

**Autonomy, Indigenous Peoples,
and Afro-Descendants in Colombia**

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Abstract

The article analyzes how indigenous and Afro-descendant communities achieved participation in the National Constitutional Assembly in 1991 in Colombia and how this process influenced the definition of new territorial institutions in which territorial autonomy and self-rule were successfully granted – against all odds. How did this happen? What circumstances facilitated the agency of these marginalized groups to such an extent that it shaped the new constitution to their benefit? The argument in this article highlights a historical juncture between a global discourse in favor of human rights, and ethnic and cultural diversity – supported by the United Nations – and a regional trend towards democratization and constitutional change. This juncture occurred during the times of a domestic peace negotiation process between the Colombian government and the country's guerrilla groups, a process that was joined by an unusual social mobilization of underprivileged groups. Taken together, these international and national circumstances created conditions that paved the way for a successful outcome of the constitutional process, for the indigenous and Afro-descendant communities.

Despite this constitutional achievement, reality has however not been easy. The territory of the two groups is rich in natural resources, something that creates opportunities for large scale agribusiness investments, and they are also well located for coca cultivation and cocaine trafficking. Such activities are not beneficial for marginalized groups. Instead, different kinds of violent fortune seekers, legal or illegal, have been attracted to the indigenous and Afro-descendant territories, which have faced threats and violence without any, or very limited, state protection.

Keywords

Indigenous rights, Afro-descendants, Territorial Autonomy, Colombia

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*The Colombian Garden is being devastated by a series of plagues;
the insecurity of life; lack of work, land and knowledge;
the rule of law which in practice protects only the powerful
and punishes the humbly dressed (...)
To attack these plagues, I propose the following remedies:
Ensure the existence of life; secure the freedom of people; and decrease
inequality relative to the powerful.¹*

1. Introduction

The call for a National Constituent Assembly (NCA) in 1991, a unique event in Colombian history, created a space for political debate where social and political actors, who having had no previous political leverage, sat face-to-face with representatives of the country's powerful traditional parties and engaged in the opportunity to negotiate the definition of the country's constitutional framework.² This scenario provided representatives of indigenous peoples and Afro-descendants, claiming their right to territorial autonomy, based on defense of their culture and ethnicity, with an opportunity to bring issues, invisible to the mestizo and white elites of the main urban areas, to the fore.

The Constitution of 1991, outcome of the Assembly, weakened resistance to democratization of the structures of power which had monopolized access to the State since the 19th century. For more than a hundred years, the Constitution of 1886, drafted by an elite of intellectuals chosen by the then president Rafael Núñez, favored the interests and opinions of an elite promoting the idea of a "white and mestizo nation", and denying the existence of indigenous and Afro-descendant communities.

How was this recognition achieved? What circumstances facilitated the agency of these marginalized groups, their access to the Assembly, and the shaping of the new constitution to their benefit?

This article analyzes how indigenous and Afro-descendant representatives were able to achieve participation in the Constituent Assembly, as well as recognition of these groups as the subjects of rights, including their territorial autonomy. It likewise analyzes their principle demands, the reactions they provoked, and the ensuing debates related to their claims on territorial rights, territorial autonomy and the institutional mechanisms proposed to ensure that self-rule became a reality.

Concepts of a democratic society, based in the precept of pluralism, grounded the new constitution. It established a specialized court in defense of the new constitutional

1 Muelas 1991, p. 12. Lorenzo Muelas was one of two representatives of the indigenous movement in the National Constituent Assembly of 1991.

2 Uprimny 2001, p. 97.

order and recognized the existence of historically excluded social groups, insisting on their mandatory inclusion as the subjects of rights in the future. A political context of discredited traditional parties, exacerbation of violence associated with the armed conflict and the drug cartels, and the critical juncture of the international system were factors that contributed to the convocation of a Constituent Assembly.

The Assembly provided for the participation of ethnic groups, Afro-descendants and other social forces previously excluded by the political project and values of the mestizo and white nation. Actors such as the demobilized M-19 guerrilla movement, descendants of African slaves and native populations, aspiring to become new political and social forces that would faithfully portray the heterogeneity of Colombian society, came to have a voice in this political space.

The opening of the Colombian State to pluri-ethnicity and multiculturalism, as evidenced by the new constitution, is incomprehensible without a broader understanding of changes in the international system prompted by the end of the Cold War, as well as the crisis of the national political system. Waves of widespread social mobilization and protest, in addition to the dynamics of the armed conflict and attempts to reach peace throughout the 1980s and early 1990s, unlocked opportunities for change.³ These circumstances enhanced the struggles of social, ethnic and identity-based movements for the vindication of their interests, denied in the old “mestizo and white statute” established by the 1886 Constitution.

To understand how Afro-descendants and indigenous people became involved in the NCA, external as well as internal factors which facilitated the participation of these groups and their organizations in the discussion of constitutional provisions concerning territorial autonomy and the rights of ethnic groups and black communities, need to be acknowledged. On three occasions, during the governments of Alfonso López (1974–1978), Julio Cesar Turbay (1978–1982) and Virgilio Barco (1986–1990), attempts to reform the constitution had been blocked.⁴ The reluctance of the two traditional political parties to effect constitutional reform finally receded in 1990 after an electoral campaign in which four presidential candidates from the left and center of the political spectrum were murdered by drug traffickers and violent extreme right-wing groups.⁵

The main source of data for this research is the archive of the National Constituent Assembly located in the Luis Angel Arango library in Bogotá, as well as documents of the NCA kept in the General National Archive. Presentations by representative members of indigenous and Afro-descendent communities were particularly significant, as were the reactions evoked in traditional political party leaders. Additionally, academic works

3 Castillo 2007, p. 260.

4 Ibid.

5 Romero 2006, pp. 364–365.

regarding the Assembly and its significance at the time of the negotiations, and literature related to international treaties supporting the recognition of indigenous peoples' rights, were reviewed.

2. End of the Cold War, Human Rights and Ethnic Diversity

The fall of the Berlin Wall in the early 1990s and the end of the international bipolar order of the Cold War era engendered diverse spillover effects within national polities worldwide. In Colombia, one of the most important effects was the opening up of traditional frameworks of participation to include new political and social actors. Negotiations with the M-19 guerrilla movement, its transition to a political party – *Alianza Democrática M-19*- and its participation in the NCA and the drafting of the new constitution is one example. Indeed, participation by the demobilized M-19 in spaces of democratic debate and in the Constituent Assembly was a fact of enormous political significance. The end of the Cold War had created an environment supportive of multiparty systems with broad participation of parties from the left of the political spectrum, thereby enhancing competition and allowing new political forces access to power.

At the regional level, Latin America was going through a period of important constitutional and democratic change.⁶ States governed by authoritarian and military regimes during the second half of the 20th century, such as those in Chile, Peru, Brazil and the Central American countries, concluded in political transitions, which included the creation of constituent assemblies and new constitutions. Peru did so in 1979, Chile in 1980, Brazil in 1989 and El Salvador and Guatemala in 1993.⁷ In order to expand electoral participation and replace old authoritarian regimes, the new constituent assemblies were considered the most appropriate mechanism in the region. Although Colombia's political history differs from other authoritarian systems of the region, the new Constituent Assembly was in concordance with the political and institutional changes occurring in Latin America.

Another external factor contributing positively to the participation and influence of indigenous and Afro-Colombian people in the NCA was the development of a global discourse in favor of human rights and cultural and ethnic diversity. The United Nations began to work on the drafting of the Declaration of the Rights of Indigenous Peoples in 1983, and after two decades, the highest organ of the organization, the General Assembly, adopted the Declaration on the right to cultural diversity on September 13, 2007.⁸ This initiative for recognition, promoted by several indigenous organizations worldwide, met

6 Lee Van Cott 2000, p. 9.

7 Castillo 2007, p. 237.

8 A/RES/61/295, hereinafter "the Declaration".

considerable resistance, as is reflected by the amount of time required to obtain approval and a majority vote in the General Assembly. 143 states voted in favor; the US, Canada, Australia and New Zealand voted against, and there were 14 abstentions.⁹

Colombia was the only country in the region that abstained from voting in favor. The then president, Álvaro Uribe Vélez (2002–2010), opposed limitations affecting the sovereignty of the central government in its relation to indigenous territories. Within the Declaration, one of the most controversial points was Article 3, which recognizes indigenous peoples' right to self-determination. This concept, embodying recognition, was the most highly disputed within the bloc opposing the Declaration, given that, by virtue of this right, indigenous peoples could freely determine their political status and development priorities, and would be granted the right to autonomy and self-government in internal affairs. In Colombia, recognition of the Declaration was one of the most debated discussions within the NCA between the bloc that supported ethnic and Afro groups and the most conservative sectors who rejected the idea of recognition of ethnic groups' jurisdiction in specific territories, and who, in addition, considered the declaration a threat to the preservation of a unitary state.

The Declaration and the International Labor Organization [ILO] Convention N°169 of 1989 were the international legal instruments allowing indigenous and minority communities worldwide to address their demands. Most agreements and treaties on human rights reflect an individualist concept of rights, a concept that is alien to the worldview of indigenous communities, given that individual identity is encapsulated within their concept of collective identity.

Prior to the Declaration, ILO Convention No. 169 was the only international instrument of indigenous rights in force. Having been officially adopted in 1989, it was a legally binding treaty, unlike the Declaration. The importance of the Convention is that Article 13 recognizes the special nature of the relationship between indigenous peoples and their territories, particularly the collective dimension of their conceptualization of rights.¹⁰

The Colombian government officially adopted the Convention through Law 21 of 1991. Its adoption and ratification, within the existing institutional framework, demonstrated the capacity of new social and political forces to lobby in the political arena for indigenous communities' rights. Ratification of the Convention fostered debate concerning the recognition of self-determination and the political and territorial autonomy of the communities and, in addition, recognition of the cultural and ethnic diversity of the population, a concept not included the 1886 Constitution, was embraced.

Moreover, the concept of ethnic group, presented in the NCA, was based on the definition contained in the Convention, which considers as indigenous

9 Olsen 2008, p. 9.

10 Id. p. 11.

those populations whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.¹¹

The inclusion of the Convention in Colombia's institutional framework ensured concurrence with global discourse favoring respect for human rights and cultural and ethnic diversity.

3. Crisis of the Political System, Alliances and The Broadening of Representation

The crisis of the two traditional parties plus peace negotiations with different guerrilla groups were the main internal factors creating a context favourable to constitutional and institutional change. This context, which had weakened the most hardened opponents, contributed to the participation of ethnic groups within the Assembly. The election of the liberal candidate, César Gaviria, (1990–1994) to the presidency facilitated State reform; espousing a technocratic perspective, his government facilitated expansion of political representation while at the same time introducing reforms to privatize activities under the State's responsibility.

In the end, the government and an elite sector conceived the NCA as the most suitable solution to the crisis of institutional legitimacy and violence experienced by the political system during the 1980s and beginning of the 1990s. Inclusion of newly demobilized insurgent organizations and different ethnic groups in the Constituent Assembly reflected the will of an important sector of the elite to embrace national coexistence.¹²

Considerable distress had resulted from the violence generated by the confrontation between the State and guerrilla groups; the emergence of new illegal armed actors such as the paramilitaries; and violence generated by drug trafficking. Various social and political groups, promoting a proposal to build a new framework for participation, demonstrated in the main cities. The mobilization of university students in favor of a popular consultation to convene a constituent assembly were key to the success of the call.

Despite the persistent demand of different movements and social sectors for constitutional reform, the project met with resistance from the more conservative sectors of the two traditional political parties, the Liberal and the Conservative. In the Conservative party, the main opponent was former President Misael Pastrana, and in the Liberal, former President Alfonso López. The two political leaders argued that the Constitution of 1886

11 ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries 1989, article 1, para 1a.

12 Castillo 2007, p. 238.

was an inspirational source of Colombian history that had ruled the country for more than a hundred years, and to destroy it would also involve destroying that legacy. The two former presidents supported a reform of the 1886 Constitution but did not support the idea of a new constitution.

The initiative favoring a new constitutional framework, therefore, lacked homogeneous support within the two historical parties, a reflection of the resistance to modification of the existing traditional system of the alternation of power. The two leaders – Pastrana and López – participated in the campaign to oppose the Constituent Assembly; however, President Gaviria (1990–1994) managed to marshal sufficient support to have it convened. Moreover, the project garnered new support among the public when the guerrillas negotiating their demobilization announced that they would hand over their weapons even if the convocation of the assembly was not yet approved.

In the end, reality prevailed. The opposition bloc was forced to participate in the election of delegates to the Assembly in order not to be excluded from this space of deliberation that would define a new constitution. The turnout to elect members of the Assembly on December 9, 1990 had a historical abstention rate of 73% of potential voters. The ex-presidents' opposition to the assembly and the two traditional parties' lack of support had influenced voters, but what was unexpected was the massive mobilization of the supporters of constitutional change, who elected more than one third of the delegates to the Assembly.

The determination of the liberal sector supportive of President César Gaviria's call for the NCA was partly an attempt to weaken on-going clientelist practices of the two historical parties, understanding that a series of pacts to counteract traditional political powers was necessary. The Democratic Alliance M-19, a party organized by the demobilized guerrilla group M-19, played a leading role in shaping the reformist bloc in opposition to the more conservative factions of the traditional parties.

The axis of the alliance that paved the way for the establishment of the NCA was the pact between the presidential candidate Carlos Pizarro, of the Democratic Alliance M-19; Álvaro Gómez, candidate of the National Salvation Movement, a faction of the Conservative party; Rodrigo Lloreda, leader of the Conservative party; and the government of President César Gaviria. The agreement was signed on August 2, 1990, despite objections from traditional political sectors, mainly from within the Liberal party. These four political sectors agreed on the agenda, the number of representatives, the day of the election, and the period and mode of operation of the Assembly. It should be noted that ethnic minorities did not participate in any agreement before the NCA; however, their spokespersons were elected as members of the Constituent Assembly.

4. Indigenous, Afros, and their Organizations

The presence of delegates from indigenous organizations and people of African descent in the NCA was an unusual occurrence in the national political arena, an elitist space reserved for people with political or economic power. Among indigenous people and within their organizations, but less so among Afro-descendants, deep distrust of the traditional schemes of political participation existed, given their historical exclusion by what was termed the mestizo and white nation. Ensuing discussions concerning this exclusion generated ideological and political differences within these organizations.

The pioneer indigenous organization was the CRIC, *Consejo Regional Indígena del Cauca*, officially created on February 24, 1971, in Toribío, department of Cauca, in the southwest of the country, as the result of the union of seven councils.¹³ The national context was one of intense agrarian mobilization against the biased anti-peasant policies of the national government, such that the organization emerged as a defensive reaction against the occupation of their territories by landowners as well as by other private and state actors. The reclaiming of their land emerged as the driving force behind indigenous mobilization.¹⁴

Although indigenous organization and mobilization were part of the overall peasant struggle for land, their principle demands directed to the government were broader than the peasants' demand for lands and resources. Indigenous people defined themselves as agricultural producers and supported agrarian reform; however, this component did not encompass all their claims. A group within the indigenous movement claimed that the demand for land also must include the social relations of exploitation associated with land monopolization. They denounced factors such as the colonialism to which they had been subjected by the white and mestizo nation that had exploited them and denied affirmation of their ethnic identity, affirming that these concerns could not be side-lined. Their claims demonstrated that indigenous groups and the descendants of African slaves were defending interests beyond those of the peasant population.

In the midst of this debate, two new indigenous organizations flourished within the CRIC: Indigenous Authorities of Colombia, AICO, and the National Indigenous Organization of Colombia, ONIC. Both were part of the NCA. Since the CRIC's creation, a faction emphasizing the cultural dimensions of the movement and proposals for its politicization through the construction of a political party, had existed¹⁵. A political party would gather together ethnic-cultural demands for a true "Indianist" policy, one which would highlight

13 The indigenous cabildos or councils are political-administrative units that rule an indigenous community settled in a traditional *resguardo*, which is a communally owned land with specific legal rights. This is an institution of native governance that has endured from the colonial era.

14 Castillo 2007, p. 118.

15 Id. p. 144.

the need for liberation of the Indian from the interests of the white and mestizo nation, and which would emphasize recovery of their territories as the main foundation of their identity. With these purposes in mind, AICO was born as a political party and organization in 1990 and participated in the NCA.

AICO's main criticism of CRIC was its narrow materialistic approach, instead of a broader cultural proposal. While the CRIC did distinguish between peasant and indigenous claims, cultural struggle was not its priority. AICO contended that land was not only the main means of production and family reproduction, as in the case of peasants, and therefore the main objective of their struggle, but also represented something more. Indeed, their core project stated that Indians should direct all their efforts towards the recovery of their territory and the defense of their councils, instead of the exploitation of territory. Their main purpose should be to defend tradition and their historical heritage.

Having emerged with political ambitions and not merely material aspirations, the AICO had a golden opportunity in the NCA where it could situate the demands of the indigenous community at the centre of national debate. The representative elected to the NCA was Taita Lorenzo Muelas Hurtado,¹⁶ a former landless peasant and member of the indigenous Cabildo of Guambía, in the southwest of the country. From a young age, he had been involved in the defence of indigenous territories, which were continually threatened by landowner occupation and of being unrecognized by local authorities as territories of indigenous jurisdiction.

The ONIC, National Indigenous Organization of Colombia, also emerged from within the CRIC, but with a national mandate, and as a consequence, the first national-level indigenous organization was created in 1982.¹⁷ Following the CRIC model, other indigenous organizations were also set up in different regions. Since its first congress, ONIC agreed that its main principles would be unity in the struggle for territory, culture and the search for recognition of territorial autonomy.

The ONIC chose the indigenous leader of the Emberá group, Francisco Rojas Birry, as its candidate for the NCA. On December 9, 1990, both Muelas Hurtado and Rojas Birry were elected members of the ANC on behalf of indigenous and Afro-descendant groups, an unprecedented event in Colombian history.

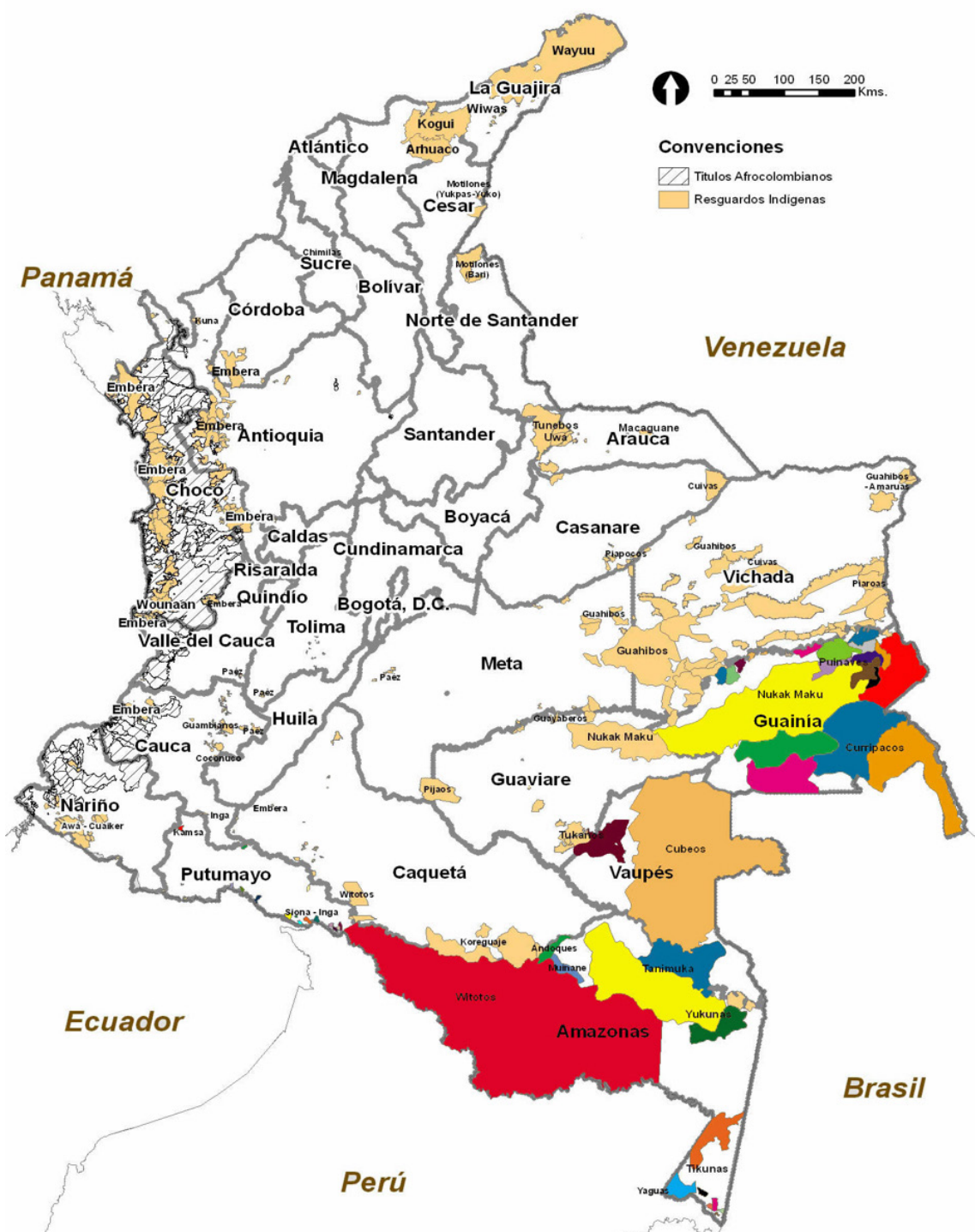
Rojas Birry had a double role in the NCA. In addition to indigenous representation, he also acted on behalf of black communities in the country's western region, a population with which indigenous groups share territories in the Pacific Ocean basin (See Map No. 1). The groups were constituted as minorities entitled to a voice and vote in the new democratization project represented by the NCA.

¹⁶ Taita was the name given to the leaders of the Guambiano community.

¹⁷ ONIC, see <http://www.onic.org.co>, last visited 23rd of April 2019.

Map No. 1

Indigenous Territories and Afro-Colombians Collective Titles



Source: <http://www.onic.org.co>

Despite being between ten to fifteen times more numerous than the indigenous population, the Afro-descendant population's organizational process has been more recent and included several vicissitudes, which had resulted in an organizational profile that was not comparable to that of the CRIC or AICO. On the contrary, it had been fragmented by electoral interests, which impeded the development of a more homogeneous identity or a political perspective based on race.¹⁸ However, similar to indigenous peoples, they shared the marginality to which they had been subjected during the colonial and republican periods, but their weak organizational capacity and identity formation precluded their having direct representation in the NCA.

The most organized and militant groups of African descent formed alliances with indigenous candidates in order to guarantee recognition of ethnic diversity and territorial rights for organized black communities by way of precepts of collective land ownership in the new constitution. Even though, in the end, this right was not included in the new constitution, it emerged as a possibility that became reality when Law 70 was passed in 1993.

Collective land ownership was recognized for black communities' public lands in the riparian rural areas of the rivers of the Pacific Ocean basin (See Map No. 1). New legislation, emerging in subsequent years, stipulated how collective ownership would be regulated and recognized community councils as self-governing bodies in internal affairs and as legal mechanisms in interactions with the state.¹⁹

5. The NCA, Minorities and Territorial Autonomy

The election to choose the 70 constituents of the NCA took place on December 9, 1990. The turnout was low with 3,710,557 votes, representing 27.1% of the electoral potential. However, this low turnout favoured minorities such as the left and the ethnic and racial groups, which were highly mobilized to elect their representatives.

The 70 constituents were distributed as follows: The Liberal party won 25 seats; the Democratic Alliance (AD) M-19 obtained 19; the National Salvation Movement (NSM, Conservative) 11 seats; the Social Conservative Party, 9, and finally the Indians, Christians and the Patriotic Union²⁰ each obtained two seats. A rotating presidency was approved to cover three periods: Álvaro Gómez Hurtado for the National Salvation Movement; Horacio Serpa for the Liberal party; and Antonio Navarro Wolf for the AD M-19. The NCA

18 Lee Van Cott 2000, p. 68.

19 Romero 2010, pp. 252–253.

20 *Unión Patriótica* was a party organized out of the peace negotiation between the president Belisario Betancur (1982–1986) and the FARC guerrilla movement 1985. The party suffered an extermination campaign until its disappearance in the mid 1990's.

worked in five commissions, each dealing with a specific topic; the second commission was assigned issues related to territorial ordering and distribution.

Coalitions within the ANC were unusual. The AD M-19, the National Salvation Movement of conservative origin, indigenous delegates, the UP and sometimes Christians, with a total of 36 constituents, formed a bloc against the Liberal and Conservative parties, which in total had 34 constituent votes. The most important ally for the territorial claims of the indigenous and Afro-descendant populations, and against the resistance of the bloc opposing recognition, was the AD-M19. What united the AD-M19 and the NSM was their need to maintain a counterweight to the Liberal party, the majority sector. In the commissions, however, the NSM delegates did not support the territorial aspirations of the indigenous and black communities.

The NCA constituted a unique opportunity for the territorial aspirations of ethnic minorities. Between 1978 and 1989, 220 indigenous territories had been created throughout Colombia, but the State only recognized 24 of them. The materialization of territorial claims was not an easy task, so for Lorenzo Muelas and Rojas Birry, being part of the NCA ensured a space for promoting constitutional recognition and delimitation of territories occupied by ethnic communities.

In Rojas Birry's and Muelas Hurtado's presentations in the NCA's second commission, recognition of territorial autonomy was the main topic of discussion. The two representatives emphasized the traditional and historical nature of territories inhabited by ethnic groups and the need to accept the cultural characteristics of the *resguardos*, including a language other than Spanish, structures of self-government, and communal methods of land exploitation.

The indigenous delegate Rojas Birry, with the support of the constituent member, Orlando Fals Borda,²¹ part of the AD M-19 list of elected delegates, presented reform project No. 104 on March 7, 1991. Its main objective was the formation and recognition of indigenous territorial entities, and their documentation highlighted the country's heterogeneous ethnic composition, and the importance of including areas inhabited by ethnic groups within the new territorial order in order to preserve their culture and historical legacy.

Similarly, Lorenzo Muelas Hurtado presented project No.103 to encourage recognition of "the right to territories", which would include jurisdictions formed by municipalities, *resguardos*, and communities or *capitanías*, to be protected by the State and with territorial divisions distinct from those defined by the central government. Also included was the right of indigenous peoples to self-rule by their own authorities within special jurisdictions embracing community norms and judicial procedures. Additionally, they would have the right to define, through their own systems of governance, projects, development plans and

21 Sociologist of international prestige, who advocated for a participatory action-research approach to field work in order to overcome the unjust social reality of the poorest groups.

exploitation of natural resources and of the subsoil within their *resguardos* and territories, in consultation with local and national authorities. The proposal indicated that in any cases of risk endangering the cultural identity or the well-being of indigenous communities or ethnic minorities, the right to oppose, based on cultural objection, would be honoured.²²

Autonomous, regional administration of each indigenous entity formed the core of the proposals submitted by the indigenous constituents for discussion. Each indigenous territory would have its own jurisdiction and administration, represented by a major council composed of leaders from different *resguardos*. Thus, each indigenous territory, constituted by *resguardos* or municipalities from different departments, could include a considerable extension of land.

The indigenous proposal for a new type of territorial administration challenged the prevailing State-centred model. The creation of ethnic and autonomous territorial entities whose collective property was indivisible, imprescriptible and inalienable resulted in a territorial and administrative management that had not been previously recognized by the Colombian state and which raised objections among the national and regional elites.

6. Oppositor to Autonomy, Backwardness and “Independent Republics”

Traditional sectors of the population considered the territorial ordering proposed by the minorities as a threat to the unitary state. Inclusion of autonomous administrative entities within the national territorial division implied the cession of power and jurisdiction from the central government to the regions, and implicitly, from privileged groups to traditionally excluded social sectors. This was, in short, to give control of an appreciable amount of territory to unreliable allies of the traditional elites, a disturbing concept for the centralist and elitist rule of the country.

Rojas Birry defended the indigenous territorial entities, ETIs, as:

The way to accomplish our right to autonomy, which must be manifested in the possibility of having our own government, of being able to decide our plans for development, of making use of and managing resources to satisfy our needs and especially to be able to maintain our cultural identity and our organizational forms.²³

The indigenous delegates defined three types of ETIs. First, were small areas with few inhabitants, under the jurisdiction of a municipality, such as a county, but with autonomy to manage their development processes. The second category included a larger population,

22 Rojas Birry 1991, pp. 5–7. Free translation.

23 Id. p. 3.

at the municipal level, with administrative autonomy and self-government. Finally, the third type of ETIs corresponded to large territorial areas, such as a department, with its own divisions, such as the Colombian Amazon.

The plan was a bold proposal for benefiting indigenous groups. An ETI was not like a *resguardo*, a territorial entity existing since colonial times, although it could include this type of territorial division. Neither was it an area inhabited by a single ethnicity given there could be different communities and ethnic groups within an ETI. The conformation of the ETIs would correlate with the political-administrative division of the State, since much of the delimitation of indigenous territories had been defined since the Spanish colonial period.

The territorial demands of the black community were similar to those of the indigenous people. However, this group did not have direct representation in the NCA and knowledge of their situation in the territory was precarious at the time. Despite this limitation, twelve NCA constituents formed a coalition that sought recognition of the Pacific and Caribbean coasts as territorial entities with administrative autonomy to manage the interests of Afro communities in these areas.

Among the 12 constituents, the names of Orlando Fals Borda, Eduardo Serrano de la Rosa, Gustavo Zafra and Carlos Holmes Trujillo stood out, the latter three being professional politicians from traditional parties who were seeking advantages for their regions of origin.

The territorial aspirations of the minority groups faced solid resistance, both in the commissions and in the plenaries, their proposal for autonomous ethnic territorial entities generating disagreement among the most conservative constituents.²⁴ The constituent Cornelio Reyes, of the National Salvation Movement, former minister of agriculture, communications and government, and one of the most influential traditional political leaders, led the bloc opposing the demands for territorial autonomy. In the commission, Reyes argued against the proposal presented by Muelas Hurtado and Rojas Birry.

According to Reyes, the Colombian Institute of Agrarian Reform, INCORA, had granted a considerable amount of land to indigenous communities in previous years. Reyes insisted that the *resguardos*' extension of approximately 25 million 821 thousand hectares was more than enough. He stated that in the Amazon there were *resguardos* with up to 8 million hectares, and in the department of Guanía, with up to 5 million hectares. During the discussions, Reyes insisted that the government had already handed over sufficient territory to indigenous groups, and that it was unexploited and had, for the most part, not been used for the country's production and economic growth.²⁵

24 Gómez Martínez 1991, pp. 1–3.

25 Reyes 1991, p. 5.

Reyes criticized the model of indigenous production and its relation to territory, claiming that their production system was rudimentary and did not make proper use of the land. He insisted that their form of production was associated with the technological backwardness of the communities, which, in turn, explained the economic and social backwardness of indigenous people.

Thus, according to Reyes, recognition of political autonomy of ethnic territorial entities implied acceptance of the economic models they were implementing in the region, models that would put national economic growth at risk. The group opposing autonomy argued that indigenous people had completely unexploited territories in eastern Colombia.

Reyes, a politician representing sugar plantation elites in western Colombia, had historically disputed land access for indigenous groups. In his view, guaranteeing the right to autonomous forms of organization in accordance with their traditions, institutions and administrative hierarchy meant that such “autonomy” could only be preserved at the risk of supporting “independent republics”.

In Reyes’ view, “the territory had been torn apart by the commission’s work”, adding that “granting new territory to indigenous groups implied maintaining a limited economic model and atomizing government resources for the protection of these territories”.²⁶ In reference to the recognition of indigenous territoriality in border areas with other countries, Reyes also indicated that Colombian citizenship had been arbitrarily granted to indigenous people born in countries such as Peru, Panama, Ecuador, Brazil or Venezuela.

7. The Issue of Autonomy in the NCA Plenary Sessions and in Congress

After the proposals for territorial autonomy, defended by Lorenzo Muelas and Rojas Birry, had been debated in commission, discussion followed in NCA plenary sessions. Criticisms of indigenous autonomy came to the NCA presidency, and Álvaro Gómez, the most prestigious conservative leader and co-president of the NCA, presented a paper on territorial organization that ignored the indigenous constituents’ proposals presented in the commissions. The conservative leader insisted that the only form of internal territorial division would be one of departments in order to avoid the division of the Colombian unitary state.

On June 16, 1991, the Assembly approved the article related to recognition of the heterogeneous cultural character of the population and of the autonomy of territories inhabited by ethnic communities. The decision enabled such jurisdictions to associate with each other or with other territorial entities, or directly with the nation. The recognition

26 Ibid.

made it clear that these new units could not be divided to form other territorial entities and that their property would be collective and inalienable.²⁷

This first victory for indigenous peoples' demands generated confusion within the most centralist sectors. The proposal had to be reviewed, along with other proposals, by a codifying commission, where it would be re-drafted according to constitutional language. Carlos Lleras de la Fuente, Cornelio Reyes and Álvaro Gómez, all constituents of the two traditional parties, were the members of this commission, which had the power to propose modifications for a second debate.

The commission rejected the proposal related to recognition of the ETIs, and instead, an alternative, suggested by the interior minister at the time, Humberto de la Calle, would permit indigenous territories, when they complied with the law of territorial ordering. The redraft of the articles ignored the right to territorial autonomy and delimitation would remain in the hands of congress, a historically inaccessible body for indigenous people.

The codifying commission's proposal caused concern in the bloc supporting the claims of indigenous and Afro-Colombian people. Representatives of ethnic groups threatened to leave the NCA, and as a solution, a meeting with the government was set up. Finally, an agreement emerged which recognized *resguardos* as entities like municipalities or departments, as was initially drafted in article 286 of the new constitution.²⁸ However, there was no agreement on the definition of the ETIs and their conformation, and the matter was left in the hands of congress to decide.

Congress finally approved the organic law of territorial ordering in 2011, 20 years later. The context in which approval was achieved indicated that a first step had been taken at the national governmental level to address territorial administration in a more rational way and in accordance with the 1991 constitution. Unfortunately, the law did not develop territorial issues such as the ETIs, nor did it clarify competences between national and territorial entities. Rather, the law created a set of territorial associative instruments of minor relevance.²⁹

This situation has been labelled one of "institutional negligence", with no administrative consequences.³⁰ The issue of territory, its administration and the definition of competences between self-rule entities and the national government continue to be a key concern for the indigenous population and Afro-Colombians, although it appears not to be a priority for national government coalitions.

27 Comisión de Ordenamiento Territorial 1991, pp. 1–3.

28 ANC 1991, p. 5.

29 Duque 2012, p. 176.

30 Baena, 2015, p. 129.

8. Conclusion

The article analysed the circumstances in which excluded groups – indigenous communities and Afro-descendants – were able to gain a voice in the constitutional assembly of 1991 in Colombia and how they influenced the definition of new territorial institutions, according to their needs and traditions. This was a unique moment in Colombian history that requires highlighting. Both indigenous people and Afro-descendants managed to take advantage of the juncture of change and to gather enough support to become “visible” to the national elites in the capital and main urban areas.

A historical juncture of national and international political dynamics facilitated the agency of organized groups of indigenous and Afro-descendants. The development of a global discourse in favor of human rights and cultural and ethnic diversity in the 1980’s coincided with a period of constitutional and democratic change in the region. At the national level, the peace negotiations between the government and the guerrillas – mainly the M-19 movement – provided an opportunity for participation in the Constituent Assembly and to find allies, supportive of their claim for territorial autonomy.

The claim for territorial rights and self-rule challenged the centralist and elitist view of territorial governance espoused by traditional elites and created great discomfort among both national and regional elites. In fact, this elite distress became clear a decade later with the global boom for natural resources. National and international investors realized that minerals and other exploitable resources were located in territories that were not empty, but inhabited by indigenous, afro-descendants and peasants, whose voices would now have to be taken into consideration. This fact, although positive in principle, has had devastating effects on local communities in a country like Colombia with an armed conflict and coca and marihuana cultivation.

The Pacific Ocean basin, where indigenous people, Afro-descendants and peasants share territory, has been subjected to guerrilla armies, paramilitary forces, drug traffickers’ cocaine exportation routes, central government military interventions, and greedy fortune seekers looking for opportunities. Although these communities have more rights on paper since 1991, the possibility to enjoy them has been limited. Their priority has been not to be killed in such a dangerous context.

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