physical and socio-cultural description of the territory requested in the application; the community's social

¹³ See *Case of the Mayagna (Sumo) Community of Awas Tingni v. Nicaragua*, Inter-American Court of Human Rights, judgment of 31 August 2001 (Series C, No. 79).

¹⁴ Such peoples are to also have access to those lands that they have not occupied *exclusively* but that are important to "their subsistence and traditional activities." International Labor Organization, *Convention (no. 169) concerning Indigenous and Tribal Peoples in Independent Countries*, Article 14 (1).

¹⁵ The Constitutional Court has applied Convention 169 to Afro-Colombians based on the composition and self-identification of *comunidades negras* as groups that share social and cultural traits that differentiate them from the majority. See Corte Constitucional de Colombia, Sentencia C-169 (2001).

¹⁶ See Decreto 1745, Article 1.

¹⁷ See *ibid.*, Article 2. As the delegation learned, a great number of *Consejos Comunitarios* have, nonetheless, been formed in other parts of the country with the purpose of gaining collective land.

¹⁸ INCODER is to undertake collective titling processes in conformity with not only Ley 70 and Decreto 1745, but also Ley 160 of 1994 and Decreto 2664 of 1994.

organization; a demographic description of the community; the forms of tenancy within the given territory; conflicts that exist over the territory or the use of natural resources within the territory; and traditional practices of production.¹⁹ Maps demarcating the territory need not be of a highly-technical character.

After receiving an application that it considers valid, the regulations call for the Regional Director of INCODER to order a visit to the community, and to notify the legal representative of the interested *Consejo Comunitario* as well as the *Procurador Delegado* for *Asuntos Ambientales y Agrarios*.²⁰ When indigenous communities are involved, their legal representatives are also notified, and an edict is placed in public places to notify any interested party of the visit.²¹ The INCODER functionaries undertake a study of the land and of the community, investigating geography, genealogy, and cultural characteristics. The visit forms the basis of a technical report that aims to confirm and elaborate on the application: to define the territory that may be collectively titled to the community; gather socio-cultural, historical and economic information concerning the group; take a census of the Afro-descendant population; determine third parties occupying the territory and the location and form of their occupation; and orchestrate with the inhabitants the boundaries of the collectively titled territory of the *comunidad negra*.²²

In the event that within the solicited territory there are two or more black, indigenous or other communities, the representatives of INCODER initiate a process of mediation to define the territory of each community. If the communities reach an agreement, they inform the relevant office of INCODER so that titling may continue; if

¹⁹ Decreto 1745, Article 20.

²⁰ This implementation Section describes the collective titling process as it should happen, which does not guarantee that it actually does occur in every instance.

²¹ Decreto 1745, Article 22.

²² Ibid.

the communities do not reach an agreement, a mixed commission is formed with representatives of all interested communities so that they may proceed to define the boundaries of their respective territories.

Land cannot be titled if a standing conflict exists within Afro-Colombian communities or between them and indigenous communities. A party that opposes the collective titling may submit written opposition accompanied by the basis for its opposition. The opposition is resolved by an inquiry into whether the opposing group has any claim to legal title over the land or if the territory is not susceptible to collective title. If after an inquiry, the disputed territory is not found to be disqualified from collective title, the opposition will be rejected and the titling process will continue.²³

After receiving the technical report, INCODER determines the legality of the collective titling process and submits the file to the *comisión técnica*. The *comisión técnica*, employing the application, the report of the *Consejo Comunitario*, and the information gathered by INCODER, then determines the boundaries of the territory which will be granted to the *comunidad negra*. If the *comisión técnica* does not find these documents sufficient to make its evaluation, it may seek further information to make its decision.²⁴

According to INCODER's representatives, its role generally ends once the land is titled unless a community is unsatisfied with the outcome. INCODER is only authorized to confer titles, after which the state's dominion over the *tierra baldía* passes to the community in question. Any community that is unsatisfied with the outcome of the titling process may, however, seek relief from INCODER or the administrative courts. If

²³ Decreto 1745, Articles 24-26 and 22 (2).

²⁴ Ibid., Article 27-28.

another party interferes with the use or enjoyment once the land is titled, INCODER is no longer involved in the process; instead, there are potential civil remedies to eject the illegal possessors of the land or possessors in bad faith. An injured party can also bring a constitutional action such as a *tutela* or *acción popular* for relief. The latter are only for remedying damages, not for evicting persons from land.

If fairly and efficiently run, the collective titling process just described provides territorial security to Afro-Colombian communities. Nevertheless, there are substantial limitations on the land that may be titled and the scope of the use of said land.²⁵ Further, until the implementation regime is expanded beyond the Pacific, many Afro-Colombians will be left without secure access to land. Even in the Pacific, administrative procedures make titling problematic while displacement continues as a constant threat. These issues will be discussed in detail in Section III of this report. Before turning to those obstacles, we review below other processes of implementation of the letter and spirit of Ley 70, beginning with the issue of development.

B. Development Rights and Consulta previa

While there has been some success in the collective titling of Afro-Colombian lands, efforts to this end have not been matched by the institutional or political will to implement other rights, including the right to development and protections against discrimination. This Subsection will outline the legal components that relate to rights to development and indicate the institutional entities involved in the implementation of these rights. The specific anti-discrimination measures contained in Ley 70 will then be

²⁵ Ibid., Article 19.

identified, and this Subsection will suggest how structural discrimination is tied to the unfulfilled right to development.

Previous Sections of the report detail development rights specified in Chapter VII of Ley 70, as well as in Decretos 1745 and 1320. Large agro-businesses are presently threatening these directives by encroaching on Afro-Colombian territories to cultivate marketable crops. If enforced, the consultation process called “*consulta previa*” could provide one means of protecting communities against these encroachments.

The mechanism of *consulta previa* was first established in Article 330 of the Colombian Constitution to address indigenous peoples. The provision states that exploitation of natural resources cannot occur if detrimental to the cultural, social, and/or economic integrity of an indigenous community. ILO Convention 169 (ratified by the Colombian government²⁶) guarantees this right to indigenous *and tribal* peoples, which is to include *comunidades negras* according to findings of the Constitutional Court as noted above. Other laws also support Afro-Colombians’ right to *consulta previa* and establish how Afro-Colombian communities are to participate in impact studies.²⁷

The specifics of the *consulta previa* process are described in Decreto 1320. The procedures give the environmental authority that grants licenses for natural resource exploitation the power to exercise its competence, and invite Afro-Colombian communities to participate in *consulta previa*. The environmental authority and its responsibility to conduct *consulta previa* are defined in Ley 99 de 1993, Article 76. *Consulta previa* is to be carried out by the environmental authority in association with the entity/interest that is interested in the natural resource exploitation of an area.

²⁶ According to Article 93 of the Colombian Constitution, all international treaties and conventions ratified by the Colombian government are to prevail in domestic law.

²⁷ Decreto 1745, for example, references Ley 21 and its requirements for community participation.

Consulta previa includes analysis of the economic, environmental, social, and cultural impact of any potential exploitation of natural resources. According to Decreto 1320, the *consulta* is to occur when the activity or project in question will take place in an area that is collectively titled or on untitled land inhabited by either Afro-Colombians or indigenous groups. The *consulta previa* study must produce a description of the characteristics of the community's culture and provide the foreseeable social, economic, and cultural impact of the proposed project. It must also describe potential alternatives or measures to mitigate the harmful effects of the proposed project.²⁸ Meanwhile, as established in ILO Convention 169, *consulta previa* is not only required in those situations pertaining to outside exploitation of resources, but also to *any* legislative or administrative measures that affect the document's targeted "peoples;"²⁹ again, this provision is applicable to Afro-Colombian communities under Colombian law.

Article 40 of Decreto 1745 stipulates that Afro-Colombian communities should receive financial credits and subsidies in line with Article 3 of Ley 160 (1994), which offers these same entitlements to rural men and women generally. Such entitlements would incorporate Afro-Colombians into plans for nationwide development assistance. As already outlined, Ley 70's Chapter VII sets out similar objectives, and Article 57 creates funding for a *Plan Integral de Largo Plazo de la Población AfroColombiana*. The National Development Plan (PND) recently adopted by the Colombian legislature includes measures directed towards Afro-Colombians. These provisions relate to economic and ethno-development; social development; funding for cultural traditions,

²⁸ Decreto 1320, Articles 6 and 10.

²⁹ ILO, *Convention 169*, Article 6.

biodiversity and the environment; and strengthening and protecting human rights.³⁰

However, many Afro-Colombian activists are unsatisfied with the PND, indicating that it considers *comunidades negras* only superficially and that it falls short of the objectives of the *Plan Integral*.³¹ Meanwhile, other proposed national laws that establish development policy, such as the proposed Rural Development Law, do not reference specific measures contained in Ley 70 at all. The Rural Development Law only refers to Afro-Colombian communities by emphasizing the need for expediency in the adjudication of private title, in the clarification of boundaries between Afro-Colombian and indigenous collective territories, and in the recuperation of unused public *tierras baldias*.³²

C. Anti-discrimination Rights

The issue of discrimination is discussed in Article 33 of Ley 70, which states that the Colombian government will create sanctions for and attempt to prevent all intimidation, segregation, discrimination, or racism against Afro-Colombian communities in all social environments, the national educational system, the media, and public administration. The *Defensoría* has, through this article as well as the Colombian Constitution, pursued a number of *tutelas* on behalf of Afro-Colombians who have been excluded from public places. The *Defensoría* has also, for the past two years, been involved in the construction of the *Estatuo Antidiscriminación* (Anti-discrimination Statute).

³⁰ *Plan Nacional de Desarrollo, 2006-2010*, Chapters 3-4, 6-7.

³¹ Indeed, Afro-Colombians are not the only ones dissatisfied with the PND, which has been the focus of dozens of demonstrations in Colombia since its passage.

³² *Proyecto de Ley de Desarrollo Rural*.

The *Estatuo Antidiscriminacion* is a far-reaching statute that attempts to address all forms of discrimination against all types of minorities. It contemplates criminal and civil penalties, as well as police sanctions, for discrimination against ethnic, cultural, racial, and sexual minorities. While the statute's aim of rectifying discrimination is commendable, it has met opposition by the varying minority groups it aims to protect, some of whom advocate for specific protections particular to their minority group. In any event, there seems to be a standstill in the anti-discrimination legislative process, as the *Defensoría* has yet to present the proposed legislation to Congress.

In the meantime, discrimination undeniably continues. Its forms range from those that are blatant and evident in the Colombian media's race-based stereotypes to more subtle, sometimes almost invisible, discrimination that is addressed directly in the following Section of this report. Problems of racial discrimination extend beyond individual cases of mistreatment based on race. Discrimination towards Afro-Colombians as individuals is tied to how Afro-Colombians as a group share experiences of poverty and marginalization. These shared experiences indicate structural discrimination within the Colombian system that are not only rights violations in and of themselves, but that also underwrite many of the other persistent obstacles discussed in the following Section.

III. Obstacles to Implementation

The previous Section shows that the spirit and content of Ley 70 provide a promising legal framework for remedying a number of the problems of exclusion

experienced by Afro-Colombian communities, while also hinting at some of the shortcomings and outright failures of this and other legislation. This Section will focus more directly on the persistent realities of marginalization, poverty, and the structural inequities experienced by Afro-Colombian communities. Many essential aspects of Ley 70 (most prominently, those pertaining to development) have yet to be implemented. Meanwhile, the articles which have been implemented are seriously undermined by inconsistent bureaucratic and institutional support as much as by the intervention of armed and/or economic interests. Further, this latter type of impediment to the enjoyment of communal lands has been met with government *inaction* such that the very relevance of Ley 70's rights guarantees are put in question, along with the state's commitment to more fundamental human rights.

A. Obstacles to Acquiring Collective Titles to Land

Before arriving in Colombia, the delegation predicted that one of the principle obstacles to obtaining collective title would be a high requirement placed on the communities to demonstrate adequately their fulfillment of the elaborate cultural criteria laid out in Ley 70. This prediction reflected reading both of significant social science literature on Afro-Colombians and about how “culture” has, in other contexts, been mismeasured so as to deny rights.³³ Much of Ley 70 is dedicated to setting parameters (many ethno-cultural in nature) by which populations are defined as *comunidades negras*,

³³ Indeed, such abuse of the concept of “authentic cultural difference” has haunted similar land-conferring legislation, as in Brazil's titling of *quilombos* to slave descendants. See Jan Hoffman French, “Dancing for Land: Law-Making and Cultural Performance in Northeastern Brazil,” *Political and Legal Anthropology Review (PoLAR)*, Vol. 25, No. 1 (May 2002).

leading some of the delegation, at least, to assume that many claimants would be excluded because of subjective judgments about their degree of cultural difference.³⁴

Instead, the delegation found that Afro-Colombian land claims were delayed more often by INCODER's technical "land study" than by its cultural "community study." This problem stems from a long history of ambiguities in the cadastral mapping of the peripheral areas of the country. It is also related to distinctions that are made about what land is owned by whom (and who can even own property) that frequently do not correspond with actual patterns of land usage. For instance, the requirement in Ley 70 that only lands denominated as "*tierras baldías*" can be passed to collective ownership has proven very problematic, since many rural Afro-Colombian communities do not live on or near such lands. Indeed, having seen its results, it is troubling that Ley 70 – understood to protect traditional, ancestral land ownership – predetermined which lands would be available for titling. This obstacle of land classification proves especially significant in the Atlantic region, which will be addressed in more detail in the next Section.

I. "Negada" or "En trámites"?

According to the information gathered by the delegation, the outright rejection of title applications that meet the formal requirements of the law has rarely occurred. This is especially true when considering only those communities located in the Pacific region of the country. Most of the cases that were introduced to the delegation as "denials" or "rejections" actually involved situations in which boundaries were under dispute or an

³⁴ Indeed, Colombia's judicial system has used *peritajes culturales* to judge things like an individual's "level of ethnic consciousness" in order "to try to establish whether he conforms to [indigenous] cultural parameters." The outcomes determine who is subject to collective rights or obligations versus who is too "acculturated" to receive the same. Quotes from Corte Constitucional de Colombia, Sentencia T-496/96.

INCODER decision was otherwise pending. These applications (categorized as being “*en trámites*”) make up a significant proportion of the claims filed in recent years, especially as the lands pre-determined to be available for titling near exhaustion. The delegation found that it was far more likely for an Afro-Colombian community to experience a sort of *de facto* denial of title by having their applications end up in perpetual *trámites* than by being rejected outright. This prolongation of the process is taxing on communities’ resources and also leaves lands vulnerable to illegal incursions by armed actors and/or agro-corporations operating in the region.

2. Bi-ethnic Boundary Disputes

Applications might be found in perpetual *trámites* due to Ley 70’s incommensurability with traditional patterns of peaceful bi-ethnic land use. INCODER’s mandate includes the requirement that, in spaces traditionally inhabited and/or used by both Afro-Colombians and indigenous peoples, boundaries be delimited before collective titles can be granted. Bi-ethnic areas are to be divided in a way in which boundaries do not overlap between communities – any given piece of land can only be owned by *either* one or the other ethnic group. This rigid conceptualization of property runs counter to the historical and contemporary sensibilities of most rural black and indigenous populations.³⁵ As anthropologist Jaime Arocha emphasized, many Afro-Colombian communities have a concept of territory wherein boundaries are *porous* and *flexible*, and patterns of usage change on a seasonal basis.

As communities try to reach an agreement on how to disentangle their lands, INCODER acts as a “moderator” but does little to expedite the process. The agency

³⁵ As noted above, the Inter-American Court decision in *Awas Tingni* set a precedent in the Americas for respecting different understandings of property and land ownership.

neither proposes concrete solutions nor presents any evidence from its initial land study that might help to suggest boundary markers whose resonance would be mutual across ethnic community lines. The delegation finds that the Colombian government has not complied with Convention 169's requirement that "[a]dequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned."³⁶ The imposition of a model of exclusive ownership and the requirement that communities come to a consensus about strict borders leaves many applications *en trámite* for extended periods of time.

3. Land Rights and Urbanization

Beyond the procedural obstacles to land claims made under Ley 70, the letter of the law itself limits the subject of collective lands to *rural* Afro-Colombian communities and in practice has further been restricted to those rural communities located in the Pacific region. Some of the aspects of Ley 70 that establish rights to development and education do not explicitly carry this limitation and thus potentially encompass Afro-Colombians in both urban areas and areas outside the Pacific. However, so far none of these rights has been implemented in these areas, despite growing demand from Afro-Colombian activists to do so. The issue of rights claims in urban settings is growing in urgency due to massive displacement of rural Afro-Colombians to these areas. This issue will be revisited in the Subsection on displacement below.

B. Obstacles to Enjoyment of Land and Sustainable Development

For at least the Pacific region's Afro-Colombians, far more obstacles to rights' fulfillment await communities after receiving title than hamper them in the titling process

³⁶ ILO, *Convention 169*, Article 14 (3).

itself. The delegation heard a number of concerns, for example, about recent legislation that appears to threaten the spirit if not the substance of Ley 70 and its subsequent *decretos*. These laws were prominent topics in nearly all of the delegation's meetings with Afro-Colombian activists and representatives. Therefore, the delegation would like to emphasize the importance that should be given to further investigation of these new laws, each of which is in a different stage of the drafting and enactment process.

1. New and Prospective Legislation

The laws in question include: “*Ley de Minas*,”³⁷ “*Ley del Agua*,”³⁸ “*Ley Forestal*,”³⁹ and “*Ley de Desarrollo Rural*.”⁴⁰ The potential effects of these legislative projects are not yet widely understood, and, while the first two might not explicitly contravene the rights guarantees codified in Ley 70, they do seem to contradict its principles. Each gives a clear normative preference for private property and extractive economic development projects (over collective social goods and sustainable development), jeopardizing Afro-Colombian communities' rights to collective land and sustainable development. All of these laws and legislative proposals also express a clear developmentalist logic tied to ideas about “modernization” often used to obfuscate racism and ethnocentrism.⁴¹ Thus, they could be interpreted to undermine the Colombian state's

³⁷ *Ley 685 del 15 de agosto de 2001, por la cual se expide el Código de Minas y se dictan otras disposiciones.*

³⁸ The most recent version of this prospective law of which we are aware is the *Proyecto de Ley del Agua*, borrador versión, January 17, 2005.

³⁹ *Ley 1021 del 20 de abril de 2006, por la cual se expide la Ley General Forestal.*

⁴⁰ This legislation is still prospective, carrying the name *Proyecto de Ley por la cual se dicta el Estatuto de Desarrollo Rural, se reforma el Instituto Colombiano de Desarrollo Rural - INCODER- y se dictan otras disposiciones.*

⁴¹ Indeed, the history of the interdependent tropes of “modernization” and “development” in Latin America have consistently had the effect of devaluing the cultures, livelihoods, and belief systems of minority groups that do not assimilate into majority society. To put an end to this form of discrimination is (at least ostensibly) one of the main purposes of Colombia's 1991 Constitution and much subsequent legislation.

already unsteady commitment to protect and respect cultural diversity and differentiated rights.

Ley Forestal and *Proyecto de Ley de Desarrollo Rural* have been sites of direct contestation over the future of Afro-Colombians' decision-making power within their territories. Their formulation has excluded Afro-Colombian community representation, and has sought to encourage *de facto* privatization and alienation of lands that are supposedly inalienable. This exclusion constitutes a clear violation of the communities' rights to participation and *consulta previa*.

2. Consulta Previa

The Colombian government's commitment to enforcing standards linked to the *consulta previa* requirement is questionable. As the previous Section indicates, Ley 70 is only one in a series of laws that require participation of communities in the design, implementation, and evaluation of development projects that are likely to affect them. Still, Afro-Colombian community leaders testify that *consulta previa* is very rarely undertaken. Both the *Defensoría del Pueblo* and the Ministry of the Interior's Office on Ethnic Issues have made verbal commitments to strengthening *consulta previa*. While clear advances are yet to be found, any final verdict on these agencies' seriousness would still be premature.

Furthermore, even when "consultation" does take place in Colombia, it is often not in good faith, involving coercion or exclusion of truly-representative elements of the community involved. While it is unclear whether any kind of *consulta previa* has been undertaken with a *comunidad negra*, such has been the experience of indigenous people in their attempts to secure this right. In conditions of extreme poverty and without state

support (or even enforcement of basic rights), indigenous and Afro-Colombian communities alike are on vastly unequal footing when negotiating with powerful economic interests in the consultation process.

3. Development: Political, Administrative, and Financial Constraints

Previous Sections of this report explain how Chapter VII of Ley 70 sets out the development rights guaranteed to Afro-Colombian communities. These rights, however, have not been brought into force (as through implementing legislation) in any meaningful sense. One fundamental reason seems to be lack of government commitment to providing the fiscal support necessary to make development possible. The central government does not allocate funds to the *Consejos Comunitarios* since they do not have the same autonomous status as their indigenous *resguardo* counterparts. Instead, Afro-Colombian communities are considered to be a *part of* the municipality in which they are enveloped. Therefore, their development potential is determined more by municipal authorities than by their own community leaders. According to various state officials in Bogotá, a number of these municipal governments suffer from a lack of administrative capacity as well as corruption and inefficiency. The fact that municipal functionaries often have a very limited understanding of Ley 70 and its implications further aggravates this situation; this problem is made worse when functionaries are influenced either consciously or unconsciously by racially and ethnically discriminatory attitudes.

Whatever the cause, *Consejos Comunitarios* are given nowhere near the decision-making power or resources necessary to accomplish the development of their collective territories as guaranteed under Ley 70. In the absence of any authoritative legislation to give shape to its Chapter VII provisions, the realization of these rights remains

implausible.⁴² Additionally, like Colombia's rural poor more generally, *comunidades negras* lack access to credit and direct subsidies, despite the existence of laws that promise such resources.⁴³ The absence of these development tools inhibits the possibilities for Afro-Colombians to take full advantage of collective title they might be granted.

The significance of the problems outlined above go well beyond the foreclosure of possibilities for the realization of Ley 70. Above all, they form part of a pattern of government inaction and failed promises indicative of the persistence of structural racial discrimination. Afro-Colombians continue to live in conditions of poverty and exclusion that are tantamount to a violation of their basic civil, political, social, economic, and cultural rights guaranteed by Ley 70, the Colombian Constitution and international law.

4. The Question of "Sustainability"

Lastly, Ley 70 not only promises the right to development generally, but also to a form that is *sustainable*, and thus offers a kind of stability and predictability of life within which communities can plan for future generations. The vital importance of sustainable development for ensuring subsistence and cultural reproduction among *comunidades negras* in the future cannot be overstated. In the absence of any state-sponsored development program, Afro-Colombian communities are left to focus on mere survival rather than sustainability, putting their ecological surroundings at further risk for over-exploitation in violation of Ley 70.

⁴² The kind of autonomy that would be gained by the provision of these rights and resources over development would bring *comunidades negras* closer to the status enjoyed by indigenous *resguardos*, a ubiquitous point of reference for Afro-Colombian activists, who experience further discrimination in their perceived relegation to second-tier minority status.

⁴³ See Ley 160 de 1994, especially Article 3. See also Article 40 of Decreto 1745 de 1995.

C. Displacement: The Greatest Obstacle to Enjoyment of Collective Land Titles

By far the most widespread threat to enjoyment of communal lands is displacement. This violent process is one that UNHCR/ACNUR Americas Director Philippe Lavanchy has recognized affects and continues to threaten Afro-Colombians disproportionately.⁴⁴ Displacement amounts to a “bundle” of Afro-Colombians’ rights violations, transgressing guarantees to development, education, cultural reproduction, and political representation enshrined in Ley 70. Furthermore, persons forced to flee their lands suffer flagrant violations of their most basic human rights, both during and after displacement.

Once Afro-Colombian individuals or communities are displaced, they effectively find themselves stripped of their rights under Ley 70. Dislodged from their land and torn from their communal support network, they are forced to start over in urban or semi-urban areas where they enjoy no special protections. Forcibly separated from their means of subsistence, they must try to insert themselves in an already tight labor market in an environment marked by stigmatization and racial discrimination. Furthermore, the semi-urban settlements many create rarely receive basic services such as potable water, much less support for personal or communal development. Access to the ethno-education mandated by Ley 70 is rarely present, and even regular public schooling is in short supply. The result is a deepening of conditions of marginalization and poverty.

⁴⁴ Red de Solidaridad Social, “El ACNUR solicita 14,4 millones de dólares para su operación a favor de las personas desplazadas en Colombia,” Feb. 20, 2007; accessible on *Vértice*, the online newsletter of the Colombian government’s Sistema Nacional de Atención Integral a la Población Desplazada. The Acción Social website’s reproduction of this article removes Mr. Lavanchy’s quote, leaving no mention of Afro-Colombians.

Were these impediments not enough, the presence of and threats by armed actors often follow displaced people to urban areas. For instance, a move from the Chocó department to Soacha (just south of Bogotá) does not necessarily mean an escape from the violence of Colombia's internal conflict. Many Afro-Colombians have even endured multiple displacements, forced to relocate from one urban settlement to another due to ongoing violence.⁴⁵

None of this is to say that tangible forms of social and cultural development are not taking place in displaced settlements, but rather that such development often happens *despite* significant inaction on the part of the Colombian state. It is only through the strong commitment that displaced Afro-Colombians have to each other and to themselves that they establish projects for cultural and community development. Remembering Dostoevsky's observation that "the degree of civilization in a society can be judged by entering its prisons," the delegation would like to suggest that the depth of the Colombian state's commitment to its citizens' integral human development should be judged by setting foot in a displaced settlement.

1. The Role of Agro-business

Afro-Colombian communities with collective titles in the Pacific region consider incursions by agro-business to be one of the primary threats to their land and well-being. The most commonly maligned industry is that of oil palm.⁴⁶ This specialized palm plant is produced for its oil, which is an ingredient in cosmetics and other foreign-produced commodities.⁴⁷ Much of the Pacific region is considered to have lands particularly

⁴⁵ Personal testimonies heard by the delegation during our visit to Soacha attest to this phenomenon.

⁴⁶ *Palma aceitera*, alternatively referred to as *palma africana*.

⁴⁷ Interest in the crop has recently increased even further as the Colombian government explores how bio-friendly combustibles will fit into its development strategy.

propitious to the plant's cultivation. Indeed, producers and investors have been extremely aggressive in promoting oil palm in this area, even drawing many accusations of having contracted paramilitary forces to threaten communities to sell their lands. This charge cannot be disregarded. Indeed, it should be taken extremely seriously, especially in light of the recent surfacing of links between paramilitaries and another transnational agro-business – Chiquita Brands International.⁴⁸

Despite the considerable criticism leveled against their practices, agro-businesses have received the moral support they need to continue advancing across the territories entitled to Afro-Colombians. President Alvaro Uribe and the Colombian Ministry of Agriculture,⁴⁹ for example, have reiterated the government's commitment to increasing the production of oil palm on numerous occasions. On April 11, 2007, that same industry's *Federación Nacional de Cultivadores de Palma de Aceite (Fedepalma)* was awarded the “*Premio Nacional a la Contribución Institucional al Desarrollo Agrícola y Rural*” by Colombia's Office of the *Instituto Interamericano de Cooperación para la Agricultura*.⁵⁰ This type of recognition considerably emboldens businesses that should instead be placed under close scrutiny by the Colombian government.

Many representatives of rural communities in the Pacific region contend that oil palm has devastating effects on the land, exhausting its minerals after a few seasons of cultivation, and, in the process, diminishing the bio-diversity of the regions in which it is grown. They also complain about the way the crop is imposed by interested actors who stand to gain much from its production while local farmers earn little. Further, it is

⁴⁸ See, e.g., Juan Forero, “Colombia May Seek Chiquita Extraditions,” *The Washington Post*, March 21, 2007.

⁴⁹ On the Ministry of Agriculture's stance, see notes from delegation's interview with representatives of Departamento Nacional de Planeación, March 14, 2007, on file with authors.

⁵⁰ See the Fedepalma website at www.fedepalma.org.

argued that state support for oil palm reveals its prioritization of developmentalism over more integral forms of development, and puts the goal of capital accumulation ahead of its legal commitment to ensure the well-being of the environment and of local *comunidades negras*.

At least one prominent supporter of Afro-Colombians' rights told the delegation that he did not understand oil palm itself to be the problem, but rather the manner in which its cultivation has been undertaken. Some assert that the crop is "good business," but that the current practices of the industry exclude the local communities from its benefits, leaving them only to fill positions as low-paid, manual laborers. Indeed, if oil palm cultivation were to follow the guidelines of *consulta previa*, ecological sustainability, and community participation outlined in Ley 70, perhaps it would have the potential to be a much-needed development tool for these communities.

For all of the industry's dangers, the delegation was advised to note that oil palm is really only the "tip of the iceberg." There are many different exogenous interests competing for control over the natural resources found in the rural areas inhabited by Afro-Colombians. Many of these zones have historically been considered valueless and "empty" (hence "*baldíos*"), but are now coveted for their productive potential and also their strategic locations. In the case of the Pacific region, developers wish to undertake mega-projects like highways⁵¹ and canals that are linked to commercial interests; meanwhile, drug trafficking cartels desire to control coastal lands for their own trade

⁵¹ We heard during our trip that there is talk of making the proposed Plan Puebla-Panamá extend into being a "Plan Puebla-Bogotá." Such a project would have grave consequences for Afro-Colombian collective lands.

routes.⁵² The Atlantic region finds further cases of conflict between commercial interests and Afro-Colombian rights, a topic to be pursued in depth in the following Section.

2. The Role of Armed Actors

The delegation's interviews with displaced Afro-Colombians revealed a disturbing trend of armed actors' entrance into lands coinciding with the completion of the titling process. If these interviews were at all representative, this occurrence is shockingly common. As one interviewee stated, "Displacement is not a product of the armed conflict. It is a deliberate strategy to get people off of the land. As Ley 70 titles are given, the paramilitary starts arriving." Some went so far as to label displacement a kind of *de facto* agrarian counter-reform.

Afro-Colombians are hardly oblivious to the correlation between collective titling and forced displacement. The delegation fears that this phenomenon could discourage some from even applying for communal lands. In the current context of impunity and state inaction, the fear of reprisals for claiming or successfully receiving land may make the execution of Ley 70 seem more dangerous than the *non-practice* of the rights it guarantees. In any case, the delegates find the words of Rudesindo Castro, in his discussion of these multiple challenges to Afro-Colombian territorial integrity, quite fitting: "Atrapados en una maraña de intereses y disparos, a los afrocolombianos y a sus organizaciones, les cobran en vida y en sangre el costo de tener derechos territoriales en el país que hemos ayudado a construir."⁵³

⁵² Though we did not hear much in the way of details, displacement caused by the drug trade and anti-drug-trafficking measures also affects the Afro-Colombian population. It would appear that the harm is a combination of competition between traffickers *and* the fumigation campaigns targeted at the coca crop.

⁵³ "Trapped in a tangle of interests and gunshots, the Afro-Colombians and their organizations are charged in blood and lives the cost of having territorial rights in the country that we helped build." See Rudesindo Castro Hinestroza, "Étnia, cultura, territorio y conflicto armado en el Pacífico colombiano," in *Utopía para los excluidos: El multiculturalismo en África y América Latina* (Jaime Arocha, ed.), (Bogotá, 2004), 379.

3. Displacement and the Role of the State

Once Afro-Colombians are displaced from their lands, the Colombian state appears to do little to rectify the situation. In fact, service provision and just resettlement are onuses for which no government agency wishes to be accountable. INCODER sees its primary responsibility as having been eclipsed at the moment in which a title is recognized, and the Defensoría del Pueblo's efforts have thus far not led to significant state accountability. A recent Constitutional Court ruling found the state to be negligent in protecting displaced persons, but it failed to provide explicit recognition of the disparate impact that displacement has had on Afro-Colombians.⁵⁴

In reality, it is of little use to talk of state support for displaced Afro-Colombians, since the government has neither produced disaggregated data on nor formulated policies specific to this minority group. This deficiency is both cause and effect of the continued invisibilization of Afro-Colombians – displaced and otherwise.⁵⁵ However “*inembargable, inajenable, y imprescriptible*” collective lands might be on paper, displacement demonstrates that they are not so in practice. Those displaced from land with this special designation seem to fare no better than any other part of the extra-legally evicted population.

D. Notes on Structural Discrimination against Afro-Colombians and Conclusions

The delegation finds that each of the specific obstacles to acquiring or enjoying collective title under Ley 70 described above is indicative of an overarching context of

⁵⁴ For a thorough synopsis of the content of the “*Autos*” issued by the Corte Constitucional in late-2006, see, Sala Tercera de Revisión de la Corte Constitucional de la República de Colombia, *Comunicado de Prensa*, Nov. 29, 2006, at: www.ilsa.org.co/IMG/pdf/Comunicado_Corte_Cnal_29_de_nov_de_06.pdf.

⁵⁵ Indeed, even representatives of the Colombian government's *Acción Social* expressed frustration at being unable to perform its mission in the absence of sufficient official information on the population.

structural racial discrimination in Colombia. Recognizing the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) as the definitive authority on discrimination, the delegation would emphasize that states are responsible for more than state-sponsored, overt discrimination. In operationalizing the goal of discrimination eradication, the ICERD includes states' responsibilities to prohibit (1) discrimination and racism perpetrated by non-state actors,⁵⁶ and (2) any policy or action (or combination thereof) that has a discriminatory *effect*. In other words, the ICERD does not only pursue "equality in law," but also "equality in fact."⁵⁷ These and other provisions determine that the duty of states is undeniably a positive one.

Despite the language of inclusion and respect for diversity in the Colombian Constitution, in practice few aspects of life have improved considerably for most Afro-Colombians. In 1999, the UN Committee on the Elimination of Racial Discrimination expressed concern for the disproportionate impact of violence and poverty on Afro-Colombian communities, noting that they have increasingly been targeted by armed groups and put in "an atmosphere that is conducive to human rights violations and the destruction of cultural autonomy and identity."⁵⁸ Even eight years after this problem was identified, the frequency with which such conditions continue to prove extremely life-threatening for *comunidades negras* is noteworthy.

The delegation would like to reiterate the following sources/evidence of persistent racial discrimination:

⁵⁶ See *ICERD*, Article 2, Section 1(d).

⁵⁷ *Ibid.*, Article 1, Section 1.

⁵⁸ UN CERD, *Concluding Observations: Colombia*, 20 August 1999. UN doc. CERD/C/304/Add.76. The CERD also noted a "climate of impunity" that becomes an important issue of discrimination when considered alongside the fact of Afro-Colombians' disproportionate subjection to "violations of international human rights and humanitarian norms." See especially paragraphs 10-11.

1. There is a collective denial among most of Colombian society of the role of race in the unequal distribution of social, economic, and political goods. The “myth of mestizaje” as it is widely known in the region continues to “invisibilize” the existence of racial discrimination. This is evidenced in school curriculum by the virtual erasure of African-descended people from Colombian history and silence concerning their present contributions to the nation. Although Ley 70 requires the state to modify national school curriculum to reflect Afro-Colombian culture and history, very little has been done in this regard. Much concerted effort will be needed to begin to combat the discriminatory discourses that have been dominant for generations.
2. Afro-Colombians continue to be “invisibilized” in contexts of political representation. Low enrollment numbers for this minority group in institutions of higher education assure that such exclusion will continue. Little has been done to decrease the disparity between the percentage of the Colombian population that is of African descent and the percentage this population represents in governmental and educational institutions. As mentioned earlier in this report, even accurate statistics on the Afro-Colombian population have yet to be produced.
3. Although a significant amount of land has been granted to those communities found in the Pacific, title has been rendered useless for many by both active and passive displacement. Government inaction to either prevent displacement, protect those who have already fled, or provide the conditions for safe return has disproportionately impacted the enjoyment of the basic human rights of Afro-descendants, effectively annulling their cultural, social, and economic rights under the Colombian Constitution, Ley 70, and international law.
4. *Comunidades negras* that have successfully obtained collective title under Ley 70 and have remained on the land have been hindered from its full enjoyment by a lack of sufficient fund allocation by the state. Implementation of the development and decision-making powers guaranteed under the law has not been undertaken. The state’s failure to provide resources for Afro-Colombian development is particularly egregious considering the state’s demonstrated support of development projects such as oil palm that have proven to be detrimental to these communities. The state’s actions are discriminatory both in treatment and effect.
5. In those few instances in which the issue of discrimination is addressed by the Colombian state, it is often treated as though it is a concern that is isolated to “private” life and individual prejudices, not something that exists at a structural level.

Overall, the delegation is concerned by the lack of political will evinced by the Colombian state in relation to ameliorating the situation of poverty, marginalization, and

violence experienced by Afro-Colombian communities. Despite the progressive content and spirit of Ley 70, there are many important senses in which the law has remained dead letter. In light of the fact that the Colombian state is in many ways a very strong one, the delegation finds that the problem is not one of capacity, but rather of priorities. Its energies are distributed unequally, reflecting discrimination based on race.

IV. Afro-Colombians in the Atlantic Coastal Region: Challenging the Limits of Ley 70

Many of the conversations during the first week of the delegation's visit were centered on the Pacific region. As already explained, the collective title portions of Ley 70 explicitly focus on the Pacific and most of the collective titling has occurred in that region. Yet, the Caribbean coastal region of Colombia is also home to many Afro-descendants, many of whom do not identify as black because of the derogatory connotation still attached to this identity in local settings. In many interviews, the Atlantic, or Caribbean region, was referenced as a site for comparison and one in which new issues are emerging for Afro-descendant communities because of its particularities of land ownership and usage, racial identity, wealth disparities, and tourist development.

Increasingly, *comunidades negras* in the Atlantic region are organizing and even using Ley 70 to petition the state for collective title, at times to contest tourism mega-projects that are spreading throughout the region. The petitions for collective title have been controversial. It is often argued that Ley 70 should or even does apply to communities and regions outside the *cuenca Pacífica* that are similarly situated to those

in the Pacific (and, in particular, who have livelihoods that are centered around water), but claims by Afro-descendant communities in the Atlantic face an uphill battle. One difficulty they communities encounter is that they often occupy lands that are designated as national parks or reserved lands of the state.

Although there has been recent organizing around and respect for Afro-descendent identity on the Atlantic coast, this identity focus should neither be understood as a new phenomenon nor as one that primarily comes in response to the adoption of Ley 70. In fact, in the early-1980s, many student, cultural, and religious groups in the region began to reclaim “blackness,” imbuing the concept with value and promoting its rich cultural and historical significance.⁵⁹ This reclaiming of Afro-Colombian identity helped set the stage for the collective title claims now articulated by local communities of this “other” coast. Such claims are at the center of a number of current legal disputes, and have found strong support from Afro-Colombian organizations at both the regional and national level. Therefore, the delegates believe that it is quite possible that the Atlantic will be an important theater in which the scope and/or application of Ley 70 will be challenged (whether by Congress or the Constitutional Court) in the next few years.

Because the relationship between the Caribbean region and Ley 70 has been the subject of little in-depth discussion, three members of the delegation stayed an additional week to explore that relationship. These delegates spent four days in Cartagena, where they also visited nearby Villa Gloria (Boquilla) and the Islas del Rosario. The trip to the region overlapped with a national meeting of Afro-descendant community leaders in

⁵⁹ See, e.g., Alfonso Cassiani, “Las comunidades renacientes de la costa Caribe continental,” in *Afrodescendientes en las Américas: Trayectorias sociales e identitarias* (Claudia Mosquera, Mauricio Pardo, and Odile Hoffman, eds.), (Bogotá, 2002).

Cartagena, and delegates took advantage of that opportunity to meet advocates and activists from across the Atlantic region.

In many ways, the delegation sees the appeal to Ley 70 in the Atlantic as a symptom of the development obstacles and structural discrimination facing Afro-Colombian communities there. While the Commission is urged to take seriously the government's failure even to consider most of the Ley 70 petitions that have been filed in the region, the delegation also encourages it to use these appeals to Ley 70 as an opportunity to consider many of the issues that confront Afro-descendant populations in this region.

A. Collective Title

Ley 70 defines “*comunidad negra*” as a community “comprised of Colombian families of African descent that have their own culture, share a history, and have their own traditions and customs within their populated space that reveal and conserve an identity and consciousness that distinguish the community from other ethnic groups.”⁶⁰ Recall that Ley 70 requires that such communities form *Consejos Comunitarios* prior to requesting collective title. Although many argue that the authors of Ley 70 never anticipated the issue of collective land applications emanating from the Atlantic, Afro-descendant communities in the region have nevertheless formed *Consejos* and, in some instances, sought title. Information from INCODER notes that three collective titles have been granted in the department of Bolívar and one in Magdalena, both of which have

⁶⁰ Decreto 1745 de 1995, Article 3 (elaborating upon Ley 70): “En los términos del numeral 5, artículo 2 de la Ley 70 de 1993, Comunidad Negra es el conjunto de familias de ascendencia afrocolombiana que poseen una cultura propia, comparten una historia y tienen sus propias tradiciones y costumbres dentro de la relación campo-poblado, que revelan y conservan conciencia e identidad que las distinguen de otros grupos étnicos.”

Atlantic coastlines. However, the delegation has been unable to find out the precise location or owners of the title. Since the delegation returned home, members have sought information via email from INCODER on applications and title in the region, but have received no response.

While in the Atlantic, delegates spoke with members of the coastal community of Villa Gloria. Villa Gloria and nearby Marlinda (both within Boquilla) have formed a *Consejo Comunitario* (Villa Gloria y Marlinda), and have submitted an application for title under Ley 70. They filed the application in April 2000. In accordance with Decreto 1745, the application was publicized so that anyone who considered that she or he had title over the land could object.⁶¹ The delegation has been unable to uncover the disposition of the application. Community leaders claim that they have never heard back from INCODER. One document shows that a citizen of Cartagena presented opposition.⁶²

Delegates who traveled to Cartagena also spoke with a number of members of the community of Orika on the Isla Grande del Rosario, who have applied for collective title over much of the island. The stakes in the outcome of this application were raised the day before the delegates arrived for their visit. On the morning of March 22, 2007, nine police officers, several authorities from INCODER and a representative of the Ministry of the Environment arrived at the door of one of the island's long-term Afro-descendant residents with orders to evict him from the property. They left six or seven hours later after extended conversation with "Cuco" (the occupant in question), community leaders,

⁶¹ Aviso, April 4, 2000 (copy on file at Rapoport Center).

⁶² Carlos Jaime Barjuch of Cartagena was reported to have opposed the collective title. *Misión de Observación a la Situación de las Comunidades Afrodescendientes en Colombia: Parte Cuarta: El panorama de la violación de los Derechos Humanos y el Derecho Internacional Humanitario en territorios de Afrodescendientes*. Copy on file at Rapoport Center.

and over 100 residents from the nearby village of Orika. When the officials boarded the boat back to the mainland, the situation remained unresolved.

Javier Morales, or “Cuco” as he is known on the island, is an Afro-Colombian who moved to the Isla Grande 45 years ago, from nearby Isla Barú.⁶³ He was eight-years old at the time. Because he worked as a child and his family had few to no resources, he never learned to write, nor even to ride a bicycle. More than twenty years ago, he and his wife moved to and began tending four hectares near the edge of the island. The land, called “Buena Esperanza,” is registered in the name of a “white” man named Garcés who rarely comes to the island, and essentially has given Cuco free reign over it. Cuco is raising his family on the property and has constructed a restaurant and some small, eco-friendly, guest facilities on the land.

Although the police arrived with an eviction notice, INCODER’s original aim seems to have been to pressure Garcés to sign an agreement for the use of the land in exchange for rent and acknowledgment that the land belongs to the state. Since 2001, the Colombian government has, through INCODER and its predecessor agency, been involved in a process of “recuperating” the property on the island. By the end of March 2007, it had reached an agreement with nearly 80 percent of the occupants of the land of the island that the government has designated as “*baldíos reservados de la Nación*.”⁶⁴ Because the property belongs to the state, INCODER has drafted up an agreement by which the occupants—mostly white owners of vacation houses and hotels—may stay on the land in exchange for the payment of a percentage of its value as rent to the state.

⁶³ For a story on Isla Barú’s own battles between local Afro-Colombian residents and tourism developers, see Hugh Bronstein, “Spectacular Colombian island in tourism battle,” *Reuters*, February 21, 2007.

⁶⁴ See, e.g., “No titularán predios en las Islas,” *El Universal* (Cartagena), April 13, 2007, accessible at: www.eluniversal.com.co/noticias/20070413/ctg_loc_no_titularan_predios_en_las_islas.html.

INCODER has served eviction notices to many of those who have refused to enter into this agreement. Because Garcés has refused to agree to pay rent, Cuco was the recipient and subject of the eviction.

The media coverage surrounding the attempted expulsion treated it as an unintended, even unexpected side-effect of the state's plan. For native community leaders, however, the eviction order had much larger, and perhaps not so surprising, consequences. For this reason, Cuco has become a *cause celebre* of the recently organized Afro-Colombian community on the island, which is using Ley 70 to attempt to assert its rights to title over part of the island. In fact, most of the island's residents that came to protest the expulsion made the forty-five minute walk from Orika, a village that was established when community members occupied the land in 2001 after the state expelled narco-traffickers from the area as a part of its recuperation efforts. The village residents then organized a *Consejo Comunitario* and have since applied for collective title of it and other land on the island.⁶⁵ INCODER responded with a letter to the *Consejo* stating that the island is not constituted of "*tierras baldías*" as required by Ley 70, and therefore is not eligible for consideration. Consequently, INCODER has not recorded the community's application in its list of applications that have been accepted or *en trámite*. It has denied the community's right to appeal the procedural disposition of the case on the ground that it was not eligible to apply in the first place.

The attempted eviction of Cuco has thus provided a way for the community to pressure the government to move forward with an official consideration of its Ley 70 application. Cuco has added to that pressure by, thus far, refusing to sign any agreement

⁶⁵ Although the community has a sketch of the property over which it would like to claim collective title, it filed for title to the entire island, leaving INCODER to decide which portions of the island were eligible for the title. Interview with Maria Paula Saffon, March 30, 2007.

with the government for use of the land. He might be forced to reconsider his position, however, given that the *Consejo de Estado* declared on March 27 that none of the lands in the archipelago can be adjudicated because they are all *baldíos reservados*.⁶⁶

B. Development and Systemic Discrimination

The case of the Isla Grande del Rosario is representative of many of the issues at play on Colombia's Atlantic coastline. Although Afro-Colombian communities have only recently begun to organize and identify themselves as culturally distinct in the region in the last ten years, the prevalence of both direct and systemic discrimination based on race is undeniable. In the department of Bolívar, where Cartagena and the Islas del Rosario are located, sixty-six percent of the population is black. Although Cartagena is known for its cosmopolitan appeal and world-class hotels and restaurants, it is also one of the poorest cities in the country. The poverty rate exceeds 75 percent, while 25 percent of the population lacks basic necessities.⁶⁷ Departments in the Atlantic region have been said to have the lowest economic development indicators in the country with the exception of the Pacific department of Chocó. The region has the highest rate of infant mortality and several of the departments have among the highest levels of malnutrition in the country.

When these disparities of wealth are discussed, they are often done so in a way that ignores the disproportionate effects on Afro-descendants. A recent Associated Press

⁶⁶ Decreto 2664 de 1995, Article 9 specifically states that Ley 70 does not apply to “[l]os baldíos que constituyan reserva territorial del Estado.”

⁶⁷ “Perspectivas del desarrollo comunitario y la calidad de vida en Cartagena: estudio de caso en Los Barrios, La Central, El Milagro y San José de Los Campanos - Zona Sur Occidental”, Universidad de San Buenaventura, Grupo de Investigación en Desarrollo Social – Gides, Centro de Investigaciones, Cartagena, 2003.

article on Cartagena, for example, only makes one somewhat veiled reference to race.⁶⁸ Seemingly as a way to inform its readers that Afro-descendants live in the area, the article quotes a priest who runs the Afro-Caribbean Cultural Center.⁶⁹ Even while pointing to Cartagena's 15 percent unemployment rate to support its claim that in Cartagena, "the gulf between Colombia's rich and poor is at its widest," the article fails to discuss which parts of the population are most likely to be unemployed and/or poor. The AP story reflects the way that these issues are often discussed on the Caribbean coast itself, even among some of those who would be identified as "black." Discussions of disproportionate effects based on race draw attention to a painful history of slavery, exclusion, and persistent power differentials from which many would prefer to distance themselves.⁷⁰

Still, as the tourist industry has expanded and been dominated by mega-projects in the Caribbean, Afro-Colombian communities have been literally pushed to the margins, where their existence continues to be threatened. It is estimated that fifty percent of internally displaced Colombians are of African descent. Their displacements, of course, are not all a direct result of armed conflict. With regard to the Caribbean, the early 1970s' development of Boca Grande, the tourist beach center of Cartagena, led to one of the first forcible displacements of between 2500 and 3000 residents of a fishing village, most of whom were Afro-Colombian.⁷¹ Continued development along the

⁶⁸ Associated Press, "Poverty, Crime Cloud Cartagena's Tourism Hopes," April 22, 2007.

⁶⁹ Ibid. The quote from the priest is short but telling, but only if one already knows the context: "We're a historic and cultural heritage site and yet have the uncivilization of the most bitter and trying problems of injustice, of decadence, of inequity."

⁷⁰ See Elisabeth Cunin, "De la esclavitud al multiculturalismo: el antropólogo entre identidad rechazada e identidad instrumentalizada," in *Conflicto e (in)visibilidad: Retos en los estudios de la gente negra en Colombia* (Eduardo Restrepo and Axel Rojas, eds.), (Cali, 2004).

⁷¹ Ruben Hernández Cassiani, *El Caribe Continental: Entre la Reafirmación y la Desesperanza* (draft).

coastline between Cartagena and Barranquilla has led to similar displacements for the past 35 years.

Villa Gloria offers a demonstrative example of the small coastal villages just outside Cartagena that have been affected by the aspirations of tourism developers. Most of the people who live there are of African descent, and most have moved (or, better said, been pushed) there in the past fifteen years. There are no paved roads to the village, only tracks cut into the sand by motorcycle and bicycle taxis. Although it considers itself to be a fishing village, the ocean waters it borders are contaminated. The village has no running water.

With or without collective title, Villa Gloria acts in some ways as a semi-autonomous community. It has set up its own schools and instituted “ethno-education,” which is provided for in Ley 70. The delegation is under the impression that the village receives some funding for its schools and that the municipality delivers potable water (which is held in open, communal containers), but that it is the recipient of little else in the way of development resources. It is without sewer lines, and villagers build their own houses and schools, which are in a mixed state of completion. The *Consejo Comunitario* seems essentially to govern the village in its day-to-day operations, primarily due to a lack of interest from any other administrative body. In this sense, the community resembles the description given some years ago by Jaime Arocha of communities in the Pacific: “On the Pacific littoral, [Afro-Colombians] were able to develop relatively autonomous territorial, economic, and political formations, but were forgotten by the state. For example, even when offered, education, health care, marketing of agricultural

products, and transportation are poorly delivered. This noticeable disregard has been a perverse form of racial discrimination.”⁷²

C. Conclusion

Because of the role that disputes over land title in the Atlantic are likely to play in the future development of Ley 70 and because of the extreme poverty and ongoing threats to and by development that Afro-descendant communities face in the region, the delegation encourages the Commission to visit the area. The delegation also encourages the Commission to consider the extent to which successful claims for collective title might respond to persistent systemic underdevelopment, exploitation, and discrimination that Afro-descendant communities face in the region.

V. Recommendations

In conclusion, the delegation found that a significant gap exists between the intended effects of Ley 70 and the persistent reality of marginalization and discrimination suffered by Afro-Colombians. While this legislation promises to provide *comunidades negras* with collective land, sustainable development, health, and education, their rights continue to be thwarted by lack of implementation of much of the legislation as well as by armed actors, the tourism industry, agro-business, and the drug trade. These problems are compounded, and indeed facilitated, by the unwillingness of the Colombian state to prevent rights violations and fulfill its obligations under domestic and international law.

⁷² Jaime Arocha, “Inclusion of Afro-Colombians: Unreachable National Goal?,” *Latin American Perspectives*, Vol. 25, No. 3 (May 1998).

Furthermore, the current interpretation and implementation of Ley 70 does not comprehensively address the needs of all of Colombia's Afro-descendent population, most blatantly excluding those who live in urban areas and those outside of the Pacific region.

Considering the findings outlined in this report, the delegation would like to suggest that the Commission do the following:

- *Compile information regarding the status and content of new and prospective legislation that could contravene the spirit and substance of Ley 70. Again, these include the Ley Forestal, Ley del Agua, Ley de Desarrollo Rural, and Ley de Minas.*
- *Investigate the role of agro-business interests in the violation of rights accorded to Afro-Colombians. This includes illegal incursions into traditional lands and possible collusion with armed groups in displacement.*
- *Interview comunidades negras, agricultural companies, and the government about implementation of the consulta previa requirement in private commercial projects and state development initiatives that could conceivably impact the enjoyment of collective property.*
- *Pursue questions related to the government's cadastral designation of lands traditionally inhabited by certain Afro-Colombian communities. Note, for instance, how the classification of certain lands in the Atlantic as baldíos reservados (rather than tierras baldías) precludes them from being collectively titled under Ley 70.*
- *Visit Afro-Colombian communities displaced by the multifarious processes described in this report, paying particular attention to how forced*

displacement undermines the rights codified in Ley 70 while causing violations of their most basic human rights. While it is clear that displacement disproportionately impacts Afro-Colombians, the state does not produce disaggregated statistical information that reflects this reality. This oversight forecloses the development of programs and plans of action specifically tailored to the needs of this minority population.

- *Obtain detailed information from INCODER regarding the number and location of Consejos Comunitarios and applications for collective land titles outside of the Pacific region. This would include the status of said applications, statistics on the number rejected, and reasons for their denial.*
- *Explore possibilities for broadening the scope of current legislation so as to benefit all of Colombia's Afro-descendent population, particularly those living in urban areas or outside of the Pacific region.*

In the delegation's opinion, a clear link exists between the flawed implementation of Ley 70 (and subsequent legislation) on the one hand and a persistent lack of political and normative commitment to Afro-Colombians' rights on the other. Important aspects of many laws that affect Afro-descendants have gone either partially- or fully-unimplemented. The complex humanitarian crisis caused by displacement has been met with state inaction, neglect, and recrimination. While the Colombian government claims to promote development through its support of a variety of mega-projects (agricultural, infrastructural, commercial, and touristic), it does so at the expense of commitment to rights promised to its Afro-Colombian citizens. The creation of mechanisms for increasing Afro-Colombian enrollment in higher education has been nominal, assuring the reproduction of their under-representation in the Colombian political system.

One of the delegation's most important lessons is that it is impossible to investigate or understand collective land claims in a vacuum. Delegates encourage the Commission to view all of the above obstacles and the government's selective inaction in confronting them in light of the definition of structural discrimination that has come to be accepted in international law. A discourse of inclusion and equality does not mute empirical facts that attest to the opposite; neither can such discourse serve as a substitute for committed government action to ensure the fulfillment of its promises to all of its citizens.

Appendix A: Delegation Biographies

Members of the Delegation

Nicki Alam will receive a Masters of Public Affairs, with a concentration in international relations, from the Lyndon B. Johnson School in May 2007. Her undergraduate degree, also from the University of Texas, is in the field of communication theory and public relations. Alam's academic research focuses on U.S. foreign diplomacy and African affairs. Most recently, she completed an internship at the U.S. Mission to the United Nations, where she worked on East Africa relations. She has had the pleasure of traveling through South America, including trips to Chile and Argentina, but this is her first trip to Colombia.

Alysia Childs obtained her B.A. degree in Spanish from Spelman College in Atlanta, Georgia in 1997 before pursuing graduate study in International Development at the Master of Science in Foreign Service Program at Georgetown University, where she received her M.S. degree in 2006. She is currently a first-year doctoral student in the African Diaspora Program of the University of Texas at Austin's Department of Anthropology. Her interest lies in African-descendant community development within Latin American countries, specifically examining Colombia and the Dominican Republic. Her current research interrogates the intersection of color and class with African-descendant populations comparatively analyzing the aforementioned countries and Washington, D.C.

Joshua Clark is a Master's degree candidate at the Lozano Long Institute of Latin American Studies. Originally from Battle Creek, Michigan, he received his B.A. in Political Science from Butler University in Indianapolis. As an undergraduate, he studied abroad in Central America through the Center for Global Education's Sustainable Development and Social Change program. He has since returned to Nicaragua and El Salvador multiple times, once as an international observer to the 2004 Salvadoran presidential election, and most recently to conduct research for his thesis. Clark's research examines indigenous-rights organizing in El Salvador and the state's reluctant engagement with multiculturalism and recognition of indigenous peoples. More broadly, Clark's studies question how the concept of "indigeneity" is defined and represented in the discourses of states, of social movements, and in international law.

Robert Davenport has a bachelor's degree in Social Anthropology. He is now studying for a Master of Arts degree in Latin American Studies at the University of Texas at Austin, focusing on anthropology, human rights, social development, and environmental issues. Before coming to the University of Texas, Davenport worked as a cameraperson, producer and editor for various media outlets and organizations, including New York Times Television. Currently, he is producing a film about social conflict and youth gangs in Guatemala, corresponding with his interest in social advocacy for youth and the prevention of violence in that country.

Paul Sebastian Di Blasi grew up in San Antonio, Texas, and received a B.A. in English and Political Science from Williams College. After college, he worked several jobs, including Voter Registration Project Coordinator for Southwest Voter Registration and Education Project and Math GED Instructor in Spanish. Last summer he clerked at the South Texas office of the Texas Civil Rights Project where he aided in disabilities litigation against discriminatory government entities. Paul has just finished his third semester at the University of Texas at Austin School of Law. He is active in aiding Professors Jinks and Sullivan in litigation regarding the Military Commission Act and the Torture Victim Protection Act.

Karen Engle, coordinator of the project, is W.H. Francis, Jr. Professor in Law and Director of the Bernard and Audre Rapoport Center for Human Rights and Justice at the University of Texas School of Law. She received her J.D. *magna cum laude* from Harvard Law School in 1989 and her B.A. with honors from Baylor University in 1984. Professor Engle writes and lectures extensively on international law, human rights, and employment discrimination. She is currently in Colombia researching the relationship between culture, human rights, and self-determination in the context of international indigenous advocacy.

Sylvia Romo received her B.A. in Peace and Conflict Studies at the University of California, Berkeley in 1999. While attending Berkeley, Romo became involved in human rights solidarity work with the Zapatista indigenous movement of Chiapas, Mexico. She has collaborated in the construction of the Zapatista Autonomous Education System since 1997, including volunteering for two years to train indigenous teachers at the first secondary school. In 2000, Romo joined the Center for Justice and Accountability in San Francisco as a paralegal and research assistant. There, her research contributed to precedent-setting civil suits against those responsible for torture in Chile, Honduras, Haiti and El Salvador. Romo is currently in her last semester as the Donald D. Harrington Master's Fellow at the University of Texas at Austin's Lozano Long Institute of Latin American Studies, where she is focusing on theories of democratic participation and indigenous autonomous governance.

Amber VanSchuyver is a second-year law student at the University of Texas and has a long-standing interest in human rights issues, especially concerning Latin America. She graduated from the University of Kansas with a B.A. in Spanish, Latin American Studies and Political Science. As an undergraduate, she completed research on women's groups combating violence in Ciudad Juarez, Mexico. Last summer, she was an intern at Texas RioGrande Legal Aid, where she helped to provide civil legal services to low-income individuals. She has also interned at the Equal Justice Center to assist immigrant workers get paid for the work that they have completed. After graduation, she plans to work in Texas to provide legal representation to low-income individuals.

Kendall Zanowiak is the Coordinator for the Family-based Immigration Program at the Political Asylum Project of Austin. She graduated with a B.S. from Georgetown University's School of Foreign Service in 2004 with a degree in Culture and Politics and a minor in Justice and Peace Studies. Her undergraduate thesis evaluated the work of

truth commissions in Latin America as a form of testimony and compared them to other cultural expressions of testimony resulting from state-sponsored terrorism. After graduation, Zanowiak worked as a Research Associate for the Guatemala Human Rights Commission and interned at the Organization of American States in the Conflict Resolution Special Program. She plans to graduate with an M.A. from The University of Texas Lozano Long Institute of Latin American Studies in May 2007. Zanowiak's current research focuses on Latino immigrant claims to space within the nation-state.

Assisting with the Coordination of the Project in Austin and Bogotá

Sarah Cline has worked as the Administrator of the Bernard and Audre Rapoport Center for Human Rights and Justice since July 2006. Cline received her M.A. in International Relations from Baylor University and her B.A. cum laude in International Relations and Sociology from Webster University in Geneva, Switzerland. Prior to joining the Rapoport Center, Cline worked for various intergovernmental and nongovernmental human rights organizations, including the United Nations Human Rights Committee and World Vision International in Geneva, and The Carter Center in Atlanta, Georgia.

Elise Harriger received her B.A. in Plan II Honors from The University of Texas at Austin in 2003. Upon graduation, she studied theology at the graduate level at The University of Oxford, Linacre College and received a Post-Graduate Diploma. Her exposure to liberation theology and social justice issues led her to serve Latino immigrants at Casa Marianella, a local Austin non-profit emergency shelter. This past summer she interned as a Rapoport Summer Fellow at the Program to Abolish the Death Penalty at Amnesty International's Washington D.C. office. Currently, Harriger is a Human Rights Scholar at the Rapoport Center for Human Rights and Justice at the University of Texas Law School.

Rachel Lopez received her B.A. in Political Science, Sociology, and International Studies from Northwestern University in 2003. This past summer she worked as a Rapoport Summer Fellow in the Rapporteurship for indigenous rights at the Inter-American Commission on Human Rights. She is the coordinator for the Human Rights Law Society at the University of Texas Law School. Currently, Lopez is a Human Rights Scholar at the Rapoport Center for Human Rights and Justice at the Law School, where she works on increasing opportunities for students to do human rights work and identifying and expanding the human rights curriculum across campus.

Fernando Serrano received his undergraduate degree in Anthropology from the National University of Colombia and his Master's degree in Conflict Resolution at the University of Bradford, UK. He has worked both as an academic and an activist on issues of gender, sexuality, cultural identity and the construction of peace. In particular, he has focused on the recognition of the rights of Afro-Colombians, urban youth and sexual minorities. He has worked as a university researcher and as a consultant with national and international non-governmental organizations and agencies.

Elizabeth Walsh received her BA in History and Ethnic Studies at Brown University. She then worked as assistant director of Posada Esperanza, a residential service for immigrant women in Austin, Texas. She is currently living in Bogotá, Colombia, where she is researching the effects of armed conflict and forced displacement on Afro-Colombian communities from the Pacific, a project that she initially began as a Fulbright Scholar. She also works as a volunteer for AFRODES, a non-governmental community organization in Bogotá.

Appendix B: Interviewee Biographies and Interview Schedule

Interviewee Biographies

Guisiken Alegría Vidal is a lawyer, human rights activist, and representative of the *Red de Consejos Comunitarios del Pacífico Sur*.

Florel Angulo is a representative of the *Federación de Asociaciones por los Derechos de las Comunidades Afro del Putumayo* (FEDECAP).

Eliana Antonio is a Colombian lawyer representing the *Proceso de Comunidades Negras* (PCN) in collaborative work carried out with the *Centro de Investigaciones Sociojurídicas* (CIJUS) at the *Universidad de los Andes*. The PCN is an umbrella organization of Afro-Colombian community groups from the Caribbean and Pacific coasts. PCN works to defend the rights of Afro-Colombians in the areas of development, identity, political participation, and land. PCN is a member of the United Nations' Afro-Colombian working group.

Raul Arce is a representative of the *Subdirección de Atención a la Población Desplazada* of the Colombian Executive Branch's *Acción Social*.

Jaime Arocha is an associate professor at the *Universidad Nacional de Colombia*. He is the cofounder of the University of Amsterdam Center for the Study of African Diaspora in Europe and Latin America. Dr. Arocha also served as a member of the Presidential Commission for the Study of Violence in Colombia.

Gustavo Balanta Castilla is a journalist, human rights activist and Afro-Colombian organizer from the Caribbean coast who works with the *Fundación Surcos en América Latina*.

Farid Benavides is Profesor of the Law and Political and Social Science at the *Universidad Nacional de Colombia*. He is also coordinator of *Colectivo de Estudios Poscoloniales en América Latina* at the University.

Daniel Bonilla is a professor of law at the *Universidad de los Andes*. His research interests include philosophy of law, rights theory, justice theory, and multicultural constitutionalism, and he teaches a legal clinic on a Ley 70 case concerning a community on the Atlantic Coast.

Héctor Cárdenas is the Director of Ethnic Issues in the Colombian Institute for Rural Development (*Instituto Colombiano de Desarrollo Rural*), INCODER. INCODER is the current implementing administrative body that oversees the implementation of land titling and reforms. It is housed within the Colombian Ministry of Agriculture.

Rudesindo Castro Hinestroza is a longtime community leader, writer and grassroots intellectual from the Chocó department of Colombia. He works with *Instituto Pensar*,

the *Instituto de Estudios Sociales y Culturales* at the *Pontificia Universidad Javeriana* in Bogotá.

Eduardo Cifuentes Muñoz is Dean of the School of Law at the *Universidad de los Andes*, as well as a professor of private and constitutional law. He worked for Colombia's *Defensoría del Pueblo* (Public Advocate's Office) until 2003, when he became Director of the UNESCO Office of Human Rights. He was also Magistrate and President of the Constitutional Court.

Paola Cobo is the Human Rights Program Manager at USAID.

Emigdio Cuesta Pino is Executive Secretary of *Conferencia Nacional de Organizaciones Afro-Colombianas* (CNOA), a federation that works to unite Afro-Colombian activists around national projects.

Daisy is a coordinator for *La Palma Negra*, a youth dance group in Soacha, a displaced community located in the south of Bogotá.

Dario Fajardo Montaña is a consultant for the Food and Agriculture Organization of the United Nations.

Ever de la Rosa is legal representative of the *Consejo Comunitario* and President of *Asociación de Comunidades Negras* of the *Islas del Rosario*.

Viviana Ferro is a representative from the *Subdirección de Atención a la Población Desplazada* of the Colombian Executive Branch's *Acción Social*.

Adriana Fuentes is a representative of the *Unidad de Protección de Tierras de la Población Desplazada* of *Acción Social*.

Silvio Garcés serves as a lead government administrator on land titling claims for Afro-Colombian communities, within INCODER. Mr. Garcés has worked in this capacity for the Colombian government since 1998. He is considered a leader in the Afro-Colombian community, and is also recognized for having perhaps the most technical and administrative experience in the land titling process. Mr. Garcés has participated in developing legislation focused on Afro-Colombian communities since the early 1990s.

César García is an Attorney at the Association of Internally Displaced Afro-Colombians (AFRODES). AFRODES was established in 1999 as a result of the forced displacement of Afro-Colombians from their land. The organization has played a fundamental role in defending Afro-Colombian territorial, civil, cultural, economic, and environmental rights and is focused on pressuring the Colombian government to produce conditions in which displaced persons might safely return to their land.

Camila Gomez serves as Program Development Specialist at USAID.

Libia Grueso is a social worker, civil rights activist and co-founder of the PCN. She is one of the most important intellectuals to the Afro-Colombian rights movement, and focuses her work on organizing and environmental defense in the Pacific region.

Yohana Herrera is a representative of the *Unidad de Protección de Tierras de la Población Desplazada* of the Colombian Executive Branch's *Acción Social*.

Rubén Hernández is an historian, and is Executive Director of *Corporación Jorge Artel* in Cartagena.

Efraín Jaramillo is Director of the *Colectivo de Trabajo Jenzera*. *Jenzera* works to create inter-ethnic alliances between indigenous and Afro-Colombian communities, especially in defending territories from corporate take-overs and petitioning the government to respect the integrity of lands shared by the two minority groups.

Luis Gerardo Martínez is a representative of the technical team of CNOA.

Jattan Mazot is Vice-President of the Association AFRODES. Prior to his involvement in AFRODES, Mazot was a community organizer in Bellavista, Choco.

Gregorio Mesa is the Academic Sub-Director of *Planeta Paz*, an NGO working against discrimination and for peace in Colombia.

Javier Morales (“Cuco”) is the proprietor of a restaurant and small guest house on the *Isla Grande del Rosario*.

Claudia Mosquera Rosero-Labbé is a professor of social work at the *Universidad Nacional de Colombia* in Bogotá. A feminist and human rights activist, she has written and edited volumes on Afro-Colombian movements, and is especially interested in the question of reparations for African-descended people in the Americas. With Jaime Arocha, Ms. Mosquera founded the Grupo de Estudios Afro-Colombianos at the Universidad Nacional in 2000.

Pastor Murillo is Director of Ethnic Issues at Colombia's Ministry of Interior.

Gabriel Muyuy is a public defender in the office on Indigenous and Ethnic Minority Issues of the *Defensoría del Pueblo*, the Public Advocate's Office.

Maria Elvira Naranjo is a Master's degree candidate at the *Instituto de Estudios Políticos y Relaciones Internacionales* of the *Universidad Nacional de Colombia*.

Francisco A. Ortega is director of the *Centro de Estudios Sociales, Facultad de Ciencias Humanas*, at the *Universidad Nacional De Colombia*.

Jaime Prieto is a contractor at USAID.

Ramona is a representative of the *Grupo de Mujeres-AFRODES*.

Eduardo Restrepo is a member of the faculty at the *Instituto Pensar* of the *Pontificia Universidad Javeriana*. Mr. Restrepo has conducted fieldwork in the southern Pacific region of Colombia for over twelve years. His work spans from the politics of blackness in Colombia to critiques of modern anthropological theory. He recently completed his doctoral dissertation at the University of North Carolina, Chapel Hill.

Axel Rojas is a professor of anthropology at the *Editorial Universidad del Cauca*, in Popayán. He has written and compiled volumes on Afro-Colombian movements and rights struggles, focusing his research on the education system and “ethno-education.”

Marco Romero is the president of the *Consultoría Para Los Derechos Humanos y el Desplazamiento* (CODHES), a non-governmental organization that researches and advocates for victims of forced displacement in Colombia.

Carlos Rosero is head of the National Coordinating Body of the PCN. He is one of the founding members of the PCN and a leading protagonist in the struggle for collective appropriation of traditional territories of the Pacific coastal rainforest by Afro-Colombian communities.

Gloria Sanchez is a community leader and member of the *Consejo Comunitario* of Villa Gloria y Marlinda, located outside of La Boquilla.

Yamile Salinas is a researcher for the *Procuraduría General de la Nación* at the *Instituto de Estudios para Desarrollo y la Paz* (*Indepaz*). She has written widely on the issue of displacement, especially as it relates to coca eradication programs.

Liliana Obregón Tarazona is a professor of international law at the *Universidad de los Andes*.

Ángel Tolosá serves as Social Sector Assessor at *Planeta Paz*.

Constanza Usa is a representative of the Ethnic Directorate of the *Ministerio del Interior*.

Oswaldo Porras Vallejo is Director of Sustainable Development at the *Departamento Nacional de Planeación*.

Carlos Julio Vargas Velandia serves as legal counsel on human rights at the United States Embassy in Bogotá.

Interview Schedule

March 12, 2007

“Panorama general de la Ley 70 y de los derechos de comunidades afrocolombianas”

Participants

- Jaime Arocha
- Daniel Bonilla
- Eduardo Cifuentes Muñoz
- Carlos Rosero

March 13, 2007

Institutional Perspectives

- *Defensoría del Pueblo*: Gabriel Muyuy
- *Departamento Nacional Planeación*: Oswaldo Porras Vallejo
- INCODER: Héctor Cárdenas

Meeting with AFRODES

- Cesar Garcia
- Jattan Mazot

“Panorama nacional y situación regional de los derechos humanos de las comunidades afrocolombianas y la implementación de la Ley 70”

Participants

- Guisiken Alegría Vidal
- Florel Angulo
- Gustavo Balanta Castilla
- Rudesindo Castro
- Libia Grueso

March 14, 2007

Institutional Perspectives

- *Acción Social, Oficina de Derechos Humanos de la Presidencia de la República*
- *Food and Agriculture Organization*: Dario Fajardo
- *Indepaz*: Yamile Salinas
- *Ministerio del Interior*: Pastor Murillo

Perspectives of Displaced People (focus on women and youth)

- Visit to Soacha (displaced community south of Bogotá)
 - Ramona (AFRODES)
 - Daisy (*La Palma Negra*)

March 15, 2007

NGOs' and Cooperation Agencies' Perspectives

- USAID/U.S. Embassy
 - Paola Cobo
 - Efraín Jaramillo
- CODHES: Luis Gerardo Martínez
- *Planeta Paz*: Marco Romero
- CNOA: Ángel Tolosá
- *Jenzera*: Carlos Julio Vargas

Lunch meeting on Reparations and anti-discrimination

- Claudia Mosquera

Meeting on Palma Aceitera and the Pacific region: *Palma Africana* Film Presentation

- Maria Elvira Naranjo

March 16, 2007

Meeting on the Future of Ethnic Land Titling

- Silvio Garcés

Delegation Presentations and Conversation with Experts

Participants

- Eliana Antonio
- Jaime Arocha
- Farid Benavides
- Claudia Mosquera
- Liliana Obregón Tarazona
- Francisco A. Ortega
- Eduardo Restrepo
- Axel Rojas

March 21, 2007

Meeting with *Corporación Jorge Artel* in Cartagena

- Rubén Hernández and others

March 22, 2007

Visit to Villa Gloria

- Interviews with Gloria Sanchez and other local residents
- Site visits to community elementary schools

Meeting in Cartagena with representatives of *Consejos Comunitarios* from across the Atlantic coastal region (including from Palenque de San Basilio and Isla de Barú)

March 23, 2007

Visit to Isla Grande del Rosario

- Ever de la Rosa
- Javier Morales
- Other community members and leaders

Appendix C. Distribution of the Afro-Colombian Population in Colombia (courtesy Silvio Garcés, INCODER)

