

Assessing Law 70: A Fanonian Critique of Ethnic Recognition in the Republic of Colombia

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Abstract

This article uses a political theory framework embedded within the theory of recognition to analyze the potential virtues and shortcomings of the legal recognition of Afro-Colombian communities' right to land and cultural preservation through Law 70. The article analyzes the historical and institutional context of Law 70 as well as its content. It relates the multicultural dimension of the 1991 Colombian Constitution to the phenomenon of identity politics and argues that the Constitution and Law 70 only offer a formal level of recognition. Using Frantz Fanon's critique of recognition in post-colonial contexts the text further argues that such formal recognition, while having some limited benefits, can potentially reproduce subtle relations of colonization akin to a form of *misrecognition*.

Introduction

In 1991, the Republic of Colombia recognized the ethno-cultural diversity of its population through a new constitution. In 1993, this constitutional recognition gave birth to Law 70, also known as the Law of blackness (*Ley de negritudes*). To this day, Law 70 represents a model of legal recognition for Afro-descendent on the continent. The scope of benefits for Black communities deriving from the law is very broad: collective land rights, ethno-education rights, political representation rights. The content of Law 70 is therefore highly progressive and represents a genuine step forward for these Afro-descendent communities after centuries of oppression, invisibilization and forced assimilation. In spite of these legal advancements the current state of the Afro-Colombian population nevertheless remains very problematic since they continue to suffer greatly from many socio-economic problems.

Indeed, rural Black communities suffer greatly from the armed conflict still afflicting Colombia's countryside and an estimated 13% of the Afro-Colombian population is in a situation of forced internal displacement because their lands are located in areas of lawlessness where narco-traffic, guerrilla and paramilitary activities are increasing ever since the early nineties.

Poverty is another major problem and impacts the lives of both rural and urban Afro-Colombians (Rodríguez Garavito, Alfonso Sierra, and Cavalier Adarve 2008, 30-31). In Buenaventura, an almost entirely Afro-Colombian city, up to 80% of the population lives in poverty (De Roux 2010, 14). This general economic marginalization means that almost 15% of the Afro-Colombian population suffers from hunger. This is twice as much as the average Colombian population (7.22%) (Rodríguez Garavito, Alfonso Sierra, and Cavalier Adarve 2008, 31). Living conditions further reflect this economic marginalization since the access of Black communities to basic services such as running water, sewage systems and access to electricity is a lot lower than the average population (Rodríguez Garavito, Alfonso Sierra, and Cavalier Adarve 2008, 54-57).

Illiteracy is another social problem affecting Afro-Colombians as almost twice as many Afro-Colombians as *Mestizos* are considered illiterate (Rodríguez Garavito, Alfonso Sierra, and Cavalier Adarve 2008, 41-44). This low literacy rate reveals a broader problem with education for Afro-Colombian communities since 11% of Afro-Colombian children do not attend primary school while 27% do not attend secondary education (Rodríguez Garavito, Alfonso Sierra, and Cavalier Adarve 2008, 43). Access to tertiary education therefore logically remains difficult as well.

Afro-Colombians generally occupy positions which necessitate fewer qualifications and which are less remunerated (Garavito et al. 2013, 7-8). With equal qualifications, they are less likely to be called for an interview than *mestizos*¹ and indigenous people when applying for work (Garavito et al. 2013, 18). Unemployment therefore affects Afro-Colombians in big urban centers with a majority *mestizo* population because of discrimination but it also affects Afro-Colombian communities in Black regions such as Chocó because of lack of opportunities. In these isolated regions, work conditions for Afro-Colombians are difficult as they usually serve as cheap labor on palm plantations and in other primary sector industries.

Research has shown that mainstream media plays a role in the reproduction of racial stereotypes as they relate blackness with hyper-sexuality, strength, folklore and happiness, dance, servility and social problems (León Baños 2012, 24-30). The phenomenon of racism towards Afro-descendent in Colombia is well documented and contrasts with the official discourse of Latin America as a racial democracy.

Given all these social difficulties, it is therefore logical that the life expectancy of Afro-Colombians is a lot lower (64,6 for men and 66,7 for women) than the average for the Colombian population taken as a whole (70,3 for men and 77,5 for women). These numbers mean that the average Afro-Colombian woman lives 10,8 years less than the average Colombian woman (Rodríguez Garavito, Alfonso Sierra, and Cavalier Adarve 2008, 29-30).

Facing these facts, it is more than legitimate to critically assess the socio-economic potential of Law 70 and the legal recognition of Afro-descendants in Colombia. In this article I suggest that the legal framework of recognition adopted by Colombia reflects some key issues with the politics of recognition in post-colonial settings. I argue that the phenomenon at play in Colombia can better be understood through a Fanonian critique of the post-Hegelian theory of identity politics.

This article is divided into five sections. Section one gives a brief overview of the theories of recognition and multicultural citizenship. Section two discusses the 1991 Colombian constitution and relates its promotion of ethnic diversity and cultural preservation to the politics of recognition. Section three offers an in-depth analysis of the content of Law 70. Section four underlines the political ideals of Afro-Colombian social movements and relates them to the provisions of Law 70. Finally, section five provides a critical analysis of Law 70 through Fanon's theory of identity formation in post-colonial settings.

Identity Politics

It is usually argued that from the 1960's and 1970's political struggles have switched from an emphasis on questions of wealth redistribution to questions of identity (Fraser and Honneth 2003, 7-9). This change was followed and transposed to the field of political theory which, from the early 90's, was marked by an increase in research and literature dealing with identity-related topics.

Identity theorists advocate for a politics of difference. Axel Honneth argues that all political struggles are founded on a feeling of disrespect experienced by subaltern identities. This feeling of social contempt becomes the main motivational factor for struggles for recognition to be waged. The experience of disrespect, understood as an experience of misrecognition for the identity at stake, leads to an experience of social suffering and potential psychological harms (Honneth 1996, 2007). Charles Taylor shares this view and argues that:

The thesis is that our identity is partly shaped by recognition or its absence, often by the *misrecognition* of others, and so a person or a group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. Nonrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being (Taylor 1994, 25).

Honneth and Taylor's theories are heavily influenced by Hegelian concepts and this theory needs to be traced back to Hegel's famous lordship and bondage dialectic (usually referred to as master/slave dialectic) in the *Phenomenology of Spirit* which elaborated the idea that one's identity and self-consciousness needs recognition by another self to fully develop itself. Hegel states that "self-consciousness exists in and for itself when, and by the fact that, it so exists for another; that is, it exists only in being acknowledged" (Hegel 1997, 111). To reach such mutual recognition, he describes a struggle between two consciousnesses mutually denying recognition to each other and which try to prove their liberty to the other by risking their life in a struggle to the death. The struggle ends when one of the two consciousnesses, afraid of losing its life, becomes the servant of the other. This leads to an asymmetric relation of recognition where the master is recognized by a consciousness which he himself does not recognize. The recognition is therefore unsatisfactory. In the end it is the dominated consciousness which reaches the truth of its certainty through the experience of work.

Will Kymlicka does not adopt a Hegelian framework and rather emphasizes the importance of identity from a liberal point of view. He argues that liberal societies ought to protect cultures because forcing someone to abandon her culture is a non-reasonable expectation in a political system which promotes freedom. Further, liberalism ought to protect cultures because a plurality of cultures offers the possibility for the citizens of multicultural societies to make informed choices on their own understanding of what the good life ought to be. Multiculturalism therefore promotes freedom by broadening the horizon of choices of the citizens (Kymlicka 2000, 75-105). Kymlicka offers a set of group-differentiated rights aimed at promoting the respect and promotion of minority groups. Kymlicka distinguishes between self-government rights (related to distinct national minority groups living within the border of a state) and polyethnic rights (related to migrant identities in their host societies). The former category covers principally the right to self-determination while the second category covers the protection of cultural distinctiveness for minority ethnic (migrant) groups against the assimilationist tendencies inherent to a necessary integration within the host society. According to Kymlicka, both national and ethnic minority groups can claim special representation rights within the political structure of the state (Kymlicka 2000, 26-33).

This article will offer a critical analysis of the group-differentiated rights perspective offered by Kymlicka. The critique will be immanent to the theory of recognition as I will use Fanon's reading of the Hegelian master/slave parable to demonstrate some of the shortcomings of Afro-Colombian recognition through Law 70.

The 1991 Colombian Constitution and Law 70

I now wish to argue that the 1991 Colombian constitution embodies the theoretical insights of the political theories of recognition and liberal multiculturalism. The 80's were a difficult period for the Colombian state which was on the verge of total collapse. The progressive weakening of state institutions concomitant with political corruption and increased level of criminal activity (narco-traffic, guerrillas, paramilitaries, etc.) led to a deep institutional crisis which could only be solved through radical changes. The government's response was to call a national constituent assembly whereby different actors of the Colombian society were elected to draft a new constitution which would radically reshape the nation. Among the participants of the assembly were indigenous leaders well determined to lobby for the constitutional recognition of the multi-ethnic dimension of the nation (Laurent 2005, 113-138).

The 1991 constitution of Colombia resulting from this process represents a radical turn in Colombian politics and national identity. Its previous constitution, dating from 1886, was one of the oldest still in force and did not mention the existence of the indigenous and Afro-Colombian population living within its territory. But in 1991, for the first time in the history of the country, the cultural and ethnic diversity of the Colombian population was officially acknowledged and steps were taken to protect and promote this diversity. The old ideology of *mestizaje*² was abandoned in favor of a multicultural ideal and the falsely monocultural identity of Colombia was replaced by the more accurate image of a pluri-ethnic state. A new political project was born with the hope to solve the enduring political and social crisis of the nation.

This multicultural project first appears in the seventh article of the constitution which stipulates that “the State recognizes and protects the ethnic and cultural diversity of the Colombian Nation” (Colombian Constitution (CC), art.7).³ The constitutional commitment to cultural diversity is further emphasized when the text states that “culture in its diverse manifestations is the basis of nationality. The State recognizes the equality and dignity of all those who live together in the country” (CC art.70). For the indigenous people of Colombia this cultural recognition and protection appeared clearly in several articles of the constitution. The provision for the recognition of Afro-Colombian people on the other hand only appeared in the transitory article 55 which gave birth two years later, in 1993, to Law 70. Indigenous people were granted rights to special representation within the democratic institutions of the state, territorial autonomy and respect for their traditional authorities (which encompasses the right to a differentiated justice system informed by indigenous customary law) and recognition of their traditional languages and customs. Afro-Colombians were granted an almost similar set of rights except for the right to a differentiated justice system. Their traditional authorities also enjoy a lower level of recognition and autonomy from the states than indigenous peoples. It is clear that this legal recognition is in line with the theory of recognition and Kymlicka’s group-differentiated rights framework.

Some authors argue that the 1991 constitution was a strategic move by the Colombian state towards an “indirect government” strategy in a chaotic time characterized by the weakening of the central state bordering on total loss of control (Arocha 1998). Christian Gros underlines the potential benefits of such a strategy for the Colombian state: “low cost presence in vast regions ignored until then; environmental protection and valorization of biodiversity; quarantine line in front of subversive or criminal groups; quest for legitimacy at the national and international level; implementation of self-sustained development programmes; etc.” (Gros 1997, 48). The crux of the argument is that the self-interest of a state committed to neoliberal reforms would in fact be hidden behind the façades of ethno-cultural recognition, local development, democracy and sustainable development. It could also be argued that the Colombian government was willing to recognize and grant differentiated rights to indigenous people and Afro-Colombian communities in order to co-opt them and reduce the appeal of left-wing radical groups amongst these communities. As Jean Jackson explains in the case of indigenous people in Colombia, “by co-opting indigenous organizations the government can weaken, if not neutralize, claims for political autonomy” and the remaining claims for cultural autonomy are easier for the state to accommodate without threatening its own interests. Jackson continues and explains the result of such accommodation: “Colombian Indian communities retain their languages and have input into the Ministry of Education’s school curricula and the Ministry of Health’s local programs, but their members become loyal, law-abiding citizens rather than dangerous revolutionaries” (Jackson 1995). This argument equally applies to the Afro-Colombian communities.

Following this line of argumentation, the state would therefore compensate its institutional weaknesses through decentralization and delegation of powers and there is no doubt that the recipients of these new policies could benefit greatly from such decentralization. However, a corollary to such institutional weaknesses is the difficulty to create mechanisms for the implementation of these new regulations and laws. Therefore, if the new policies appear genuinely progressive and benevolent on the surface, they are in actuality enforced with great difficulty.

Protection of Afro-Colombian Culture and Collective Land Rights under Law 70

In spite of presenting several candidates to sit in the national constitutive assembly, there were no Afro-Colombian representative present during the process leading to the new constitution draft and no direct mention of affirmative actions in favor of Afro-Colombian communities appear in the document. Nonetheless, indigenous representatives who were present in the constituent assembly, and especially Francisco Rojas Birry (Cunin 2003, 33), made sure that Afro-Colombian communities would be taken into account in the redesigned pluri-ethnic Colombian state.

Provisional article 55 was the guarantee of such step towards the institutional recognition of Afro-Colombian communities. Provisional article 55 led to the adoption of law 70 in 1993 which recognizes Afro-Colombian communities as subjects of collective differentiated rights. The law particularly emphasizes the access of Black communities to collective land, the guarantee of some level of political autonomy and the implementation of affirmative actions aimed at the preservation of their culture. Several authors have argued that Law 70 broadly replicates the model of indigenous recognition established by the new constitution (Escobar 2008).

The first article of Law 70 clearly identifies its objective:

The object of the present Law is to recognize the right of the Black communities that have been living on barren lands in rural areas along the rivers of the Pacific Basin, in accordance with their traditional production practices, to their collective property as specified and instructed in the articles that follow. Similarly, the purpose of the Law is to establish mechanisms for protecting the cultural identity and rights of the Black Communities of Colombia as an ethnic group and to foster their economic and social development, in order to guarantee that these communities have real equal opportunities before the rest of the Colombian society. In Accordance with what has been stipulated in paragraph 1 Article 55 of the Political Constitution, this Law will also apply in the barren, rural, and riparian zones that have been occupied by Black Communities that have traditional practices of production in other areas of the country and abide by the requirements established in this Law (Law 70, art. 1).

In order to finalize the introduction to the law, article three establishes four key principles informing the content of Law 70:

- Recognition and protection of ethnic and cultural diversity, and equal rights for all cultures that compose the Colombian nationality.
- Respect for the integrity and dignity of the Black Communities' cultural life.
- Participation of the Black Communities and their organizations, without detriment to their autonomy, in decisions that affect them and in those that affect the entire nation in conformity with the law.
- The protection of the environment, emphasizing the relationships established by the Black Communities and nature (Law 70, art. 3).

I now wish to analyze separately cultural rights on the one hand and land rights on the other while keeping in mind that such distinction is artificial since culture is embedded in land and land informs culture for the majority ethnic political actors in Latin America.

Political Representation and the Promotion of Afro-Colombian Culture

The recognition and protection of Afro-Colombian culture is guaranteed in a variety of ways. Afro-Colombian representation within the democratic institutions of Colombia is guaranteed through article 66 which establishes a special circumscription to elect two Black representatives to the Chamber of representatives. Beside this special circumscription, Law 70 also led to the creation of other spaces of participation and concertation such as the high level and departmental consultative commissions (decreto 1371 de 1994) (De Roux 2010, 21-23). Afro-Colombian representatives are also present in many state agencies such as CONPES (Consejo Nacional de Política Económica y Social – National Council of Economic and Social Policies) or INCORA (Instituto Colombiano de Reforma Agraria – Colombian Institute of Agrarian Reform). The main idea behind the representation of Afro-Colombians in various state agencies dealing with issues potentially affecting Black communities (environment, education, etc.) is to involve as much as possible Black people in the planning and decision making process.

The recognition and support for the preservation of Afro-Colombian culture takes many forms. For example, Law 725 of 2001 established the “National Day of Afro-Colombianness” which is celebrated on the 21st of May as a tribute to the abolition of slavery and the pluri-ethnic dimension of the nation (De Roux 2010). This legal recognition also means that the Colombian state will promote ethno-education for Black communities (art. 32 and 35). The state commitment to Black ethno-education materializes through the elaboration of specific curricula dedicated to Black history and culture, the formation of ethno-educators and the creation of an educational commission for Black communities (*Comisión Pedagógica de Comunidades Negras*) (Cunin 2003, 44-45). Afro-Colombian students also receive scholarships for university studies through a special fund, the Special Fund of Educational Credits (*Fundo Especial de Créditos Educativos*) and universities in Colombia have adopted special quota for Afro-Colombian students. The decree 1122 of 1998 also increased the visibility of Afro-Colombians in the education system by creating a Chair for Afro-Colombian studies (*Cátedra de Estudios Afrocolombianos*) (De Roux 2010, 23).

Furthermore, Law 70 stipulates that the state will assist the economic and social development of Black communities according to their cultural characteristics and vow to help for the preservation and protection of these cultural specificities. According to articles 41 and 47:

The State will support, by providing the necessary resources, the organizational processes of the Black Communities, in order to recover, preserve, and develop their cultural identity (Law 70, art.41).

The State will adopt measures to guarantee the Black Communities referred to in this Law their right to develop economically and socially, according to their autonomous and cultural elements (Law 70, art. 47).

Finally, Law 70 also addresses the problem of racism and discrimination affecting the Black community. This article represents an important step in the acknowledgement of a racial problem in Colombia while the term racism had for a long time been avoided in mainstream political and scholarly discourses about Colombia and Latin America in general (Wade 2010, 2011).

Land Rights and Political Autonomy

Before addressing the matter of land rights as such, it is important first to introduce the political authority recognized as being responsible for the development of these lands. Article 5 requires the creation of an administrative body, the *Consejo Comunitario* (community council), as an intermediary between the state and Black communities. Article 5 states that:

In order to receive adjudicable lands as collective property, each community will form a Community Council as its internal administrative body whose functions will be determined by National Government ruling.

In addition to the functions determined by National Government ruling, other functions of the Community Councils are: to watch over the conservation and protection of the rights of collective property, the preservation of cultural identity, the use and conservation of natural resources; to identify a legal representative from the respective community as their legal entity, and to act as friendly conciliators in workable internal conflicts (Law 70 art.5).

It could be argued that community councils are the equivalent of indigenous *cabildos*⁴ but contrary to the indigenous *cabildos*, these community councils are not the recipient of direct fiscal transfers from the state nor are they recognized and have the legal status of public entities (Velasco 2011, 415). The autonomy of the *consejos comunitarios* is mainly reduced to administrative tasks related to the process of land titling put in motion by the state.

In article 4, the law defines the lands susceptible of becoming collective property of Black communities:

The State will grant collective property to the Black Communities referred to in this Law, in areas that, according to the definitions in Article II, comprise barren lands located along the riverbanks in rural riparian areas of the Pacific Basin as well as those in areas specified in the second clause of Article 1 of the present Law: lands that they have been occupying in accordance with their traditional practices of production.

For all legal purposes the lands, for which collective property rights are established, will be called: The Lands of the Black Communities (Law 70, art. 4).

Articles 6 however sets a number of limitation to article 4:

Except for the grounds and the forests, collective grant lands under this Law do not include the following:

- Control over goods for public use.
- Urban areas of municipalities.
- Renewable and non-renewable natural resources.
- Legally constituted and protected indigenous territories.
- The subsoil and rural lands accredited as private property as per law 200 of 1936.
- Areas reserved for national security and defense.
- Areas of the national-park system.

The article further explains that the ownership of the soils and forests included in the land titles should be exercised as “a social function with an inherent ecological function”. In order to ensure the respect for these social and ecological dimensions, Article 6, therefore requires that the exploitation of forests for commercial purposes should guarantee the continuity of resources and that the authorization of a competent entity to handle these resources should be sought.

The article then explains that consequently, the Black communities which are granted land titles will need to develop conservation and handling practices compatible with ecological conditions of the Pacific basin and that “appropriate models of production should be developed, such as agrosilvopasture, agroforestry, and the like, designing suitable mechanisms to stimulate them and to discourage unsustainable environmental practices (Law 7, art. 6).

As we can see, Law 70 emphasizes strongly the supposedly very sustainable character of the Afro-Colombian lifestyle and the Afro-Colombian recognition project sometimes appear to be more akin to a conservation project. Articles 19, 21 and 54 all further emphasize the conservation dimension of the land titling process.

Article 19 lists a series of practices which are considered as legal practices and should be exercised “in a manner that the renewal of resources, in quantity as well as in quality, is guaranteed”. These practices include the use of natural resources for the construction or repair of houses, fences, canoes, and other domestic elements but also “the traditional practices exercised over the waters, the beaches, the riverbanks, the secondary fruits of the forest or over the fauna and the terrestrial and aquatic flora for alimentary purposes”. These include hunting, fishing and the harvesting of products for subsistence. The article further states that all these activities “will have preference over any other quasi-industrial, industrial, or sports interest” (Law 70, art. 19).

Article 21 further emphasizes the guardianship role of Black communities and explains that

the groups receiving collective title will continue to maintain, preserve, and favor the renewal of the vegetation that protects the waters, and to guarantee, through adequate use, the preservation of particularly fragile ecosystems such as mangroves and wetlands, and to protect and preserve species of wild fauna and flora that are threatened or that are in danger of extinction (Law 70, art. 21).

Article 54 stipulates that the Colombian state will assist Afro-Colombian communities to ensure that they retain intellectual property over the knowledge derived from all these ecological practices. The state will also ensure that these communities will obtain the economic benefits inherent to these practices in the same way that other entrepreneurs who develop products for national or international markets benefit from their creativity (Law 70, art. 54).

The right of prior consultation, *consulta previa*, accorded to indigenous people before natural resources exploitation permits are granted (and in particular mining and oil extraction) is also a right given to Afro-Colombian communities. According to article 26,

The Ministry of Mines and Energy dutifully or by petition from the Black Communities to which this Law refers may choose to identify and delimit in lands adjudicated to the Black Communities, mining zones where the exploration and exploitation of non-renewable natural resources should be carried out under special technical conditions for their protection, and with the participation of the Black Communities for the purpose of preserving their particular economic and cultural characteristics, without prejudicing their acquired or constituted rights, in favor of third parties (Law 70, art. 26).

While all these articles raise serious questions about the political autonomy of Black communities in Colombia and does not in any way address the many urban Afro-Colombians, Ulrich Oslender nevertheless casts a positive look upon these legal advancements and argues that the legal mechanisms set in motion by Law 70 have been used by Black communities to reconceptualize the Pacific region and challenge “the capitalist state logic of extraction and exploitation” (Oslender 2012, 96). Black communities would therefore use the provision of Law 70 to create “territories of difference” in the margin of capitalist development whereby ecology, culture and autonomy would intersect in new types of development projects (Escobar 2008). This is what I analyze in the next section.

Afro-Colombian Struggles for Autonomy and the Creation of “Territories Of Difference”

Ethnic social movements in Latin America have proved to be important political actors. They have demonstrated a great potential to mobilize people and innovate in terms of political practices and ideas. Furthermore, the important political mobilization of indigenous people on the continent has increased the importance of environmental practices in left-leaning politics. In Colombia, both indigenous people and Afro-Colombian social movements have gained visibility and proved their political strength and creativity, especially since the adoption of the 1991 constitution. In the case of Afro-Colombians, their political organization led to successful bargaining power with the state in terms of collective land titling. Indeed, over 70.000 Afro-Colombian families were granted collective land titles over more than 5 million hectares under Law 70 (Salinas Abdala 2014, 7).

The political struggle of Afro-Colombians started with the first rebellions of the enslaved and freedom-seekers. Those who were formerly enslaved escaped and thus, established fortified villages in remote areas known as palenques where they aspired to live as free men. These palenques were effectively the first territories on the continent to break free from Spanish colonization (Espinosa Bonilla 2011, 220). Modern Afro-Colombian political organizations are, however, a much more recent phenomenon which can be traced back to the seventies and the international climate surrounding civil rights movements in the United States. There are now many different Afro-Colombian political organizations fighting against racism, for collective land rights or for the respect of internally displaced people's human rights.

The *Cimarrón* movement, Colombia's oldest Black movement, was born in 1976 out of the Soweto study circle in the city of Pereira where a group of Black students, influenced by the struggle of African Americans in the US, decided to meet on a weekly basis to discuss and understand the phenomenon of Racism. Alongside Martin Luther King, Malcolm X or Nelson Mandela, historical Afro-Colombian figures such as Benkos Biohó, the African king founder of several palenques, became heroes and role models for the *Cimarrón* struggle (Cunin 2003, 37-40). *Cimarrón* is now one of the main Black organizations in Colombia and plays a major advocacy role. Its main objectives are to:

- Present and manage policies and programs for the development of Afro-Colombian communities with the governmental, private, national and international institutions
- Promote the independent organization of Afro-Colombian communities at local and national level, their awareness, and mobilization for a dignified life.
- Educate to eradicate racism from the collective and individual consciousness of Colombians.
- Promote programs and actions aimed at eliminating racial discrimination practices affecting Colombian society. Promote the education, organization and empowerment of Afro-Colombian women.
- Develop, enhance and disseminate Afro-Colombian identity and Afrocolombianidad, as patrimony of each Colombian man and woman and the society as a whole. Protect and conserve the biodiversity and the rights granted to Afro-Colombian communities regarding their ancestral lands.
- Encourage the autonomous political participation of Afro-Colombian people, claiming the equitable representation it deserves within Colombian society.
- To promote relations and identity between the Colombian society and Afro-descendants, and the continental unity among the African-American people (Movimiento Cimarrón).

Cimarrón has developed ethno-education projects, publishes reports on the social well-being of Black communities, puts pressure on the government to develop ethnically differentiated statistical analysis and created the Justice Centre against Racism (*Centro de Justicia contra el Racismo*). *Cimarrón* also played a role in the genesis of the first Afro-Colombian peasant organizations in the Pacific region which then became the first "community councils".

Another major Afro-Colombian political movement which plays an important role in the struggle for land rights is the network known as Black Communities Process (*Proceso de Comunidades Negras – PCN*).

The PCN is mostly a rural organization and was born in the early nineties out of the debates surrounding the elaboration of Law 70. PCN has a strong and very effective organizational structure and has gained recognition from the state as an interlocutor in matters of land rights (Agudelo 1999, 11-12). The PCN gives “pre-eminence to the social control of the territory and natural resources as a precondition for the survival, re-creation, and strengthening of culture” (Escobar 2008, 221). They therefore played a key role in the ethnicization process of blackness in Colombia and to the creation of an “imagined (Black) community” to use Benedict Anderson’s expression (Restrepo 2004). Indeed, what characterizes PCN is their claim that emphasizing a common past and the experience of enslavement and racism is not enough. Instead, for the PCN, the remembrance of a common past necessarily needs to lead to the construction of a common future for the Afro-Colombian population (Grueso, Rosero, and Escobar 1997, 56). PCN therefore emphasizes clearly the territorial (and rural) dimension of the struggle but also takes seriously into account the cultural and ecological dimension of territorial autonomy in a region renown for the exceptional richness of its ecosystem. Indeed, PCN helped the development of particular ideological concepts to empower Black communities and to create “counter-spaces” in the Colombian Pacific coast. According to Oslender and Escobar, these counter-spaces try to elaborate specific development projects which do not obey to the traditional capitalist development agenda and respect the harmony between people and their environment (Oslender 2012) (Escobar 2008). Oslender specifically emphasizes the role played by the riverine environment of Afro-Colombian communities in the Pacific region which creates a specific space of social interaction whereby the very nature of the environment informs daily social and economic practices. For example, tidal rhythms influence working hours and intricate river systems limit greatly the modes and pace of transportation in the region.

This close relation between people and their environment, between culture and nature, explains why PCN has been eager to develop a strong political ecology discourse which leads to the reconceptualization of the term biodiversity as “territory plus culture”. With such reconceptualization of the term biodiversity, people and cultures are not defined as the other of the environment but as part of it and the political project of increased territorial autonomy for Black communities becomes intertwined with conservation projects. In other words, “there is no conservation without territorial control, and conservation cannot exist outside of a framework that incorporates local people and cultural practices” (Escobar 2008, 146).

There is no doubt that Afro-Colombian social movements have played a great role in advancing the well-being and visibility of Black communities. Their struggle for recognition has given Afro-Colombians increased visibility and reinforced the agency of Black people in Colombia. This agency contrasts sharply with the victimization phenomenon which is largely at play within some NGO’s and state agencies.

Yet it could be argued that these struggles are always in tension between inclusion and exclusion from the state (Dryzek 1996). This tension is revelatory of the complex relation between struggles for recognition on the one hand and incorporation within state structures of recognition on the other hand. The pitfalls of inclusion within state institutions can better be understood through a robust engagement with Frantz Fanon’s critique of the recognition paradigm in post-colonial contexts.

A Fanonian Critique of Law 70

Frantz Fanon's theory of recognition is most apparent in *Black Skin, White Masks*. While the whole book can be read as a phenomenological description of a colonized people's lived experience of misrecognition, the last few pages of this work directly address Hegel's Master-Slave dialectic. In these last pages, Fanon argues that the Hegelian parable does not apply – in the real world – to the relations of recognition between colonizers and colonized people. Indeed, according to the genuine Hegelian model of recognition, recognition means *mutual* recognition and *reciprocity* between equals and such recognition is the result of a *struggle* for freedom against the objectifying gaze of the other. However, as Fanon notices, with the end of colonialism, there is no more genuine struggle between the colonizers and the colonized people and instead of *winning* their recognition and *proving* their equality as the result of a struggle for freedom, the recognition is *given* to them by the master. As Fanon summarizes it: "One day the White Master, without conflict, recognized the Negro slave" (Fanon 2008, 169). Or a little bit further in the text:

Historically, the Negro steeped in the inessentiality of servitude was set free by his master. He did not fight for his freedom.

Out of slavery the Negro burst into the lists where his masters stood. Like those servants who are allowed once every year to dance in the drawing room, the Negro is looking for a prop. The Negro has not become a master. When there are no longer slaves, there are no longer masters.

The Negro is a slave who has been allowed to assume the attitude of a master.

The white man is a master who has allowed his slaves to eat at his table (Fanon 2008, 171).

The problem with such recognition is that it does not offer a mutual recognition between equals *ala* Hegel but instead recasts the relations of domination under a new, in appearance more human, light. Fanon continues:

The upheaval reached the Negroes from without. The black man was acted upon. Values that had not been created by his actions, values that had not been born of the systolic tide of his blood, danced in a hued whirl round him. The upheaval did not make a difference in the Negro. He went from one way of life to another, but not from one life to another (Fanon 2008, 171).

The fact that the colonized people have been acted upon from without means that they have been deprived of the transformative praxis offered by the reality of struggle and which from a Fanonian point of view is the only way for a people to break away from internalized relations of colonization. Indeed, according to Fanon,

the Negro knows nothing of the cost of freedom, for he has not fought for it. From time to time he has fought for Liberty and Justice, but these were always white liberty and white justice; that is, values secreted by his masters (Fanon 2008, 172).

Fanon's critical understanding of the decolonization process is valuable to understand the current debates over the recognition of colonized people and represents a real warning against some of the pitfalls encountered by current social movements struggling for recognition within settler states. Indeed, as Sonia Kruks argues:

his warning, that the affirmation of identity can be liberating *only* in the context of a struggle also to transform wider material and institutional forms of oppression is still relevant today. To affirm, express, or celebrate one's identity is, as Fanon insisted, psychologically empowering. It is also, as Sartre claimed, a vital moral affirmation. But to affirm one's identity is not, in itself, to change the world (Kruks 1996, 133).

This reality and the consequent dangers of an empty recognition have been convincingly addressed by indigenous scholar Glen Sean Coulthard in his *Red Skin, White Masks. Rejecting the Colonial Politics of Recognition* (Coulthard 2014). In this book Coulthard argues "that instead of ushering in an era of peaceful coexistence grounded on the ideal of *reciprocity* or *mutual* recognition, the politics of recognition in its contemporary liberal form promise to reproduce the very configurations of colonialist, racist, patriarchal state power that Indigenous peoples' demands for recognition have historically sought to transcend" (Coulthard 2014, 3). The reason why the ideal of recognition in its liberal form remains nothing but false promises for indigenous people (and in this case Afro-Colombians) according to Coulthard is that it has replaced a colonial rule based on state violence with a colonial rule based on the acceptance and interiorization by indigenous people of *asymmetrical* and *nonreciprocal* forms of recognition (Coulthard 2014, 25). Coulthard draws from Fanon's analysis of Hegel's master-slave dialectic to show that unlike Hegel's parable whereby both actors were in need of the other's recognition, in the contemporary colonial contexts "the "master" – that is, the colonial state and state society – does not require recognition from the previously self-determining communities upon which its territorial, economic, and social infrastructure is constituted. What is needed is land, labor, and resources" (Coulthard 2014, 40). Coulthard also notices that unlike the scene taking place in Hegel's *Phenomenology of Spirit*, the current relations of recognition do not happen in a face-to-face fashion but instead are mediated by a whole set of institutions and are multi-polar (Coulthard 2014, 29).

Coulthard's realization that the current politics of liberal recognition embodied through cosmetic multicultural policies elaborated by the colonial state can hardly replicate the Hegelian ideal of mutual recognition leads him to advocate for a politics of *self-recognition*. According to him, we can learn from Fanon that freedom does not naturally emanate "from the slave being granted recognition from his or her master" but rather that "the pathway to self-determination instead lay in a quasi-Nietzschean form of personal and collective *self-affirmation*" (Coulthard 2014, 43).

This means turning away from the state and develop a whole range of anti-colonial practices which would help the colonized people to get rid of internalized colonialism and to develop new alternative indigenous or Afro subjectivities (Coulthard 2014, 151-179).

I suggest that the phenomenon described by Fanon and its application to contemporary politics of recognition towards colonized people is painfully evident in Colombia. While in theory the legal gains made by Afro-Colombians are impressive, they hardly materialize in the daily lives of Afro-Colombian communities as evident from the statistics and information provided in the introduction. Indeed, the Colombian state does not need recognition from the Black communities. What it needs is still “land, labor and resources”. This reality appears clearly in the *double-speak* displayed by a state which formally promotes local, culturally sensitive and ecological development for Black communities while still promoting an extractive capitalist industry in indigenous and Afro-Colombian territories. The disregard for the prior consultation mechanism illustrates very well this phenomenon and shows that a master/enslaved relation remains intact with the power imbalances inherent in such relations.

But why would such an oppressive state even bother with a formal recognition of Afro-Colombian rights then? There are three main factors to take into account here: international legitimacy; co-optation and indirect control. First, the state needs some legitimacy at the international level. The formal recognition of Afro-Colombians provides Colombia with a veneer of legitimacy. The current social suffering experienced by Afro-Colombians can be blamed on and reduced to problems related to non-state criminal actors or under-development. The solution to the problem would therefore be an increase in external help from “generous” donors. Second, by promising increased autonomy and access to resources, the state can easily co-opt social movements and reduce the threat these movements pose to its stability. I explained this phenomenon in the second section. Third, by incorporating indigenous and Afro-Colombian communities into its structure of governance, the Colombian state increases its control over territories which previously were marked by a very low state presence. It is therefore a form of indirect control over territories which permits increased capitalist investments in remote regions of the country. I also explained this phenomenon in the second section.

Afro-Colombian social movements therefore face a challenge. They need to make use of the legal avenues opened by the 1991 constitution and Law 70 but without losing their vitality and political power as major members of a vibrant civil society. As I explained in the fourth section, they are currently making use of Law 70 in order to create alternative spaces of resistance especially in the Pacific region. Yet their efforts are threatened not only by the obvious threat of paramilitary and guerilla violence but also by the more subtle efforts by the state to impose its own agenda on the socio-economic development of Afro-Colombian communities through the imposition of a Black version of the “ecological native” (Ulloa 2005) paradigm. Indeed, Afro-Colombian social movements such as PCN run the risk to see their promising political ecology ideals subsumed under a state-driven green capitalism and ethno-tourism development programmes which, while potentially positive from a purely economic perspective, would undermine Black communities’ cultural and political autonomy.

From a neo-Hegelian point of view Afro-Colombian social movements should not aim at a premature reconciliation which would be synonymous with a pathological form of recognition between *unequals*. This would reproduce the patterns of asymmetrical and nonreciprocal recognition (which are in fact a form of misrecognition) highlighted by Coulthard. They should therefore embrace the moment of struggle which is truly the most meaningful moment of the dialectic in order to establish genuinely liberated identities. Nevertheless, the current political violence impacting the lives of so many Black communities in mainly rural Colombia might force one to reconsider this radical Fanonian stance and settle for reconciliation and incorporation within the state structures.

Conclusion

This article offered a brief overview of the theories of recognition and multicultural citizenship. It then discussed the 1991 Colombian Constitution and related the promotion of ethnic diversity and cultural preservation to the politics of recognition. The article further offered an analysis of the content of Law 70 through which Afro-Colombian recognition materializes in the Republic of Colombia. Next, the text discussed the political ideals of Afro-Colombian social movements. The article concluded by offering a critical analysis of Law 70 through Fanon's theory of identity formation in colonial settings and argued that such formal recognition, while having some limited benefits, can potentially reproduce subtle relations of colonization akin to a form of *misrecognition*.

References

- Agudelo, Carlos. 1999. "Participation politique des populations noires en Colombie." *Cahier des Ameriques Latines*:151-176.
- Arocha, James. 1998. "Inclusion of Afro-Colombians: unreachable national goal?" *Latin American Perspectives* 25 (3):70-89.
- Asher, Kiran. 2009. *Black and Green: Afro-Colombians, Development, and Nature in the Pacific Lowlands*. Durham: Duke University Press.
- Cárdenas, Roosbelinda. 2012. "Multicultural Politics for Afro-Colombians: An articulation "Without Guarantees"." In *Black social movements in Latin America : from monocultural mestizaje to multiculturalism*, edited by Jean Rahier. New York: Palgrave Macmillan.
- Colombian Constitution. Translated version of the text by Marcia W. Coward, Peter B. Heller, Anna I. Vellve Torras, and Max Planck retrieved from https://www.constituteproject.org/constitution/Colombia_2005.pdf on 7/03/2016.

- Cunin, Elizabeth. 2003. *Identidades a flor de piel. Lo 'negro' entre apariencias y pertenencias: mestizaje y categorías raciales en Cartagena (Colombia)*. Bogotá: IFEA-ICANH-Uniandes-Observatorio del Caribe Colombiano.
- De Roux, Gustavo I. 2010. *Políticas públicas para el avance de la población Afrocolombiana: revisión y análisis*. Panamá: Programa de las Naciones Unidas para el Desarrollo.
- Dryzek, John S. 1996. "Political Inclusion and the Dynamics of Democratization." *The American Political Science Review* 90 (3):475-487.
- Engle, Karen. 2010. *The elusive promise of indigenous development : rights, culture, strategy*. Durham: Duke University Press.
- Escobar, Arturo. 2008. *Territories of Difference. Place, Movements, Redes*. Durham: Duke University Press.
- Garavito, César Rodríguez, Juan Camillo Cárdenas C., Juan David Oviedo M., and Sebastián Villamizar S. 2013. *La discriminación racial en el trabajo. Un estudio experimental en Bogotá*. Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia.
- Gros, Christian. 1997. "Indigenismo y etnicidad: el desafío neoliberal." In *Antropología en la modernidad: identidades, etnicidades y movimientos sociales en Colombia*, edited by Victoria Uribe and Eduardo Restrepo, 15-59. Bogotá: ICAN.
- Grueso, Libia, Carlos Rosero, and Arturo Escobar. 1997. "El proceso organizativo de comunidades negras en Colombia." *Ecología Política* (14):47-64.
- Gudynas, Eduardo. 2011. "Buen Vivir: Today's tomorrow." *Development* 54 (4):441-447. doi: 10.1057/dev.2011.86.
- Hale, Charles R. 2002. "Does Multiculturalism Menace? Governance, Cultural Rights and the Politics of Identity in Guatemala." *Journal of Latin American Studies* 34 (3):485-524.
- Jackson, Jean E. 1995. "culture, genuine and spurious: the politics of Indianness in the Vaupés, Colombia." *American Ethnologist* 22 (1):3-27.
- Laurent, Virginie. 2005. *Comunidades Indígenas, Espacios Políticos Y Movilización Electoral En Colombia, 1990-1998 : Motivaciones, Campos De Acción E Impactos*. Bogotá: Instituto Colombiano de Antropología e Historia.
- Law 70. Translated version of the text by Norma and Peter Jackson (Benedict College, Columbia, South Carolina) retrieved from http://www.benedict.edu/exec_admin/intnl_programs/other_files/bc-intnl_programs-law_70_of_colombia-english.pdf on 7/03/2016.

- León Baños, Lewis Alexandra. 2012. *Imaginarios sobre lo étnico-racial negro en la agenda noticiosa. Un pre-texto para seguir cuestionando-nos*. Cartagena de Indias: Universidad de Cartagena.
- Oslender, Ulrich. 2012. "The Quest for a Counter-Space in the Colombian Pacific Coast Region: Toward Alternative Black Territorialities or Co-optation by Dominant Power?" In *Black social movements in Latin America : from monocultural mestizaje to multiculturalism*, edited by Jean Rahier. New York: Palgrave Macmillan.
- Restrepo, Eduardo. 2004. "Ethnicization of blackness in Colombia: Toward de-racializing theoretical and political imagination." *Cultural Studies* 18 (5):698-753.
- Rodriguez Garavito, Cesar , Tatiana Alfonso Sierra, and Isabel Cavalier Adarve. 2008. *El derecho a no ser discriminado. Primer informe sobre discriminación racial y derechos de la población afrocolombiana*. Bogota: Observatorio de discriminación racial.
- Salinas Abdala, Yamile. 2014. "Los derechos territoriales de los grupos étnicos: ¿un compromiso social, una obligación constitucional o una obligación constitucional o una tarea hecha a medias?" *Punto de Encuentro* 67:1-39.
- Ulloa, Astrid. 2005. *The ecological native : indigenous peoples' movements and eco-governmentality in Colombia*. New York: Routledge.
- Velasco, Marcela. 2011. "Confining Ethnic Territorial Autonomy in Colombia." *The Journal of Environment and Development* 20 (4):405-427.
- Wade, Peter. 2010. *Race and ethnicity in Latin America*. London: Pluto.
- Wade, Peter. 2011. "Multiculturalismo y racismo." *Revista Colombiana de Antropología* 47 (2):15-35.

Endnotes

¹ Racially mixed Latin American.

² Ideology which promotes race mixture in order to abolish race differences in Latin America.

³ All further quotes from the Colombian constitution come from the translated version of the text by Marcia W. Coward, Peter B. Heller, Anna I. Vellve Torras, and Max Planck retrieved from https://www.constituteproject.org/constitution/Colombia_2005.pdf on 7/03/2016.

⁴ Indigenous authorities in charge of indigenous reserves in Colombia.