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**On Titling Collective Property, Participation, and Natural Resource  
Management: Implementing Indigenous and Afro-Colombian Demands**

**A Review of Bank Experience in Colombia**

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(revised for Rural Week 2001)

## **Author's Note on Important Terminology:**

### **“Indigenous”**

The Indigenous Operational Directive of the World Bank has a flexible working concept of “Indigenous” which identifies Indigenous people in terms of marginality, customary institutions, territoriality, cultural distinction, language and self-identification. Under this working concept, although they do not have a clearly distinct language, Afro-Colombians of the Pacific littoral and rural Afro-Colombians in general can be considered Indigenous. This is because they make up some of the poorest populations in Colombia, they possess distinct social and customary institutions and consider themselves a distinct cultural group. More importantly they have traditionally occupied and used ancestral lands. Considering Afro-Colombians as Indigenous opened up a space for their inclusion as part of the NRMP, the legal protections of their lands and their participation in the management and conservation of the environment.

Nevertheless, in Colombia the term “Indigenous” is a specific legal and cultural category. In particular it signifies the descendants of the original inhabitants of Colombia, who still identify themselves as a community and who have kept their traditional institutions. Legally until the 1980s they were specifically those communities recognized as distinct through their titles to resguardos (Indigenous Territories) originally granted by the Spanish Crown. The historic continuity of this legal status is important for the definition of a community as Indigenous.

For purposes of convenience in this paper the term “Indigenous” is used to refer to the communities as defined in Colombia. That is to say, a legal status, in spite of the huge variety of people who fall under the category. This is done because although both Indigenous and Black communities can be considered “Indigenous” their legal status differs under Colombian law.

However, for purposes of Bank policy and future projects, the recognition of Afro-Colombians as Indigenous with all its implications, is a novel step that addresses poverty and inequality at a fundamental level. If Afro-Colombians had not been recognized under the rubric of Indigenous in this NRMP, the program would not have had the rationale to address the community demands of the majority of the population affected by the project in a manner relevant to the actual situation on the ground, and possibly territorial conflicts would have increased with little avenues for resolution.

### **Reserves vs. Resguardos**

The Colombian institution of the resguardo is similar to that of Native American Reservations in the USA, in that they delimit a territory within which there is a measure of self-government, autonomy and control in the hands of the Indigenous population and the resguardo has a particular and separate relationship with the central government. Resguardo could be translated as “reserve” or “reservation” in English, however, this would lead to a confusion with “reservas indígenas” or “Indigenous reserves” which delimit much more limited autonomy, control and self-government and have a much more dependent relationship to the state.

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## **Executive Summary**

Since 1994, the World Bank has been supporting the Colombian Ministry of Environment in the implementation of a Natural Resources Management Program (NRMP). It included three components of titling and demarcation of Indigenous resguardos, titling of Black community lands, and setting up of Regional Committees. The objectives are: 1) stopping the process of degrading natural resources, 2) promoting and improve the sustainable management and use of natural resources, 3) strengthening the capacity of the environmental, institutional and community management.

World Bank funds have been used to contract Afro-Colombian and Indigenous community organizations to inform rural peoples about these new laws, as well as to set the groundwork for the granting of collective titles. One of the benefits of the NRMP was that due to this active community participation and awareness of the program there was a rapid feedback mechanism regarding compliance with goals.

The NRMP went through three important transformations:

1) the Yanaconas Meeting of 1992 where the World Bank presented the proposed program for review by community organizations and representatives prior to initiation of the loan. Due to community demand, this meeting led to the reorientation of the institutional strategy to include the preservation of cultural and ethnic identity, the recognition of community territorial rights, including collective titling for Black communities, and, participation in the planning, execution and follow up of the program as the bases for the sustainable development of the region.

2) the Inter-Ethnic Regional Committees starting in 1997 were set up to revise tensions and possible inter-ethnic conflicts, and to develop knowledge of the territorial rights, the actions of the state and external violent factors. Significantly, as the exercise of titling produced an escalation in ethnic conflict over territory, the Inter-Ethnic Regional Committees transformed the Regional Committees from principally training, capacity building and information dissemination sites to highly effective sites of conflict resolution.

3) set up to combat tensions between the community and the government, the Action Plan of 1998 linked the operational plans for all three components into a single integrated work program with specific goals including strategies of territorial definition, capacity building, strengthening of intercultural understandings and conflict resolution.

An essential legal framework both existed and was created through the NRMP. Most important of these transformations was the 1991 new Colombian Constitution, which recognizes ethnic groups and their rights, including the right to collective territory and mandates participation as an integral part of the functioning of the state, for the first time. The NRMP is able to work from, and with these legal transformations, to make real some of the rights guaranteed in the constitution and to push for compliance with others, while at the same time the political will of the constitution enabled the NRMP to develop and implement environmental and territorial policy.

The existence of special legislation in independent forms gave rights to Indigenous and Black communities over areas that they occupy, but does not resolve complex situations where one or other share territories and have managed to develop forms of shared understanding and administration. In effect the legislation blocks the creation of joint inter-ethnic territories in spite of the community demand.

In the Pacific, which used to be on the margins of Colombian violence, today the phenomenon of violence causes a permanent state of anxiety causing large displacements of poor peasants to urban centers. The violence breaks up social networks and internal governing, disturbs economic life and traditional forms of work, and breaks up traditional ways of managing nature, using natural resources and defending ecosystems. Nevertheless, collective titles not only set up legal basis to claim back the territory in the future but specifically register the social, cultural and political existence of communities associated with the land and the moral obligation of the state to their members.

The NRMP was innovative in terms of community participation, conflict resolution and creating a solid base for environment conservation, instrumental in the implementation of legal statutes, the realization of constitutional rights of ethnic groups, and the justification and defense of territory, and fundamental to the creation of strong bonds between local residents and state institutions. A lot of the success was due to the coordinating efforts on the part of the PCU in the Ministry of Environment, which had to balance limiting and controlling spending with giving autonomy and agency to the institutions they worked with. Structural institutional transformations, not just within the local community organizations but also within the executing and coordinating agencies, are the basis of sustainability in such a program. In order to make participation a reality it was necessary to strengthen communities and their organizations as well as implementing agencies.

Titling gave a clear and solid ownership over territory and a legal base effective to protect it. In the context of armed conflict the winning of ownership over the land, through NRMP, has represented for many communities of the Pacific a real possibility for the defense of life and a degree of independence from the conflict. Titling has also acted as a base for bargaining and legitimacy. In spite of the insecurity and upheaval brought about by the violent situation, land titles lend a specific long-term stability and permanence to communities.

The efforts to obtain titles and the titling itself have contributed to strengthen the internal forms of government and the community's negotiating capacity. Yet, productive actions that complement the Land Titling components of the NRMP are necessary to ensure the future long-term wellbeing of the communities. The legal status of the collective titles to Indigenous and Black communities affects how they operate as territories and how the councils can operate as governing bodies. A clarifying of legal positioning of ethnic territories, and municipalities in regard to one another, of revenue and resource collection and distribution, and of the administrative support from local and central government for the functioning of the territories would be needed to address arising territorial conflicts between administrative units.

The long-term effect of titling has been conservation through appropriation. The participatory nature of the program increased the community's security in their capacity to make claims and to manage resources helping to recuperate cultural uses of territory and traditional knowledge about biodiversity. Due to community participation and awareness of the program there was a rapid feedback mechanism regarding compliance with goals. Environmental programs that want to secure citizen participation need to give special support to strengthening community organizations where they already exist, and to push for their formation where they are lacking.

## **Introduction**

Since 1994, the World Bank has been supporting the Colombian Ministry of Environment in the implementation of a Natural Resources Management Program (NRMP). The program is intended to contribute to the arresting of the degradation of natural resources along the Pacific coast and the several upland watersheds that drain into the coast. Activities financed under the program include: (a) the development of a policy, information, and institutional base for forest management, with a particular focus on the Chocó region; (b) the rehabilitation and protection of selected water catchment areas in the western highlands; (c) the improved management of national parks; and (d) the strengthening of environmental and forestry education, training and research and program management.

As part of the Policy and Strategy Development aspect of the NRMP, three components deal with the titling and demarcation of Indigenous reserves (resguardos), the titling of Black community lands, and the setting up of a series Regional Committees, to ensure the active participation of Indigenous and Black communities and their organizations in the land titling, environmental monitoring and natural resources management activities financed under the program. These components are considered essential to the future conservation, management and sustainable development of the forestry and other natural resources of the Pacific Coast.

In particular the Bank has worked closely with the Project Coordinating Unit (PCU) in the Ministry of Environment (MOE), the Colombian Agrarian Reform Institute (INCORA), the Red de Solidaridad Social (RED), and the Indigenous and Black Community Affairs Offices of the Ministry of the Interior, as well as consulted with representatives of Indigenous and Black organizations to ensure the successful implementation of these components.

The NRMP loan 3692-CO for US\$ 39 million with a maturity of 17 years including 4 years grace period, draws to a close at the end of the year 2000. By June 2000, the program had achieved 72% of its Land Titling goals, benefiting 19,860 families (over 100,000 people). The project spent US\$ 3.25 million of the US\$ 4.09 million allotted to these three components leaving a remainder of US\$ 0.81 to terminate. The NRMP is responsible for 17% of land collectively titled to Indigenous people in the Pacific coast and 100% of land collectively titled to black Communities in Colombia in general.

Beyond what is indicated by the number of Collective Titles achieved during the program, the NRMP has been innovative in terms of community participation, conflict resolution and creating a solid base for environment conservation, instrumental in the implementation of legal statutes, the realization of constitutional rights of ethnic groups, and the justification and defense of territory, and fundamental to the creation of strong bonds between local residents and state institutions.

This paper is an outline of the chronology of Bank involvement in the Indigenous and Black Land Titling and the Regional Committee components of the NRMP, the participation of different actors, the change in the framework of the three components and the lessons that can be learned for similar programs in other parts of the country, and the region, as well as for Bank projects in other regions.

## **The People and Their Region**

The Pacific is a region of cultural complexity and diversity, administratively including the whole of the department of Chocó, and the western portions of the departments of Antioquia, Risaralda, Valle de Cauca, Cauca and Nariño. The Pacific basin is characterized by the presence of Black communities in the lowlands, river valleys and coasts and the presence of Indigenous communities in the higher elevations of the coast ranges and the cordillera. Indigenous and Black communities have thus organized their societies along the principle of verticality developing interconnected practices and technologies adapted to the use and management of a diverse ecology including the rain forests, seasonally inundated lowlands and the highlands. Today these groups have a special constitutional recognition and legislation that protects their rights after years of struggle for territorial legalization.

The bio-geographic region of the Chocó extends 1,300 km from Panama to Ecuador and covers an area of approximately 100,000 square kilometers making up 8% of the Colombian national territory. This area, which at its widest extends no more than 250km, has enormously diverse habitats ranging from the coastal basins to the Andean mountains. It contains rivers that run into the Pacific and into the Caribbean sea. It includes lowland coastal plains often containing mangrove swamps, the flatter river basins of the Atrato and San Juan rivers with altitudes of about 200 meters above sea level, the coast ranges which reach 2000 meters above sea level and finally the region of the western Cordillera of the Andes that rises to 4200 meter above sea level. Because of this great heterogeneity of altitude and longitude the Pacific region contain numerous ecosystems within its predominantly tropical rain forests.

The region is one of the most humid and rainy in the world with a rainfall average between 5,000 and 12,000 mm/year. Covered with tropical forests (77%) over some 9.1 million hectares, that have been managed and maintained by the Indigenous and Afro-Colombian populations, the region is privileged with an abundancy, variety, and variability of forms of animal and plant life.

## **The Inhabitants**

The 83 municipalities that make up the bio-geographic region of the Chocó have a population of 2.3 million people that represent a little more than 6% of the total population of Colombia, 90% of whom are Afro-Colombian and 4% Indigenous. The

Pacific region has 1.3 million people who are rural and whom make up 12 % of the total rural population (1993 Colombian census).

The inhabitants of the Pacific region are considered some of the poorest in the nation. The social indicators of the Pacific are particularly staggering: an infant mortality rate of over 100 per 1000 live births; 82% of the population do not have sufficient basic necessities as compared with the national average of 32%; the illiteracy rate is 39%; and the per capita annual income is less than US\$ 500.

The present economy is centered around an extractive system of natural resources, including timber, palms, gold, silver and river and sea products. In the southern part of the region and in the Andes agribusiness such as African palm cultivation, aquaculture, cattle ranching and sugar cane developed. Nevertheless, the main production is on a subsistence level produced through traditional practices.

The Indigenous communities of the northern Pacific region along the Atrato and San Jaun rivers include the Embera, Wounaan, Katio, Chami, Tule and Zenu of the Choco and Antioquia. They live with Afro-Colombians as close neighbors, in some areas sharing territories and in other forming distinct communities. The Afro-Colombian communities are descended from enslaved populations from central west Africa principally the Guinea, Congo and Angola coasts, that were brought to exploit the mines of the Pacific from the first decade of the 17<sup>th</sup> century and principally through the 18<sup>th</sup> century. These communities have occupied the territories as laborers, as peasant producers during enslavement, and as freemen (libres) and rebelling communities termed “palenques” since they first arrived. Further to the south in Nariño live the Awa who also live in parts of Ecuador. They too live upland from the riparian dwelling Afro-Colombian communities that share their forested territories along the Guapi river and near the centers of Tumaco and Barbacoas.

## **Community Organization**

Community organization in the region is varied, some areas have old well established community groups and others are only just beginning to organize as part of the process of

titling. Problems and conflict related to the Land Tilting process are mainly found in areas where community organization is weakest, such as in Cauca where neither the Indigenous nor the Black population have a strong history of community organization.

The two best examples of community organization in the Pacific are OREWA (the Regional Organization of the Embera and Waunana) and ACIA (the Integral Peasant Association of the Middle Atrato) both of whom represent a number of different communities of the Middle Atrato in the Chocó, have existed for over 15 years and were involved in struggles over territorial definition and legalization long before the NRMP. At the same time they were instrumental in the implementation of the NRMP in terms of training, capacity building, dissemination of information, conflict resolution and institutional vigilance.

Started in 1979, OREWA, originally a student organization in Quibdó with missionary direction, was probably the first expression of popular organizing in the Pacific with ethnic characteristics. It brought forth fundamental themes of land, cultural respect as an identity base, autonomous self-government and the capacity to define and orient their own development options for the Embera and the Waunana Indigenous peoples.

Born in 1986 and comprised of 3,500 members, ACIA is the first and best organized Afro-Colombian community based organization to come up with an integrated solution to the problem of the legalization of land. They were instrumental in structuring the demand for collective rather than individual titles. It came into being in opposition to two land and timber concessions in the Middle Atrato and was formed through small neighborhood associations working to attain basic necessities called “grupos de base” within the communities of the Atrato assisted by a group of missionaries from the Dioceses of Quibdó. In 1990 at the Meeting in Defense of Our Traditional Territory of the Pacific, ACIA claimed their territorial rights as: a minority ethnic group, as part of the patrimony they have gotten historically and through labor, and as a responsibility of state duty. They demanded that these rights be fulfilled through the Collective Titling of the space in which they live.

## **Territorial Organization**

If both Indigenous and Afro-Colombians are considered to have ancestral rights to land, then 95% of the inhabitants of the Chocó Region are entitled to land based on historic occupation. At the start of the NRMP most of the land in the Chocó Region was a public forest reserve under direct state administration.

A clarification of the land ownership situation was essential for the design of resource management and conservation policies, in order to assess the convergence of interests of the parties affected and involved, the distribution of economic benefits and costs, the degree to which market-based incentives can be used successfully and the justification, if needed, of compensatory measure for external costs and benefits. Taking into account existing individually titled land, areas occupied by Indigenous groups for which reserves

were not yet legally established, and proposals for additional protected areas, an estimated 4 million hectares or 44% of the Chocó region was without clear land ownership at the beginning of the NRMP and available for the collective titling to Black communities.

Territorial organization of the Pacific region was historically structured around the extraction of mineral and forest resources. National and international companies at the margins of state control, generated forms of political and territorial control expressed in extreme forms of appropriation during the first half of the 20<sup>th</sup> century through mining concessions, rubber market networks, banana and sugar cane plantations, and huge networks of inlets and creeks converted to routes for the trade in mangroves. As a result of this, the countryside is made up of diverse land use situations depending on the how control is exercised over territory forming islands and pockets of population with limited communication with the exterior or within the Colombian nation.

This colonial heritage of territorial organization exists parallel to types of organization traditionally developed by Indigenous communities and taken up by Black communities through time. Company territorial control is superimposed on forms of self-ownership of Indigenous peoples or Black family networks. These forms came into conflict when the Pacific became the principal national center for timber production.

Since the 1950s, there was an abrupt change in the social and economic life of traditional peoples with the expansion of the ports of Buenaventura and Tumaco on the Pacific and Turbo on the Caribbean and of roads and railroads that connected the Andean region with the coast and the extraction of timber in all parts of the Pacific. This economic investment and development was promoted by the macro policy of “apertura” in the 1980s, designed to open up the frontier of the Pacific to commercial interests and Colombia to the Pacific rim economy. A new chapter in regional history was opened with the multiplication of extractive actions, the Andean colonization looking to amplify the agricultural frontier, state projects of integration, the agro-industrial capitalism of plantations of bananas and cattle in the north and of African palm and shrimp aquaculture in the south. The new order is characterized by the multiplicity of actors and the greater state presence in the regional functions. Between the 1960s and 1990s the proposed projects included a naval base at Bahia de Malada, the conclusion of the Pan-american highway, the Popayan-Lopez de Micay main road, the Pasto-Tumaco highway and the Santa Cecilia-Nuqui-Bahia Solano road, hydroelectric dams on the Bocobero and Micay rivers and large forest and mineral commercial concessions.

The new model which has menaced the existence of Indigenous and Black populations since the 1970s mobilized the Indigenous communities to protect their territories and initiate the conformation of resguardos. Since the 1980s this has been emulated by Afro-Colombians who organized to fight for their territorial rights, which were concretized through constitutional recognition in 1991.

### **Precursors of the NRMP**

Since the 1960s different Indigenous communities had been pressurizing the government to convert Indigenous reserves into resguardos, the majority of which were converted in the 1980s. Although Afro-Colombians did not have legally recognized territorial rights as ethnic groups until the 1991 constitution, they too mobilized to have those rights recognized, as the concessions to Indigenous communities made their land tenure less secure. In 1988 ACIA and the Regional Autonomous Corporation of the Chocó, CODECHOCO, signed accord 20 that awarded ACIA 800,000 hectares of land in an unofficial agreement which, although was not legally binding became a district model.

The 1991 Political Constitution, which identifies Colombia as a multi-ethnic, pluri-cultural nation, recognizes and outlines the framework for collective territorial rights for ethnic groups. The new constitution created a different formula for running a government. It was instrumental in backing up the call for greater participation, consultation and recognition of territorial rights made by Indigenous and Black communities in the 1992 meetings in Yanaconas near Cali. At this meeting titling was introduced to the Natural Resources Management Program that was in formation, as a priority strategy for strengthening sustainable development and cultural identity.

### **Forest Action Plan For Colombia (PAFC)**

The new Natural Resources Management Program (NRMP) grew out of the Forest Action Plan for Colombia (PAFC). Originally started in 1985 as the Tropical Action Plan, the PAFC had the objectives of: 1) maximizing the economic and social benefits of rural populations whose subsistence base was gained through use of forest resources, 2) elevating the participation of the forestry sector in the national economy and 3) protecting and renovating forest ecosystems of high biological value. The PAFC was a joint government of Colombia, the Netherlands, and FAO project. As a policy, the PAFC was more operational than strategic. It had an over emphasis on vigilance and control over protected areas and did not take into account the problem of unclear land tenure situation, nor resolve the territorial demands of Indigenous and Afro-Colombians.

### **World Bank Indigenous People's Operational Directive**

The 1991 Operational Directive on Indigenous People of the World Bank was instrumental in the formulation and execution of the NRMP. The objective of the directive is to ensure that Indigenous peoples do not suffer adverse effects during the development process and that they receive culturally compatible social and economic benefits. The strategy for addressing these issues is based on the informed participation of Indigenous peoples themselves, through out the consultation, incorporation, implementation and evaluation, giving full consideration of the options preferred by Indigenous people, in any project that affects Indigenous peoples and their rights to natural and economic resource.

The directive identifies Indigenous people as among the poorest segments of a population having in varying degrees the following characteristics:

- 1) a close attachment to ancestral territories and to the natural resources in these areas;
- 2) self-identification and identification by others as members of a distinct cultural group.
- 3) an Indigenous language, often different from the national language
- 4) presence of customary social and political institutions, and
- 5) primarily subsistence-oriented production.

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The operational directive recognizes that in many cases, proper protection of the rights of Indigenous people will require the implementation of special project components that may lie outside the primary project's objectives. Some of these components include land tenure and a strategy for local participation. In order to incorporate components that recognize customary tenure and that ensure local participation the World Bank initiated a workshop meeting in 1992 in Cali, which was termed the Yanaconas meeting to review with the Black and Indigenous communities the proposed program components.

### **The 1992 Yanaconas Meeting**

At this meeting the World Bank circulated the proposed plan for the NRMP to 62 representatives of local communities, NGOs and government agencies with the objective of:

- 1) arranging a forum whereby the design could be debated and prosper from the informed participation of the affected communities in determination of the development objectives and project components,
- 2) incorporate the recommendations made during the workshop into the appraisal of the NRMP and
- 3) ensuring an integrated community based approach to management and rational use of renewable resources and protected areas is forthcoming in all components.

The government of Colombia accepted the idea because the new political mandate laid out in the 1991 constitution recognized and emphasized participation and the territorial rights of ethnic groups. Additionally, the old PAFC was not liked by anyone, not the government, nor the Bank, nor the people. It was considered too 1970s in its emphasis on the amount of vigilance over the forests by the state.

The workshop was attended by the institutions of national government, representatives of all the Regional Autonomous Corporations, 28 community based groups, NGOs, the High -Level Consultancy Commission, the highest organ of the accord and agreement of the Afro-Colombian community sector, and the institutions of the national government responsible for developing territorial programs for Afro-Colombian communities in the Pacific Coast.

Although the original terms of reference for setting up the workshop did not mention Black community territory, (while mentioning other land tenure issues such as Indigenous resguardos), titling of Black community land was an essential factor

introduced through the process of participation. Representatives of Black and Indigenous organizations and communities helped reorient the institutional strategy to include the preservation of cultural and ethnic identity, the recognition and granting of community territorial rights and the collective use of natural resources by the local communities, as the bases for the sustainable development of the region.

As a result of the workshop the National Planning Authority (DNP) agreed to guarantee the articulation of Transitory Article 55 that gives Afro-Colombians collective rights to territory which later led to the creation of Law 70 in 1993. From this meeting a sub-program named “Policy and Strategic Development” formed from the following components: forest policy, Black community land titling, constitution and demarcation of Indigenous resguardos, ecological zoning, environmental monitoring and Regional Committees. The Regional Committees were to guarantee community participation in the planning, execution and follow up of the NRMP.

### **The Natural Resources Management Program (NRMP)**

The main thrust of the Bank Assistance to Colombia from the mid 1980s has been to help establish a policy environment supportive of growth led by the private sector. The NRMP progressed to set the groundwork for investment through institutional strengthening with titling as a vital part. The loan proposal and processing lasted from August 1989 until October 1993.

In 1993 the Bank Appraisal mission proposed that the NRMP requires complex policy actions which are relatively new to Colombia. These included: 1) improve the institutional and regulatory framework in natural resource management; 2) develop a sound forest concessions and royalties system; 3) clarify land rights, in particular for the Afro-Colombian populations in the Chocó; 4) involve Indigenous and Afro-Colombian communities in project planning, implementation and environmental monitoring 5) support investments made by communities for the rehabilitation of vital watersheds on a matching grant basis and 6) improve the management of parks.

The following expenditure and goals were set forth for the Titling and Regional Committees components of the NRMP:

- 1) Titling and Demarcation of Resguardos, at \$0.5 million over 5 years (0.8% of total loan). Establish 40 resguardos and demarcate 123 existing resguardos benefiting a total of 68,000 people
- 2) Titling of Black Community Land, \$ 2.0 million over 2 years (3% of total loan). Support initial actions to regularize and title land of Black communities in the Pacific Region under the terms of law 70. This would include: coordination between state entities and Black communities; estimation of the level of demand for titling, identifying the regional priorities, critical areas

and potential problems; technical support and training; fieldwork with the communities informing them on the titling procedures and supporting their organization process; mapping and; supporting INCORA's activities of land titling and registration.

- 3) Regional Committees, \$1.3million (2% of total loan). To support the operation of mostly existing regional committees of delegates of local communities and community-based groups from the Indigenous and Afro-Colombian populations in the Chocó Region. These committees would monitor the implementation of the NRMP, identify problems, coordinate land titling activities, build consensus and support proposed actions that would lead to mitigation or correction of perceived or actual environmental damages.

#### **Indigenous Resguardos Constituted as Part of the NRMP**

<b>Resguardo</b>	<b>Department</b>	<b>Area (Ha)</b>	<b>Families</b>
Abejero	Chocó	230	6
Abibe-Chigorodó	Antioquia	10,992	129
Abeibe-Mutata	Antioquia	32,482	89
Andabú	Antioquia	16,661	62
Caimán Nuevo	Antioquia	210	141
Chaquenodá	Antioquia	8,492	12
Choromandó Alto y Medio	Antioquia	3,035	12
Copé del Rio Ingará	Chocó	122	34
El Sande	Nariño	8,825	173
Gran Rosario	Nariño	15,560	154
Guarandó Carrizal	Choco	72	12
Isla del Mono	Cauca	1,560	12
La Loma de Sitabará	Risaralda	269	66
La lomita de Curundó	Choco	1,017	14
La Palma	Antioquia	104	32
La Puria	choco	5,237	63
Las Ploayas	Antioquia	176	32
Mojoré-Amburá	Antioquia	6,950	141
Miasa de Partadó	Choco	2,289	15
Mungaradó	choco	563	15
Murrí-Pantanos	Antioquia	30,288	76
Nusidó	Antioquia	258	33
Paina	Choco	2,834	10
Peñas del Olvido	Choco	231	62
Pichicora-Chiué-Punto Alegre	Choco	23,383	71
Piedra Sellada-Quebrada Tronquería	Nariño	2,281	18
Piguambi-palangala	Nariño	500	48
Pipalta-Palbiyaguapi	Nariño	2,256	17
Puerto Antioquia	Choco	280	8
Puerto Libia-Tripicay	Choco	2,119	27
Pulgande-Campo Alegre	Nariño	1,034	20
Río Bebará	Choco	27,119	37
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Piguambi-palangala	Nariño	500	48
Pipalta-Palbiyaguapi	Nariño	2,256	17
Puerto Antioquia	Choco	280	8
Puerto Libia-Tripicay	Choco	2,119	27
Pulgande-Campo Alegre	Nariño	1,034	20
Río Bebará	Choco	27,119	37
Sabaleta	Choco	610	26
San Agustín-la Floresta	Nariño	53	6
San José Amiá de Pató	choco	820	11
Sanquinaguaita	Antioquia	1,029	5
Santa María- el Charcón	Antioquia	130	18
Sever	Antioquia	9,977	54
Tortugaña-Telembí	Nariño	24,918	197
<b>Total</b>		<b>2444,966</b>	<b>1,958</b>

### Collective Territories for Black Communities Constituted as Part of NRMP

<b>Collective Territory</b>	<b>Department</b>	<b>Area (Ha)</b>	<b>Families</b>
ACAPA	Nariño	94,388	1,453
ACIA	Choco	525,664	6,275
ACIA	Antioquia	169,581	1,629
Agricultores del Patia	Nariño	31,475	202
Alto Guapi	Cauca	103,742	437
Apartadó Buenavista	choco	19,153	29
Bajo Potedo	Valle	1,473	32
Bocasde Atrato/leoncito	Antioquia	34,366	49
Bocas de Taparal	Choco	9,494	45
Campo Hermoso	Valle	1,138	73
Chicao	choco	18,026	58
Clavelino	choco	3,709	27
Dos Bocas	choco	8,734	16
El Progreso	Nariño	29,969	314
El Progreso del compo	Nariño	9,175	152
Guadualito	Valle	1,159	60
La Madre	Choco	8,231	30
La Nueva	Choco	12,738	41
Los Mangos	Antioquia	384	33
Manatías	Antioquia	4,397	28
Manos Amigas del Patía	Nariño	66,562	395
Mayorquin-Papayal	Valle	19,060	267
Río Cacarica	choco	103,024	710
Río Cajambre	Valle	75,710	1,479
Río Napí	Cauca	47,007	436
Río Pepe	Choco	8,191	294
Río Raposa	Valle	20,526	583
Río San Francisco	Cauca	26,232	138
Río Yurumangí	Valle	54,776	529
San Francisco de Cogucho	Choco	8,773	83
San Isidro	choco	12,851	206
Taparal	Valle	1,720	52

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San Francisco de Cogucho	Choco	8,773	83
San Isidro	choco	12,851	206
Taparal	Valle	1,720	52
Unicosta	Nariño	16,063	245
Union Patía Viejo	Nariño	41,197	636
Veredas Unidas	Nariño	13,170	229
Villa Conto	Choco	29,026	330
Villa María de Purriche	choco	24,411	175
<b>Total</b>		<b>1,655,305</b>	<b>17,772</b>

The NRMP loan 3692-CO for US\$ 39 million with a maturity of 17 years including 4 years grace period, draws to a close at the end of the year 2000. By June 2000, the program had achieved 72% of its Land Titling goals, benefiting 19,860 families (over 100,000 people). The project spent US\$ 3.25 million of the US\$ 4.09 million allotted to these three components leaving a remainder of US\$ 0.81 to terminate. The NRMP is responsible for 17% of land collectively titled to Indigenous people in the Pacific coast and 100% of land collectively titled to black Communities in Colombia in general.

### Results of the NRMP <sup>1</sup>

<b>Titles</b>	<b>Number</b>	<b>Communities</b>	<b>Families</b>	<b>Hectares</b>
Collective Titles for Black Communities	37	360	17,772	1,655,305
Indigenous Resguardos constituted	39	39	1,958	224,966

<sup>1</sup> The evaluation in April, 2001 identified 58 collective titles for black communities for 497 communities, 22,132 families, and 2,359,204 ha. Also the indigenous resguardos increased to 56 resguardos, 2,573 families, and 2,683,429 ha.

Indigenous Resguardos amplified	7	5	138	20,243
<b>Total</b>	<b>83</b>	<b>404</b>	<b>19,860</b>	<b>1,920,514</b>

From Roldán and Sanchez External Evaluation June 2000

### **Legal Transformations**

An essential legal framework both existed and was created through the NRMP. Most important of these transformations was the 1991 new Colombian Constitution. Voted in by the National Constitutive Assembly the new Colombian constitution recognizes ethnicity as part of the discursive framework of the nation-state. It declares Colombia an "ethnically and culturally plural society" and mandates participation as an integral part of the functioning of the state. This new declaration is intimately associated with access, use and control over land, ascribing new rights in land as it ascribes new forms of recognition and belonging. It thus lays out the framework for the Land Titling and Regional Committees components of the NRMP.

More specifically the new constitution recognizes for the first time ethnic groups and their rights including the right to collective territory. It upholds the Indigenous political organization (cabildo) as a recognized body of landholders. It also strengthens the autonomy of self-government and the protection of communal lands and unified and associative forms of property (articles 58, 63, 286, 287, 288, 330 and transitory article 55). It obliges a participatory form of government and provides for the protection of natural resources (articles 8, 80, 81, 82, 330-5).

The following articles have special relevance to Indigenous and Afro-Colombian populations:

- The right of communities to conserve their integrity and the physical and cultural patrimony (articles 2, 7, 10, 58, 63, 72, 79, 248 of living and to receive help in attaining this (articles 64, 330 and transitory 55)

- Right of communities to participate in public affairs, those that concern them directly or indirectly and especially in deciding their own future (articles 1, 2, 40, 41, 49, 286, 287, 329, 330, and transitory 55)
- Right of communities to the cooperation of the state in the protection of their life, culture and environment of their territories (articles 79, 330, and transitory 55).
- Right of communities to conserve and have respected their judicial and social institutions, traditions and customs. (Article 7, 8, 70, 246, 330, and transitory 55)
- Right of communities to demand and obtain justice and satisfaction of their rights (articles 29, 86, 94, 229, 246, 282 etc).
- Right of communities to land and natural resources (articles 63, 286, 329, 330, and transitory 55)
- Right of communities to health and social security (article 44, 48, 49, 50, 64, and 366)
- Right of communities to an education adequate to their requirements and according to their culture (articles 67, 68, 69, and 70)
- Right of communities to know their rights and have them known and respected by the rest of national society.

The new constitution opened up a space for ethnic groups that had not previously existed in Colombia. At the same time it set out provisions for participation and environmental protection that were also novel. One of the strengths of the NRMP is that it was able to work from, and with these legal transformations, to make real some of the rights guaranteed in the constitution and to push for compliance with others, while at the same time the political will of the constitution enabled the NRMP to develop and implement environmental and territorial policy.

## **Afro-Colombians and the New Constitution**

The 1991 Constitution opened up a space in which, for the first time, Afro-Colombians could organize and claim land as an ethnic group. Since the abolition of slavery in 1851 until 1991, Afro-Colombian populations did not have a single legal instrument from which to make territorial or self governing claims. There were no legislative or constitutional acts and laws relating to the rights of Afro-Colombian populations, neither to prevent or correct discriminatory treatment nor to compensate in some manner the enormous inequality left by slavery over 350 years.

Indigenous peoples, being well organized and capitalizing on the solidarity created by the rejection of the celebrations marking the 500th anniversary of Columbus, were able to get two delegates elected to the National Constituent Assembly by national vote at the end of 1990. However, Afro-Colombians and Insular Natives, had no delegates to represent them, and used lobbying to put forward concerns. Working with the Indigenous organization OREWA, Black Community organizations, such as ACIA, formed a Working Table that lobbied for the dispersal and implementation of proposals, and mobilized and pressurized for the support of their demands which were presented by Indigenous constituents or the few sympathetic independents.

Only groups from Buenaventura influenced by the Bishop Gerardo Valencia Cano, tried to put up a representative to the National Constitutive Assembly. The frustration of this process did not stop a young group of Afro-Colombians, el Movimiento Nacional Cimarrón, which later became a national movement, from presenting a proposal that through the constituents was put into the constitution. It proposed that:

- 1) “the Colombian nation is pluri-ethnic and pluri-cultural”,
- 2) laws must “prohibit racism and all discrimination against Black and Indigenous communities”,
- 3) they must “order the state to help zones inhabited by Black and Indigenous communities to accelerate their economic, social, cultural and political development,
- 4) they must “ recognize the ancestral right to property and use that Black and Indigenous communities have acquired over the land they occupy”,
- 5) and “determine a structure of national planning that promotes equality between the regions and eliminates the internal colonialism practices by more developed regions over the more marginal ones.”

#### **Transitory Article 55**

Specific recognition of Black communities in the 1991 constitution comes in the form of Transitory Article 55 which states that; “the government will create a law that recognizes the right to collective property for Black communities that have come to be occupying vacant lands in the rural riparian zones of the rivers of the Pacific Basin, in accordance with their traditional practices of production.” It dictates that the inter-ministerial commission set up to review the rights of the Afro-Colombian populations, and the Congress should produce a law putting in motion transitory article 55 by mid 1993. This law became law 70 in August 1993.

## **Indigenous Colombians and the New Constitution**

Colombian law has always recognized Indigenous peoples as culturally and legally distinct societies within the greater national society, and as such holders of fundamental rights. One of these special rights was the right to property in the form of a resguardo specifically defined in law 89 of 1890. The resguardo as an institution granted the community complete rights of property over their lands, within a marked jurisdiction, free from civil ordinances.

The 1890 law 89 grants Indigenous people entitlement to set up their own forms of internal government, through the election of Cabildos or Indigenous Councils, bodies composed of several members of the respective community that take on the internal administration of the group, particularly with regard to the distribution and administration of communal lands and the carrying out of minor policing measures to keep internal order.

Cabildos were recognized by the state as public entities of a special character, incorporated into the country's political and administrative structure. As government bodies responding to communities, they have two main functions: governing the community and participating on their behalf in activities outside the community's normal life, but relating to the defense of the group's interest.

The Agrarian Reform Law 135 of 1961 recognized the full rights of Indigenous people to property over their traditionally occupied lands. In the late 1960s INCORA implemented this law titling 73 resguardos of 1.0 million hectares. This law did not mention Afro-Colombians. Using the few provisions in the Agrarian Law that related to Indigenous people, sectors of the Indigenous population who were engaged in menial or servile forms of work on haciendas and estates in the department of Cauca, launched a vigorous movement aimed at claiming back the lands they had lost or at widening their vital spaces, if they had any.

The 1991 constitution confers upon the Indigenous territories the status of political and administrative institutions. This legal concept formally gives the Indigenous communities a high degree of administrative and fiscal autonomy to conduct their internal affairs and their relations with other public and private bodies. As a political and administrative entity integrated into the new constitutional system, an Indigenous territory can be governed by Indigenous authorities and a taxable base can be established for the members of the community. In addition, each Indigenous territory has a share in the distribution of national income. Can administer its own resources and provide public services, or at least some of those that are provided by territorial entities, such as education, health, basic sanitation, and can undertake engineering projects beneficial to the community etc.

Article 357 of the Constitution establishes the "Indigenous resguardo share in the nation's current income," such that all Indigenous communities who occupy a resguardo have the right to receive every year from the central government an amount of money proportional to the number of inhabitants, to cover administration expenses, provision of basic services and development programs.

### **Law 70 of August 1993**

Following from the Yanaconas meeting the National Planning Authority (DNP) agreed to guarantee the articulation of Transitory Article 55 that gives Afro-Colombians collective rights to territory which came about in the form of Law 70 in August 1993. This law recognizes Afro-Colombian populations as ethnic groups and recognizes their territorial rights in the Pacific Basin, in the form of collective territories. In conjunction with decree 1745 of 1995, Law 70 stipulates how ethnic claims must be put forward, legal territorial recognition and what constitutes an Afro-Colombian ethnic group.

The NRMP made concrete the titling of Black property. While the constitution gave the recognition to the territory, the financial readiness and impulse to support the writing of this law on the part of the World Bank helped forge it into being.

Law 70 defines Black communities to be based on ideas of ethnicity, which are framed with four criteria in mind; culture, history, occupation and location. Law 70 grants a form of self-government in the “consejo comunitarios de comunidades negras” or Community Councils for Black communities. Nevertheless, the consejo comunitarios are formed in a confused legal conception and are the legal personification of the community and are thus constituted as entities with a purely private character. This private, not public character is granted by Law 70. Taken in this way, the consejo comunitarios are a clear disadvantage in comparison to the Indigenous Cabildos and the administrative councils of the future Indigenous Territorial Entities, which are clearly invested with attributions that are deeply buried in carrying out public functions.

### **Law 160, the New Law of Agrarian Reform of 1994**

Law 160 was inspired by the constitutional view that it is the duty of the state to provide progressive access to landed property for agrarian workers and other rural public workers with the aim of improving the income and quality of life of the rural population. Additionally this law grants Indigenous peoples complete rights to property over traditionally occupied areas.

Implementing Law 160, decree 2164 of 1995 consolidates the process of constituting a resguardo. It says that INCORA must make studies of the land necessities of Indigenous communities, to give and title sufficient and additional land adequate to their assets and development, recognizing the property they traditionally occupied, the preservation of the ethnic group and the improvement of the standard of living of its members, without jeopardizing or infringing on the rights of Black communities detailed in law 70 of 1993.

Nevertheless, Article 85 of law 160 states that INCORA and the MOE, in concert with the community institutions, have to verify and certify that the communities comply with the social and ecological (respectively) functions of the property with out specifying the

parameters by which this can be done. Thus, territory traditionally used by Indigenous nomads, semi nomads and agriculturists who survive on hunting, relocation and horticulture that are situated in Forest Reserves, can be designated as an Indigenous resguardos but its occupation and use still fall under the provisions established by the MOE and their rules on renewable natural resources.

### **Environmental Law 99 of 1993**

Law 99 set up the National Environmental System (SINA), the Ministry of Environment (MOE) and Regional Autonomous Corporations. Until Law 99 INDERENA was in charge of environmental affairs. The law promotes the integration of Indigenous and Black communities that traditionally inhabited the region in the process of conservation and the cooperation of the international community in compensating the efforts of local communities to defend their unique ecosystems.

### **Citizen Participation Law 312 of 1994**

This law outlines popular participation in political life as a right. The new constitution constructed a new model of national society defining the participation of civil society in the management of public affairs as supremely important. The law requires and specifically grants to minority communities community participation in the management and decision making that affects their economic, social, political, administrative and cultural life is.

As regards ethnic groups the objectives of participation in Law 312 are:

- 1) to assure their complete dominion and tranquil presence over territory,
- 2) to assure the protection of cultural patrimony of ethnic groups and the full respect of their identity,
- 3) to obtain an acceptable level of autonomy for the management of their internal affairs and to define their own models of development and their own strategies of improvement,
- 4) to contribute to the strengthening, in an increasing and sustainable manner, the climate of tolerance and respect for ethnic and cultural diversity in Colombia,
- 5) to assure their increased decision making power in the management of public affairs,
- 6) to provide in a progressive and sustainable manner the enjoyment of basic services especially health and education, as well as the ownership of new technology appropriate to environmental conditions, permitting ethnic groups to make adequate improvements to their resources and to improve their living conditions.

### **The Influence of International Conventions: ILO and RAMSAR**

In conjunction with the World Bank policy on Indigenous people's, a number of International Conventions shaped the NRMP and its effects and possibilities of being carried out. They either solidified the legal base the state was trying to create or structured the manner in which laws could be applied.

The International Labor Organization (ILO) Conventions 107 and 169 outline an international strategy regarding the rights, both civil and territorial, of Indigenous peoples in relation to their states. These conventions were instrumental in setting the agenda for a policy towards Indigenous people by the Colombian state by influencing the form of the new national constitution. Convention 169 was ratified in 1991 a few months before the constitution came into being and is closely incorporated into legislation regarding Indigenous populations in Colombia.

The Convention on Biodiversity (ratified in 1994) and the RAMSAR Convention on Wetlands of International Importance (ratified in 1971) outline the use of biodiversity and specifically wetlands affecting the implementation of titling as they identify areas of ecological fragility and international importance. Since the signing of the RAMSAR Convention mangrove swamps have been conceptually managed in Colombia as wetland ecosystems. This removes them from land that is available for titling and puts them under special protection of the MOE. The status of mangroves as wetlands is of fundamental importance to community titling since a large proportion of traditional community territories contain mangrove swamps (as is detailed further in this paper). While these conventions lend weight to conservation projects they also outline the boundaries of land that can be titled to communities.

The ILO Convention 107 of 1957 on the “protection and integration of Indigenous and tribal populations in independent countries”, helped to convert usufruct rights for Indigenous people in “territorial reserves” in Colombia to full territorial ownership as collective property. The program of legal recognition of Indigenous communities’ lands in forests and plains started in 1968 a year after the adoption and ratification of Convention 107 into national law as Law 31 of 1967. Based on article 11 of the Convention 300 or more resguardos were granted to the communities as their property between 1968 and the adoption of the ILO Convention 169 in 1989.

The ILO Convention 169 labeled resguardo lands as inalienable, unmortgageable, non-seizable and inprecscriptible inspired by the new idea of a territory as a space of life for a people. This guaranteed the participation of Indigenous people in running the affairs within their territories. Colombia was a signatory to the convention and instrumental in its formation. The Convention and the new 1991 national constitution were in agreement on a lot of stipulations over the rights of Indigenous people including the right:

- to preserve their integrity and that of their physical and cultural heritage
- to improve their conditions of life and to receive support for this purpose
- to participate and decide upon their own future
- to the cooperation of the state for the protection of their lives, their cultures and the environment of the territories that they inhabit
- to preserve and have due regard for their institutions, traditions and legal and social customs
- to demand and see justice done in connection with their rights
- to land and natural resources
- to health and social security
- to an education which is suited to their requirements and in keeping with their culture

- to know their rights and see that their rights are known and respected by other members of the national society
- to communicate and cooperate among Indigenous peoples of frontier areas

The Convention rejects all acts, which could violate the fundamental rights and freedoms of Indigenous peoples. Rights of citizenship of Indigenous peoples shall be recognized without restriction, and their enjoyment of special privileges belonging to them as Indigenous peoples shall not constitute an obstacle to their exercising of the rights granted to all citizens. Colombia ratified the ILO Convention 169 four months before adopting the new Constitution with law 21 of 1991.

## **The Process of Titling Collective Territories and the Pacific Today**

Since 1994 Bank funds have been used to contract Afro-Colombian and Indigenous community organizations to inform rural peoples about these new laws, as well as to set the groundwork for the granting of collective titles. For 18 months from June 1994 to December 1995, the activities of the components focused on establishing the legal and institutional conditions for implementing the Indigenous resguardo and Black community land titling processes. The NRMP found that in order to make participation a reality it was necessary to: 1) strengthen communities and their organizations so they can take up the knowledge and responsibility of having territorial ownership and domination. This meant legal training, construction and consolidation of consejos comunitarios, regularization of management of natural resources, and definition and agreement on the boundaries of communities, and 2) necessary simultaneous training and capacity building of the institutional entity in charge of the procedures for instance INCORA.

Soon after the Loan Effectiveness, a High-Level Consultative Commission and affiliated departmental commissions were established to carry out consultations for the regularization of Law 70. The work of this commission, much of it financed under the Regional Committees component of the NRMP, resulted in Decree 1745 of 12 October 1995. This decree set out the procedures that make the titling of Afro-Colombian land possible. Decree 1745 regulates chapter III of Law 70 and defines rules and procedures for collective titling. It defines collective titling as fundamental to:

- 1) human rights,
- 2) cultural survival,
- 3) socio-economic development, and
- 4) natural resource protection and management.

### **Red de Solidaridad Social (RED)**

Much of the success of the Black Land Titling component can be attributed to the hard work of the RED in designing and implementing the Regional Committees component of the program. The RED was created with the objective to promote the social and participatory side of development that:

- 1) promotes the advance of decentralization,
- 2) generates a better commitment to local collectivities in the creation of their self development,
- 3) consolidates new institutional models for the coordination and control of social politics in the territorial entities and promote social equality between all the population groups favoring the most vulnerable.

The RED ensured that the views of Indigenous and Afro-Colombians were represented in the program, and the transparency and accountability between government and civil society organizations. They worked through seminars and workshops with government and community entities and programs on the workings of the NRMP where they could exchange points of view known as “Mixed Regional Committees”. The RED did training in environmental and ethnic legislation, helped institutions become appropriate to the region and promoted popular communication. They also produced a series of popular educational materials on law 70 and other laws pertaining to land titling and use.

### **Regional Committees**

With the creation of the MOE and the conformation of the RED, Regional Committees were organized under the direction general of the Environmental Regularization and Territorial Planning of the MOE. They were flexible meeting and consultation sites between the state and the communities of the Pacific region represented by their ethnic territorial organizations. They were created to address the local, regional and national dynamics and expectations of the NRMP to produce a legal framework for the ethnic, territorial and environmental rights and issues.

At first they provided technical assistance for the promotion of ethnic and territorial rights. Later, they began to promote these rights through strengthening the local communities and ethno-territorial authorities’ autonomous space, helping the consolidation of rights, and promoting instances of democratic participation and consultation. Within the Regional Committees they came up with principals, criteria and guarantees to guide the process of collective titling. The strength of the Regional Committees that were run through the RED was that they had:

- 1) an emphasis on active participation of regional Black and Indigenous organizations

consolidation of rights, and promoting instances of democratic participation and consultation. Within the Regional Committees they came up with principals, criteria and guarantees to guide the process of collective titling. The strength of the Regional Committees that were run through the RED was that they had:

- 1) an emphasis on active participation of regional Black and Indigenous organizations
- 2) pedagogical materials produced on the territorial rights of these populations.
- 3) initiatives to create inter-ethnic dialogue between Black and Indigenous organizations, as well as with state and regional institutions.

One of the strengths of the Regional Committees is that their agreements set both a trend and a bench mark from which to claim rights and compliance on the part of the state. In the medium term the Regional Committees highlight participation in planning, follow-up and evaluation of the program, looking to harmonize the objectives with the rights and interests of the local population. In the long term they present a challenge to build a strategy of regional transference and appropriation of the results of NRMP, both at the institutional level and that of the ethnic, territorial and urban organizations of the Pacific, understood as the joint actions of communication, training and consultation to promote the conservation of natural resources in the region.

Although the NRMP considers titling as the condition necessary for the conservation of the natural patrimony of the communities and the nation, the scope of the Regional Committees is limited as a space where the ethno-territorial organization of the Pacific can concur, because of being so tightly connected to the process of titling. Regional Committees need to widen the focus of discussions to include other aspects of the NRMP, for instance, of ecological zoning and national parks. Additionally the lack of leadership of the Regional Committees led to the impression among some Afro-Colombian organizations that gaining or initiating the distribution of economic resources, in particular land, was the aim of the process rather than just a portion.

## **Community Participation and Institutional Performance: INCORA and Indigenous Land Titling**

One of the benefits of the NRMP was that due to community participation and awareness of the program there was a rapid feedback mechanism regarding compliance with goals. Indigenous organizations were particularly forthright in demanding and pursuing compliance in the demarcation and titling of resguardos. The most vocal of these community organizations, OREWA, wrote letters to the implementing agencies, to the World Bank and even to the President of Colombia demanding accountability and compliance.

OREWA's main complaint was that since INCORA had started titling collective territories for Black communities they had stopped titling and demarcating Indigenous

resguardos. A major finding of the mid term review in 1997, was that INCORA was dragging its feet and creating the potential for increased inter-ethnic conflict through faster pace of implementation of the Black community activities and a lack of coordination of the Indigenous and Black community programs. From September through December of 1997 there was a growing concern on the part of World Bank staff that “it is a great irony, that we would have titled Afro-Colombian land but at the price of the progress of the Indians” because of this delayed action and inactivity of INCORA in regard to Indigenous resguardos.

Through support to OREWA’s concerns, and letters to the MOE and INCORA, the World Bank pushed for compliance, and accountability with treats to withhold the loan. They advocated a change in personnel, the institutional and legal reorganization of INCORA, making Indigenous resguardo titling a high priority, an external evaluation and the integration of Regional Committees for conflict resolution.

As external evaluations, mid-term reviews and community complaints all indicated serious concern about the progress of Titling and Regional Committees, the World Bank sent a supervision mission in January of 1998 where they determined the MOE should elaborate a Plan of Action determining how they plan to address the problems of the Land Titling and Regional Committee components by end of February 1998.

OREWA did not cease acting as an overseer and pushing their own specific agenda. Right up to the present they continue monitoring the progress of the demarcation and titling of resguardos specified by the Action Plan. They continue to accuse INCORA of lacking political will to carry out the titling duties assigned to it, especially in the regional offices. Their strategy of contacting all those involved regarding their complaints remains an effective way to participate as a local community organization.

## **The Action Plan of March, 1998**

After the meetings of Yanaconas in Cali in 1992, the Action Plan of 1998 is the most important turning point in the process of the NRMP’s components of a Land Titling and Regional Committees. This Action Plan was developed to link the operational plans for all three components into a single integrated work program with specific goals, including a strategy for documenting the experience and lessons learned by the NRMP and participating institutions.

The Action Plan was set up to combat the tensions between the community and the government. It provided specific goals and the mechanisms to achieve them that allowed for the achievement of the Land Titling and Regional Committee component goals. This plan included strategies of territorial definition, capacity building, strengthening of intercultural understandings and conflict resolution.

More specifically it recommended that:

- 1) INCORA develop a computerized data system for tracking the process of titling.

- 2) INCORA contract regional Indigenous organizations to assist in conducting the delimitation and other topographic work necessary for the constitution of resguardos.
- 3) INCORA prepare a special land regularization plan for the constitution of resguardos in Cauca, Valle and Nariño.
- 4) The RED and other cooperating institutions should organize a special meeting of the inter-ethnic Regional Committee to discuss and agree upon INCORA's operational plan for the two titling components and to resolve any outstanding issues or conflicts.
- 5) INCORA outline specific land titling goals for Black and Indigenous communities, defining the number of titles to be issued or the hectarage to be covered in the time remaining.

The Action Plan brought forward the important role of Inter-ethnic Regional Committees in conflict resolution, and coordination between Black and Indigenous community activities. The process of agreeing on the Plan of Action and the framework of measurable objectives in the Plan have played an important role in increasing coordination among the various implementing agencies, in establishing greater trust between these agencies and the indigenous and Black community organizations of the Pacific coast, and in promoting greater transparency and accountability. For the first time a systematic data base exists on the status of land regularization for both the Indigenous and Black communities, and monitoring of performance in meeting the milestones set for in the plan for 1998-99. Only with the formation of the Action Plan and clear corresponding strategies and criteria did the Land Titling and Regional Committee components of the NRMP gain its own momentum after moving very slowly.

### **Expulsion of Regional Directors of INCORA.**

Due to community pressure, mainly from Indigenous groups, 2 regional directors of INCORA were forced to leave their positions. In 1998 the government of Colombia removed 9 out of 25 regional directors from their jobs because of inefficiency and irregularities. This reshuffle of functionaries of INCORA included 2 regional directors in the Pacific. The director from the Chocó was removed for inefficiency and administrative disorder and the director from Cauca because of inefficiency in the titling of Indigenous resguardos.

### **The Unique Experience of Titling Collective Territories For Black Communities: ACIA**

The NRMP is responsible for 100% of land collectively titled to Black Communities in Colombia today. By June of 2000 the program had titled 1.65 million hectares of land to 360 Black communities benefiting 18,000 families. The first Black community collective title issued was the title of la Madre, in Bajo Atrato the only title issued in 1996. Another 6 titles were issued the following year including the title to ACIA for a territory of 695,254 hectares. The pace of titling picked up after the Action Plan of 1998 with the majority of titles being issued between 1998 and 2000.

ACIA, representing over 100 communities in one of the most remote, riparian areas in the Chocó region, was given their title deed for 695,254 hectares on 11 of Feb 1998 by Ernesto Samper, the then president of Colombia, to mark the auspicious occasion. As one of the first titles issued and definitely the largest, the process of titling the ACIA territory acts as a model for titling of collective territories for Black communities throughout the Pacific region.

The process of obtaining the titles was arduous. ACIA had to first negotiate the meeting and contract for mobilization, and training of the communities, then gather and process information, consult and agree with Indigenous, private and other organizations holding property, with other Black communities and the state and now define the new responsibilities since titling. The initial management of funds was difficult because of the number of entities and people involved in the formalization of the accord since the process was structured for international governments and entities rather than poor rural farmers with a high percentages of illiterate members.

Thanks to their community work done before the process of titling, ACIA not only had a huge knowledge of the communities but a formidable ability to call meetings. They were thus able to do an intense job and hold 139 community workshops, 9 zonal workshops, and one great General Assembly. In order to solve border difficulties they created with OREWA and OIA (Organización Indígena de Antioquia) an Inter-ethnic Commission to look for solutions. With private property owners and other communities they directly negotiated on a case-by-case basis.

However, similar to what happened to other communities along the Atrato river, in 1999 external armed groups imposed control as the only power within the territory and many of the members of ACIA were displaced as refugees in urban centers. This was a very real negation of the exercise of construction of community self-governing and autonomy. Nevertheless, in 2000, thanks to the title and the new legal security over their land the communities of ACIA have managed to neutralize to a large extent the advance of the war in their territory.

## **Violence and Collective Territories of Ethnic Groups**

The Pacific, which used to be on the margins of Colombian violence, has experienced dramatic changes that affected the models of traditional territorial appropriation of Black and Indigenous communities with the simultaneous degradation of the ecosystem since the late 1980s. These changes include: the state trying to integrate the region to the international markets, the fight of many companies for access to the forest and mineral resources, the domination of certain territories by drug traffickers, the increase in the region of armed confrontation between the military, paramilitary and guerrilla, and the model of cattle ranching colonization typical of other regions of the country and finally

the configuration of Indigenous or Black social movements in defense of their territory and culture.

Today the phenomenon of violence causes a permanent state of anxiety among the inhabitants as the armed groups carry out terrorist actions, murder and retaliation in the countryside, which caused large displacements of poor peasants to larger urban centers. Although drug and political armed violence are somewhat independent they are more and more interconnected every day.

These violent conditions directly impact the Land Titling and Regional Committee components of the NRMP. For instance, shortly after the collective titles of the Black communities of la Nueva, Dos Bocas, Taparal, Clavellino and Chicao of the Lower Atrato river were issued in 1997 the populations were displaced by paramilitary. In 1998 other displaced communities of the Lower Atrato river sent a letter to the World Bank saying that being displaced makes it more difficult to obtain a title. They requested the participation of the International Red Cross, the office of the High Commissioner for Refugees of the UN and delegates from the Dioceses of Apartado and Chocó to form part of a high-level commission to look into titling and violence. They demanded collective entitlement as part of their proposal for a dignified return to their territories.

On the other hand in the case of rio Sucio in the Chocó, the very fact of the titling of collective territories for Black communities contributed to the return of numerous displaced inhabitants and communities, although the confrontation with armed groups continues. Nevertheless the capacity of communities to maintain peace, their possession of the land and to reasonably manage the environment is appearing to be increasingly affected. The effects include:

- 1) the breaking up of social networks and governing forms internal to the communities, in the incorporation of youths in these groups, the auto-proclamation as agents of justice or governing by forest agents in place of community authority, and the destruction of traditional cultural values and internal rules.
- 2) disturbed economic life and traditional form of work. Although this is done in many ways the removal of family members from traditional everyday activities by armed groups or drug traffickers and the abandoning of rural plots for urban areas when displaced has the greatest impact.
- 3) the break up of traditional ways of managing nature, using natural resources and defense of ecosystems in the introduction into the regional economy illicit crops as a financial front for armed groups, the toleration of these groups non regulated use of forest and mines and the possibilities of quick money.

In spite of this insecurity and upheaval brought about by the violent situation, land titles lend a specific long-term stability to communities. They serve not only to mark the legal boundaries of territory today, but to ensure the existence of the communities into the future. Andean Colombia has a long history of land titles demonstrating ethnic or community existence. Similar to Royal titles issued by the Spanish Crown during the colonial period to Indigenous communities in the Andes, the collective titles of the

Pacific prove the existence of the community as a community and as an ethnic group to the wider Colombian nation. In the Andes many Indigenous communities ceased to be recognized as Indigenous, and their lands ceased to be recognized as their territories because they did not possess or could not prove their connection to, royal titles over the land.

One might argue that there is no point in titling land if those that possess the title cannot live there due to their displacement to urban areas because of violence. Nevertheless, the collective title not only sets up a legal basis to claim back the territory but it specifically registers the social, cultural and political existence of the communities associated with the land and the moral obligation of the state to the members. Thus, in a less violent future the titles facilitate the return of these people to their territories and traditional ways of life.

### **Ethnic Conflict and Resolution**

The titling of collective territories for Indigenous and Black communities was not without conflict. Importantly the exercise of titling itself produced an escalation in ethnic conflict over territory. These conflicts had existed prior to the program, especially where Black communities had particularly insecure rights to land, while Indigenous communities held specific legal rights over neighboring and at times coterminous land, and where both communities were poorly organized. As the possibility of titling collective territory for Black communities became a reality conflicts arose over territorial boundaries and over the process and rapidity of titling. At the same time the government policy of “cleansing” of resguardos through the removal of non-Indigenous populations increased the friction between Indigenous and Black communities.

The context of ethnic conflict and its relation to the NRMP is complex and depends on the prior relationship between Indigenous and Black communities, their relative participation as functionaries of the state, and their unequal legal access to secure title to land. On one hand it was difficult for Indigenous communities used to a certain process of titling to accept new restrictions and procedures for titling, such as environmental restrictions or having to consult with Black communities over boundaries. On the other hand INCORA stopped titling of Indigenous resguardos in the Chocó for almost 2 years during the NRMP, causing a strong impression of the lack of political will on the part of the government to title Indigenous territory.

With the possibility of obtaining legalization of their territory some Black communities no longer accepted the principals behind “cleansing” arguing that these lands were traditionally ancestral lands of Black communities. These pockets of land within resguardos became bones of contention. At the same time, in certain areas of the Pacific such as the Chocó, as the main functionaries in government institutions or in politics, Afro-Colombians used these positions to secure rights they deemed appropriated from them.

In 1997 the first Inter-Ethnic Regional Committee was held in Perico Negro, in the municipality of Puerto Tejada. It was organized by INCORA and set up to revise tensions and possible inter-ethnic conflicts, and to develop knowledge of the territorial rights, the action of the state and external violent factors. Black Communities and Indigenous organizations participated and so did national and regional implementing entities. The committee concluded that the Afro-Colombian and Indigenous communities still maintain traditional methods of conflict resolution that should be supported and promoted, and that it was nonetheless still necessary to adjust the actions of the different state entities for conflict resolution and to strengthen these mechanisms.

These Inter-Ethnic Regional Committees can be seen as the third turning point in the NRMP after the meeting of Yanaconas, and the Action Plan that fundamentally changed and enabled the program to accomplish its goals. Through these Inter-Ethnic Regional Committees the Regional Committees were transformed from principally training, capacity building and information dissemination sites to highly effective sites of conflict resolution.

### **Community Organization and Conflict Resolution**

In 1998 the community organizations of the middle Atrato river, ACIA, OREWA and OIA used the Regional Committees to consult and come to an agreement over their territorial limits. The territory of Indigenous communities of OIA and OREWA surround the large territory of ACIA rising up from the Atrato river valley on one side to the Cordillera Central and the other to the Coast ranges. There were pockets of Indigenous and Black communities living within the territories of the other group. At the same time there were disputes over the boundaries of the already recognized territories.

Through the process of consultation and prioritization they were able to determine the final land mass of ACIA and delimit the neighboring 16 resguardos. The accord made possible the constitution of 8 resguardos in department of the Chocó in 1998 and eased the following constitution of 6 others in department of the Chocó and 2 in the department of Antioquia. The accord included the exchange of land to consolidate territory and in some areas the shared management of territory between Indigenous and Black communities. These communities were able to come to such agreements because of their strong, long-term organization, which had been strengthened through their participation in the NRMP.

### **What is a Collective Title?**

## **Interethnic Territories**

The settlement dynamic of Black and Indigenous communities is not necessarily homogeneous with separate populations occupying clearly defined spaces. In reality throughout the Pacific Black and Indigenous populations are interconnected not only through trade but also through kinship, ceremonies and shared territorial spaces.

Ironically, Law 70 truncated the process of forming interethnic territories. This legislation does not take into account the historical dynamics of the rural communities of the Pacific due to a lack of research and description of the types of settlements and relations that exist between these populations.

Since 1998 the communities of San Juan requested a joint Black and Indigenous Territory - the Territorio Wounaan-Negro. From San Juan south settlements do not follow the homogeneous rules that characterizes the Atrato or the Baudó. This is important to recognize when using ACIA as a model for future titling. Trying to force the communities into tenure systems that do not reflect their social reality can cause conflicts. At times Black communities have no territorial options outside of joint territories with Indigenous communities and the titling process could dispossess them. To make spaces for the reality of interethnic territories as a tenure modality and reduce conflicts through the incorporation of historical pasts of the communities, legislation needs to reflect the actual settlement patterns of the two communities.

## **The Legal Status of Ethnic Administration: Cabildos vs. Consejo Comunitarios**

The existence of special legislation in independent forms gave rights to Indigenous and Black communities over areas that they occupy, but did not resolve complex situations where one or other share territories and have managed to develop forms of shared understanding and administration. One of the reasons that this is particularly difficult is the different status of the governing bodies of these territorial entities, and essentially the status of the territorial entities themselves.

The cabildo, the governing body for Indigenous resguardos, is a public entity of a special character incorporated into the country's political and administrative structures. It is an autonomous institution that receives funds from the central government can collect taxes and make and administer laws within its territories and carries out public services and minor policing measures to keep internal order. It is integrated into the political system at the constitutional level.

The consejo comunitario, the governing body for collective territories of Black communities, on the other hand, is the legal personification of the community and is thus constituted with a purely private character. It retains an undefined and ambiguous autonomy because it pertains to the municipality and relies on the municipality for the transfer of resources and revenues as it does not receive funds from the central government. Nevertheless, it is not within the authority jurisdiction of the municipality. It is unclear whether the consejo comunitario has the authority to collect taxes and make and administer laws within its territories or carry out public services and minor policing measures to keep internal order. It is integrated into the political system at the legislative level.

As a result the ability of consejos comunitarios for Black communities, if compared to Indigenous cabildos and councils of territorial entities which have a public character, to authorize an adequate administration of community interests severely limits the perspective and possibilities of future territorial and communal development and management.

A key thing to note is that the main difference between the legal recognition between Black and Indigenous territories is that for the Indigenous communities the law recognizes some degree of Indigenous territorial control and provides for limited autonomy or self-rule. For Black communities the law recognizes more of a corporate structure similar community forests in the USA, with limited self-rule potential.

## **The Legal Status of Collective Titles and Public-Use Goods**

Similar to many coastal territories of the Pacific, the traditional territory of the Peasant Association of Rio Patia, ACAPA, in Nariño includes intertidal plains covered by mangrove swamps, which they have used traditionally for subsistence production in fishing and collection of sea resources including bivalves and mollusks. The status of these mangrove swamps as land or sea, as public or private use goods, and thus as able to be titled or not, raises some important issues about the status of Collective Titles for Black Communities, the level of autonomy and control of community councils, the relationship between environmental policy and community involvement, and finally the inequality of rights between Indigenous and Black collective territories (standardization of the law).

Although the MOE and the community representatives ACAPA signed an accord in June of 1998 allowing the territory of ACAPA to be titled explicitly leaving out the areas of mangrove swamps the communities later protested the loss of over 20% of their territory. They argued that the mangroves are their sustainable livelihood that guarantee their food security, experience has demonstrated that the Black communities have conserved the mangroves historically, and a high percentage of the Pacific Territories contain mangroves. Thus the inclusion of the mangroves within the title up holds their constitutional right to protect their ethnic and cultural diversity and a real recognition of the collective right to territory of the lands of the Pacific Basin by Black communities.

In 1999 INCORA had a meeting to analyze and conceptualize the juridical nature of mangrove zones and the implications for Collective Titling for Black communities. After considering technical and legal arguments they came to the conclusion that the areas of mangrove are not to be excluded from the titleable areas. They requested the go ahead to title from the MOE. However, neither INCORA nor the MOE wanted to take a stand regarding the titling of mangrove areas and neither proceeded

In April of 1999 the legal office of the MOE was asked to state their position on the legal nature of the mangrove zones and their implication for the titling of collective property

for Black communities of the Pacific. It was the opinion of the legal office that “the MOE is not the entity in charge of defining if a good is or is not of public use, in spite of its involvement in the theme especially when it was part of the technical commission and when the discussion involves areas that house mangrove ecosystems, according to articles 12 and 48 of law 160 of 1994 and article 20 of the regulatory decree 2663 of 1994 INCORA is the entity that has the function of delineating goods of public use, that can not be included in the collective titles as stated in article 6 of law 70 of 1993 and article 19 of decree 1745 of 1995.”

In the end INCORA and the MOE adopted the formula that had been used decades ago for the constitution of Indigenous reserves, that INCORA issue the title to the communities excluding the mangrove swamps, recognizing public ownership over the mangrove swamps as according to the law they could not be titled. Then the communities were awarded usufruct rights to the areas excluded.

While the usufruct rights to public use goods in the case of the mangroves seems a practical solution to conflicting policies of environmental protection and community control over natural resource management, the solution points to the limits of participation and ownership on the part of the community. These are also indications of the types of habitats considered manageable by communities and those that are not. For instance, the conversion of Indigenous reserves to Indigenous resguardos in the Pacific was a recognition of the communities ability of manage forests and a transference of the control of this management to the community level. It would appear that wetlands are not yet considered manageable by communities.

In mid 2000 OREWA wrote to the MOE requesting closure on the mangrove issue from the point of view of the Indigenous legislation to solve the problem of the Indigenous peoples who live in mangrove areas and use them traditionally. Deemed public use goods one would assume closure on the mangrove issue had been reached when addressing the problem in relation to Black communities. Nonetheless, because the two ethnic groups do not fall under the same legislation, and the titles do not title exactly the same thing, and Indigenous territories as public entities may be able to contain public use goods, the issue must be readdressed regarding Indigenous territories.

#### **Some Benefits of Collective Titling and Participation;**

- 1) the process of titling contributed to ethnic identification in a participatory manner, community organization and access to clear tenure.
- 2) the participatory nature of the program increased the community's security in their capacity to make claims and to manage resources.
- 3) the efforts to obtain titles and the titling itself has contributed to strengthen the internal forms of government and the community's negotiating capacity.
- 4) titling gave a more clear and solid ownership or dominion over their territory and a legal base effective to protect it.
- 5) in the context of armed conflict the winning of ownership over the land, through NRMP, has represented for many communities of the Pacific a real possibility for the defense of life and a degree of independence from the conflict.

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- 4) titling gave a more clear and solid ownership or dominion over their territory and a legal base effective to protect it.
- 5) in the context of armed conflict the winning of ownership over the land, through NRMP, has represented for many communities of the Pacific a real possibility for the defense of life and a degree of independence from the conflict.
- 6) titling has acted as a base for bargaining and legitimacy.
- 7) other programs had been programs of the government and not long term programs of the state. The NRMP was able to cover three government administrations as the communities were the stabilizing factor through the changed of administrations.
- 8) participation contribute to the maintenance of traditional knowledges and cultures.
- 9) the titling of Black community land was a determining factor in the defense of biodiversity.

### **Impact of the Land Titling and Regional Committees Components of NRMP**

There are four areas of impact of the above three components:

- 1) communicational - between state and local organizations as well as between local organizations and the people.
- 2) organizational – the structure and unity of organizations.
- 3) spatial – territorial authority and control.
- 4) temporal – structural change and long term influences.

#### **Communicational Impact:**

Communication is a major problem throughout the region. The difficulty of uniting people across the region is a weakness of the program making it hard to centralize decisions and to coordinate work. Local communities have tried to ameliorate the situation by asking for an autonomous space to get together before the meetings of the Regional Committees in order to consolidate a regional position beforehand.

Community organizations, but especially Afro-Colombian organizations, felt that the process of titling enhanced their cultural cohesion and awareness. Through this process the communities demarcated and reactivated the oral history of their people and territories and built up the self-awareness and education about their culture. The titling process consisted in making social maps of the territory including maps for the future and the past, of narrating and recording the history of the people, their culture and their traditional practices and detaining the social relationships with the communities around them. This generated a huge excitement at learning from the older generations by the young and understanding the internal diversity of the communities.

The titling process also helped recuperate the cultural process of use of the territory and traditional knowledge about biodiversity. This took place through a community

intellectual movement including hunters, gathers, the elderly and traditional doctors to reconstruct the history of settlement of the territory, and to explain from their own perspective the importance and use of the natural resources that exist. Part of this knowledge is left in maps and minutes (memorias) from the workshops of social mapping. Most importantly, as expressed by some of the Afro-Colombian participants, the young and the old, the men and women were put together to synthesize traditional knowledge about the biological resources and the community territory as part of their own identity. The communities felt that this combined effort was particularly informative and useful.

Law 70 generated an institutional coordination framework such that the MOE, INCORA and the RED were able to work together without conflict. This institutional coordination was amplified by the Regional Committees and consultations. Adversely, the strong unity between the three organizations had the initial effect of distancing the Ministry of the Interior and in particular the High-Level Consultative Commission, since most of its job and space was taken over by the RED. However, the interethnic Regional Committee in Perico Negro, Puerto Tejada in August 1997 recuperated the High-Level Consultative Commission as the Committee brought it into agreements on the necessity of defining territory.

#### **Organizational Impact:**

The natural institutional rhythm of the implementing agencies was accelerated by the agreements with the World Bank on goals, resources and deadlines. There was a combination of political will, resources and social demand, which made the project the success that it was.

A lot of the success was due to the coordinating efforts on the part of the PCU in the MOE which had to balance limiting and controlling spending with giving autonomy and agency to the institutions they worked with. Their ability lay in the rigidity in which they demanded compliance with deadlines and funding accountability, and the flexibility they gave the institutions in planning and going about their work. As the PCU was not responsible for the implementation of projects, although fully responsible for the use of funds, they served as strong overseers of spending. The structuring of this facilitating mechanism within the MOE is an important lesson for the coordination of future projects. Additionally the people who worked on the NRMP had an amazingly high level of dedication and enthusiasm for the project both at the World Bank and in Colombia.

The MOE discovered during the program that the cheapest form of strengthening environmental institutions was through the participation of the people in the process such that they were in charge of the project themselves. This type of participation was novel. Previously the conservation programs had placed the environment before the social such that people were not involved until after the creation of the legislation. They later discovered that the long-term effect of titling has been conservation through appropriation. Because of the stability that titles provide they have witnessed an interest in conservation by communities of the region.

At first INCORA had a sole division attending Indigenous and Black communities within one area of administration. Law 70 of 1993 and Decree 1745 of 1995 along with community pressure was a great push to force the titling of Black community territory. The national government named Ortilia Vegas, a Black woman, as manager of INCORA in the Pacific and under her INCORA separated the single program attending ethnic groups into two separate programs at the end of 1997.

At a time when INCORA was dividing the unit attending Indigenous and Black community land titling, the RED instituted Interethnic Regional Committees (they had started out as separate Black and Indigenous Regional Committees). The changes that took place in INCORA would appear to have allowed for, and perhaps demanded, the complimentary change in the RED. As the Collective Territories for Black Communities became a reality with the reordering of the administration within INCORA, the resolution of interethnic conflict became more important as well.

### **Spatial Impact:**

The new territorial units challenge old ideas of power and authority between the Territories of Black Communities, Resguardos and Municipalities, contesting control over 1) land, 2) resources in general 3) natural resources in particular and 4) permissions and licenses for extraction and exploitation of minerals. This becomes obvious in instances such as the formation of Plans of Territorial Regularization. The PCU has to coordinate between these territorial units as well. The uncertainty of these relations is compounded by the fact that Consejos Comunitarios do not receive funds for services such as health and education from the central government as do Indigenous Resguardos, but rather depend on the municipality for such funds, yet they are not within the authority jurisdiction of the municipality.

The shortage of vacant land (baldíos) in the Pacific Coast affects the sustainability of the project to continue titling in the future. It will soon not be possible to extend territories in the Pacific except through the purchase of private property. This is already becoming a problem in areas where resguardos cannot be amplified without encroaching on land held by others. INCORA is trying to address this problem outside of the Pacific by buying private property to deed as collective titles to Black communities.

### **Temporal Impact:**

The titling of property changed people's way of thinking about their region, especially for Black communities. They began to think about it as a naturally rich area where remaining rather than migrating was now an option. Now that the land has been removed from the market there has been a repopulating of the territory accompanied by a rise in ethnic identification. Additionally, the support of the existence of solid regional and grassroots organizations and the security offered by legally recognized territorial dominion has been invaluable for struggles for peace.

The NRMP's model of participation can serve as an example for other projects that would like to define and adopt participatory strategies. The model has contributed to strengthening the image and the legitimacy of state entities that assume the responsibility

to carry out their functions in the eyes of the public. A real interest in the environment and sustainable development developed among the community. At present a large percentage of the community organizations are working on management plans for their territories. Nevertheless the environmental authorities are not taking advantage of this favorable occurrence to development initiatives more in accord with the communities to maintain and consolidate the commitment.

The sustainability of Collective Territories in the future depends on: a) being part of an environmental policy, b) the control and use of natural resources, c) the accompaniment of productive activities to prevent reversion, d) management plans, and e) the resolution of internal conflicts between individual and collective credit and organization. The latter is particularly hard as there is no clear policy about credit and each community organization has to deal separately with the problem. For instance, ACIA invented a usufruct contract so that farmers could obtain credit.

The government is trying to incorporate the ideas of the Collective Land Titling and Regional Committees components of the NRMP into macro political policies for the Pacific allowing them to slowly become structurally part of policy development. The Organic Law of Territorial Regularization for land use planning is going to emphasize territorial entities. However, while Indigenous Resguardos are going to become Indigenous Territorial Entities and have equal power to municipalities, the Collective Territories of Black Communities have less autonomy and pertain to municipalities and rely on them for the transfer of resources and revenues. This is a constitutional condition and only a change in the constitution can affect this administrative positioning.

INCORA has begun for the first time to incorporate the theme of Black Communities in their new Plan of Operation along with that of Indigenous Communities. They have begun a program to buy land in areas outside of the Pacific for Black Communities who don't have land. They have already purchased land in San Andreas, Santander and in the North of Cauca, and have had petitions for titles in three territories out side of the Pacific in Cartagena, Caldas, and Antioquia (Uraba). This had been part of the demands of Regional Committees of Black Communities since 1998.

Nevertheless INCORA is dropping the use of Regional Committees outside of the Pacific Basin because; 1) the specificity of the Pacific enabled the success and utility of Regional Committees while other areas do not have the same conditions, and 2) the jurisdiction of the RED to call Regional Committees is limited to the Pacific. They claimed to have learned from the strategy of participation of Regional Committees and from the High-Level Consultative Commission. However, they appear to see the Regional Committees as capacity building arena and do not take seriously their conflict resolution potential.

## **Lessons Learned**

### **The Program:**

The NRMP also shows that to make participation effective a program needs to work with the community or organizations that have direct interest in the solution to the problem.

Many environment programs are programs of the government and not long-term programs of the state. The NRMP was able to cover three government administrations because the communities were the stabilizing factor through the changes of administrations. Indigenous and Black people have a large awareness of the right to participate, and have come to demand and obtain it in part without direct laws or regulations. The state entities recognize it just a responsibility and requirement of a quality of service of public administration. Law 70 generated an institutional coordination framework such that the MOE, INCORA and the RED were able to work together without conflict. It is important that these advantages become institutionalized.

The natural institutional rhythm of the implementing agencies was accelerated by the agreements with the World Bank on goals, resources and deadlines. A lot of the success was due to the coordinating efforts on the part of the PCU in the MOE, which had to balance limiting and controlling spending with giving autonomy and agency to the institutions they worked with. Their ability lay in the rigidity in which they demanded compliance with deadlines and funding accountability, and the flexibility they gave the institutions in planning and going about their work.

In spite of the ample praise given to the functioning of the Regional Committees both as capacity builders and as conflict resolution mechanisms, they seemed the least structurally incorporated into policies and future plans of implementing organizations. Perhaps this is because they were organized and administered by the RED whose jurisdiction and future existence is uncertain at the moment. Nevertheless, the lack of incorporation of Regional Committees as conflict resolution mechanisms in future projects of administering institutions, but especially within INCORA, is a wasted lesson. Institutions whose future plans do not include Regional Committees should include in their analysis of sustainability alternatives in popular participation.

### **Institutions:**

Structural institutional transformations, not just within the local community organizations but also within the executing and coordinating agencies, are the basis of sustainability in such a program. The NRMP found that in order to make participation a reality it was necessary to: 1) strengthen communities and their organizations so they can take up the knowledge and responsibility of having territorial ownership and domination. This meant legal training, construction and consolidation of consejos comunitarios, regularization of management of natural resources, and definition and agreement on the boundaries of communities, and 2) necessary simultaneous training and capacity building of the institutional entity in charge of the procedures, for instance, INCORA.

### **Conservation:**

The long term effect of titling has been conservation through appropriation assuring a solid base for conservation. Because of the stability that titles provide they have witnessed an interest in conservation by communities of the region. Thus making titling a determining factor in the defense of biodiversity. The titling of property changed

people's way of thinking about their region, especially for Black communities. Now that the land is removed from the market there has been a repopulating of the territory accompanied by a rise in ethnic identification.

The NRMP was able to work from, and with the legal transformations, to make real some of the rights guaranteed in the constitution and to push for compliance with others, while at the same time the political will of the constitution enabled the NRMP to develop and implement environmental and territorial policy.

The participatory nature of the program increased the community's security in their capacity to make claims and to manage resources. The titling process also helped recuperate the cultural process of use of the territory and traditional knowledge about biodiversity. This took place through a community intellectual movement including hunters, gathers, the elderly and traditional doctors to reconstruct the history of settlement of the territory, and to explain from their own perspective the importance and use of the natural resources that exist. Part of this knowledge is left in maps and minutes (memorias) from the workshops of social mapping. Most importantly, as expressed by some of the Afro-Colombian participants, the young and the old, the men and women were put together to synthesize traditional knowledge about the biological resources and the community territory as part of their own identity. The communities felt that this combined effort was particularly informative and useful.

**Participation:**

The agility in delimiting territory, the support for the demographic and technical information and the search for accords with other communities and persons as a necessary information base for titling was only possible in the cases in which the organizations themselves had done the prior work of informing and training the community. For instance, thanks to their community work done before the process of titling, ACIA not only had a huge knowledge of the communities but a formidable ability to call meetings. Thus, for environmental programs that want to secure citizen participation there needs to be special support given to strengthening community organizations where they already exist, and to push for their formation where they are lacking.

Due to community participation and awareness of the program there was a rapid feedback mechanism regarding compliance with goals. Indigenous organizations were particularly forthright in demanding and pursuing compliance in the demarcation and titling of resguardos. One of the strengths of the Regional Committees is that their agreements set both a trend and a benchmark from which to claim rights and compliance on the part of the state. In the medium term the Regional Committees highlight participation in planning, follow-up and evaluation of the program, looking to harmonize the objectives with the rights and interests of the local population.

The process of titling contributed to ethnic identification in a participatory manner, community organization and access to clear tenure. Community organizations, but especially Afro-Colombian organizations, felt that the process of titling enhanced their

cultural cohesion and awareness. Through this process the communities demarcated and reactivated the oral history of their people and territories and built up self-awareness and education about their culture.

**Territories:**

Titling gave a clear and solid ownership over territory and a legal base effective to protect it. In the context of armed conflict the winning of ownership over the land, through NRMP, has represented for many communities of the Pacific a real possibility for the defense of life and a degree of independence from the conflict. Titling has acted as a base for bargaining and legitimacy.

In spite of the insecurity and upheaval brought about by the violent situation, land titles lend a specific long-term stability to communities. They serve not only to mark the legal boundaries of territory today, but to ensure the existence of the communities into the future. The collective title not only sets up a legal basis to claim back the territory but it specifically registers the social, cultural and political existence of the communities associated with the land and the moral obligation of the state to the members. Thus, in a less violent future the titles facilitate the return of these people to their territories and traditional ways of life.

Productive actions that complement the Land Titling components of the NRMP are necessary to ensure the wellbeing of the communities. At present a large percentage of the community organizations are working on management plans for their territories. Nevertheless the environmental authorities are not taking advantage of this favorable occurrence to development initiatives more in accord with the communities to maintain and consolidate the commitment and the state needs a clear will to orient actions to overcoming poverty.

The efforts to obtain titles and the titling itself have contributed to strengthen the internal forms of government and the community's negotiating capacity. Nevertheless the sustainability of Collective Territories in the future depends on: a) being part of an environmental policy, b) the control and use of natural resources, c) the accompaniment of productive activities to prevent reversion, d) management plans, and e) the resolution of internal conflicts between individual and collective credit and organization. The latter is particularly hard as there is no clear policy about credit and each community organization has to deal separately with the problem.

The legal status of the collective titles to Indigenous and Black communities affects how they operate as territories and how the councils can operate as governing bodies. The legal status of titles is not equivalent between Indigenous and Black communities, the former having a public status and the latter a private one. In the Pacific south of San Juan settlements are not homogeneous with separate populations occupying clearly defined spaces that these disparate statuses of the titles indicate. In effect the legislation blocks the creation of joint inter-ethnic territories in spite of the community demand.

The existence of special legislation in independent forms gave rights to Indigenous and Black communities over areas that they occupy, but did not resolve complex situations where one or other share territories and have managed to develop forms of shared understanding and administration. Trying to force the communities into tenure systems that do not reflect their social reality can cause conflicts. This is important to recognize when using ACIA as a model for future titling. To make spaces for the reality of interethnic territories as a tenure modality and reduce conflicts through the incorporation of historical pasts of the communities, legislation needs to reflect the actual settlement patterns of the two communities.

With the proliferation of municipalities, and territories under the control of extra-governmental groups, it would seem that the inequality of status between Consejo Comunitarios and Cabildos, and their respective territories as administrative units will produce new territorial conflicts with other territorial administrative units such as municipalities. The disparity in relations with the central government in the funding of the entities, and their ability to collect taxes from their inhabitants compounds the problem. A clarifying of legal positioning of these territories in regard to one another, of revenue and resource collection and distribution, and of the administrative support from local and central government for the functioning of the territories would be needed to address this problem.

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## **Appendix II: Outline of the Chronology of World Bank Involvement**

**1851 Abolition of slavery.** Since the abolition of slavery Afro-Colombian populations did not have a single legal instrument from which to make territorial or self governing claims. Until 1991 there had been no legislative or constitutional acts or laws relating to the rights of Black populations, neither to prevent or correct discriminatory treatment nor to compensate in some manner the enormous inequality left by slavery over 350 years.

**1890 Law 89 Cabildo Law.** Colombian law has always recognized Indigenous peoples as culturally distinct and legally distinct societies within the greater national society, and as such holders of fundamental rights. One of these special rights was the right to property in the form of a resguardo. The resguardo as an institution granted the community complete rights of property over their lands, within a marked jurisdiction, free from civil ordinances. Thus, the colonial institutions of the resguardo and the cabildo provide a basis for claims to territory and self-governance.

Law 89 of 1890 grants Indigenous people entitlement to set up their own forms of internal government, through the election of Cabildos or Indigenous Councils, bodies composed of several members of the respective community that take on the internal administration of the group, particularly with regard to the distribution and administration of communal lands and the carrying out of minor policing measures to keep internal order.

Cabildos were recognized by the state as public entities of a special character, incorporated into the country's political and administrative structure. As government bodies responding to communities, they have two main functions: governing the community and participating on their behalf in activities outside the community's normal life, but relating to the defense of the group's interest.

**1957 Convention 107 of International Labor Organization (ILO).** Convention 107 of ILO helped to convert usufruct rights for Indigenous people in "reservas territoriales" to full territorial ownership (dominio) in the collective form for perpetuity. Nevertheless Convention 107 was openly integrationist in spirit which proved a stumbling block as an adequate legal base to address Indigenous issues.

**1959 Law 2a.** The government recognizes the traditional lands of Indigenous populations but sanctions the entire Chocó region as Forest Reserve and thus limits land ownership by Blacks whose insecurity of tenure led to conflict with Indigenous communities.

**1960s** large forest concession given on coast, naval base and Santa Cecilia-Nuqui-Bahia Solano road. Pan-American highway.

**1961 Law 135 of Agrarian Reform (Ley Agraria)** The agrarian laws recognize the full rights of Indigenous communities and people to property over their traditionally occupied lands. The late 1960s INCORA implemented this law titling 73 resguardos of 1 million hectares. The law did not mention Afro-Colombians. Using the few provisions in the Agrarian Law that related to Indigenous people, sectors of the Indigenous population who were engaged in menial or servile forms of work on haciendas and estates in the

department of Cauca, launched a vigorous movement aimed at claiming back the lands they had lost or at widening their vital spaces, if they had any.

**1966 Indigenous Lands Program.** INCORA initiated a program of Indigenous Lands and constructed, among others, the Indigenous reserve of Caimán Nuevo in favor of the Tule.

**1967 Law 31** by which ILO Convention 107 of 1957 on the “protection and integration of Indigenous and tribal populations in independent countries” was ratified and incorporated into national law.

**1968** the program of legal recognition of Indigenous communities’ lands in forests and plains started in 1968 a year after the adoption of Convention 107. Also a large number of the regulations which established the 300 or more resguardos granted to the communities as their property between 1968 and the adoption of Convention 169 were based on article 11 of the Convention.

**1970s INCORA** began to title and identify Indian reserves. In the 180s there was large areas given in resguardos creating uncertainty among Afro-Colombians.

**1974 Union de Indigenas Chocanos (UNIDICH),** UNIDICH set up by Church in Bajo San Juan river area

**1979 OREWA** (Organizacion Regional Embera Waunana) originally a student organization in Quibdó with missionary direction, was probably the first expression of popular organizing in the Pacific with ethnic characteristics. It brought forth fundamental themes of land, cultural respect as an identity base, autonomous self-government and the capacity to define and orient their own development options for the Embera and the Waunana Indigenous peoples.

**1980** almost all Indigenous Reserves were declared Resguardos.

**1982 1<sup>st</sup> National Indigenous Congress** in Bogota and **1<sup>st</sup> regional OREWA congress**

**1982 Creation of ONIC (Organización nacional Indígena de Colombia)** whose fundamental idea is to fight for unity, land, culture and autonomy.

**1983 2<sup>nd</sup> Congress**

**1986 3<sup>rd</sup> Congress** Led to state concertation by late 1980s resulting from the expansion of extractive activities (mining and timber) and inter-ethnic tensions with Afro-Colombians. (Espera Indigenous people in Bocas de Saturga (Cauca) were killed in a dispute between Indigenous and Afro-Colombian peasants over mineral resources. Burning of Afro-Colombian houses by Indigenous people in Medio Atrato).

**1986 ACIA -Integral Peasant Association of the Middle Atrato (Asociación Campesina Integral del Medio Atrato).** Born in 1986 and comprised of 3,500 members, ACIA is the first and best organized Afro-Colombian community based organization to come up with an integrated solution to the problem of the legalization of land. They were instrumental

in structuring the demand for collective rather than individual titles. It came into being in opposition to two land and timber concessions in the Middle Atrato and was formed through small neighborhood associations working to attain basic necessities called “grupos de base” within the communities of the Atrato assisted by a group of missionaries from the Dioceses of Quibdó.

**1987 Quibdó Civic Strike (Paro Civico de Quibdó) May.** This occasion was organized by a civil movement that planted, for the first time, the demand for titling of land in general but in the form of individual titles. A month later **ACIA** organized a meeting that brought up the idea of Collective Titles.

**1985-1989 Tropical Action Plan strategy proposal.** The 1986 Accord between Government of Colombia, the Netherlands, and FAO was to develop the 1985 Tropical Action Plan which was an FAO project to stop the destruction of tropical forests. The accord led to a 1987 survey and regional consultation run through the National Department of Planning (DNP) which examined 300 local initiatives and approved 70 to be part of the body of the basic plan. The negotiation process finished in 1989 and the strategy proposal was later translated into the Forest Action Plan for Colombia which formed the precursor of the Natural Resource Management Program (NRMP).

**1988 Acuerdo 20 of CODECHOCO.** Building on demands from community organization for collective titles to land spearheaded by **ACIA**, the regional autonomous organization CODECHOCO awarded ACIA (Asociación Campesina Integral del Atrato), 800,000 hectares in an unofficial agreement which, although was not legally binding became a district model.

**1989 June Convention 169 of the International Labor Organization (ILO)** labeled resguardo lands as inalienable, unmortgageable, non-seizable and inpreceptible inspired by the new idea of a territory as a space of life for a people. This guaranteed the participation of Indigenous people in running the affairs within their territories. Colombia was a signatory to the convention and instrumental in its formation. The Convention and the new constitution were in agreement on a lot of stipulations. Some of these rights of Indigenous people include the right to:

- to preserve their integrity and that of their physical and cultural heritage
- to improve their conditions of life and to receive support for this purpose
- to participate and decide upon their own future
- to the cooperation of the state for the protection of their lives, their cultures and the environment of the territories that they inhabit
- to preserve and have due regard for their institutions, traditions and legal and social customs
- to demand and see justice done in connection with their rights
- to land and natural resources
- to health and social security
- to an education which is suited to their requirements and in keeping with their culture
- to know their rights and see that their rights are known and respected by other members of the national society

- to communicate and cooperate among Indigenous peoples of frontier areas

The Convention rejects all acts which could violate the fundamental rights and freedoms of Indigenous peoples. Rights of citizenship of Indigenous peoples shall be recognized without restriction, and their enjoyment of special privileges belonging to them as Indigenous peoples shall not constitute an obstacle to their exercising of the rights granted to all citizens.

**1989 –1991 preparation of loan for NRMP.** From August 1989 until December 1991 the government of Colombia was preparing the proposal for a loan for the NRMP.

**1990 ACIA and Land Rights, Quibdó, June.** ACIA continued efforts to broaden its support base and the technical and juridical substantiation of its demands. This ended in the “Meeting in Defense of Our Traditional Territory of the Pacific” (Encuentro por la Defensa de Nuestro Territorio Tradicional del Pacifico) where they claimed their rights to territory as a minority ethnic group to secure a full life, as part of patrimony they have gotten historically and as fruit of labor, and as a responsibility of State duty that must be fulfilled with the Collective Titling of the space.

**1990 National Constitutive Assembly and Afro-Colombians.** Because of the incipient degree of development of these organizations, Black community organizations were not able to put forth a representative in the National Constituent Assembly at the end of 1990. The Indigenous organizations were able to put forth two different representatives. Working with OREWA Black Community organizations, including ACIA, formed a Working Table that put a lot of effort into the dispersal of and lobbying for proposals and mobilization and pressure in support of their demands that were presented by Indigenous constituents or the few sympathetic independents.

Only groups from Buenaventura influenced by the Bishop Gerardo Valencia Cano, tried to put up a representative to the National Constitutive Assembly. The frustration of this process did not stop a young group of Afro-Colombians, **el Movimiento Nacional Cimarrón** which later became a national movement, from presenting a proposal that through the constituents was put into the constitution. It proposed that:

- 1) “the Colombian nation is pluri-ethnic and pluri-cultural”,
- 2) they must “prohibit racism and all discrimination against Black and Indigenous communities”,
- 3) they must “order the state to help zones inhabited by Black and Indigenous communities to accelerate their economic, social, cultural and political development,
- 4) they must “ recognize the ancestral right to property and use that Black and Indigenous communities have acquired over the land they occupy,
- 5) and “determine a structure of national planning that promotes equality between the regions and eliminates the internal colonialism practices by more developed regions over the more marginal ones.”

**1991 Law 21 Ratification of ILO Convention 169.** Colombia ratifies ILO Convention 169 four months before adopting the new Constitution. From the papers presented by the

Indigenous members to the Constituent Assembly and from debates stirred by them, it became obvious that Convention 169's rules concerning land, government autonomy, respect for Indigenous peoples' culture and for their right to participate, health and education services adapted to their culture, respect for the Indigenous languages, so on and so forth, did guide formulations and made decisions easier.

**1991 New Nation Constitution.** Voted in by the National Constitutive Assembly the new Colombian constitution defines Colombia as a pluri-ethnic and multi-cultural nation thus protecting ethnic and cultural diversity (articles 7 and 70). It recognizes for the first time ethnic groups and their rights including the right to collective territory. It upholds the Indigenous political organization (cabildo) as a recognized body of landholders. It also strengthens the autonomy of self forms of government and the protection of communal lands and unified and associative forms of property (articles 58, 63, 286, 287, 288, 330 and transitory article 55). It obliges a participatory form of government and provides for the protection of natural resources (articles 8, 80, 81, 82, 330-5).

The following articles have special relevance to Indigenous and Afro-Colombian populations:

- The right of communities to conserve their integrity and the physical and cultural patrimony (articles 2, 7, 10, 58, 63, 72, 79, 248, and transitory 55).
- Right of communities to improve their standard of living and to receive help in attaining this (articles 64, 330 and transitory 55)
- Right of communities to participate in public affairs, those that concern them directly or indirectly and especially in deciding their own future (articles 1, 2, 40, 41, 49, 286, 287, 329, 330, and transitory 55)
- Right of communities to the cooperation of the state in the protection of their life, culture and environment of their territories (articles 79, 330, and transitory 55).
- Right of communities to conserve and have respected their judicial and social institutions, traditions and customs. (article 7, 8, 70, 246, 330, and transitory 55)
- Right of communities to demand and obtain justice and satisfaction of their rights (articles 29, 86, 94, 229, 246, 282 etc).
- Right of communities to land and natural resources (articles 63, 286, 329, 330, and transitory 55)
- Right of communities to health and social security (article 44, 48, 49, 50, 64, and 366)
- Right of communities to an education adequate to their requirements and according to their culture (articles 67, 68, 69, and 70)
- Right of communities to know their rights and have them known and respected by the rest of national society.

**1991 Indigenous People and the Constitution.** The 1991 constitution confers upon the Indigenous territories the status of political and administrative institutions. This legal concept formally gives the Indigenous communities a high degree of administrative and fiscal autonomy to conduct their internal affairs and their relations with other public and private bodies. As a political and administrative entity integrated into the new constitutional system, an Indigenous territory can be governed by Indigenous authorities and a taxable base can be established for the members of the community. In addition,

each Indigenous territory has a share in the distribution of national income. Can administer its own resources and provide public services, or at least some of those that are provided by territorial entities, such as education, health, basic sanitation, and can undertake engineering projects beneficial to the community etc.

Article 357 establishes the “Indigenous resguardo share in the nation’s current income,” thus all Indigenous communities who occupy a resguardo have the right to receive every year from the central government an amount of money proportional to the number of inhabitants, to cover administration expenses, provision of basic services and development programs.

**1991 Transitory Article 55** paves the way for the Afro-Colombians to have communal ownership of the lands that they have traditionally occupied (in this case the rural riparian zones in the rivers of the Chocó Region). An inter-ministerial commission to review the rights of the Afro-Colombian populations was established in 1992. In case the Commission and the Congress should fail to produce the law required by the constitution by the mid 1993, the government will decree on this matter within the following six months.

**1992 The First World Bank Mission.** The loan processing on the part of the World Bank went from January 1992 to October 1993. It was prepared by the government of Colombia, FAO-World Bank cooperative program under the Tropical Forestry Action Plan.

**1992 Inter-Ministerial Agreement between Ministry of Government, INDERENA and INCORA** in order to review land use activities within resguardos situated within protected areas to ensure that they were used sustainably.

**1992 Sept 25 Letter from Roldán** outlining the conditions of land and land tenure in the Choco. “If both Indigenous people and Afro-Colombians are considered to have ancestral rights to land, then 95% of the inhabitants of the Chocó Region deserve land titles based on historic occupation in order to assure the tranquil ownership of these areas. While the Afro-Colombians as a group have not yet been awarded land titles, in areas where they have traditionally logged or inhabited the riverbanks. They have self-defined ownership rights, and rarely if ever, has this land been taken from them. Some have bothered to get home made cadastres (declaraciones extrajuicio), stamped at notary publics and the like, but these have no legal foundation.”

Land conflicts preexisted, especially bad in the Cauca and Nariño however, two organizations in the Chocó, the ACIA and OREWA have had conflict resolution meetings that have successfully resolved the problems and resulted in increased government services in health and education.

**1992 Participation Review Meeting in Yanaconas, October,** At this meeting the World Bank circulated the proposed plan for the NRMP to 62 representatives of local communities, NGOs and government agencies with the objective of:

- 1) arranging a forum whereby the design could be debated and prosper from the informed participation of the affected communities in determination of the development objectives and project components,
- 2) incorporating the recommendations made during the workshop into the appraisal of the NRMP and
- 3) ensuring an integrated community based approach to management and rational use of renewable resources and protected areas is forthcoming in all components.

The government of Colombia accepted the idea because the new political mandate laid out in the 1991 constitution recognized and emphasized participation and the territorial rights of ethnic groups. Additionally, the old PAFC was not liked by anyone, not the government, nor the Bank, nor the people. It was considered too 1970s in its emphasis on the amount of vigilance over the forests by the state.

The workshop was attended by the institutions of national government, representatives of all the Regional Autonomous Corporations, 28 community based groups, NGOs, the High -Level Consultancy Commission, the highest organ of the accord and agreement of the Afro-Colombian community sector, and the institutions of the national government responsible for developing territorial programs for Afro-Colombian communities in the Pacific Coast.

Although the original terms of reference for setting up the workshop did not mention Black community territory, (while mentioning other land tenure issues such as Indigenous resguardos), titling of Black community land was an essential factor introduced through the process of participation. Representatives of Black and Indigenous organizations and communities helped reorient the institutional strategy to include the preservation of cultural and ethnic identity, the recognition and granting of community territorial rights and the collective use of natural resources by the local communities, as the bases for the sustainable development of the region.

As a result of the workshop the National Planning Authority (DNP) agreed to guarantee the articulation of Transitory Article 55 that gives Afro-Colombians collective rights to territory which later led to the creation of Law 70 in 1993. From this meeting a sub-program named "Policy and Strategic Development" formed from the following components: forest policy, Black community land titling, constitution and demarcation of Indigenous resguardos, ecological zoning, environmental monitoring and Regional Committees. The Regional Committees were to guarantee community participation in the planning, execution and follow up of the NRMP.

**1993 Law of Territorial Regularization** (ley de Ordenamiento Territorial, outlined in article 286 of the constitution and decree 436 of Consejo Nacional de Política Indigenista). It outlines the land tenure process of implementing Agrarian reform law and granting titles to resguardos. According to these laws, lands may be grouped into four categories: departments, districts, municipalities, and Indigenous territories. Indigenous reserves and territories may be groups into Indigenous Territorial entities (ETI).

**1993 Law 70, August.** This law sets into motion transitory article 55 of the constitution recognizing the cultural and territorial rights of the Afro-Colombian population of the Pacific Basin specifically the recognition of collective territories for Black communities. The financial readiness and impulse to support the writing of this law on the part of the

World Bank helped forge it into being. Law 70 commissions the following institutions to carry out the law:

- Ministry of the Interior
- Ministry of Environment
- INCORA or Colombian Institute for Agrarian Reform
- IGAC or the Agustin Cordazzi Geographic Institute
- Plan Pacífico
- Red de Solidaridad Social
- High-Level Consultation Committee. (Comite Consultiva de Alto Nivel)
- Regional Autonomous Corporations
- Local and regional organizations

Following from the Yanaconas meeting the National Planning Authority (DNP) agreed to guarantee the articulation of Transitory Article 55 that gives Afro-Colombians collective rights to territory which came about in the form of Law 70 in August 1993. This law recognizes Afro-Colombian populations as ethnic groups and recognizes their territorial rights in the Pacific Basin, in the form of collective territories. In conjunction with decree 1745 of 1995, Law 70 stipulates how ethnic claims must be put forward, legal territorial recognition and what constitutes an Afro-Colombian ethnic group.

The NRMP made concrete the titling of Black property. While the constitution gave the recognition to the territory, the financial readiness and impulse to support the writing of this law on the part of the World Bank helped forge it into being.

Law 70 defines Black communities to be based on ideas of ethnicity, which are framed with four criteria in mind; culture, history, occupation and location. Law 70 grants a form of self-government in the “consejo comunitarios de comunidades negras” or Community Councils for Black communities. Nevertheless, the consejo comunitarios are formed in a confused legal conception and are the legal personification of the community and are thus constituted as entities with a purely private character. This private, not public character is granted by Law 70. Taken in this way, the consejo comunitarios are a clear disadvantage in comparison to the Indigenous Cabildos and the administrative councils of the future Indigenous Territorial Entities, which are clearly invested with attributions that are deeply buried in carrying out public functions.

**1993 Quibdo Meeting between Government of Colombia and OREWA.** This meeting was to view project sites and get feedback from the community representatives regarding NRMP.

**1993 Law 99 Environmental law** set up the National Environmental System (SINA), the Ministry of Environment (MOE) and Regional Autonomous Corporations. Until Law 99, INDERENA was in charge of environmental affairs. The law promotes the integration of Indigenous and Black communities that traditionally inhabited the region in the process of conservation and the cooperation of the international community in compensating the efforts of local communities to defend their unique ecosystems.

**1993 World Bank Appraisal Mission and Debate negotiations** in April and October respectively producing recommendations:

Proposed NRMP requires complex policy actions, which are relatively new to Colombia. Included for example, are actions needed to: 1) improve the institutional and regulatory framework in natural resource management; 2) develop a sound forest concessions and royalties system; 3) clarify land rights, in particular for the Afro-Colombian populations in the Chocó; 4) involve Indigenous and Afro-Colombian communities in project planning, implementation and environmental monitoring 5) support investments made by communities for the rehabilitation of vital watersheds on a matching grant basis and 6) improve the management of parks.

**Benefits:** 1) enhanced volume, quality and stability of water supplies for domestic use, irrigation and hydro. 2) reduced soil erosion, 3) reduction of environmental damages achieved through improved monitoring and control, 4) more employment in the highlands and 5) conservation of biodiversity, and carbon sequestration.

**Risks:** 1) fluid institutional situation, 2) evolving legal framework, 3) process of decentralization of govt. responsibilities, 4) possible continuation of existing, unsatisfactory system of forest concession, 5) the need for cooperation by affected populations, 6) unpredictable security situation in Colombia.

**1993 Proposed NRMP Loan from World Bank of US\$ 39 million** with a maturity of 17 years including 4 years of grace.

**1994 Ratification of the Convention on Biological Diversity.**

**1994 National Environment Plan**

**1994 Decree 1371 High-Level Consultative Commission June 30** was created to address issues of Black Communities.

**1994 Approval of NRMP loan 3692 from World Bank, August 9.** The NRMP retained 3 objectives 1) stop the process of degrading natural resources, 2) to promote and improve the sustainable management and use of natural resources, 3) strengthen the capacity of the environmental, institutional and community management.

An ambitious program was set up with four components consisting of 1) Forest Policy and Strategic Development, 2) rehabilitation of watershed, 3) national parks, and 4) an education, capacity building, research and administration program. However, in the first phase of the program, not even the subgroups had any action oriented to resolve the territorial demands of Indigenous and Afro-Colombians of the Pacific. It was not announced how they were going to obtain and maintain the participation of the communities for obtaining their goals, nor did it commit to anything in the sub-programs. What is more there was no part that assigned the legalization of communal land. That is to say the recognition of fundamental rights of the native people did not transpire in any part of the strategic definition.

Since 1994 Bank funds have been used to contract afro-Colombian organizations to inform rural peoples about these new laws, as well as to set the groundwork for the

granting of collective titles. The following expenditure and goals were set forth for the titling and regional committees components of the NRMP.

- 1) Titling and Demarcation of Resguardos lending at \$0.5 m /5 years (0.8% of total loan)  
40 new resguardos  
123 resguardos demarcated
- 2) Titling of Black Community Land 2.0m /2 years (3% of total loan)
- 3) Regional Committees 1.3m (2% of total loan)
- 4) total financing of 3 components 5.8% of total loan

**1994 Law 312 Citizen Participation.** This law outlines popular participation in political life as a right. The new constitution constructed a new model of national society defining the participation of civil society in the management of public affairs as supremely important. By law the participation of communities in the management and decision making about things that affect their economic, social, political, administrative and cultural life is required and specifically granted to minority communities.

Objectives of participation: 1) to assure the complete dominion and tranquil presence over the territory and the intangibility of this in the long run, 2) to assure the protection of cultural patrimony of ethnic groups and the full respect of their identity, 3) to obtain an acceptable level of autonomy for the management of their internal affairs and to define their own models of development and their own strategies of improvement, 4) to contribute to the strengthening, in the country, in an increasing and sustainable manner, the climate of tolerance and respect for ethnic and cultural diversity, 5) to assure their increased decision making power in the management of public affairs, 6) to consent in a progressive and sustainable manner to the enjoyment of basic services especially health and education, as well as the ownership (dominio) of new technology that with subjection to the environmental conditions which puts them in their proper place, permits them to made adequate improvements to their resources and to improve their living conditions.

**1994 Law 160 New Law of Agrarian Reform.** Law 160 was inspired by the constitutional view that it is the duty of the state to provide progressive access to landed property for agrarian workers and other rural public workers with the aim of improving the income and quality of life of the rural population. Additionally this law grants Indigenous peoples complete rights to property over traditionally occupied areas.

Implementing Law 160, decree 2164 of 1995 consolidates the process of constituting a resguardo. It says that INCORA must make studies of the land necessities of Indigenous communities, to give and title sufficient and additional land adequate to their assets and development, recognizing the property they traditionally occupied, the preservation of the ethnic group and the improvement of the standard of living of its members, without jeopardizing or infringing on the rights of Black communities detailed in law 70 of 1993.

Nevertheless, Article 85 of law 160 states that INCORA and the MOE, in concert with the community institutions, have to verify and certify that the communities comply with the social and ecological (respectively) functions of the property with out specifying the parameters by which this can be done. Thus, territory traditionally used by Indigenous nomads, semi nomads and agriculturists who survive on hunting, relocation

and horticulture that are situated in Forest Reserves, can be designated as an Indigenous resguardos but its occupation and use still fall under the provisions established by the MOE and their rules on renewable natural resources.

**1994 MOE Assigns the RED to administer Regional Committees, Dec.** The Red de Solidaridad Social with the national department of Planning contracted to support the organizational process of local communities, institutional development, and to facilitate training, access and operation of the communities organizations to guarantee their participation instances of planning execution and follow-up of the NRMP.

**1995 Technical Commission** was installed in January and the members named in November.

### **1995 Decree 1745 and the start of NRMP in the Pacific, October**

From June 1994 – Dec 1995 (18months) the activities of the components focused on establishing the legal and institutional conditions for implementing the Indigenous resguardo and Black community land titling processes. Soon after the Loan Effectiveness, a High –Level Commission and affiliated departmental commissions were established to carry out consultations for the regularization of law 70. The work of this commission, much of it financed under the Regional Committees component of the NRMP, resulted in Decree 1745 of 12 October 1995. This decree set out the procedures that make the titling of Afro-Colombian land possible.

Decree 1745 regulates chapter III of law 70/93 and defines rules and procedures for collective titling. It defines collective titling as fundamental to:

- 1) human rights,
- 2) cultural survival,
- 3) socio-economic development, and
- 4) natural resource protection and management.

It was supported by the idea that the basic success of titling can be measured as the level of participation of the community and organizational strengthening. The process should produce synergy, social capital and inter-institutional coordination.

Participation highlighted that more work was needed in two areas: 1) strengthening of communities and their organizations so they can take up the knowledge and responsibility of having territorial ownership and domination. This meant legal training, construction and consolidation of consejos comunitarios, regularization of management of natural resources, and definition and agreement on the boundaries of communities. 2) necessary accompaniment training and capacity building of the entity in charge of the procedures (INCORA).

### **Formal structure of the Titling process**

A Technical Committee(Comite Technica) to authorize and license.

A High-Level Consultation Commission to guide the procedure

Regional and departmental consultative committees

Consejo Comunitarios (or community councils)

The consejo comunitario which operate on the local level facilitate:

- 1) Jurisdiction and respectability,

- 2) Capacity building,
- 3) Sensibility of legal norms, and
- 4) Organizational strengthening in procedures assistance and collecting of information.

### **Territoriality, Ancestrality, Ethnic Identity for Afro-Colombians**

Within the NRMP and Decree 1745 collective titling is considered basic to:

- 1) environment protection
- 2) territorial ordering
- 3) sustainable production and development
- 4) identity, autonomy and participation

**1995 Decree 2164 of December 7** consolidated, along with law 160 of 1994, from at least the legal point of view, the process of constituting a resguardo. It says that INCORA must make studies of land necessities of Indigenous communities, to give and title sufficient and additional land to facilitate the adequate their assets and development, the recognition of the property they traditionally occupied, or constitute their habitat, the preservation of the ethnic group and the improvement of the standard of living of the members, without jeopardizing or infringing on the rights of Black communities detailed in law 70 of 1993. Article 2 outlines what is understood by Indigenous Territory, community, Indigenous “parcialidad”, Indigenous reserve, Indigenous Cabildo and traditional authority. It outlines a lot of work to be undertaken by the MOE which the Bank felt the communities could do.

**1995 General Outline of Participation** (Lineamientos Generales de Participación). Commitment by CONPES , the National Council for Economic and Social Policy, (Consejo Nacional de Política Económica y Social), to offer the conditions necessary for participation of civil society.

**1995 CONPES** document “Salto Social” called for 1.2 m hectares for Afro-Colombians which the national development plan incorporated.

**1995 MOE contracts INCORA to administer Land Titling components, Nov.** In the inter-administrative convention no 045 for the execution, supervision, finance and evaluation of the subprogram A: “Development Policy and Strategy of Renewable Natural Resources in the Choco biogeographic of the NRMP” with reference to the components A.2.C: “Demarcation and Constitution of Indigenous Resguardos” and A.2.D: “Collective Land Titling for Black Communities”. PCU signed INCORA to support the programs of social regularization of property understanding that the titling of Black and Indigenous community territories is an essential contribution to regional development. In 1996 INCORA went into another agreement with the department of Antioquia to move ahead with the titling of resguardos in that department. They had also made such an agreement with CORPONARIÑO. INCORA has titled 127 resguardos between 1979 and 1995.

**Process: Titling**

- 1) diagnostic (INCORA)
- 2) training and constitution of consejos comunitarios
  - a) regulation of environment norms in law 70
  - b) conservation of Natural Resources use
  - c) Ancestral knowledges and genetic resources
  - d) land use and environment planning in Black community territories
  - e) address the problem of population in parks and marine and coastal zones
  - f) consultation and participation of communities in environment management and decision-making.
  - g) social and productive development strategy.
- 3) training for titling and pilot experiences
- 4) strengthening of national and regional institutions (INCORA and INGAT)
- 5) extension to other zones of the country with Black populations
- 6) financing and costs of program (5 year time horizon) = beginning 1995-1996 to 2000

**1996 Ecological Policies by MOE including the Forestry Policy****1996 National Policy for Biodiversity**

**1996 Decree 1397** This was drawn up by the Government of Colombia along with Indigenous organizations creating the Nation Commission of Indigenous Territories as a participatory forum for recognition and granting of territorial rights

**1996 1<sup>st</sup> Regional Committee for Black Communities, Cali April.** The ethnic territorial organizations of the Pacific called a meeting in Cali for the collective titling of Afro-Colombian community lands with the aim to agree on principles, criteria and guarantees to guide the process of titling. They also aimed to advance the exercise of focusing and prioritizing projects from a base set up from the local and department work of the Autonomous Regional Committees that propelled the elaboration of a proposal regarding titling.

Participating at the meeting was the Presidential Consultory for Social Policy (Consejeria Presidencial de Politica Social), the Division of Black Community Affairs in the Ministry of the Interior, the MOE, the Geographic Institute of Agustin Codazzi (ecological zoning), Proyecto Biopacifico, Plan Pacifico, Red de Solidaridad and INCORA as the executing entities of the projects. Some 82 ethnic territorial organizations and their regional bodies participated on the part of the communities.

They adopted as a pilot capacity building for the collective titling of ACIA in recognition of ACIA's leadership and as an expression of the political will of the nation government to guarantee the integral recognition of territorial rights in benefit of Black Communities in an area of approximately 700,000 hectares. From this experience they suggested the development of local autonomous committees to do the part of capacity building as a necessary and prior condition to go ahead with collective titling.

The importance of these workshops called "capacitacion para la titulacion colectiva" was:

- 1) organizational strengthening, territorial reflection, and adoption of the new institutionality created by law 70 of 1993 and decree of 1745 of 1995,
- 2) the constitution and consolidation of community councils (consejos comunitarios) and their boards as administrative authorities internal to the territory,
- 3) the promotion of the use and sustainable management of the natural resources,
- 4) the definition of boundaries and the intra and inter ethnic consultation, and
- 5) the construction of a new model of development that reconciles local regional, national and international interests.

**1996 2<sup>nd</sup> Regional Committee for Black Communities, June 19th Tumaco.** They formed an orientation group (Commission for the Administration and Follow-up or “Comission de Gestion y Seguimiento”) to apply the territorial rights set up by the Constitution and law 70 for Black Communities. Receiving proposals from consejos comunitarios and organizations, selecting targeted areas and mobilizing resources. Participating were the palenques of Valle, Cauca, Nariño and working groups of Choco.

**1996 Mixed Commission of Administration and Follow-up July 4** (Comision Mixta de Gestion y Seguimeinto) in Bogota at INCORA offices to work out the program and financing. Dr. Cesar Augusto Torres the INCORA head of Black titling program. The Division of Afro-Colombian Affairs came up with a work plan with the inter-Institutional committees.

**1996, 3rd Regional Committee for Black Communities, Sept 12-13 Buenaventura,**  
 Focus on training for titling process,  
 prioritization of projects  
 criteria and methodologies – setting out selection criteria

**Criteria**

constitution of consejo comunitarios  
 capacity of management, contracting and territorial definition

**Out Comes**

formation and consolidation of consejos comunitarios  
 elaboration of proposal for collective titling

**1996 Plan Pacifico \$90m**

They pay the balance of capacity building (World Bank funds) and titling (INCORA) = World Bank money used for organizational and community building.

**1996 The 9<sup>th</sup> High-Level Consultative Commission, Juanchaco, August.** (which is the highest entity of negotiation between the national government and Black communities) met in Buenaventura to support and endorse the mechanisms of the Regional Committees.

**1996 1<sup>st</sup> Regional Committee for Indigenous peoples, Sept. 8/9 Peurco Negro, Puerto Tejada.** This meeting was for the constitution and demarcation of Indigenous resguardos. – OREWA, OIA, UNIPA, ORIES, ORIVAC, ACIESNA. A 36 page document was given to INCORA on “the territorial situation of Indigenous peoples of the biogeografic

region of the Chocó (situación territorial de los pueblos Indígenas del Chocó biogeografico)”. 34 outstanding processes for titling and amplification, 83 resguardos created, 45 of 210 communities without resguardos.

- a) delays in land regularization (INCORA)
- b) need for training programs in territorial legislation to counter disinformation between Blacks and Indigenous people = NRMP funds available.
- c) critique of regional INCORA official as creating conflict not respecting Indigenous rights, and not having a standardized policy.
- d) Clearing and amplification of resguardos
- e) ACIA/OIA discussion titling and inter-ethnic relations over territorial limits (data from OIA) OIA and ACIA joined together to address the series of conflicts generated “by the new legislation of Black communities” to come up with accords and define solutions to be respected by the authorities.
- f) Steps need to be taken to address the problem of campesinos and agrarian reform so that the Indigenous people and the Black communities do not have to assume the responsibility of addressing their land problems.

**1996 Mixed Commission of Administration and Follow-up Oct 4-8** with the regional organizations

**1996 3<sup>rd</sup> Regional Committee for Black Communities, Sept. 14-15, Buenaventura**

**1996 La Madre Title resolution 0286, December.** The first Black community title to be issued was the title of la Madre, in Bajo Atrato. Shortly afterward the population was displaced by the paramilitary.

**1996, 2<sup>nd</sup> Regional Committee for Indigenous Peoples, Dec 3 Bogota.**

Held at INCORA offices in Bogota. INCORA being pressured to clarify its position regarding Indigenous resguardos. The capacity building among community members was requested. Diomenes Londoño (MOE) expressed his worry at the lack of coordination between the teams that manage the Indigenous and Black community affairs within INCORA.

**1996 Inter-Institutional Technical Committee** to coordinate activities relating to the Afro-Colombian land titling and Indigenous Resguardo components. The committee consisted of the Ministry of the Environment (MOE), The Agrarian Reform Agency (INCORA), Divisions of Indigenous and Black community affairs in the Ministry of the Interior, the Red de Solidaridad, and Biopacifico. More recently also representatives of Presidential Advisory on Social Policy, in the MOE, and the newly created unit on Citizen and Community Participation. There are plans to include representatives of Indigenous and Afro-Colombian organizations.

**1996 Red de Solidaridad Meetings and contract 038, September.** It was created with the objective to contribute to the improvement of the conditions of life for the most poor and vulnerable population and to facilitate their participation in the larger social programs. They were to generate a climate of shared living, promote solidarity and

contribute to the process of peace through local and community participation in making decisions.

The mission of the RED is: To push the social and participatory production of development that:

- 4) promotes the advance of decentralization,
- 5) generates a better commitment to local collectivities in the creation of their self development,
- 6) consolidate new institutional models for the coordination and control of social politics in the territorial entities and
- 7) promote social equality between all the population groups favoring the most vulnerable.

**1996-1997 The High-Level Consultative Commission** is derived from law 70 and is in charge of overseeing the application of the law, the development of necessary legislation to institutionalize the law, and a body oriented to guarantee the participation of communities. It was successful in the 1995 but in 1996-1997 it became disbanded in actions and lost relevance under the incapacity to guarantee mechanism of consultation and participation, but above all because it lacked a strategy that permitted the it to give itself the technical tools to formulae a policy or work strategy with a long term vision.

**1997 Midterm Review January** Establishment of legal and institutional conditions. The new priorities and broad objectives reformulated during the midterm review are to develop the policy, institutional and technical base for sustainable natural resource management introduced by law 99, with an emphasis on forestry and on the Choco Biogeographic region.

Recommendations:

- 1) strengthen INCORA's institutional capacity – training regional staff dealing with laws 70 and 160 to resolve conflicts.
- 2) Technical Committee to develop a coordination strategy – training to sensitize public agencies and private institutions of purposes of law 70 and its compatibility with Indigenous Resguardos.
- 3) INCORA' division on Indigenous Reserves and Black community land, Ministry of the Interior's division of Indigenous Affairs and Red de Solidaridad Social should meet with Indigenous organizations and work out a joint strategy.
- 4) Broaden activities of Red de Solidaridad Social to have greater impact through more incorporation with other components of the program. For instance national parks, ecological zoning and watershed management components. The recently formed MOE's Unit on Citizen and Community Participation whose director formerly worked with Red may provide a needed bridge.

**1997 Displaced populations in Bajo Atrato, February 19.** The titles of the Black communities of la Nueva, Dos Bocas, Taparal, Clavellino and Chicao of the Lower Atrato were issued. Shortly afterwards the populations were displaced by paramilitary.

**1997 Evaluation Report, February.** ACIA to do environmental education, INCORA troubles titling Indigenous Resguardos.

**1997 Internal World Bank Correspondence 13 Feb.** ACIA interested in receiving support for natural resource management activities from the Bank loan. Thinks it would be favorable as “following up titling with field-level NRM activities (training for local farmers and foresters) is an ideal way to proceed on these matters, and it would fit in with our position that there should be devolving of funds for watershed management activities to local communities and NGOs.”

**1997, 3<sup>rd</sup> Regional Committee for Indigenous Peoples, March 17.** MOE highlights lack of coordination between INCORA in terms of Indigenous and Afro-Colombian lands. Increased funds from \$200,000 to \$500,000 to improve training for Indigenous communities. Indigenous organizations presented to INCORA “priorities for Indigenous territorial resolution in the Pacific”. Problems of INCORA not able to do socio-economic studies because of interethnic conflicts. They declared that to be able to move ahead with the constitution and amplification of resguardos they have to have consultations with Indigenous and Black communities because INCORA can not unilaterally make decisions that will come to create interethnic conflicts. The Regional Committee asked that the Ministry of the Interior prepare a proposal for the creation of a territorial, social and environmental analysis to clarify the rights of ethnic groups and to propose a solution to ethnic conflict.

**1997 1<sup>st</sup> Inter-ethnic Regional Committee** held in Perico Negro, in the municipio of Puerto Tejada and organized by INCORA, was set up to revise tensions and possible inter-ethnic conflicts, to develop knowledge of the territorial rights, the action of the state and external violent factors. Black Communities and Indigenous organizations participated and so did national and regional entities. They concluded that the Afro-Colombian and Indigenous communities still maintain traditional methods of conflict resolution, and that it was nonetheless still necessary to adjust the actions of the different state entities for conflict resolution and to strengthen these mechanisms. The principal factors of violence in the zone are fundamentally related to the presence of external armed agents.

Nevertheless, the regional committee meeting ended on bad terms for the coordination between the government entities and the communities because the delegates from INCORA took extremely radical positions. Other functionaries who had been contracted to work with Black communities used racist language that, far from helping understanding, contributed to the conflict. INCORA had also contracted people incompetent for the job.

**1997, Mixed Commission of Administration and Follow-up April 8, Bogota.**

Organized by the Presidential Council for Social Policy. Protest by organizations of unilateral actions of INCORA and outside agreements in Regional Committees of Cali, Tumaco and Buenaventura. INCORA setting up its own consejos comunitarios without following criteria or consulting community organizations. It was using its own shadow NGOs which caused the fractionalizing of river communities and territories.

### **1997 Inter-institutional politics**

- 1) INCORA circumventing other organizations and accords made in Regional Committees: Not following agreements of High-Level Consultation Commission to use Regional Committees as spaces for discussion, concert and coordination for the titling process.
- 2) INCORA defends position based on budget constraints and legalistic grounds. The Consultative Commission and not the Regional Committees have deliberative power.
- 3) INCORA doesn't agree with first targeting projects agreed in Regional Committees and addressed 19 petitions from organization and communities not in Regional Committees of which financing 2 from national budget. They say that training is one thing, and INCORA and the Technical Commission's responsibilities under decree 1745/95 in the titling process is another thing.
- 4) DACN sides with INCORA and the other government agencies side with NRMP in debate. Plan Pacífico – BID supports Regional Committees approach. Nevertheless, sometimes DACN helped ACABA when INCORA didn't respond.
- 5) The High-Level Consultation Mixed Commission has power to define and review policy of titling lands of Black communities.
- 6) Diomedes Londoño (MOE) defends participatory and concertation approach and says internal differences of organizations are not for the state to interfere with.

**1997 October Internal Mail** The PCU is aware of problems with INCORA but no progress. Concern expressed about titling Afro-Colombian lands at the expense of Indigenous ones. Suggests follow-up letter. Shelton Davis sets out a series of things to evaluate the stage INCORA has reached in titling and the institutional obstacles. They proposed an evaluative mission by Shelton Davis and Phil Hazelton.

**1997 October, Concern and follow up letters:** including 1997 Letter to Dr. Guhl, MOE raising concern about the lag in titling Indigenous Resguardos and suggesting institutional improvements, including that INCORA meets with Indigenous organizations. From September through December there was a growing concern on the part of World Bank staff that “as a great irony, as we would have titled Afro-Colombian land but at the price of the progress of the Indians” because of the delayed action or inactivity of INCORA in regard to Indigenous Resguardos. The World Bank pushed for compliance, pushed for accountability with treats to withhold the loan, with letters to different parts of the Colombian government, especially the Minister of the Environment. They pushed very hard to get their goals met, including pushing for the change in personnel, for the institutional and legal reorganization of INCORA and integration of regional committees for conflict resolution.

**1997 Concern and Follow-up NOV 13** letter to MOE from the country manager Andres Solimano of the World Bank. Complaining that the major finding of the mid term review was that INCORA is dragging its feet and created the potential for increased inter-ethnic conflict through faster pace of implementation of the Black community activities and a

lack of coordination of the Indigenous and Black community programs. In the last 10 months little progress has been made in addressing the problems. Requesting high priority to this matter and an external evaluation

**1997 Outside Experts Evaluation November** by Roldán. The evaluation also found that there was general government resistance to comply with their responsibilities to ethnic groups in the country. The findings included that INCORA was not performing regarding Indigenous titling and moving very slowly on Afro-Colombian titling. In the year 1997 between February and October INCORA did not do any processing toward the legalization of territory for Black communities. It also was only able in all the time between 1994-1997 to title only one resguardo, the process of which had been initiated before the start of the NRMP.

In 1997 the named High-Level Consultative Commission in charge of following through with the process of titling did not even meet once. The Technical Commission which is comprised with the MOE, INCORA, and the geographic institute of Agustin Codazzi, was inactive. This commission is responsible to do the technical evaluation of the solicititudes and to determine the legal limits of the territory.

The functionaries of the Division of Indigenous Affairs of the Ministry of the Interior indicate that the activity of INCORA, in the legalization of land for Indigenous peoples, can be found practically paralyzed through out the country including the region of NRMP and this paralysis has to do with 1)the lack of compliance by INCORA with the Indigenous policies adopted by the state, 2)with a lack of human and financial resources, and 3)with the lack of pressure and claims from the Indigenous organizations. The functionaries in INCORA say it is caused by: 1) administrative and political changes 2) and managerial relations in the NRMP.

**1997 Mixed Commission of Administration and Follow-up, Dec 5** (Bogota) specific projects and problems discussed.

**1997 ACIA title, December 29.** This was the first Black Community titles given out by INCORA to ACIA the Peasant Association of the Middle Atrato (Asociación Campesina Integral del Medio Atrato) representing over 100 communities in one of the most remote, riparian areas in the Chocó region. It consisted of 695,254 hectares and is one of the first to an Afro-American population, delivered on the 11 of Feb 1998 by Ernesto Samper.

However, in 1999 many of the members of ACIA are refugees in urban centers, while within the territory external forces have imposed a control as the only real power. This shows a real negation of the exercise of construction of governing and autonomy. In 2000 thanks to the title and the new legal security over their land the communities of ACIA have managed to neutralize to a large extent the advance of the war in their territory.

The process of obtaining the titles was arduous. They had to first negotiate the meeting and contract for mobilization, and training of the communities, then gather and process information, consult and agree with Indigenous, private and other organizations with property, with other Black communities and the state and now to define the new responsibilities since titling. The initial management of funds was difficult for the number of entities and people involved in the formalization of the accord because it was

structured for international governments and entities rather than poor rural farmers with a high percentages of illiterate members.

Thanks to the work done before the process of titling ACIA not only had a huge knowledge of the communities but a huge ability to call meetings. They were thus able to do an intense job and hold 139 community workshops, 9 zonal workshops, and one great General Assembly. In order to solve border difficulties they created with OREWA and OIA a Inter-ethnic Commission to look for solutions. With private property owners and other communities they directly negotiated on a case by case basis.

**1998 January Supervision Mission** The mission was satisfied with the overall NRMP progress since the Mid-term Review. The Bank expressed serious concerns about the progress of Titling and Regional Committees in November. The Bank expects to receive a **Plan of Action** for the remainder of Program for the Land Titling components by Feb 27, 1998. This Action Plan should link the operational plans for all three components into a single integrated work program with specific goals. This would include a strategy for documenting the experience and lessons learned by the NRMP and participating institutions.

The mission expressed the Bank's enormous satisfaction at the NRMP's role in supporting Colombia's historic accomplishments in titling Black community lands. The Bank would consider a high priority additional funds or assistance required for Indigenous Titling component.

They recommended that INCORA:

- 1) develop a computerized data system for tracking the process of titling.
- 2) contract regional Indigenous organizations to assist in conducting the delimitation and other topographic work necessary for the constitution of resguardos.
- 3) prepare a special land regularization plan for the constitution of resguardos in Cauca, Valle and Nariño.
- 4) the RED and other cooperating institutions should organize a special meeting of the inter-ethnic Regional Committee to discuss and agree upon INCORA's operational plan for the tow titling components and to resolve any outstanding issues or conflicts.

Impressed by the RED and the Regional Committee:

- 1) emphasis on active participation of regional Black and Indigenous organizations
- 2) pedagogical materials it has produced on the territorial and other rights of these populations.
- 3) recent initiatives to create inter-ethnic dialogue between Black and Indigenous organizations, as well as with state and regional institutions.

However they can be improved by:

- 1) increasing number of stakeholders and organizations participating
- 2) widening the focus of discussion to include other aspects of the NRMP eg ecological zoning and national parks

**1988 6<sup>th</sup> Regional Committee for Indigenous Communities Feb 5-6, Bogotá.**

- 1) Marcela Bravo of INCORA who was causing a lot of trouble sent excuses for not being able to make it to the meeting. Casaman, of OREWA stressed the

importance of her participation to define clear actions and to not to have more meetings.

- 2) They wanted to receive from INCORA a legal clarification of “inheritances of Black Communities.” General questions about the manner in which Law 70 is applied.
- 3) there was also no clarity in respect to individual private property titles within resguardos.

### **1998 Feb 6<sup>th</sup> Letter from Las Organizaciones Indígenas del Pacífico Colombiano.**

Additional complaints about the non compliance of INCORA and the government in general claiming that there is no political will and lack of mobilization manifest worst in the Chocó and Cauca.

### **1998 External Evaluation, Enrique Sanchez and William Villa, February 7.**

Recommendations and conclusions – the overall conclusion is that there is an absence of a strategic vision in the development of the components and an absence of institutional direction to guide the process in a clear manner. This double vacuum, strategic and institutional make difficult the resolution of territorial conflicts within the communities affecting above all the quality of community participation and the institutional development.

Collective Titling is a decisive factor in the protection and guarantee of the physical and cultural integrity of the ethnic groups, but it is necessary to advance to territorial regularization to protect the natural community patrimony that they contain and to give sustainable productive alternatives that contribute to overcome the conditions of poverty of the rural population.

The consultative will of the program has been a very important factor in the developing the program. It attended to initiatives from the population, and gained the confidence and credibility. Nevertheless, the mechanism of the Regional Committees needs to be revised to generate spaces that dynamize the consultative process beyond the institutions that the community organizations encounter in the procedure. More important they could be used to advance the management of biodiversity resources in the collective territories of Black communities in accordance with chapter IV of law 70 whose clarification is essential to the construction of a conservation policy for the Pacific.

The advances made in the titling of Indigenous territories is much more limited, which the Indigenous organizations see as a clear absence of political will. In some cases the problem is methodological, legal or the absence of internal coordination of INCORA.

### **1998 Feb 12 Supervision Report:**

- 1) the loan has played a critical role, widely acknowledged in Colombia, in supporting the implementation of law 70 which recognized the rights of Black communities to collective land title. This law had just been passed around the time the project was appraised and the contribution of the program to its implementation has far exceeded expectations.
- 2) the slow implementation of the component supporting the titling and delimitation of Indigenous resguardos in the Pacific. The Indigenous organizations do not believe

that INCORA, the land reform agency, is giving them equal treatment relative to the Black communities.

**1998 Feb 25 Letter from the Displaced Communities of the Lower Atrato**

complaining about the titling program and saying that being displaced makes it more difficult to obtain a title. They are requesting the participation of the International Red Cross, office of the High Commissions of the UN and delegates from the Dioceses of Apartado and Chocó to form part of a high-level commission. They demand that the collective entitlement is part of their proposal for a **dignified return**.

**1998 letter from OREWA to the Bank Feb 25** requesting the Bank addresses the lack of political will on the part of INCORA and government of Colombia in the inefficient manner in which INCORA is addressing the issue of Indigenous titling and in the little money assigned to the endeavor. They would like the NRMP to prioritize the Indigenous issue and new resources to do it.

**1998 4<sup>th</sup> Regional Committee of Black Communities, Feb-March (Bogota)**

- 1) ideas to consolidate work with unified program; Black, Indigenous, and Regional Committees
- 2) INCORA to come up with a Plan of Action for Titling
- 3) 29 projects underway
- 4) organizations present idea of support for productive projects in territories, including plans of management of natural resources and development
- 5) idea to extend to other areas (Valle Interandino, Antioquia, Risaralda, Costa Caribe) with the adoption of a special program of acquiring land for Black communities that are found outside of the Pacific.
- 6) participation in parks and protected areas \$1,485,918,372 pesos solicited \$200,607,584 approved
- 7) difficult situation of displaced in Bajo Atrato
- 8) INCORA promises to clarify the ownership of property in the Bahía Málaga and río Naya where the titles are to the government of Valle and the University of Cauca respectively.

**1998 7<sup>th</sup> Regional Committee for Indigenous Communities Feb 25-26, Bogotá.**

- 1) the Indigenous of Juradó claim that although the Black community uses the forest they don't have possession nor was it their ancestral or traditional territory, thus they have no right to make claims
- 2) they complained of the valuation of land to be the bottleneck to "cleansing" of the resguardos. "Cleansing" is outside Bank contract.
- 3) The general manager of INCORA, Otilia Dueñas reiterated that the institution is committed to the accords of the Regional Committee.

**1998 Letter from the Bank Task Manager to Indigenous Organizations, 9 March**

outlining that they have received the card and are working on a joint solution between Indigenous and Black communities through the Action Plan.

**1998 Action Plan March** was set up to combat the tensions between the community and the government. The estimated cost is US \$ 3.6 million. This plan included 6 strategies

- 1) territorial definition for Black and Indigenous communities (regularization and titling) including entering into agreements with private bodies,
- 2) the coordination and agreement on the collective titling for Indigenous and Black communities for natural resource conservation,
- 3) community capacity building,
- 4) strengthening intercultural understandings, including with extra governmental armed forces, and
- 5) communication and coordination including the sharing of interethnic conflict resolution and the writing of memoir of the experience in general.

Shelton Davis found the strategy good except that it: a) was delinked from experts report, b) too many acts, c) not enough participation especially of Indigenous communities and organizations which leads to reinforcing state agencies and not Indigenous organizations.

“The Collective title for Black and Indigenous communities is conceived as a strategy of conservation of natural resources. For them, for the titled territories they have to formulate and develop plans of environmental regulation, technological and appropriate production systems, that are compatible with the offered environment, and with the socio cultural diversity. These systems of production must be economically productive and construct real and efficient alternatives to better the standard of living of the communities and the consolidation of the territories”.

INCORA places both the Indigenous and Black community land titling components under the direction of the same division in INCORA to improve Indigenous titling. PCU and INCORA working to design a realistic program of implementation.

**1998 Letter from Jan Pablo to Bank Task Manager about External Evaluation.** He agrees with them on the need to move from “Titling” to “Management Plans” for the titled areas. Also in agreement on the necessity to conform interethnic territories using the existing laws to permit in practice the peaceful coexistence of the groups through neighborly accords. The objectives of the Plan of Action to go beyond “Titling” is very positive as long as we do not forget the titling is the initial and fundamental step to obtain other proposals. Titling does not signify territorial regularization although it is the initial step.

**1998 Mixed Commission of Administration and Follow-up April 15.** Following to World Bank agreements

- 1) problems of INCORA losing 70% of funds for Black titling – ACABA delay and protest
- 2) “budget shifts,” only \$100m of \$400m pesos available
- 3) INCORA suspends the giving of titles and field visits
- 4) increasing violence, displacement and intervention of armed agents

### **1998 Budget and violence crisis**

In order to balance the fiscal expenditure with the budget 1998 the government cut back the national budget substantially reducing the amount going towards the NRMP by US

\$4.44 million. In the face of severe fiscal constraints and the unavailability of any investment budget for activities undertaken by the Ministry of Environment other than those included under the two loans from the Bank and a loan from IDB, in September of 1998 the new team in the MOE together with DNP indicated to the Bank that it intended to “close certain Program components in 1998, reduce to the minimum the amount of 1999 budget resources allocated to the remaining components in order to leave room for funding new priorities, close the loan on December 31, 1999 (the original closing date.), and cancel the remaining loan balance of US \$ 10-12.

**1998 letter from MOE to Bank Task Manager, April 30.** The consultants are preparing a legal proposal for the conformation of biethnic territories and to design a strategy for the prevention, mitigation management and resolution of inter-ethnic conflicts in the process of collective titling for Black communities and the constitution of Indigenous resguardos. They also have contracted a lawyer specialized in Environmental law to conceptually and methodologically elaborate the process of verification and certification of the “ecological function” of property of the Indigenous resguardos. Data base for info management.

**1998 Letter from Bank Task Manager to PCU May 14th** questioning why Marcela Bravo Gallo was still Program chief for Indigenous affairs at INCORA saying that this must be sorted out before the Action Plan can go into affect. It also encouraged the PUC to involve the community organizations in the selection of the consultants to carry out socio-economic studies.

**1998 Mangroves Meeting Bogota, June 3.** The Technical Commission and the Procuraduría Ambiental y Agraria and community representatives of the zone affected produced an accord that established that they should go ahead and titles the territory of ACAPA explicitly leaving out the unadjudicable areas according to the laws. Nevertheless after this agreement ACAPA submitted a protest to the legal office and the division of Ecosystems at the MOE opposing the titling of these zones, because of cultural considerations, such as that the mangroves constitute a habitat for a high percentage of the Pacific, where they obtain their livelihood in a sustainable form which guarantees the food security of the ancestral population and that experience has demonstrated that the Black communities have conserved the mangroves historically.

**1998 GEF Proposal for the Serranía del Baudó June 17** for biodiversity conservation while recognizing the rights of individual regions within the country to exercise their own development options. They will work with law 70, Plan Paífico, Port Expansion Plan, Indigenous Territorial Entities, NRMP, and Land Use Plan (Plan de Ordenamiento Territorial). The MOE has agreed to establish a coordinating program for the sustainable use and conservation of biodiversity in the Biogeographical region of the Colombian Pacific.

They will work with Plan Pacífico (designed through the National Planning Department it is a sustainable development strategy for the Colombian Pacific coast. The plan, which is largely funded by the Interamerican Development Bank, includes development of three kinds of infrastructure programs:

- 1) social infrastructure including health, education, and housing,
- 2) Environmental infrastructure including land use planning, natural resource management, biodiversity protection, fishing and aqua-culture, and mining, and
- 3) physical and energy infrastructure including transportation, energy and telecommunications.

**1998 Concertation between ACIA, OREWA and OIA, August.** Finished one phase of the consultation on the territorial limits using the support of Regional Committees. The determined the final land mass of ACIA and delimited the neighboring 16 resguardos. This accord made possible the constitution of 8 resguardos in the Choco in 1998 and eased the following constitution of 6 others in the Choco and 2 in Antioquia.

**1998 MOE Evaluation of Indigenous Component, August 16.** To evaluate the state of the components with a focus to institutional and community problems and obstacles. Although one can highlight that the titling of collective territories for black community in the case of Rio Sucio in the Chocó, has contributed to the return of numerous communities, and thousands of displaced, nevertheless, the confrontation with armed groups continues. The collective titling is a fundamental contribution to the rights of people of the Pacific in moments where diverse armed actors continue the appropriation of land for external agents. INCORA was behind in titling resguardos and has various reasons for why this happened.

**1998 Mixed Commission of Administration and Follow-up, August 26-27 (Bogota)**

- 1) review of projects
- 2) financial adjustments
- 3) progress in forming consejo and titling despite budget- violence constraints
- 4) new government, INCORA 600m pesos for capacity, consejo and petitions for titles
- 5) Mangrove (manglares) issue arises for the first time as a public use issue, as does the idea to exclude these zones from collective lands. A lot of community concern.
- 6) need to discuss Regional Committee and their use in national parks including buffer zones
- 7) computerizing all INCORA data or petitions for title.
- 8) ACABA and la Bocana proposals to be done with NRMP/INCORA funds in 1999.

**1998 Aide Memoir Report, October.** The Government of Colombia is considering restructuring the loan because of financial problems. The Action Plan was beneficial in mobilizing the program and making it more transparent. For the first time there is a systematic data base on the status of land regularization. However, the Plan will only be able to meet their goals with strong institutional, financial and political commitment. Interethnic consultation is fundamental for the concretizing of the territorial rights of Black and Indigenous communities of the Pacific. The work of the RED is fundamental not only to reaching the goals but in guaranteeing peace and the comensuratness of the

region. The agreements between ACIA and OREWA serve as examples. They congratulated INCORA on its new Working Plan for 1998-99.

**1998 National Development Plan 1998-2002, October.** Outline for a policy of Sustainable Development in the Colombian Pacific, document for internal discussion. Recognizes the population as the principal subject and object of development thus it must address two things: 1) the recognition of the territorial, social and cultural rights of ethnic groups that live in the region and 2) overcoming poverty.

The plan recognizes that there is a relationship between biodiversity and the existence of ethnic groups. That is to say the “biodiversity is the condition of existence of Black and Indigenous people of the Pacific and these peoples contribute to its conservation... the richness and diversity of the natural environment of the Pacific is inseparable from the cultures that live within and also constitute the base of its protection and development for the future. Biodiversity has to be a real option for development.”

Comparative advantages of the Pacific include:

- 1) the megabiodiversity,
- 2) the cultural diversity that has protected and developed the biodiversity, and
- 3) the strategic location International basin of the Pacific Rim and between the two great maritime coasts of the country.

Territorial regularization and decentralization are tools of development because they:

- 1) avail existing tools to citizen participation,
- 2) delegates and harmonizes competence among the state, departmental, municipal and ethnic entities,
- 3) designates resources to the generation of own alternatives to development, and
- 4) potentially help resolve conflicts peacefully.

**1998 Letter from OZBESCAC to the Bank, October.** Asking for a cancellation of a contract for a consultant, Carmen Cecilia Toro Moreno because they are unsatisfied with her work and they proposed the name of Carlos Alberto Orjuela Laverde.

**1998 Report by Enrique Sanchez to the MOE, October 12.** The violence continues in the region and the natural resources, especially wood and Naidi palms, continue to be a factor in the tension between communities and individuals. There are newly displaced populations and there does not seem to be a clear strategy to attend to these populations. There is expansion of illicit crops in the areas of rivers Patia, Micay and Naya which put in danger the ecological and cultural integrity of the south Pacific coast. This situation makes the process of collective titles even more urgent. When the community has security in regard to their land and an organization that represents them (consejo comunitario or cabildo) they are more capable of confronting the pressure to grow illicit crops.

The National Development Plan and the Peace Negotiations are two policy works that will affect the region. There is a good will to work in the new government and the directors of INCORA and the RED say they will support and advance the process of recognizing the territorial rights of Black and Indigenous communities.

The position of the MOE not to give the go ahead to the collective titles in mangrove zones has generated bad feelings and lack of confidence in the government's

actions. This position must be revised to give the communities in the south confidence in the government. From the organizational point of view the Indigenous people maintain a more coherent stand in their participation in the program. This had not been the same for Black communities which might affect the program in the future especially in the Cauca.

The progress is coming along with better coordination and sharing of information such that the goals are reachable and probably surpassable. Nevertheless there continues to be tension within the two working groups in INCORA (Indigenous and Black communities). There is no clear process in mineral zones for resolving inter-ethnic conflicts of titling. The position of the Juridical office in the MOE to not give the go ahead to titling areas of mangroves has generated a complex and delicate situation. "The communities of Patia Grand and Los Brazos united in ACAPA feel, and this is real, that to apply this intrusion, that in my judgement does not have a legal foundation, leaves them at the risk of losing their lands." One forgets that in this manner 36% of the rural population of the Pacific live in the coastal low-lying floodplain and 16% in the outlying isthmuses and barrier islands.

### **Recommendations**

The MOE has to meet before a high level working group to restart the activities of regulating chapter IV of law 70 that regulates the use of land and the protection of natural resources and the environment. Also it should modify: decree 1320 of July 13 1998 which regulates the prior consultation with Indigenous and Black community and the paragraph 10 of decree 2164 of 1995 which refers to the demonstration of the ecological function of property in the process of restructuration, amplification and cleansing of resguardos. Modify decree 1745 because it is too long and tedious through giving participation to the community, and getting rid of unnecessary procedures and duplications. And declare consejo comunitarios as entities of special public rights like Indigenous Cabildos.

Law 70 truncated the process of forming interethnic territories. Legislation need also reflect the actual settlement patterns of the two communities to make spaces for the reality of interethnic territories as a tenure modality and reduce conflicts through the incorporation of historical pasts of the communities.

The Action Plan which was a result of an exercise of consultation and participation must be maintained and strengthened through administrative action as a contribution to the generation of conditions for peace. They do need however a database about the process of titling.

### **1998 Letter to President from German Casama Gindrama, OREWA, November 12.**

Complaining that between 1993 and 1998 not a centimeter of the territory occupied by Indigenous people was legalized in the Chocó region. They requested the naming of impartial functionaries to the Indigenous program and a change of the regional director of INCORA in the Chocó. Shelton Davis stressed that the Bank should show support of OREWA to the MOE and INCORA.

**1998 Bank letter to MOE concerning OREWA complaint, November 30.** Asked for help to resolve the continuing problems in the Indigenous titling component expressed as great concern to the Bank and stressed that OREWA had written to Pastrana as well.

Stressed the 15 pending requests for titling saying they would like to see them completed before the end of this year and that the MOE strong support would increase the speed of implementation of the titling. They would also like a progress report on the Plan prepared in the next 15 days.

**1998 Expulsion of Regional Directors of INCORA, December.** Due to community pressure mainly from Indigenous groups 2 regional directors of INCORA were forced to leave their positions. 9 out of 25 regional directors removed for inefficiency and irregularities. The guy from the Chocó was removed for inefficiency and administrative disorder and the guy from Cauca went as well because of inefficiency in the titling of Indigenous resguardos. Marcela Bravo was to be removed from the position of Coordinator of the Indigenous program.

**1998 Progress Report July-December (January 1999)** they are making advances in the implementation of the Action Plan especially the solution of interethnic differences.

**1998 Convention 115** between the MOE, the Regional Autonomous Corporation for Sustainable Development of Chocó, (CODECHOCO), the Institute of Environmental Investigation of the Pacific (Instituto de Investigaciones Ambientales del Pacífico), and the Integral Peasant Association of the Middle Atrato (ACIA – Asociación Campesina Integral del Medio Atrato) to formulate an Environmental Management Plan and Territorial Regularization in the Middle Atrato.

The activities included: delimiting communities, defining community forests, social mapping, environmental conservation, identifying degraded areas, areas for use, conservation or reserves, along with a flora and fauna inventory and a characterization of traditional systems of production.

**1998 Municipal Plan of Territorial Regularization (Plan de Ordenamiento Territorial)** By an executive decree, the Colombian government instructed the country's municipalities to define a land use plan that accounts for economic, environmental, political, and cultural factors.

**1999 External Evaluation of Indigenous Component, Jan 29.** At the end of August the Indigenous Coordination Program of INCORA did not accept that the information over the systematization of procedures for titling resguardos be shared with the Regional Committees. The evaluation blames the rigid interpretation of decree 2164 adopted by Marcela Bravo to be prejudicial to the rights of Indigenous peoples. She did not accept that he revise the interpretation for the final procedures. The new directorship of INCORA, Rodrigo Villalba introduced changes such as the firing of the regional directors of the Chocó and Cauca, and the soon leaving of Marcela Bravo. He concluded that there was: weak application of policy and law by the state, weak planning and follow-up of the process, weak use of human resources, and information and documentation. Very weak participation in the studies to construct resguardos.

In November and December they had two meetings of INCORA that approved 15 applications for Resguardos. INCORA announced a new path. An improvement by the end of 1998 on the goals set by MOE.

**1999 Technical Report from the RED, January.** The community leaders of the Pacific remain worried in respect to the state position toward the definition of the mangrove swamps as goods of public use which in a way does not recognize the system of life, use and conservation that the Black communities have in regard to the mangrove swamps. They made a move to get the MOE to define in a definite form their position.

It was reiterated that they needed Regional Committees with references to the problem of National Parks and buffer zones. They stressed that the RED would like to present to the MOE the importance on going on supporting the process of Collective Titling as a base for a sustainable development strategy.

They signaled the urgency of addressing the chapter IV of Law 70 as a fundamental prerequisite to advance the formulation and implementation of management plans and environmental ordinances in Collective Territories for Black communities especially regarding the participation of the communities in the management plans of National Parks and other protected areas, the definition of training strategies for the use of natural resources, the ordering of the relationship between the consejos comunitarios with the private sector and with the municipal administrations.

**1999 Project Status Report, February 9.** The key objective is to develop the policy, institutional and technical base for sustainable natural resource management within the context of the decentralized framework for environmental management introduced by Law 99 of 1993. The security situation has substantially adversely affected the sustainability and impact of NRMP activities for example some beneficiaries of land titling have been displaced by violence. Large reduction in government's budget. Generally satisfactory progress made. They recognize that since the Action Plan progress has been made in the implementation of land titling components.

**1999 MOE letter to INCORA regarding Indigenous Titling, Feb 25.** Different worries about the speed and mode of INCORA operations especially on things only waiting for INCORA's action

**1999 Mangroves - letter to MOE from INCORA, March 2.** INCORA had a meeting on Feb 19 to analyze and conceptualize the juridical nature of mangrove zones and the implications for Collective Titling for Black communities. After considering technical and legal arguments they came to the conclusion that the areas of mangrove are not to be excluded from the titleable areas. The letter requests the go ahead to title.

**1999 Supervision Mission, 11 March.** To review the advances made on the goals set out by the Action Plan. The MOE enscribed CODECHOCO and ACIA to formulate Environmental Management Plans for collective territories under the influence of ACIA to serve as instruments to support the making of decision about the use of the land, the quality of the environment and to proportion the conservation of natural resources. Recommendations: follow-up on INCORA's promises to constitute and demarcate resguardos, the titling of collective territories for Black communities depends on the conceptualization of mangroves for inclusion or exclusion from the territories so they should speed up the decision on the mangrove, to hold a reflexive workshop about the

experience of the collective titles and the community participation which should be held after the meeting of Agenda Pacífico XXI and before the end of the project.

**1999 INCORA to OREWA, March 30.** This is a report of the steps that INCORA took and how far they have come in titling Indigenous resguardos in the Chocó. It is copied to the Bank.

**1999 Letter from OREWA to the Bank, April 11.**

**1999 Shelton's Back to Office Report, April 12.** Improved relations with Indigenous peoples, collaboration between groups and the state entities. Significant progress in the Indigenous land titling and demarcation component can be directly attributed to the intervention of the new Director of INCORA who has begun a major reorganization of the agency including the nomination of a new Sub-director for the Social Property section and the replacement of two regional sub-directors who had been major obstacles to Indigenous land titling and demarcation in the program area.

The mangrove problem continues to slow down the pace of titling of collective territory for Black communities. There was notification of a resolution of the mangrove problem and evaluation of experience and workshop requested.

The RED cut back its active role in the past several months because it was called upon to assist with the emergency in the Eje Cafetero of the earthquake. Shelton discussed with the RED and the PCU the possibility of organizing a workshop before the end of the project on the overall lessons learned from the land titling and Regional committees components of the project.

A contract was signed between the Instituto de Investigaciones del Pacifico, CODECHOCO and ACIA to prepare a natural Resources Management Plan for the area titled by ACIA which will serve as a basis of decision concerning land use and natural resources management.

**1999 MOE legal analysis of the Mangrove Issue, April 15.** The Legal office of the MOE was asked to state their position on the legal nature of the mangrove zones and their implication for the titling of collective property for Black communities of the Pacific. It was the opinion of the legal office that "the MOE is not the entity in charge of defining if a good (bien) is or is not of public use, in spite of its involvement in the theme especially when it was part of the technical commission and when the discussion involves areas that house mangrove ecosystems, according to articles 12 and 48 of law 160 of 1994 and article 20 of the regulatory decree 2663 of 1994 INCORA is the entity that has the function of delineating goods of public use, that can not be included in the collective titles as stated in article 6 of law 70 of 1993 and article 19 of decree 1745 of 1995."

**1999 National Parks and Regional Committees BTOR Hazelton, April 30.** The parks has gradually worked toward more local knowledge, participation, acceptance and ownership of the parks in the Pacific, and has prioritized this aspect of the program for the future. This is as much as anything a survival strategy in the face of severe rural violence, but also the result of a growing commitment to democratic principles of civil society participation. The Parks is currently preparing the stage for a future focus on

biodiversity conservation outside of the national parks, such as in municipalities, on Indigenous and Black community reserves and on private lands. This exceeds the scope of the NRMP but will be built on its results and methods.

Related to the guerilla, para-military and narcotics-related violence in and around the parks, the central government is calling on the National Parks administration to assist it in its peace negotiations and mediation efforts. The central government has called upon Parks to invest more effort and resources in local community economic development activities, for which the parks system is not well prepared.

The parks were encouraged to develop joint management plans for areas that overlap with Indigenous and Black territories as drawing in / upon other elements of the NRMP.

**1999 Agenda Pacífico XXI, May.** It started with the issuing of the collective title for ACIA in 1998. The strategies include participation through better communication and dissemination of information, construct a region, and coordinate the region with the nation in development efforts recognizing the Pacific Coast's unique political, economic, environmental, cultural, social and territorial conditions and positions within Colombia.

Effort to develop from the bottom up an environmental policy and regional development plan (with a 20 year horizon) for the Choco Biogeographic region. Diomedes Londoño has been designated to lead this effort within the MOE, with the Instituto de Investigaciones Ambientales del Pacífico playing a key role. They feel this is a mechanism for much of the good work done in the Chocó under the NRMP to become more widely disseminated and used. They insisted that this is a bottom-up initiative which builds on the dynamic created in the Regional Committees and not simply a bureaucratic or political one. The process will be trying to develop in a participatory, democratic, tolerant and pluralistic collective manner the Pacific as a region.

In April the Bank agreed to the use of 500,000,000 Colombian pesos to finance the process Agenda Pacífico XXI. Elsie suggested the full inclusion of communities living in the Pacific coast other than Indigenous or Black communities and to define ways to involve them as full participants in this process to promote peaceful coexistence.

**1999 Correspondence with INCORA, June.** They titled 11 resguardos and amplified 2. The Bank was very pleased with the advances made.

**1999 Parks, June.** Community outreach will in the long run contribute to the sustainability of the system. The parks administration is concerned with the issue of rural violence and security in and around the parks and is strengthening all of its participatory processes and outreach programs and training its staff to deliver them.

**1999 MOE Mangrove Update July.** They want to:

- 1) have a prior consultation of the communities living in the mangroves to revise from their perspectives the social, economic, political, cultural, environmental and territorial effects that could be caused in case the collective titles exclude the mangrove areas and the uses and methods for management of these areas. This will be coordinated by the Ministry of the Interior.

- 2) construct a support unit to the Technical Commission of law 70 focused on decree 1745 and integrate working groups of both community and government entities that will bring to the process juridical, technical, ancestral, and sustainable, inputs adequate for use of the mangroves.
- 3) do an institution-community campaign to discuss the results of the prior consultation and the different inputs.
- 4) the results will be brought the Technical Commission who based on the available information must produce an opinion about the petition for collective title that includes the mangrove areas. This will take 3 months
- 5) INCORA will title accordingly.

The Bank task manager felt that 3 months was too long and did not understand why the Ministry of the Interior was involved.

**1999 MOE final evaluation, August.** MOE agrees to overall workshop and reflection using the experience of ACIA as a reference for others at the local and regional level.

**1999 Bank Task Manager to Enrique Sanchez, September.** Wanted him to do the final evaluation of the implementation of the Plan of Action. The MOE did not want to finance the work but the Bank would find funding on its own given the importance of the subject to the Bank. They would use the report as a background paper for a workshop with key stakeholders in the Chocó, towards November or December 1999.

**1999 Letter of Paola Agostini to Elsie, Nov.** She is asking help for Luis Eduardo Agodelo a lawyer of the Association de Cabildo Indigena de Antioquia OIA looking for possible funding of land use plans. He was instrumental and extremely important in resolving and mediating the conflict between the Black communities in the Naya Corridor and the Universidad del Cauca on titling of the corridor (the formal title belongs to the University since 1920, but the communities claim it. The University is willing to give the land to the communities, but only if they prepare a land use plan. The communities will not prepare a land use plan, unless they have the title.

**1999 Correspondence from OREWA, Nov.** In October 1998 they had left with the Bank a project on Capacity Building and Territorial Regularization for the Indigenous people of the Chocó but they don't know what has held up the proposal to date. They wrote through an intermediary at the World Bank.

**1999 OREWA Public Opinion Communiqué, Dec.** They are publicly denouncing any connection with the Guerrilla and the violence in the area of Nussí-Purrú. They do not believe that through violence they will obtain social justice. They call for protection of the population of Juradó where the people have left for urban centers and abandoned the land.

**1999 Extension of NRMP, Dec 21.** The loan was extended to close at the end of 2000.

**1999 Indigenous Legal Land Status.** An **81.65%** of Colombian Indigenous peoples have their territorial occupancy legalized. Recognition by the state adopts the form of the

resguardo, a legal concept which, to the Indigenous peoples, has the meaning of full ownership of land. A total of 469 resguardos have been created. These lands, granted to the Indigenous peoples as freeholds, add up to a present day total of approximately 27,954,896 hectares, which is **24.48%** of the country's area which in 1996 served a population of 638,606.

**2000 IX Regional Committee for Indigenous People May 11-12.** INCORA did not comply with the required requirements especially pitting the Indigenous and Black communities against each other through territorial definition. Although they came to important agreement and concertation process with ACIA it has not been respected by INCORA and the Indigenous territories of the Medio Atrato have been ignored. INCORA also forces Indigenous groups to sign accords that are within the titles of Black communities of San Isidro which is Indigenous territory of Lomita-Curundó.

The representatives of Cauca felt that the only part of the department that was advancing was the Andean part and ask for INCORA to direct the functionaries of the region to comply with the laws and to stop the same functionaries from telling the Black communities not to meet and come to agreements with the Indigenous communities, and to stop them from saying that they can not title more Indigenous land. They also stressed that they did not want the functionaries to bring people from outside the communities and who doesn't know the territorial situation to the Regional Committee meetings. They stressed that these people create false expectations among the Black communities that they "came remain with the territory that does not belong to them" as a part of politicking. This also occurs in the Chocó. INCORA promised to send reports to the organization every 2 months on the progress it was making in addressing these issues

**2000 OREWA Status of Promises Review, May.** This is a report since the Action Plan of 1998. They argue that the Action Plan set out to construct 35 resguardos and demarcate 80 facilitated through participatory actions to focus and prioritize the needs of the community and to look for solutions to limitations of legal rules about the social and ecological function of property.

They have, between 1998 and 1999 constructed 27 resguardos and amplified 6. Most of these were from old petitions and procedures. They accuse the functionaries of INCORA of lacking political will, especially in regional offices. They accuse them of pressuring communities to sign acts which make vulnerable the Indigenous rights, like what happened with the Eperara Siapidara in the Ensenada de Tumaco. Also of creating problems with other social groups because of their irresponsible commentaries and actions, like the letter sent by the regional director for Choco to the campesinos of Jaradó which had an interpretation favorable to the buying up of improvements.

Now that the relationship between the MOE and INCORA is coming to an end, they are very worried about the future of the Indigenous program with INCORA, because with all the resources they advanced so little what can we hope for the completion of pending promises.

They also wanted closure on the Mangrove issue from the point of view of the Indigenous legislation to solve the problem of the Indigenous peoples who live in Mangrove areas and use them traditionally. Finally they asked for the Banks support in their calls for compliance.

**2000 External Evaluation Roldan and Sanchez, June 9.** Titling was introduced to the idea of the program as a strategy for strengthening sustainable development and cultural identity. It outlines the crises of 1998 that forced the Plan of Action into being, especially the slowness of Indigenous titling. The end result of the Mangrove dispute was that the communities would get an exclusive usufruct right to the mangroves but would not have them included in community titles.

The NRMP constructed 39 (out of 40) resguardos and amplified 7 which is a total of 17.8 of the total resguardos in the Pacific and covers 244,966 and 20,243 hectares respectively for a total of 265,209 hectares titled to Indigenous peoples with a benefit of 44 communities and 2,096 families. The demarcated 33 (out of 123) resguardos.

The NRMP titled a total of 1,655,305 hectares of land to 360 Black communities of almost 18,000 families. This was a completely new activity through the development of new mechanisms for agreement and the peaceful resolution of territorial conflicts. For most who participated they felt it was an important learning experience. The community valued the management and interpretation of maps, and images of remote sensing, fieldwork, surveying, making posters and manuals, the administration of public funds, the negotiation with entities and inter-ethnic consultations and agreements.

72% of the goals for land titling were achieved, benefiting 19,860 families and almost 100,000 people with 89.45% being Afro-Colombians and the rest Indigenous (10.55%). 100% of all land titled collectively to Afro-Colombians in the region is due to this program, while 17 % of the Indigenous is. The project spent US\$ 3.25 of the US\$ 4.09 million allotted to the project. In other words some US\$ 0.81 million is left over.

The program met its particular titling and participation goals and provided a solid base for biodiversity conservation as almost all of the natural forest now fall outside of land markets and in some cases have improved prospects for conservation. The NRMP represents 23% of the region.

Two things must be addressed: 1) the Indigenous and Black communities that occupy the same territory, and 2) the character and responsibility and scope of the functioning of the Consejo Comunitario. The Consejo Comunitario in the very confused legal concept is the legal personification of the community but is constituted as an entity with a purely private character and the junta directiva (board of directors) is not a distinct persona to the council. It is a clear disadvantage to the Indigenous Cabildos and the administrative councils of the future Indigenous territorial entities, which are clearly invested with attributions that are deeply buried in carrying out public functions.

**Some Lessons:** One of the objectives of the Action Plan was to recuperate cultural processes of use of the territory and traditional knowledge of the biodiversity. The titling process generated an intellectual movement in the community where the elderly, hunters, gatherers and traditional doctors to reconstruct the history of occupation of the territory and to explain from their own perspective the importance and uses of the natural resources that exist. Part of this knowledge is left in maps and minutes from the workshops of social mapping. The most important as expressed by some of the afro-Colombian participants was putting the young and the old, the men and women together to work to socialize a traditional knowledge about the biological resources and the community territory as part of their own identity.

There was not enough participation of communities in other components of the NRMP. The continuation of titling is necessary and should be continued with other resources once the program is finished in a less expensive and faster way.

**2000 Reply to OREWA July.** Asking about the follow-up of the Regional Committee.

**2000 Progress Report of Black Community Land by INCORA, July.** 38 collective titles to Black communities covering 1,662,158 hectares benefiting 17,823 families. There are another 30 or so remaining. In the Annual Operative Plan INCORA had projected to process 77 petitions for collective titles (some 3,000,000 hectares) to benefit some 60,000 families of Black communities of the Pacific.