# Racial Colonial Continuities and Emancipatory Uses Law in Cartagena de Indias*

## Continuidades raciales coloniales y usos emancipatorios del derecho en Cartagena de Indias

## Continuidades raciais coloniais e usos emancipatórios do direito em Cartagena das Índias

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**ABSTRACT**

This article examines how Afro-descendant communities in Cartagena de Indias confront the continuities of the colonial legal paradigm that has historically structured racial and territorial exclusion. Using socio-legal methods that combine historical analysis, ethnography, and case law analysis it shows how these communities employ multicultural and human rights frameworks to interrupt ongoing dispossession. It argues that their emancipatory uses of law reveal the transformative potential of constitutional and international law to address historical inequalities and reshape power relations in urban contexts.

**Keywords:** Race; colonial legal paradigm; dispossession; emancipatory uses of law; afro-descendant communities; Cartagena de Indias.

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**RESUMEN**

Este artículo examina cómo las comunidades afrodescendientes de Cartagena de Indias enfrentan las continuidades del paradigma jurídico colonial que históricamente ha estructurado la exclusión racial y territorial. A través de métodos socio-jurídicos que combinan el análisis histórico, la etnografía y el análisis de decisiones judiciales, muestra cómo estas comunidades emplean los marcos del multiculturalismo y de los derechos humanos para interrumpir procesos continuos de despojo. Sostiene que sus usos emancipatorios del derecho revelan el potencial transformador del derecho constitucional e internacional para abordar las desigualdades históricas y reconfigurar las relaciones de poder en contextos urbanos.

**Palabras clave:** raza; paradigma jurídico colonial; despojo; usos emancipatorios del derecho; comunidades afrodescendientes; Cartagena de Indias.

**RESUMO**

Este artigo examina como as comunidades afrodescendentes de Cartagena das Índias, Colômbia, enfrentam as continuidades do paradigma jurídico-colonial que historicamente estruturou formas de exclusão racial e territorial. Utilizando métodos sociojurídicos que combinam análise histórica, etnografia e análise de sentenças, mostra como essas comunidades empregam marcos do multiculturalismo e dos direitos humanos para interromper processos contínuos de despossessão. Argumenta-se que seus usos emancipatórios do direito revelam o potencial transformador do direito constitucional e internacional para enfrentar desigualdades históricas e reconfigurar as relações de poder em contextos urbanos.

**Palavras-chave:** raça; paradigma jurídico-colonial; despossessão; usos emancipatórios do direito; comunidades afrodescendentes; Cartagena das Índias.

## Introduction[1]

Black communities living along Cartagena's Caribbean coast continue to experience the enduring legacies of a colonial legal paradigm in the distribution of land and resources between them and the tourism industry. This paradigm allocated rights and privileges primarily on the basis of race, as well as class, gender, and other classificatory regimes, establishing hierarchies that structured access to land, labor, and political participation (Fischer et al., 2018; Grinberg & McGuire, 2019; Pérez Morales, 2022; Segato, 2007). Law has played a dual role in this process. Historically, colonial legal frameworks underpinned racial exclusion and sustained durable systems of inequality. At the same time, contemporary constitutional and human rights regimes have recognized Afro-descendant communities as ethnically distinct peoples and provided legal tools to defend their territorial rights (Pashel, 2016). In Colombia, this shift materialized in the 1991 Constitution and subsequent regulations such as Law 70 of 1993, which institutionalized ethnic-territorial rights and political participation.

This article argues that, despite formal recognition, colonial patterns of racialized dispossession persist in Cartagena, particularly through tourism-driven urbanization. Using a socio-legal approach that combines historical analysis, qualitative legal research, and ethnographic fieldwork conducted between 2013 and 2024, the article traces the *long durée* reconfiguration of a colonial racial legal paradigm and examines how it continues to shape contemporary territorial conflicts.

The historical analysis draws on documentary and historiographical sources to reconstruct the spatialization of racial hierarchy across time, while the ethnographic and legal materials examine how Afro-descendant communities mobilize constitutional and international norms in concrete disputes over land and planning. The findings identify a recurring qualitative pattern: judicial and administrative outcomes tend to be more protective when communities actively participate as legal

[1] I would like to express my sincere gratitude to Violeta Alicia Brock and Sofía Escobar Dangond for their dedicated research assistance in the preparation of this article. I am also deeply grateful to Bruno Lima for his insightful suggestions from a legal-historical perspective.

subjects, engaging procedurally and discursively through mechanisms such as *tutelas*, interventions, hearings, and ethnic-territorial claims. This qualitative pattern does not claim statistical generalizability but emerges from a structured reading of thirteen Constitutional Court decisions and one Council of State ruling, contrasted according to the degree of procedural participation of the affected communities.

Building on this empirical analysis, the article introduces the concept of *emancipatory uses of law* to describe how marginalized communities engage law as both a site of constraint and an agonistic terrain of struggle. It pursues three interrelated objectives: to reconstruct the historical continuities of the colonial racial legal paradigm in Cartagena; to analyze how contemporary urban development reproduces racialized dispossession; and to demonstrate how Afro-descendant communities deploy legal frameworks to interrupt these patterns. Conceptually, the article contributes to debates on transformative constitutionalism by foregrounding its bottom-up dimension (Céspedes-Báez et al., 2025). Rather than understanding transformative constitutionalism primarily as a top-down judicial project (Verdugo, 2015), it shows how its transformative potential is materially sustained by communities who activate constitutional and international norms in everyday territorial conflicts. In this sense, the emancipatory uses of law documented in Cartagena are not external to transformative constitutionalism but constitute one of its living modalities in urban ethnic-territorial contexts.

## Tourism's Landscapes of Dispossession in Cartagena

Thirteen Afro-descendant communities are located in the extensive northern territory of Cartagena de Indias. They inhabit amphibious landscapes that encompass the Caribbean Sea, beaches, mangroves, lagoons, and wetlands, which has led me to refer to them as the "People of the Sea" (Bejarano, 2024). Since the beginning of the millennium, these peoples have established an ethnic authority for each of the thirteen groups, known as Community Councils (Babilonia et al., 2021), constitutional bodies created to protect the political and territorial rights of Afro-descendant peoples as ethnic minorities.

Historically, Black communities settled in these areas because they were the only spaces where they were tacitly "allowed" to live (Rangel, 2015). Considered worthless by white elites concentrated in the city center, these unstable lands between water and soil were excluded from formal property regimes.[2] Although residents could not obtain legal ownership, this absence of recognition paradoxically allowed their permanence.

Cartagena's Black communities developed ways of life deeply intertwined with the ecosystems' resources and rhythms. Like other fishing and agricultural communities in the Caribbean (Rivera, 2024), their daily existence follows the rainy and dry seasons, and their territories constitute both spaces of subsistence and collective life. As Arturo Escobar (2018) and Marisol de la Cadena (2015) suggest, territorial relations are ontological as much as material, shaping how communities inhabit, know, and defend their environments.

The cyclical and unstable nature of these ecosystems offered protection from elite interests: for land to become a commodity, it must be measurable and stable, qualities absent in the lagoons, mangroves, and wetlands of northern Cartagena (Bejarano, 2024). Over the twentieth century, however, infrastructural interventions altered these aquatic dynamics, separating land from water. It started with the hygienist transformations of the walled city[3], continued with the city planning instruments like the Pearson Plan of 1914 and the Regulador Plan of 1948, aimed to develop "empty" spaces (Solano, 2022; Valdemar Villegas, 2017) and concluded with processes of expulsion and exclusion (Bejarano, 2024; Deávila, 2015). The process intensified in the 2000s, when territorial planning designated the northern zone as a hub for urban and tourism development (Rangel, 2015). The very ecosystems that once shielded Black communities became coveted for their scenic value and proximity to the Caribbean Sea.

Today, Afro-descendant communities remain in their territories but are increasingly confined (Piñeros, 2017). When I began conducting ethnographic research over a decade ago, urban expansion projects were

[2] See for example.

[3] Law 33 of 1913 in Gaceta Departamental de Bolívar, 1914, p. 1033

still in planning; today they are a reality. A vast real estate project now transforms land once used for agriculture: Serena del Mar, The Dreamed City. According to its developers, it is based on three pillars—integration with nature, a city designed for the future, and opportunities for all (Serena del Mar, 2023).

"Integration with nature" has meant separating water from land by artificially channeling and controlling it to enable property creation. "Designed for the future" has meant that community visions must now align with the development model imposed by the project. Lastly, "opportunities for all" translates into employment for community members, mainly in housekeeping, gardening, and other service-related tasks.

Figure 1. **Yarcelis Manrique, owner of the company Asociación de Pescadores de Tierra Baja, along with her workers who are employed at the Satellite Transport Terminal**

Source: Fundación Serena del Mar (2017).

Figure 2. **Julio Morón Batista, an employee of Conspyl S.A. at Morros Eco**

Source: Fundación Serena del Mar (2017).

Figure 3. **Carolina Fontalvo, from the Tierra Baja community, employee at the Serena del Mar Sales Center**


Source: Fundación Serena del Mar (2017).

Afro-descendant communities in Cartagena, as well as other along the Caribbean litoral (Ojeda, 2014), now find themselves confined to small portions of land surrounded by hotels, golf courses, and luxury apartments, with diminishing access to the resources that once sustained their way of life (Ojeda, 2019). The physical separation of land from water has gone hand in hand with separation from their means of life, representing the most extreme form of dispossession they currently face. It prevents them from producing and reproducing their own culturally differentiated life projects.

### *Dispossession as a Process*

Why is this process referred to as dispossession if communities have not been expelled from their territory? I draw on Diana Ojeda's concept of dispossession, which frames it as a continuous and everyday process (2016). This perspective contrasts with the legal understanding of dispossession in the context of the Colombian armed conflict, where it is defined as a single event occurring at a specific historical moment (CNRN, 2009). In that framework, dispossession is associated with violent acts leading to the loss of possession: a "one-act spectacle." In contrast, Scholars like Ojeda, following Hart (2016) and Harvey (2004) conceptualize dispossession as an ongoing process in which different forms of violence are routinely inscribed into space, producing territories and landscapes over time. The landscapes of dispossession are cumulative products of historical and material processes (Harvey, 2004, 2006)

Applying this framework, the expansion of tourism in northern Cartagena can be understood as a process that has produced a landscape of dispossession (Ojeda, 2019). A defining feature of this transformation is the separation of water from land, which created a picturesque scene for beach tourism characterized by securitized and racialized exclusion. Within this new landscape, real estate consumers and tourists occupy the top of the social hierarchy, while Afro-descendant communities are confined to small portions of land and have lost access to the resources that once sustained their way of life, becoming economically dependent on the tourism industry.

This process did not occur suddenly, nor did it begin solely with the urban development plan of the early 2000s. Rather, the transformation of northern Cartagena has unfolded gradually, revealing two levels of historical continuity. First, there is a racial dimension rooted epistemologically in the colonial legal paradigm. Second, throughout the twentieth century, Afro-descendant communities experienced three major expulsions that mirror current processes, exposing a persistent pattern of dispossession, expulsion, and displacement. The following sections examine these two continuities in greater detail.

## The Continuities of the Colonial Legal Paradigm

### *The Colonial Racial Paradigm: Classification, Status, and Rights*

In this section, I draw on primary and secondary historical sources to describe the colonial legal paradigm, characterized by the legal classification of subjects primarily based on race. I argue that, during the colonial period, legal regimes in Latin America institutionalized racial classifications through law, producing enduring effects that extended beyond the colonial era and continued to shape social and legal orders in the republican period and into contemporary times (Segato, 2010). I refer to these as the longue durée effects of the colonial legal paradigm.

Similarly, in eighteenth-century Cartagena, racial classification operated as a legal and social technology that organized rights, status, and access to resources. The accounts of Antonio de Ulloa and Jorge Juan, who visited Cartagena between 1735 and 1746 as part of the meridian expedition, reveal how colonial authorities perceived and reproduced this order. Their narrative does not invent racial hierarchy; it describes it. They portrait a graded sequence of mixture categories —from Black and mulato to terceron, cuarteron, and quinteron— culminating in Spanishness. Upward movement was valued; downward movement stigmatized through designations such as salto atrás:

> The children of Quarterones or Quinterones who unite with Mulatos or Tercerones —and likewise those of these with Blacks— are

> known as Salto atrás ("step back"), because instead of progressing toward becoming White, they regress and return closer to the caste of Blacks. (De Ulloa y Juan, 1748, pp. 41-42, translation is mine)

What mattered was not phenotype alone but the codified association between racial category and civic worth, including presumptions about honor, occupation, and legitimate participation in public life. Colonial *Casta* paintings crystallized these associations, depicting elevated categories with refined clothing and free from the signs of labor, while lower categories appeared as artisans, fishers, or weavers.

Figure 4. **Casta Painting. The union of an Indio and a Cambuja produces a Lobo Torna Atrás**[4]


Source: Unknown Author.

In these depictions, racial hierarchy is naturalized through domestic scenes where race indexes virtue, civility, and proper social place

[4] Available at: https://sites.berry.edu/dslade/wp-content/uploads/sites/8/2016/02/lobo-torno-atras.jpg

(Katzew, 2004). Such imagery translated legal distinctions into everyday forms of difference (Fischer et al., 2018; Segato, 2010). For the purpose of this article, I want to highlight that law was a means to install this racial classification into social life. As portraited by Fuente and Gross, the black population occupied the lower spaces of racial hierarchy.

Across linguistic and imperial barriers, the law constituted "blacks" as social outcasts, conflating their social existence with enslavement. Legal prohibitions that applied to "all black men and women, free or enslaved," or defined certain actions by "any black or mulatto" against "whites" as a crime, made blackness, rather than enslavement, the mark of degradation (Fuente & Gross, 2020, pp. 15-16).

The colonial racial paradigm was not merely symbolic; it was embedded in specific legal regimes governing marriage, inheritance, property ownership, access to guilds, and political participation (Rodríguez Garavito, 2011; Vidal, 2003). The colonial legal paradigm thus tied rights and privileges to race, class, gender, and occupation. Despite this, eighteenth-century Cartagena's racial order remained largely juridical and symbolic, not yet spatialized as happened in other colonial settings (Velednitsky et al., 2020). Even legal processes of emancipation allowed this racial mix in geographical terms, as described by McKinley (2016) for the case of Lima. The nineteenth century would rearticulate this logic through republican discourses of equality and citizenship, laying the groundwork for new, spatial forms of exclusion.

Historiographical sources on the colonial period in Cartagena surprisingly show that this social order was not initially spatially rigid. Ulloa and Juan (1748) describe a city largely populated by Black and mixed-race residents. At that time, Cartagena was already a Black city in demographic terms (Múnera, 2020), sustained by trade and the slave market. The prosperity of the port and the depopulation of Indigenous communities intensified the importation of enslaved Africans (Meisel, 1980). As I prove in the next two sections, the colonial legal paradigm would acquire a spatial dimension only during the republican period, when racial classifications were supposedly overcome through formal legal claims of equality.

### *Republican Equality and the Afterlives of Colonial Hierarchy*

Independence did not dismantle the colonial racial order; it recalibrated it under the language of equality (Lasso, 2007; Rappaport, 2018). Although the republic proclaimed formal equality, the new paradigm absorbed and updated colonial hierarchies rather than displacing them.

During the wars of independence, Black, pardo, and mulato populations participated massively in both royalist and republican armies, particularly in demographically Black regions such as Cartagena (Lasso, 2015; Múnera, 2021). Their participation was indispensable yet unsettling for the white criollo elite. Múnera recounts that in 1820 Bolívar instructed Santander to recruit exclusively Black soldiers, arguing that whites had died disproportionately and that continued losses could produce a demographic imbalance in which Black people would come to dominate the country (Múnera, 2021, p. 146). Equality was proclaimed as a founding principle, but elite correspondence reveals deep anxieties about Black political power.

These anxieties were not merely rhetorical. Historians document Bolívar's fear of a possible pardocracy, a regime in which pardos and Blacks would dominate the political sphere by virtue of their numbers and military prestige (Múnera, 2021). In an 1823 letter to Santander, Bolívar warned that legal equality would fuel demands for "absolute equality," culminating in pardocracy and the destruction of the privileged class (Bolívar, 1823, as cited in Múnera, 2021, p. 231). His references to blood and lineage, as Múnera explains, reveal the enduring influence of aristocratic notions of racial hierarchy within a republican project publicly committed to universal rights (Múnera, 2021, p. 230).

At the same time, Black military participation occasionally translated into tangible legal gains. The 1810 electoral instructions summoned "whites, Indians, mestizos, mulatos, Blacks, and zambos" to vote, provided they were heads of household and lived from their labor (Ezequiel 1889, as cited in Lasso, 2015). Enslaved individuals were often promised freedom in exchange for enlistment, acknowledging and instrumentalizing their role in the struggle (Pérez Morales, 2022). Yet these recognitions were framed by property and gender restrictions,

revealing how the republican paradigm of equality merged colonial racial differentiation with preexisting class exclusions (Lasso, 2015).

Reforms such as the removal of racial labels from official records, the Ley de Vientres (González, 1974), and certain educational initiatives (Acevedo Puello, 2017) signaled an aspiration toward racial equality. However, this horizon remained unstable, constrained by fears that the numerical majority might claim the full substance of republican promises (Lasso, 2015; Múnera, 2021). The result was a layered paradigm: a republican idiom of rights enveloping, rather than dismantling, colonial hierarchies of race and status.

This hybridization is crucial for understanding what followed. The republic shifted the grammar through which difference was articulated, but it preserved the structural linkage between racialized personhood, authority, and belonging. As the next section shows, this unresolved tension would acquire a spatial dimension, reorganizing racial hierarchy not only through legal discourse but through the material ordering of urban space.

### *From Status to Space: Nineteenth-Century Segregation and Urban Life*

By the mid-nineteenth century, the colonial hierarchy of race and status had not disappeared; it had found new modes of expression within republican society. Cartagena, once a vibrant port that embodied both the wealth of empire and the contradictions of slavery, became a microcosm of these transformations. The end of colonial rule did not end racial difference. As republican ideals of equality and civility spread, they reshaped but did not dismantle the racialized order. Everyday interactions, public celebrations, and the emerging urban geography of Cartagena reflected the continuity between colonial and republican paradigms (Lasso, 2015; Múnera, 2021).

A window into this transition is offered by Joaquín Posada Gutiérrez, a nineteenth-century criollo intellectual and politician from Cartagena. In his 1865 chronicle of the Candelaria festivities, he depicted dance halls attended by white (Castilian), mulata, and free Black women, giving

the impression that colonial classifications had been overcome. Yet he also noted that poor Black people were excluded:

> For the poor people —free and enslaved— pardos, Blacks, laborers, charcoal burners, cart drivers, fishermen, etc., *all of them barefoot, there was no dance hall* […]. Preferring the natural freedom of their class, they danced under the open sky to the thunderous sound of the African drum. (Posada Gutiérrez, 2020, p. 121; translation is mine, emphasis added)

This contrast between interiors and exteriors is telling. Bare feet, clothing, and occupation mark social difference, recalling the colonial link between civility, labor, and skin color. The ballroom interior represents regulated sociability, while the open-air dance embodies freedom and exclusion. Some Black and mulato individuals achieved limited mobility, but most remained confined to poverty and peripheral occupations. Respectable interiors —dance halls, salons, and commercial centers— became guarded, while the poor were relegated to outdoor or marginal spaces (Lasso, 2015).

Here, the colonial paradigm becomes spatial. In the eighteenth century, hierarchy was juridical and symbolic; by the nineteenth century, Cartagena's republican order translated it into spatial and behavioral forms: who could appear where and with what signs of respectability. Civility replaced caste terminology as the mechanism of differentiation, and class discourse carried racial meaning without naming it directly (Múnera, 2021).

Cartagena's transformation exemplified the contradictions of republican modernity. While the city celebrated national progress and equality, daily life revealed persistent hierarchies (Bejarano, 2024). The port's commercial revival and fortifications coexisted with practices that confined Black majorities to fishing, charcoal production, and cart driving, tying them to the rural and watery margins. The republic's discourse of freedom thus masked a process of racialized spatial ordering.

Posada's nostalgic tone romanticizes this order, portraying the "natural freedom" of poor Black revelers as picturesque, even as it reproduces colonial notions of difference. His chronicle documents how republican

moral codes turned race into geography. The ballroom's inside and outside stand as metaphors for inclusion and exclusion—one bounded by decorum and whiteness, the other by noise and Blackness.

These nineteenth-century dynamics foreshadowed the twentieth and twenty-first centuries, when urban planning and tourism formalized separation through property regimes. The control of water and the commodification of coastal land transformed social distinctions into physical barriers. The colonial allocation of rights by race survived as allocation by respectability, capital, and proximity to stabilized land. A hierarchy of status became a hierarchy of space, producing the landscapes of dispossession that continue to define Cartagena today (Múnera, 2021).

### *The Consolidation of Racialized Dispossession in the 20th Century*

Over the twentieth century, spatial segregation in Cartagena deepened and became routinized. The colonial legal paradigm —once centered on racial classification and status— was adapted and updated into a spatial logic through discourses of hygiene, urban planning, tourism, and law. This section describes three vignettes of expulsions and displacements of Afro-descendant communities in Cartagena during the 20th century that illustrate how these processes crystallized and presage contemporary dispossession. Law played a crucial role in the continuity of a colonial racial paradigm of exclusion.

#### *Early Hygienist Expulsions of Black People*

At the turn of the century, Cartagena's elites reframed the walled city center as a locus of disease, vice, and decay, in line with the hygienist discourses of the *Regeneración* period (García, 2008). A cholera outbreak near the 19th century's end intensified the critique of the colonial walls as impediments to public health and progress. In response, parts of the walls were demolished or repurposed under the pretext of urban modernization. As Lemaitre (1983) describes, elites sought "a life more in line with the comfort and conveniences of the new century, breathing fresher and healthier air, outside the suffocating walls that were no longer of any use" (Lemaitre, 1983, p. 459; translation is mine).

These reforms had direct consequences for Afro-descendant fishing settlements that occupied marginal lands of the walled city—wet zones between lagoons and sea, often unstable and lacking formal property rights. Because these communities were not legally recognized as owners, authorities found it easy to expulse them. As urban development pushed outward, fishing settlements in neighborhoods like Manga and Bocagrande were systematically removed; displaced residents were relocated to peripheral sites such as the Island of Tierra Bomba or other watery peripheries of the city (Samudio, 1999).

Similarly, working-class neighborhoods founded by fishing communities —such as Pueblo Nuevo, Pekín, and Boquetillo— were gradually portrayed as unhealthy, dangerous, and unruly (Bohórquez & Hernández 2008). Lemaitre (1990, cited in Elles, 2022) recounts how some fishers had moved into spaces near the city walls "to be closer to the sea … taking advantage of the indifference of the authorities". The image of dilapidated housing, flooding risk, and poor sanitation became the grounds for dispossession. Rhetoric of progress and sanitary order justified demolition and eviction. One 1917 newspaper statement illustrates the logic:

> Although Cartagena has ceased to be a fortified city over time, the needs of its urbanization may, at any moment, require that the beaches where these hamlets are located be vacated to transform them into promenades … or any other development that progress demands. (Diario de la Costa, February 21, 1917, cited in Bohórquez & Hernández, 2008, p. 45; translation is mine)

In 1936, under Mayor Daniel Lemaitre, the first large-scale eviction targeted several neighborhoods to make way for urban expansion and tourism infrastructure. Authorities established the *Sociedad de Mejoras Públicas* (Public Improvements Society) to justify beautification and clearance plans. National funding bolstered these efforts. These expulsions were not merely informal administrative practices or discretionary acts of urban authority. They were enabled through specific legal instruments, including expropriation procedures, urban planning ordinances, sanitary regulations, and cadastral classifications that rendered certain forms of

occupation legally invisible or precarious. Through these mechanisms, racialized communities inhabiting amphibious and marginal lands were repositioned as obstacles to modernization rather than as legitimate territorial subjects.

Bohórquez and Hernández (2008) document how, in 1927, the Ministry of Public Instruction allocated resources for purchasing houses "at the side of the wall … that make tourist access impossible," framed in terms of preserving Spanish heritage (cited in Bohórquez & Hernández, 2008, p. 48).

When discontent arose among residents, they contested their removal with constitutional appeals:

> The procedure initiated against us … is contrary to the Constitution and National laws … if expropriation is necessary, it must be decreed by judges (…) following due process". (La Patria, October 21, 1929, cited in Bohórquez & Hernández, 2008, p. 50, translation is mine)

Faced with resistance and legal liability, city officials rebranded the removal as infrastructural development. The construction of Avenida Santander (named for the *libertador*) in 1936 provided the pretext to displace the residents of Pueblo Nuevo, Pekín, and Boquetillo under the guise of connectivity and modernization (Bohórquez & Hernández, 2008). Relocated communities were often moved to Canapote, a flood-prone area lacking services and exposed to epidemics—a grim irony given that the health rationale had been used to justify their displacement.

Thus, the first vignette demonstrates how visions of sanitation, order, and modernization were enacted through legal instruments such as national laws and local resolutions issued by the mayor and the city council, which were implemented to dismantle Black communities whose land claims were weak under formal law. The colonial racial paradigm, though no longer explicit, was updated through a modern legal vocabulary of hygiene and progress. Nevertheless, in these first expulsions, it is notable that black communities started using legal arguments to defend their right to remain, even though those arguments failed back then.

*Bocagrande: Tourism, Land Filling, and Dispossession*

The transformation of Bocagrande, as the second vignette, illustrates how tourism and the artificial conversion of wetlands through land filling reconfigured space and dispossessed fishing communities in favor of white elite enclaves. Initially a fishing peninsula with dunes, mangroves, and lagoons, Bocagrande was gradually reshaped. A century ago, in contrast to the modern tourist setting it has today, the peninsula —like many places in the Inner Land Caribbean (Márquez, 2022; Rivera, 2024)— was less land than water, resembling Swiss cheese with holes, where small lagoons were surrounded by mangrove forests.

The transformation began with the construction of La Machina dock at the end of the nineteenth century, the first major infrastructure project in the area. Used to load and unload trains and ships (Ortiz, 2018), its construction required extensive land filling and stabilization of mangrove and wetland areas, initiating the large-scale environmental transformation of the peninsula.

Until then, Bocagrande had been inhabited primarily by Afro-descendant fishing communities whose livelihoods depended on the mangrove ecosystem (Bejarano, 2015; Durán, 2007). The dock's arrival altered both the ecological landscape and the social relations tied to it. Fishing villages were gradually displaced as Bocagrande became a site of industrial activity and later of elite residential development. In the 1920s, the Andean National Corporation, a Canadian oil company, acquired most of the land, building American-style houses for its employees and a golf club reserved for elites (Samudio, 1999). Bocagrande became a "healthy" place only after the company's environmental transformation, which turned sand dunes, mangroves, and swamps into an area suitable for habitation and later for tourism. The company "filled and leveled the entire surface of the peninsula with material extracted from the bay" (Samudio, 1999, p. 34; translation is mine), creating spaces available for stable private property.

An incipient tourism industry began in the 1940s with the construction of the "Hotel Caribe." Tourism shaped Cartagena as a destination for visitors rather than a livable city. The hotel, the city's first large-scale tourism infrastructure, was part of a broader national and global strategy

to promote mass tourism. Public resources also funded the Rafael Núñez Airport in the Crespo neighborhood, inaugurated in 1946, one year after the hotel (Pájaro, 2013).

From the outset, Cartagena was framed as both a beach destination and a site of historical tourism. With the promise of incoming capital, the elite's former disdain for the colonial walls transformed into what Flórez (2015) calls a "cult of the stone." The Sociedad de Mejoras Públicas had laid the groundwork for restoration since the 1930s, as seen earlier in Pueblo Nuevo, Pekín, and Boquetillo. This process reclaimed areas "invaded" by fishing neighborhoods, reinforcing a vision of heritage and beauty built on the erasure of Afro-descendant communities.

Here again, the legal and spatial logic reveals the continuities of the colonial paradigm: elites determined where and how to produce stable land through land filling to commodify it, sacrificing the livelihoods of fishing communities whose occupations were not recognized by law. Dependent on wetlands and shifting coastlines, these communities were excluded as the very spaces that sustained their lives were redefined to sustain tourism. Bocagrande thus became a model of exclusionary development, its desirability justifying dispossession and the artificial stabilization of coastal land.

### *Chambacú*

The history of Chambacú is the last vignette revealing the deep continuities between colonial racial hierarchies and the urban transformations that accompanied the rise of tourism in twentieth-century Cartagena. What took place on this small island across from the walled city exemplifies the entanglement of racism, dispossession, and development—an entanglement that continues to shape contemporary tourism and urban development in Cartagena.

Manuel Zapata Olivella, in his autobiography, describes Chambacú as "a refuge for maroons in colonial times… surrounded by canals and mangroves" (2020, p. 153; translation is mine). Originally a swampy and malarial zone, it became home to displaced Black families who, through their own labor, made solid ground out of the marsh. They

built a community from the refuse of the city —its trash, rice husks, and discarded materials— transforming waste into a site of life.

By the mid-1950s, Chambacú had already become a scandalous presence at the city's edge. Gabriel García Márquez captured its contradictions in his 1955 *El Espectador* column, "El más humano de los barrios." The title itself mocked the official rhetoric that sought to "humanize" Chambacú. "The most human thing Cartagena has is Chambacú, a neighborhood that boils and rots with pure humanity" (García Márquez, 2015, p. 879; translation is mine). The irony is devastating: while officials declared the need to "sanitize" Chambacú, its inhabitants embodied the city's most human dimension—the capacity to create community out of nothing.

For García Márquez, the tragedy lay not in Chambacú's poverty but in the hypocrisy of the authorities: "What is inhuman is something else: the authorities who for twenty years have watched 1127 shacks grow over a garbage dump and found no way to change things" (p. 879; translation is mine). The city's elites tolerated the settlement's existence as long as it remained hidden from tourists. The effort to render Chambacú invisible, both materially and symbolically, reflected the logic of a tourism industry that demanded whitened, sanitized spaces. Already in 1955, García Márquez exposed how tourism, racism, and urban planning were becoming inseparable in the making of modern Cartagena.

Photographs taken by Nereo López[5] that same year show children playing by the swamp and women cooking outside their homes—images that reveal, beyond misery, a dense social fabric.

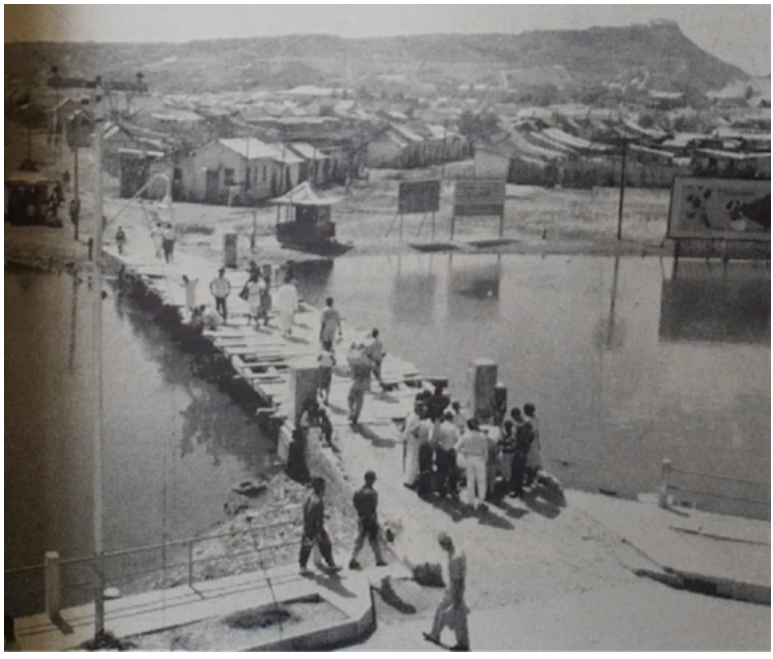
Like the fishing and mangrove communities of the Ciénaga de la Virgen, the residents of Chambacú adapted to a hostile environment, asserting their right to remain where the city refused to see value.

Manuel Zapata Olivella's novel *Chambacú, corral de negros* offers a literary reconstruction of that struggle. Through the story of La Cotena and her five children, Zapata portrays both the precariousness of life in the settlement and the growing awareness of racial injustice. Máximo, the eldest son, articulates this consciousness with clarity:

[5] And in this case, taken from historian Orlándo de Ávila Perduz's X account: https://twitter.com/OrlandoDeavilaP/status/1651218829773512705/photo/1

Figure 5. **Chambacú ®Nereo López, 1955**

Figure 6. **Chambacú ® Nereo López, 1955**



"We are condemned to scatter… This land we tread is not ours. Tomorrow, they will drive us out even though everyone knows we have paved it with our sweat and mangrove" (p. 119, translation is mine). His words express both historical continuity and political awakening.

Máximo's resistance takes the form of legal and political mobilization. A self-taught man, he studies the law to defend his community: "We will demand justice… We will march on the city to claim our rights!" (p. 138; translation is mine). Zapata Olivella's choice of the law as the language of resistance is telling. It signals the double bind of modern citizenship: the same legal system that excludes Black subjects also provides the vocabulary through which they claim dignity and belonging.

Yet resistance comes at a cost. The novel captures the ambivalence of those torn between fighting for justice and protecting their families. Mothers, fearful of losing their sons, ask: "What do you gain by painting slogans on the walls?" (p. 31; translation is mine). The conflict between survival and collective struggle reveals the moral weight of displacement and the violence of development.

Chambacú was ultimately demolished in the early 1970s. Many of its inhabitants were displaced to new peripheries, where poverty and racial discrimination persisted under new forms. The site itself was later redeveloped into commercial real estate—a "smart building" now stands where the community once was. This story condenses a longer trajectory: from colonial marginalization to touristic gentrification. Both rely on the erasure of Black presence from spaces deemed valuable. The tourism industry's appetite for "cultural authenticity without the poor" repeats in sanitized forms of urban development. Chambacú's story remains a paradigmatic case of how racialized dispossession sustains the aesthetics and profits of modern tourism in Cartagena.

These three vignettes portraying hygienist expulsions, land filling for tourism development in Bocagrande, and the Chambacú demolition, map a trajectory of dispossession under shifting legal and aesthetic regimes. Law, urban planning, and discourses of hygiene and beauty as vehicles for racial ordering in spatial form. The colonial legal paradigm, in which race determined legitimacy, was not abolished but mobilized through property norms, sanitary mandates, and tourism-driven aesthetics. Each example demonstrates how black communities occupying marginal or

undervalued lands become vulnerable to displacement once those lands acquire new economic significance. Over the twentieth century, the legal regime of race was spatialized—and modern urban development became the terrain on which colonial logics of exclusion were enacted.

### *Law as the Continuum of the Colonial Racial Paradigm*

Across the colonial and republican periods, law operated less as a neutral instrument of order than as a mechanism for producing and legitimizing racial hierarchies. In the colonial era, legal norms intertwined with racial taxonomies to determine who could own property, exercise rights, or be recognized as a full legal subject. Independence did not dismantle these hierarchies but concealed them behind the republican discourse of equality and citizenship. The universal language of rights persisted alongside exclusions maintained through property, class, and respectability.

Law provided continuity between paradigms, mediating the transition from lineage to civility, from caste to class, and from status to space. In Cartagena, this continuity materialized in the city's spatial organization, where the promise of equality coexisted with mechanisms of differentiation. The legal order that once governed bodies and status evolved into one that governed land, consolidating a racialized geography of privilege and exclusion.

By the twentieth century, this logic took explicitly spatial form. Legal and planning instruments such as zoning, cadastral delimitation, expropriation, and wetland stabilization transformed fluid, amphibious livelihoods into categories legible to property law. Black fishing communities inhabiting mangroves and shifting coastlines were deemed unlawful because their ways of occupying space did not conform to legal notions of private ownership or stable ground.

Efforts to contest exclusion through law exposed the contradiction of a system that proclaimed equality while erasing livelihoods not rooted in *terra firma*. This impasse sets the stage for the next section, which examines how, from the late twentieth century onward, new legal vocabularies and practices —*emancipatory uses of law*— emerged to articulate territorial claims on the communities' own terms.

## Emancipatory Uses of Law in Current Struggles for Land

In this section, I draw on ethnographic work and case law analysis to understand the continuities and modes of interruption of the colonial legal paradigm in contemporary Cartagena. The body of ethnographic work I draw on here has been published elsewhere, authored not only by myself but also in collaboration with other researchers. I also rely on ethnographic studies conducted by other scholars. I focus on ethnographic sources because they reveal, more clearly than other types of evidence, how race continues to shape the lives of Black communities in the peripheries of Cartagena.

The settlement patterns described above resemble those of Afro-descendant communities that remain in their territories today. Settlements between the sea and the lagoons still characterize Cartagena's fishing communities. In La Boquilla, elders recall how their ancestors once lived inland and only visited the coast to fish. By the late nineteenth century, families began building permanent homes on the narrow strip of land between the beach and the lagoon, which is closer to their livelihoods.

> Fishermen used to come here for "*la liga*,"[6] build makeshift shelters with mangrove sticks and coconut palm fronds, and stayed to fish [...] and established their homes in 1885. Over time, those shelters turned into houses. (Hernando Ortega, November 24, 2020, cited by Babilonia et al., 2021, translation is mine)

These families developed communal livelihoods in amphibious environments, typical of Black settlements in the region. Yet, since the 2000s, tourism and urban expansion have revalued these lands as investment sites, leading to new cycles of what Ojeda (2016) calls continuous and everyday dispossession.

A crucial difference, however, marks the present: under the 1991 Constitution, ancestral occupation may lead to collective titles, prior consultation, and political representation. Once outside the law, these

[6] This term is commonly used in many Caribbean communities of fishermen and peasants and it refers to the meat or protein that should be included in every meal. A common use of this term also refers in general to the income that a person must generate.

claims now hold constitutional recognition. Still, recognition alone does not dismantle colonial legacies. Instead, Afro-descendant communities engage the law as a political resource among other cultural resources (García, 2019), mobilizing multicultural and human rights frameworks to defend their right to remain (Paschel, 2016). From an agonistic perspective, law is not neutral but a terrain of contestation where meanings of justice, rights, and belonging are negotiated. These engagements that I call *emancipatory uses of law,* do not end conflict but transform it into a democratic struggle for territorial permanence.

From an agonistic perspective, law is not a neutral framework for resolving conflicts, but a terrain of contestation in which the meanings of justice, rights, and belonging are continuously negotiated. As Chantal Mouffe (2014) argues, the political does not seek to eliminate conflict but to give it a form that makes democratic struggle possible. In this sense, Afro-descendant communities' engagements with law reveal an "agonistic" and emancipatory dimension of legality, where legal norms become the medium through which historical exclusions are confronted, reinterpreted, and sometimes momentarily subverted.

To develop this argument, I examine how Afro-descendant communities mobilize legal instruments and discourses in procedural and everyday practices, showing how these engagements, though unable to fully dismantle colonial continuities, enable them to act as political subjects who use law to defend their territorial permanence.

## *Emancipatory Uses of Law by Afro-descendant Communities in Cartagena*

Afro-descendant communities have appropriated the law as a field of action, negotiation, and political imagination. In recent decades, these communities have engaged the law not merely as an external structure of domination but as a resource that can be mobilized, interpreted, and transformed from within. The analysis that follows explores these "uses of law," understood as the diverse ways in which Afro-descendant communities in Cartagena interact with legal frameworks to assert their rights, defend their territories, and reshape the terms of their relationship with the state and private actors. Drawing on ethnographic

and legal research (Bejarano, 2015, 2024), I distinguish between two interrelated dimensions: the judicial and administrative uses of multicultural law, and the everyday uses of legal discourses and practices in community life. Together, these illuminate how law circulates through both institutional and quotidian spaces, producing what I call a *double flow* of human rights.

*Judicial and Administrative Uses of Multicultural Law*

Between 2010 and 2021, the Colombian Constitutional Court selected for review thirteen *tutela* cases concerning ethnic-territorial rights of Afro-descendant communities in Cartagena[7]. These cases share three key features. First, they were initiated and constructed directly by Afro-descendant communities and their legal representatives, resulting in active procedural participation throughout the proceedings. Second, the majority of the disputes arose from urban development projects, including infrastructure construction, industrial and port expansion, tourism development, and conservation initiatives associated with tourism that affected collective territorial rights. In this respect, the historical and ethnographic findings presented in the previous sections are reflected in the Court's jurisprudence. Third, all of the decisions incorporate international law, particularly ILO Convention 169 and related human rights standards, as part of their legal reasoning, whether to grant protection or, in exceptional cases, to deny it. During the same period, the Council of State issued only one decision regarding land rights of afro-descendant communities in Cartagena[8].

The analysis of these cases allows the article to identify a qualitative pattern: when communities intervene actively as legal subjects,

[7] The decisions analyzed are the following: T-164 of 2021, Justice Alejandro Linares Castillo; T-021 of 2019, Justice Alberto Rojas Ríos; T-479 of 2018, Justice José Fernando Reyes; T-667 of 2017, Justice Alberto Rojas Ríos; T-601 of 2016, Justice Gloria Stella Ortiz Delgado; T-197 of 2016, Justice Jorge Iván Palacio; T-485 of 2015, Justice Myriam Ávila Roldán (Acting Justice); T-969 of 2014, Justice Gloria Stella Ortiz Delgado; T-646 of 2014, Justice Luis Guillermo Guerrero; T-172 of 2013, Justice Jorge Iván Palacio; T-376 of 2012, Justice María Victoria Calle; T-680 of 2012, Justice Nilson Pinilla; T-745 of 2010, Justice Humberto Sierra Porto.

[8] Council of State, Administrative Litigation Chamber, First Section, Reporting Justice Roberto Augusto Serrato Valdés, Bogotá, D.C., May 18, 2017.

framing their claims in ethnic-territorial and international law terms, judicial reasoning tends to engage more substantively with multicultural constitutional principles.

Administrative and judicial mechanisms for recognizing Afro-descendant territorial rights in Cartagena reveal a striking paradox: while these procedures are designed to guarantee ethnic and collective rights, their outcomes depend less on the type of mechanism and more on the degree of community participation (Bejarano, 2024). When Afro-descendant communities actively engage as legal subjects —filing *tutelas*, participating in consultations, submitting briefs, or attending inspections— the results tend to be more favorable. When they are excluded, decisions reproduce historical patterns of dispossession. This tension exposes the agonistic character of law: it is simultaneously a space of domination and a field of struggle where communities redefine legality.

In administrative settings, two procedures have been central: prior consultation and collective titling. Both have faced severe institutional and regulatory obstacles. The decree regulating prior consultation originally limited this right to cases involving titled land, excluding most communities in Cartagena, whose territories are untitled. Even after the Constitutional Court removed this restriction, bureaucratic barriers persisted: community councils not listed in the Ministry of the Interior's registry are often declared "nonexistent," forcing them to seek judicial protection through *tutelas*. In the case of collective titling, the situation is even more restrictive. Of thirty-three Afro-descendant communities in Cartagena, only four; La Boquilla, Orika, Caño del Oro, and Tierra Baja have secured collective titles. The regulation that confines collective property to rural land excludes most coastal and peri-urban territories, where Black communities have historically lived in amphibious environments of mangroves, lagoons, and sea.

The case of La Boquilla epitomizes these contradictions. Although internationally celebrated —former U.S. President Barack Obama attended the title ceremony— the community's collective title has been legally contested because its territory is now classified as suburban. The 2020 administrative court's decision to annul the title demonstrates how planning regulations continue to privilege development projects over ethnic recognition. Yet, the community's response also illustrates the

creative reappropriation of law: through appeals, public demonstrations, and community "mingas", La Boquilla's residents have transformed a bureaucratic dispute into a broader struggle for territorial justice. Their influence and active participation in the process led them to win the case in the Council of State (2025), maintaining their collective land title.

In judicial arenas, especially before the Constitutional Court, Afro-descendant communities have achieved more substantial protection of their rights precisely because they have acted as protagonists in shaping their cases. Between 2010 and 2021, thirteen Constitutional Court rulings addressed violations of fundamental rights of Black communities in Cartagena (Bejarano, 2024). Three features distinguish these cases. First, they were initiated directly by the communities or their representatives, ensuring that their experiences and languages entered the legal record. Second, most cases arose from conflicts generated by urban expansion—tourism, infrastructure, and environmental conservation policies that threatened community territories. Third, all the rulings invoked international law, particularly ILO Convention 169, as interpretive tool or binding authority.

Community participation alters not only outcomes but also legal reasoning. When Afro-descendant actors frame their grievances in the language of constitutional and international law, they compel judges to reinterpret state norms considering multicultural and territorial principles. In the case of Tierra Baja and Puerto Rey (T-969 of 2014), for example, the Constitutional Court recognized the communities' right to prior consultation even though their councils had been established after the project's approval. The Court's reasoning acknowledging that self-awareness of rights is gradual was only possible because the communities themselves framed the dispute around ethnic identity and environmental harm. Similarly, in the Pasacaballos case (T-197 of 2016), the Court accepted the community's own reports on the impacts of a gas pipeline, transforming their testimony into legal evidence.

This contrasts sharply with administrative or contentious proceedings where communities are absent. The Council of State's decision ordering the relocation of Marlinda and Villa Gloria (Council of the State, 2017) illustrates this: because the lawsuit was initiated by an outsider and the communities intervened only at the appeal stage, the

ruling ignored their ethnic status and justified relocation in the name of environmental protection. Without their voices, the proceedings reproduced a technocratic view of law, erasing the historical and racial dimensions of the conflict.

This contrast also reveals a broader structural tension within the legal order itself. These conflicts also reveal a structural tension between constitutional mandates recognizing ethnic-territorial rights and other regulatory regimes governing land use, environmental protection, urban planning, and tourism development. The issue is not merely non-compliance, but a deeper fragmentation within the legal order. Multicultural constitutional provisions coexist with property, zoning, and administrative norms that operate under different rationalities (Bejarano & Rivera, 2026). Whether this disarticulation is the result of deliberate political choices or unintended institutional fragmentation, its effect is clear: Afro-descendant communities must constantly navigate overlapping and sometimes contradictory legal frameworks in order to defend their territorial permanence.

Across these cases, a clear pattern emerges: when communities actively participate, law becomes a site of negotiation and transformation rather than mere regulation. The outcomes of judicial and administrative processes are not determined by institutional design but by the agonistic engagement of the subjects within them. In this sense, the uses of law by Afro-descendant communities in Cartagena reveal both its indeterminacy and its political potential—the capacity to challenge exclusion not from outside the law but through its own procedures, language, and contradictions. These findings suggest that transformative constitutionalism, rather than operating solely through top-down judicial innovation, is materially sustained by the procedural and discursive interventions of marginalized communities who activate constitutional norms in concrete territorial conflicts and struggles for social justice.

This pattern also reframes the meaning of transformative constitutionalism in practice. The transformative dimension of constitutional law does not operate exclusively through progressive judicial interpretation; it depends on the procedural and discursive activation of rights by those historically excluded from the legal order. In the Cartagena cases,

Afro-descendant communities do not merely benefit from constitutional protection; they actively shape its content by framing their claims in ethnic-territorial and international human rights terms. Their participation reveals that transformative constitutionalism is not solely a doctrinal aspiration but a relational and conflictual process sustained through bottom-up legal mobilization.

*Everyday Uses of Law*

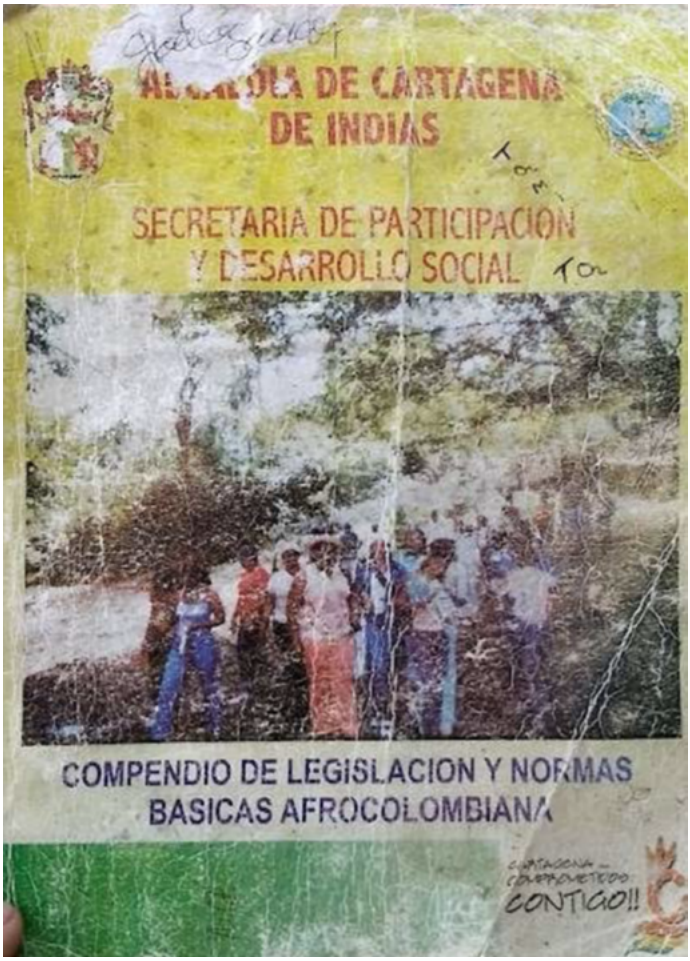
I also examine how Afro-descendant communities deploy multicultural practices and discourses in everyday life. By "use of multicultural discourses," I refer to instances where communities articulate legal statements claiming truth about their identity as ethnically differentiated peoples and the rights derived from that status (García, 2016; Foucault, 2003). While these discourses are employed in formal legal settings, its use is not confined to such forums. Everyday multicultural practices involve a performative element, where ideas expressed in discourses are enacted.

The everyday uses of law among Afro-descendant communities in Cartagena reveal how law circulates far beyond courts and bureaucratic offices. In daily life, law becomes a language of political imagination and resistance. It is appropriated, translated, and reinterpreted in courtyards, beaches, and community meetings. Rather than a distant instrument of domination, law operates as a flexible resource that Afro-descendant communities use to articulate dignity, defend territory, and assert recognition.

During a warm afternoon in 2019, Gloria Sánchez, a leader from Villa Gloria, explained what "dignity" meant to her after the Council of State ordered the relocation of her community: "The ruling says that they must relocate us with dignity. Dignity is not having a two-story brick house or a paved street. Dignity for us is something else. Dignity is having space, like this courtyard… a sea where we can fish, a lagoon where we can collect snails and crabs, a safe and free place where I can continue to develop as an ethnic people" (Sánchez, personal communication, March 2019; translation is mine). Her courtyard, built by her husband's own hands, stood as material proof of that struggle.

Gloria's story shows how encounters with the law have shaped personal and collective transformations. After being evicted and even imprisoned in the 1990s for reclaiming land, she discovered Law 70 of 1993, which recognizes the rights of Black communities over their collective territories. "I read Law 70 and swallowed it," she said. "I read it twenty times to put together a speech that would allow me to open up spaces" (Sánchez, personal communication, March 2019). She showed me her law book:

Figure 7. **Compendium of Afro-Colombian legislation and basic norms. Personal archive. March 2019**



Despite her evident legal expertise, she insisted, "I'm not a lawyer, Mami. I'm a social worker." But she mobilized the legal discourse to "open spaces" of recognition for communities that had been historically invisible.

Other community leaders also invoke the law in everyday interactions with state authorities. In a 2021 meeting about Cartagena's new Land Use Plan, José, a leader from La Boquilla, interrupted the consultants' technical presentation: "After so many years, you still haven't understood that you can't talk to us like that… This must be done through prior consultation" (Ortega, personal communication, March 2021, translation is mine). His intervention reframed a bureaucratic discussion into a political and legal claim for recognition.

Similarly, during the pandemic, Ángela Cárdenas led the beach workers of La Boquilla to negotiate the reopening of their beach: "They wanted us to have the same facilities as the hotels, but we got organized and presented them with a plan… We'll comply, but in our own way, with our own materials" (Cárdenas, personal communication, March 2021; translation is mine).

These everyday uses of law are not merely symbolic acts of resistance or cultural affirmation. They hold the potential to rebalance historically uneven relations of power between Afro-descendant communities and state institutions. By appropriating legal language and performing it in daily life, community leaders like Gloria, José, and Ángela transform law into a political and legal resource through which conflicts are reframed in juridical terms. The invocation of concepts such as *dignity*, *territory*, and *prior consultation* does not simply express moral claims—it produces legal meaning and opens new arenas of negotiation.

## *Emancipatory Uses of Law: Interrupting the Colonial* Long-Durée *Exclusionary Legal System Through Law*

The analysis of Afro-descendant communities' engagements with law in Cartagena reveals that the legal field, long employed as a tool of exclusion, can also become a site of transformation. Through both formal and informal practices, these communities not only cite the law but enact it—transforming it through practice. Law circulates between

institutional arenas and everyday life; as it moves, it changes, acquiring new meanings and functions. In this circulation, law ceases to be a distant instrument of state control and becomes a living language of autonomy, creativity, and collective survival.

These practices exemplify what Chantal Mouffe conceptualizes as *agonistic engagement*: rather than rejecting law as a mere site of domination, Afro-descendant communities occupy it, dispute its terms, and use it to expand their political visibility. Through this engagement, they re-signify legal norms and challenge the very foundations of a system historically designed to exclude them. The law thus becomes a field of contestation where domination and emancipation coexist—an indeterminate terrain of political struggle.

A historical reading of Cartagena's spatial and legal organization demonstrates how, from colonial times to the twentieth century, legal instruments such as property rights, urban planning regulations, and environmental policies have served to separate land from water and to deny the legitimacy of collective territorial occupations. Yet, in recent decades, Afro-descendant communities have mobilized ethnic-territorial law to dispute these same structures. By identifying as ethnically differentiated peoples under the framework of multicultural rights, they invoke ancestral territoriality and collective autonomy in their negotiations with public authorities and private investors.

This turn toward the law has not been purely defensive. The communities' active participation in judicial and administrative procedures shows that outcomes tend to be more favorable when they are legally engaged. Whether through lawsuits, administrative complaints, or petitions for consultation, the act of *using* the law transforms it. In these encounters, law becomes agonistic and emancipatory—its meaning is constantly renegotiated by actors positioned asymmetrically in social hierarchies. As a result, while the invocation of law does not abolish inequality, it renders the political field more balanced. The law, from this perspective, acquires an indeterminate and performative character: it does not merely regulate power; it reconfigures it.

The relationship between everyday and institutional uses of law is reciprocal. When communities incorporate multicultural discourses in their daily life —speaking of "ancestral territories," "collective rights,"

and "autonomy"— they generate new expectations and frameworks for legal action. Conversely, when judicial or administrative decisions recognize their claims, rulings are reinterpreted and performed in community settings, becoming part of everyday political repertoires. In this recursive process, law circulates, mutates, and expands its reach beyond formal institutions.

However, this process is not linear or purely progressive. Those who oppose Afro-descendant territorial claims also adapt, learning to use multicultural and human rights language to their advantage. Developers and bureaucrats now deploy notions such as "general interest," "balance of rights," or "sustainable tourism" to justify interventions that reproduce old hierarchies under new vocabularies. The emancipatory use of law thus entails a dynamic of constant tension, co-optation, and reappropriation—a struggle without final resolution. As Mouffe (2014) reminds us, "every social order is a contingent articulation of power relations that lacks a final rational foundation" (p. 131).

In this sense, Afro-descendant engagements with multicultural law reveal the contingency of power. By becoming legitimate participants in legal and political debates, these communities alter the very composition of the field. Their actions have created more symmetrical relationships with their opponents—relationships that, while conflictual, are governed by shared procedural rules. As Mouffe writes, "Although they know there is no rational solution to their conflict, adversaries nonetheless accept a set of rules according to which their conflict will be regulated" (2014, p. 137). These rules materialize in networks of jurisdictional and administrative practices that connect communities, NGOs, and state institutions, forming what might be described as constellations of emancipatory legality.

Through these practices, Afro-descendant communities insert multicultural jurisdiction into the heart of urban territorial conflicts, reframing struggles over permanence and belonging in terms of ethnic-territorial rights. This constitutes a profound shift: what was once perceived as an informal occupation now becomes a legitimate form of collective existence. By doing so, these communities have forged what can be termed *urban ethnic-territorial multiculturalism*. Unlike the rural focus of Law 70 of 1993 and the international frameworks that inspired it —such

as ILO Convention 169 and the jurisprudence of the Inter-American Court– this urban multiculturalism asserts that ethnic difference and collective territoriality are not confined to the rural margins but are central to the life of the city.

The practices described above not only interrupt local dynamics of dispossession; they also illuminate a broader reconfiguration of constitutionalism in Latin America. As the previous section has shown, when Afro-descendant communities actively participate in judicial and administrative procedures, they do more than invoke constitutional norms. Instead, they shape their interpretation and application. This dynamic invites a reconsideration of transformative constitutionalism beyond its understanding as a primarily judicial project (Verdugo, 2025).

From this perspective, the Cartagena cases can be read through the lens of international transformative constitutionalism (von Bogdandy & Urueña, 2020). Transformative constitutionalism in Latin America has been conceptualized as a project aimed at confronting structural inequalities and legacies of violence through constitutional and international human rights law. However, the empirical material examined here suggests that its transformative force does not reside solely in courts or supranational institutions. Rather, it is materially sustained by the emancipatory and procedural interventions of marginalized communities who activate constitutional and international norms in concrete territorial conflicts.

In this sense, Afro-descendant communities in Cartagena do not merely participate in a pre-existing transformative project; they expand and reconfigure it. Their emancipatory uses of law reveal that transformative constitutionalism acquires its most radical potential when articulated through ethnic-territorial struggles that challenge the spatial afterlives of colonial legality in urban contexts.

Urban ethnic-territorial multiculturalism thus emerges as both a legal and political innovation from below. It challenges the historical division between the city as the space of modernity and the periphery as the space of difference. In Cartagena, the descendants of those who were displaced by centuries of racialized exclusion now occupy the frontlines of legal and political transformation. Their practices show that

multiculturalism is not merely a state policy or constitutional promise, but an evolving field of struggle continuously reshaped through use.

Ultimately, the emancipatory and transformative use of law disrupts the colonial continuity of dispossession. It does not offer a definitive victory or a messianic resolution; rather, it opens a space where historically excluded actors can participate as equals in defining the rules of coexistence. By doing so, these communities have forged what can be termed urban ethnic-territorial multiculturalism. By situating emancipatory uses of law within the longue durée of colonial racial governance, this article shows that transformative constitutionalism acquires its most radical potential when articulated through ethnic-territorial struggles that challenge the spatial afterlives of colonial legality in urban contexts. The law, once an instrument of domination, becomes one of the many tools in a broader struggle for justice, recognition, and the right to remain. By engaging law agonistically, Cartagena's Afro-descendant communities illuminate the indeterminacy of power and the creative possibilities that emerge when historically marginalized actors speak the language of law only to transform it from within.

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