After the Constitution:

Indigenous Proposals for Territorial Demarcation in Colombia

The Colombian constitution granted all Indigenous territories legal status as "Territorial Entities" within the republic. The Indigenous movement's triumph during the constitutional convention is particularly important since it makes Colombia the first country to have recognized all Indigenous communities territorial rights, rather than selectively granting rights to certain peoples.

by Ana Cecilia Betancourt and Hernán Rodríguez

7ith 82 different ethnic groups living within its national boundaries, Colombia is second only to Brazil in terms of ethnic diversity in South America. As a result, we in Colombia have learned to respect differences, while working together to defend our ancient cultures, ancestral territories, and autonomy. This history explains, to a certain extent, why the Organization of Colombian Indigenous Nations (ONIC), and the Colombian Indigenous Authorities (AICO), representing 40 different local and regional organizations, were the only nonpartisan groups represented in the Constitutional Assembly of 1991.

Acting as spokespeople, Lorenzo Muelas of AICO, Francisco Rojas Birry of ONIC, and Alfonso Pena Chepe of the now demobilized armed indigenous movement, Manuel Quintín Lame, ensured that the Magna Carta protect the rights and aspirations of the various ethnic groups in Columbia, including the natives of San Andrés Archipelago, and African-American communities.

Ana Cecilia Betancourt and Hernán Rodríguez are members of ONIC's press department. Although the Constitution has established legal norms for establishing territories, pressure to speed up the secondary legislative procedures has led to continued exclusion of indigenous communities from the political process. Agreements reached at the Constitutional Assembly are thus being disregarded.

Constitutional History

The political constitution of 1991 defines Indigenous Lands under Article 286 as Territorial Entities with the same political and administrative jurisdiction as departments and municipalities. This permits indigenous communities autonomy to define their own development strategies and be governed by their own authorities who will have authority to administer public resources including local and national taxes. The Constitution left the actual distribution of territorial entities as well as definition of their responsibilities to a piece of follow-up legislation called the Organic Law for Territorial Demarcation. This law would also regulate the settlement of disputes between the National Government and the Territorial Entities.

Indigenous organizations published

their proposals for the Organic Law two years after the Constitution was ratified. This proposal was developed through consensus and focused on three general considerations:

- a) As products of the national constitution the indigenous territories shall not be subject to decisions made at the congressional level.
- b) Indigenous Territories will be those areas currently held by indigenous communities with boundaries defined by traditional social, economic, and cultural activities, regardless of whether the communities have received prior legal title.
- c) The Organic Law should be designed with a certain margin for change as the territories' actual boundaries are drawn by future legislation.

Delimiting Territories

As a result of 500 years of colonial domination and genocide, many communities have been fragmented, or severely reduced in size. To allow for the variation among communities, there should be no minimum size limitations either for populations or areas in establishing territories. Problems may, however, arise if many small territories

which do not unify communities within broad administrative regions are created. In particular, divisions between communities could increase.

Indigenous organizations have made a series of proposals addressing these issues. First, the establishment of territories should be based on at least one of two criterion:

- a) a geographic unit consisting of a continuous region in which communities conduct their social, economic, and cultural activities;
- b) an ethnic unit belonging to a cultural complex in which the majority of the population is indigenous, in a region that is not geographically continuous.

Secondly, the indigenous organizations suggest that territories link their administrative structures to those of the departments. Administrative decentralization should be enhanced when combined with links to governmental bodies, such as departments, capable of providing institutional support, without threatening their autonomy.

We propose the following steps when establishing a territory:

- a) Interdepartmental Territorial Entities should be formed;
- b) Negotiations to establish a direct relationship with one of the departments or the central government should begin after a period, not to exceed five years, in which new administrative structures are consolidated.
- c) Indigenous communities should begin the process of establishing territorial boundaries and administrative functions by submitting an application and a preliminary proposal.
- d) The proposal should be evaluated through an in-depth study carried out by an interdisciplinary task force including indigenous organizations.
- e) The information collected will be used to submit a formal proposal to the Territorial Regulatory Agency, according to Article 329 of the New Constitution.
- f) The final decision will be made by the national government and repre-

sentatives of the indigenous organizations, as outlined under the Constitution.

Government Response

The Colombian administration presented congress with a proposal for the new Organic Law for territorial demarcation 1992. The proposition however, violated guidelines established under the New Constitution by failing to consider Indigenous organization's proposals. Additionally, it neglected many territorial entities. As a result, the administration was

dress the Indigenous proposal.

The Future of the Territories

In addition to the difficulties of reaching an agreement with the gov- should occur. ernment on the proposed Organic Law, this law which should be organic (providing original and basic structure to legislation), is not. Instead, the government proposed instead a step by which would shape the territories functions has already been approved or is being considered. A law defining dis-Environmental System and projects earlier achievements.

forced to retract its proposal. In Sep- regulating the national planning systember of 1993, the administration tem and Departmental regulation are presented congress with a new pro- all awaiting approval. All of these will posal, but this one also failed to ad- define the role of the state's administrative structures differently. In this way, the government proposes that the territories Organic Law should conform to preexisting laws, when the opposite

We hope that the proposals made by the indigenous people will stimulate a more open debate and promote more democratic and representative forms of government. This new govstep process. A series of legislation ernment should reflect the interests of its diverse population and permit the introduction of alternative models of development. Nonetheless, we have a tribution of responsibilities and re- long way to go before this becomes a sources in relation to the municipali- reality. Indigenous organizations efties was approved in 1993. At the same forts to construct solid political structime, the National Fees Fund, National tures will determine the future of our

