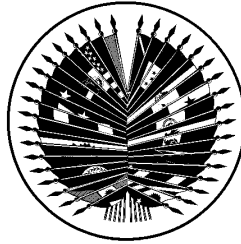


Organization of American States/Harvard University  
Project on Colombia



The Samoré Case: Observations and Recommendations

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## **Organization of American States/Harvard University Project on Colombia**

### **The Samoré Case: Observations and Recommendations**

#### **Background**

In May 1997 the Government of Colombia, through its Ministry of Foreign Affairs, asked the OAS General Secretariat to enlist the services of Harvard University for an on-site investigation into the conflict between the U'wa indigenous people and the oil companies Occidental de Colombia (Oxy) and its partner Compañías Shell de Colombia (Shell). The companies were engaged in a joint venture with the national company Ecopetrol in the Samoré Block, in the northeastern part of the country. Given the importance of the case, both from the standpoint of the indigenous rights and from that of the national economy, and the difficulties it was encountering in holding productive discussions among the parties, the Ministry thought it best to seek outside help.

In response, the General Secretariat, through its *Unit for the Promotion of Democracy* (UPD), sent a team of experts in the analysis and prevention of interethnic conflict from the UPD and *the Program on Nonviolent Sanctions and Cultural Survival* of Harvard University's Weatherhead Center for International Affairs.

With logistical support from the OAS National Office in Colombia, the OAS/Harvard team visited Colombia from May 14 to 22, 1997, and again from July 30 to August 3, to make a preliminary assessment of the Samoré case: collect the views and opinions of the Colombian government and the other parties, prepare a document reflecting the position of all the parties involved in the conflict, and produce recommendations on managing conflict. If the preliminary assessment seemed promising, it was hoped that a work program could be developed that would lead to dialogue and, potentially, to negotiations.

#### **The Samoré Case: A Brief Summary**

The U'wa are an indigenous group who live in the Northeast of Colombia. In 1992 Occidental de Colombia (the "operator" within the block and affiliate of the U.S. company Occidental Oil and Gas) applied to the Colombian government for permits to explore for and exploit oil in an area containing a protected zone, a reserve, and traditional lands of the U'wa people. On February 3, 1995, the Ministry of the Environment issued an environmental permit authorizing exploration.

Thereupon, complaints from the U'wa about past and prospective drilling on what they considered to be their ancestral lands began to arrive at government offices such as the Directorate General for Indigenous Affairs and the Office of the Ombudsman. Next, widely circulated newspaper stories reported that members of the U'wa community opposed these activities and had even threatened mass suicide.

On behalf of the U'wa people, the Ombudsman applied to the Superior Court of Bogota for an injunction against Oxy and the Ministry of the Environment for having granted the environmental permit. The Ombudsman cited the rights and duties of indigenous groups as contained in the laws and, in particular, the Colombian constitution and stressed that the U'wa had not been properly consulted in advance as required by the permitting procedure.

The situation became even more complicated when the Colombian Supreme Court of Justice ruled that the "adequate prior consultation" that Oxy claimed to have carried out was invalid, while the Council of State asserted the opposite: that Oxy did have a permit to enter the territory and had indeed complied with the consultation requirement.

Despite the ruling by the Council of State, the Ministry of Mines and Energy and Oxy said they would begin talks with U'wa representatives in order to reopen a dialogue and would discontinue their operations until the conflict was resolved.

At the initiative of the Colombian government, a meeting was held on April 21 in the Office of the President and attended by representatives of the U'wa community and the ministries of Mines and Energy, Interior, and Environment. The ministry representatives promised to pursue the process of reconciliation with the U'wa, listen to their arguments on Samoré projects and sponsor another meeting. This took place in Chuscal, in U'wa territory, on May 29 and 30, with the participation of the three ministers and the U'wa leaders.

Despite these efforts, on the part of the Colombian government as well the indigenous peoples and organizations, difficulties that impeded the advance of productive discussions continue, and the role of the OAS/Harvard Project, therefore, remains unchanged.

### **Summary of the Mission**

During its first visit, the OAS/Harvard team met with representatives of the ministries of Mines and Energy, Environment, Foreign Affairs, and Interior and with members of government agencies connected with the conflict, in one way or another, including the Office of the Ombudsman, the Directorate General for Indigenous Affairs (DGAI), the Colombian Institute for Agrarian Reform (INCORA), the Office of the Attorney General, the Council of State, the Constitutional Court, Senator Lorenzo Muelas, and Ecopetrol, the Colombian national oil company. Talks were also held with representatives of the National Indigenous Organization of Colombia (ONIC), the official representative of the U'wa community, and representatives of

Ecopetrol, Shell, and Oxy. In intensive interviews, these representatives provided much supplementary information for the analysis of this case.

It was apparent that the conflict had passed beyond the judicial realm into that of politics with an admixture of cultural and social considerations that could hamper the negotiating process.

The international mass media had given the public a simplistic view of the conflict, presenting it as a classic case of a small indigenous community confronting a multinational company and feeling that its basic cultural values and territorial integrity were being threatened. After the mission, the members of the OAS/Harvard Project agreed that the Samoré case was a multifaceted conflict, much more complex than they had originally imagined, affecting the petroleum investment policy of the Colombian government and endangering the constitutional guarantees of indigenous groups. It had created difficulties and raised questions for human-rights activists, environmentalists, and the oil industry itself.

In the light of the preliminary findings, and of its commitment to make recommendations, the OAS/Harvard team maintained regular contact with some of the groups and organizations both to receive additional information and views and to explore options for recommendations. The project also organized a second mission to Colombia in July 1997 to clarify a number of points with individuals and organizations that the team had seen previously, and to meet with people who had not been present on the first visit.

On the basis of these visits and interviews, a number of observations and recommendations were prepared. This report contains: (1) a summary of the observations and conclusions; (2) a brief description of the main parties involved in the conflict; and (3) recommendations on developing means and methods to deal with the conflict.

## **Presentation of the U'wa case before the Inter-American Commission on Human Rights**

In May 1997, the Association of Senior Councils of the U'wa People, ONIC, and the Coalition for Amazonian Peoples and Their Environment filed a complaint with the Inter-American Commission on Human Rights alleging that no "adequate prior consultation" had been held and that the measures necessary to protect the personal, cultural, economic and environmental integrity of the U'wa people had not been taken. The petitioners further contended that any oil exploration in the territory would seriously compromise the culture and religion and the personal integrity of the U'wa. In its communication opening the case, the Commission asked the Colombian government for information on the motion for redress filed by the petitioners.

The Commission, the UPD, and the OAS/Harvard team have remained in touch over the parallel proceedings under way in the Samoré case. The possibility of cooperation between the OAS/Harvard team and the Commission has been envisaged in the event that a dialogue and negotiations should result. The UPD has also offered to cooperate with the Commission.

### **Observations**

#### **The Main Actors**

For many public and private-sector groups in Colombia, the conflict over oil production in the Samoré Block has become a political and economic issue of national interest. The discussions surrounding the conflict, in which the main characters are the U'wa indigenous people and the multinational oil companies, form a dramatic backdrop for an exchange of ideas on a wide range of national issues and concerns. The observations here are based on interviews and studies involving all the interested parties mentioned later in this report. The recommendations, however, are centered around a more limited number of actors and locations: the U'wa people, ONIC, Occidental de Colombia, Shell of Colombia, Ecopetrol, and three Colombian ministries (Mines and Energy, Interior, and Environment). Each of these parties is connected to the activities in the Samoré Block.

The OAS/Harvard Project on Colombia recognizes that these issues, which are important in the national and regional contexts, also have wider implications. Many of the general recommendations and observations relevant to the specific case of the Samoré Block may, or will in the future, be applicable to similar situations involving the exploitation of natural resources in or near indigenous territories, communal lands, and similar protected zones.

The observations and recommendations in this report have to do with the following actors:

## 1. *Indigenous Groups*

### a. *The U'wa*

The U'wa, numbering about 5,000, commonly known as "Tunebo," currently live at the foot of the Sierra Nevada of Cocuy in Colombia. Traditionally, they were spread over an area that includes the cities of Boyaca, Santander, Arauca, and Casanare and during part of the year occupied an extension of the low plains. At certain times of the year they advanced towards the foothills. These movements across the extensive territory were accompanied by rituals at different geographic levels. According to them, it was through these rituals that they could maintain harmony in the world. During the 1970s, part of the territory was formally designated as the U'wa *Resguardo*, where they have exclusive rights over the land, and an adjacent Reserve (a total of 40,711 hectares). The reserve is inhabited by settlers as well as the U'wa and there the latter have rights to use the land but not long-term ownership. On the basis of their use of the land in both the past and present, the U'wa also claim a larger area, a territory (*territorio*).

Despite the influences of the settlers and missionaries, the U'wa have preserved a strong sense of independence and are considered a proud, separate culture with strong spiritual beliefs.

### b. *The National Indigenous Organization of Colombia (ONIC)*

ONIC, created in 1981, represents more than 80 Colombian indigenous groups. As such, its interest in the U'wa case reflects both local and national indigenous concerns. During the 1980s, while seeking to consolidate the indigenous peoples throughout the country, ONIC approached the U'wa and proposed that they strengthen their council (*cabildo*) as a government structure, envisioning it as an important representative system through which the U'wa, like other Colombian Indian organizations, could deal with issues outside the community. ONIC continues working closely and frequently with many U'wa representatives, in particular those who live inside of the *resguardo*. .

## 2. *Oil Companies*

### a. *Occidental de Colombia, Inc. (Oxy)*

Oxy is in charge of operations and is responsible for the day-to-day work and for decision-making. Under the Samoré Association Contract, it holds 37.5% of the shares.

*b. Companias Shell de Colombia (Shell)*

Shell is not responsible for daily operations but has a voice and role in decision-making. Under the Samoré Association Contract, it also holds 37.5% of the shares.

*b. Ecopetrol (Colombian National Oil Company)*

Ecopetrol, which is directed by the Ministry of Mines and Energy, administers access to natural resources in various ways. It acts as an independent producer, partner in direct association with foreign companies (approximately one third of total production), partner through joint ventures, and manager of a few concessions (about 2.5 % of total production).

The work of the foreign companies is carried out under fixed-term contracts that are based, according to Ecopetrol executives, on “standard industrial” practice. In Colombia these standard agreements have a term of 30 years. Except for a total “production” period of 22 years (after 6 years of prospecting), the agreements can be amended to incorporate changes in local conditions. In the case of the Samoré Block, various amendments have already been accepted.

*3. Colombian Government Ministries, Departments, and Agencies*

*a. Ministry of Mines and Energy*

The Ministry of Mines and Energy supervises and plans all exploitation of natural resources in Colombia.

*b. Ministry of Interior*

The Directorate General for Indigenous Affairs is part of the Ministry of Interior, and is the government agency in charge of issues concerning indigenous communities.

*c. Ministry of Environment*

The Ministry of Environment assesses the social and environmental impact as well as the consultation process before issuing extraction permits for national and international projects.

*d. Ministry of Agriculture (INCORA)*

The Colombian Institute for Agrarian Reform (INCORA), within the Ministry of Agriculture, handles territorial property titles, relocation payments, and other matters related to land ownership.

#### *4. Colombian Non-Governmental Organizations*

Various sectors and groups in Colombia have shown an interest or have been involved in research or support programs related to the conflict.

#### *5. Guerrilla Groups*

The presence of the National Liberation Army (ELN) looms like a dark shadow over all the actors and complicates any analysis of the conflict or any attempt to deal with it. The ELN has shown that it can disrupt the flow of oil and kill people involved in exploiting it. The OAS/Harvard Project has taken due note of the problem, but has not dealt with it among the recommendations in this report. This is not done to diminish in any way the importance of the guerilla groups. Quite the contrary, by focusing primarily on the "Oxy-U'wa" dispute, the report provides a clearer understanding of the real role of the ELN guerrillas, who have sometimes been confused with groups that legitimately defend the rights of indigenous peoples.

### **Sources of the Conflict**

The following background information can provide a clearer understanding of the conflict.

#### *1. Important Cultural Differences*

As was noted, during the early development of the Project, there were significant cultural differences between the parties even before the conflict and they continue to be the main obstacles to a solution. Most of the U'wa people knew about the oil production in the Cano Limón area, and a large number of them had worked at the production site or in related activities. But as plans and activities for oil exploration got under way in the Samoré Block, a clash developed between local groups and the oil companies, each with its own way of "understanding." As a result, they became embroiled in a mounting dispute.

Like other prolonged disputes over the use of land and resources, the claims of the parties arise from radically different perceptions, and relationships thus swim in a pool of mutual misunderstandings and entrenched positions. However, the U'wa case is an extreme example. The differences in perception range from basic understandings of the nature of the world and knowledge to ordinary behavior with regard to day-to-day relations between groups and the meaning of human interaction.

The U'wa indigenous organizations, the oil companies, and the government of Colombia acknowledge these general differences. However, there has been very little indication, apart from public declarations that the oil companies would refrain from going into U'wa territory, that the companies and most of the government agencies have learned enough about U'wa culture to arrive at some future agreement on the essential elements of the conflict. Similarly, the



indigenous groups have shown that they know very little about the priorities and basic needs of the oil industry and the national economy and do not really understand the specific methods used in oil production in the Samoré Block and its present and future implications; the U'wa and the leadership of the national Indian organization remain deeply concerned and uncertain about the wider impact of oil production on their culture.

The word "culture" may be understood in two different, yet complementary senses, both equally applicable to the indigenous groups and the oil companies.

*a. Cognitive*

This refers to the way in which a person or group learns about how the world is created, ordered, and maintained. It is a process that is partly individual and partly communal: a person's individual imagery and observations are often shaped and confirmed by the community. The cognitive process generates values, feelings, and concerns. This interpretation of the word "culture" shows how people, individually and collectively, create the sense of order, logic, and meaning that make up the basis for their values and beliefs.

This definition can be illustrated by an example particularly relevant to this conflict: the land on which the U'wa people live, its initial formation, present structure, and future needs. The views held by the oil companies and some government agencies are radically different from those of the U'wa and their indigenous and non-indigenous supporters.

The views and related values of the oil companies and government agencies are based on perceptions of geological formation and consequent physical structure, surface and subsoil. Indigenous people, on the other hand, place the emphasis on the spiritual creation of the Universe--on notions of the heavens and the underworld --as well as on the earth's surface. Their values center around the need to maintain the fragile balance initially established in the beginning between the two levels. These ideas--which vary between sectors but are shared by members of the same sector--demonstrate one aspect of the prevailing cultural differences.

*b. Social*

This refers to the wide range of social, political, economic, and ritual structures created by a community to organize, maintain, and guarantee its values, feelings, and concerns and ensure social cohesion. It is how a given group organizes itself socially and politically and publicly to understand and to maintain its spiritual values.

This may be illustrated by the same example as above: the lands of the U'wa people. Various sectors of the U'wa community, the national and multinational oil companies, and the government agencies hold diametrically opposed views on social organization, authority, respect for spiritual values and sacred sites and the rituals essential for maintaining the unity, balance, productivity and integrity of the community and the land.

The oil companies and most of the government agencies grant the need for ecological sustainability. However, with their differing concepts about land, they have set social and political priorities and created institutions geared towards deriving income from the natural resources in the area. They stress the fact that the exploitation of the resources is essential for industry and for the Colombian society and economy.

The indigenous people have, in turn, based their arguments on their own beliefs. They have reacted by creating sociopolitical and religious structures that they deem necessary for maintaining order in the world and within their community. This is evident in their public statements, private rituals, and in the sociopolitical organization.

These brief "cultural" observations and examples are by no means intended as an exhaustive analysis of specific cognitive or social characteristics of the parties to the conflict; they are used merely to illustrate the significant differences between them.

A large body of information on the U'wa, the national and international economy, and the political aspects of the oil industry already exists, and is readily available. While it may not be possible to achieve total mutual understanding, the parties will have to work much harder to comprehend about each other.

On the basis of the brief definitions given above, the members of the OAS/Harvard team noted the significance of cultural differences in this conflict. From a cognitive as well as a social standpoint, many of the indigenous people and their supporters perceive petroleum exploration as a threat to the future of U'wa culture. The opposing perceptions of the U'wa and the oil companies have prevented mutual understanding and thus engendered conflict.

Unless significant and constant actions are taken to increase understanding, the conflict will persist and the hostility between the sides will increase. In the absence of mutual education followed by other steps to understand their different ways of interpreting the way the world works, or ought to work, efforts to understand the nature of the present dispute will fail and it will not be possible to sustain a dialogue or other form of communication capable of producing a consensus. Education and mutual understanding takes time and perhaps would benefit from technical assistance, but the need is obvious. There clearly are no peaceful or otherwise acceptable alternatives.

## 2. *Uncertainty Regarding the Extent of the Territorial Rights of the U'wa*

The uncertainty and confusion concerning the territorial rights of the U'wa complicates the case. Within the larger Samoré Block, there are U'wa lands designated as protected zones and indigenous reserves. The problem is not with these lands, but with areas outside them but still inside the Block.

Colombian law provides for the concept of indigenous territory, including rights based on traditional indigenous patterns of use and settlement in geographical areas beyond protected zones and reserves. U'wa territorial rights outside the protected zones and reserves may include possession or ownership, similar to those they enjoy in the protected zone; access to natural resources in areas not occupied solely by themselves, in accordance with their traditional practices, and jurisdiction over territory.

The U'wa and their allies have provided evidence of territorial rights outside of the protected zone and the reserve. In addition, they have sought an expansion of their reserve within the Samoré Block. However, the boundaries of their territory within the Block have not been officially determined and no decision has been taken on expanding the protected zone. As long as land tenure in the Samoré Block remains unclear, it will be difficult to continue any industrial exploitation of natural resources within the Block.

### 3. *Lack of Clarity concerning the Consultation Process*

The conflict is due largely to a lack of clarity with regard to the consultation process that, in terms of pertinent legal and constitutional norms, is required before any development project that may affect an indigenous community can be officially approved.

#### *a. Normative Framework*

The competent government institutions are working on an executive decree that will specify more clearly the requirements for the consultation process. This is consistent with the Government's legal obligation to oversee consultations with indigenous peoples even where the project is being sponsored by a private entity.

The details of prior consultation will undoubtedly continue to be a subject of discussion among the parties concerned. However, it is worth noting that minimum standards already exist under current law and should apply to any attempts to promote oil production that may affect the U'wa. All the parties have recognized and accepted the legal and constitutional norms that govern the process and render it compulsory.

It is also well known that the requirement of prior consultation is based not only on Colombia's own legal and constitutional system, but on legal obligations at the international level. Convention No. 169 of the International Labor Organization, which was approved by Colombia under Law 21 of 1991, states that in cases like this one, the government is bound to hold consultations with the indigenous people (Article 15.2). The Convention specifies that the "consultations shall be carried out in good faith and in a manner appropriate to the circumstances, ***with a view to reaching an agreement or achieving consensus on the proposed measures***" (Article 6.2). It further states that "interested peoples shall determine their own development priorities and shall participate in the formulation, implementation and

assessment of national and regional development plans and programs which may affect them directly" (Article 7).

As explained in the ILO document "Indigenous and Tribal Peoples: A Guide to the Implementation of ILO Convention 169" (Geneva, 1996) these provisions require governments to consult with indigenous peoples from the start over decisions that may affect them directly. Furthermore, the consultation process must be one in which the indigenous people can participate and have a say in all decisions on projects involving their lands, including the early stages when the project is being drafted. According to the ILO document, this does not mean that they can veto development initiatives undertaken by the state; rather, the objective of consultations should be to seek common ground. When no agreement is possible, the government decides, but if its decision is contrary to the wishes of the indigenous community, it must present justification and provide, among other things, that the project will not violate the cultural integrity of the indigenous group but rather will benefit them.

Exactly how the relevant constitutional and legal provisions on consultations are to be applied is to some extent a matter of interpretation. The point is to decide on the best course of action whatever the minimum legal requirements may be. The OAS/Harvard Project concluded that the present conflict will not be resolved until the Government affords the U'wa a greater opportunity to participate in and influence decisions on the exploitation of petroleum that could affect them.

#### *b. Cultural Aspects of the Consultation*

The lack of clarity in the consultation process is complicated by an absence of intercultural understanding. To date, the consultations have been handled mainly by representatives of Occidental de Colombia and leaders and members of the U'wa community. An U'wa member remarked that even though they had attended the meetings sponsored by Oxy and signed a formal agreement, his view was that the meetings had provided an opportunity to listen, not to make decisions. He, as well as ONIC leaders, pointed out that making decisions would require more information for subsequent evaluation. To participate more effectively and reach an agreement, the U'wa would have to know more about both the economic and the "cultural" aspects of the oil industry.

Similarly, when the U'wa invited representatives of the ministries of Interior, Environment, and Mines and Energy and of Oxy to participate in a dialogue on their territory, the community considered that this was an appropriate way to begin to acquaint others with their culture but that it would take more time to achieve genuine mutual understanding. As a result, both the U'wa and ONIC considered that they had been given neither enough information nor enough time to make an informed decision, so it would be premature to initiate negotiations or conclude that an adequate dialogue had been held.

For their part, the oil company officials who had participated in the consultations felt that the briefings had been numerous and sufficient. Both these officials and the representatives of the Ministry of the Interior considered that the formal agreement signed by the U'wa represented tacit approval, and so the relevant legal obligations had been fulfilled. The Council of State supported this position, though challenged by the Ombudsman. The companies, however, have indicated that they will do no more work, despite the Government approval, until there have been more consultations, but expressions of good will are vitiated by the persistent lack of clarity in the process.

The Government is well aware of this impediment. Yet cooperation among the ministries has been weak and no mutually acceptable single consultation process has been agreed upon. Some steps have been taken to coordinate the work and prepare a program acceptable to all, but no agreement has been reached. This has hampered efforts to resolve the key elements of the conflict and will continue to do so. Moreover, the absence of a mutually acceptable process of consultations will complicate any future natural resources development programs in indigenous reserves, communal property, national parks, or other protected areas.

#### 4. *Clarification of Other Critical Aspects of the Conflict*

Two other concepts critical to the management of the dispute are also objects of serious ambiguity and uncertainty: "dialogue" and "representation". A brief analysis of each concept follows:

##### *a. Dialogue*

All parties have expressed an interest in keeping the channels of communication open, but there are widely differing perceptions of the nature, objective, and expected results of the exchange of ideas. Nevertheless, the parties have split into two well-defined groups.

##### *Groups publicly opposed oil production in U'wa territory*

These include some sectors of the U'wa community, ONIC leaders, other sectors of civil society, and Government agencies and representatives. The spokesman for the U'wa people, Roberto Cobarria, has said that they would like to teach the world, and especially Oxy, about their culture and explain the logic at the heart of their beliefs. The ONIC leaders cite the negative social and environmental impacts of oil production in or near indigenous communities as the reason for their opposition. Some leaders have stressed the need to learn more about the oil industry.

##### *Groups which support oil production in U'wa territory*

These include the national and multinational oil companies, some Government agencies and ministries, some indigenous and non-indigenous sectors of the local population, and local

government representatives. Some oil company representatives think that all they need to do is listen to the arguments of the other side. But many others believe that dialogue made a great contribution towards achieving some type of consensus on the issue of petroleum exploitation.

Thus, even though an interest in some sort of dialogue has been expressed in general terms, views differ as to what it is and what are its objectives, content and form, and in some cases contradict each other. This suggests serious differences, irreconcilable for the time being, between those who perceive dialogue as an instructive and informative exercise and those who see it as a tool or instrument to achieve an end.

### *b. Representation*

The question of representation has caused considerable debate among some observers and among the U'wa themselves. This is largely because some of the U'wa and neighboring settlers openly support oil production as a potential source of employment and infrastructure support. Others disagree. Opinions among the U'wa are also divided over such issues as the secondary effects of oil production on the region--economic development in general and the sociopolitical changes it would bring in its wake.

This has led to the perception of a clash between the traditional way of life and the way of change through cultural assimilation. But this is a simplistic distinction drawn by outsiders. It fails to reflect the wide gamut of opinions and positions prevailing within U'wa society and may create the impression that the U'wa have no broad-based structure of government. As a result of these pronounced social distinctions and assumptions, the oil companies have been accused of working with some U'wa groups to divide the ranks of the opponents of the oil industry or rob them of their legitimacy. In short, the issue of representation has given some people a naive view of U'wa society that has further fanned the flames of the conflict.

### *Internal differences*

In U'wa society as in many others, (1) it is normal to have differences of opinion that lead to arguments, (2) some outsiders with vested interests have played on the internal differences within the U'wa community to justify their own opinions on the leadership, and (3) in times of upheaval and misunderstanding it is extremely difficult to arrive at a consensus. The divergence of views within the U'wa community, however, does not indicate that they lack government structure.

### *Structure of government*

The main responsibility for the internal organization of the U'wa rests with the elders, or *werjaya*. It is generally agreed that they have had considerable or absolute influence in the past and still do. They live isolated from the outside world, and when strangers are brought into their

presence, their opinions are relayed by means of *werjaya* apprentices. In the past, the opinions were given out in traditional meetings convened by the elders.

More recently, these informal structures have been formalized. In the late 1970's and early 1980's, faced with the threat of encroachment by settlers, the U'wa sought legal recognition of their territory and set up a local government council, or *cabildo*, to deal with land questions.

During the 1980s, ONIC took steps to consolidate the country's indigenous groups. It went into U'wa territory and urged them to strengthen the *cabildo* system as a representative governmental structure through which the U'wa, like other indigenous organizations, could deal with matters outside of their community. The *cabildo* deals not only with ONIC matters but with external affairs in general.

The communities appoint representatives who travel to the local municipality, where they are recognized by the mayor as legal representatives. They do not take the place of the elders, but complement them by serving as representatives to the outside world, while the final decisions are taken by the traditional leaders.

The U'wa have formalized their traditional internal structure and linked it to the *cabildo* system by setting up the U'wa Association of Cabildos and Traditional Indigenous Authorities, which connects the *werjaya*, the local *cabildos*, the High Cabildo, and the U'wa community. Roberto Cobaría is now president of the High Cabildo and the main spokesman for the Association. In short, there exists a formal structure and recognized leadership.

### *c. The Perception of the Oil Companies as a Form of Government*

The fact that the U'wa often deal directly with representatives of Oxy has added to the misapprehensions generated by the marked cultural differences: They attach all their concerns to the company. While this may sometimes be appropriate in some critical matters, neither Oxy nor any other national or multinational company is qualified to take decisions or allot resources. This is particularly evident, serious, and urgent in two areas that are the direct responsibility of the government: (1) clarification of rights to land and resources, and (2) clarification of the consultation process.

## Recommendations

On the basis of the foregoing observations, the OAS/Harvard project in Colombia recommends the following measures:

1. **A statement from the oil companies promising to suspend the implementation of plans for oil drilling or exploitation in the Samoré Block as a first step towards creating better conditions for any future resumption of activities.**

This commitment is essential for defusing the atmosphere of conflict between the parties and improving mutual understanding. It should be made immediately and unconditionally.

2. **Formalization of the process to extend the U'wa protected zone.**

Although the concept of indigenous territories as a right to own land separate and apart from a resguardo or reserve exists, the formalization of a resguardo would provide greater security and clarity as to their rights. Based on a study supporting their claim, undertaken by a technical team from the Javeriana University, the U'wa have requested an extension of their protected zone. The study has been delivered to INCORA and no questions about its validity appear to have been raised. For various reasons, however, there is a perception that the U'wa request has been stalled as a means of exerting pressure on them. It is important that this perception be dispelled and the extension of the protected zone be considered without prejudice due to pressure resulting from oil exploitation.

3. **A moderation of public rhetoric.**

In particular, every effort should be made to refrain from statements linking those who have opposed the oil companies with the guerrilla movement or drug traffickers. Not only do such statements exacerbate tensions, but they may also endanger the lives of people who sympathize with or advocate the cause of the U'wa. Conversely, those opposed to the oil companies must be careful that their interpretation of the facts and of the other parties' intentions statements is valid and well founded.

4. **Recognition and respect for the U'wa system of leadership and authority.**

The U'wa people have a system of leadership and authority based on their culture and age-old traditions. This system must be respected in any attempt to approach or establish relations with them. If they differ among themselves, they must be allowed to resolve the differences using their own system of authority. Any attempt to establish relations with the U'wa



while ignoring their political and traditional cultural system can only increase tensions and create confusion.

5. **Establishment of a consultation process under the supervision of the Government of Colombia.**

Any renewal of oil exploitation in the Samoré Block should take place only after consultation with the U'wa people, who could be affected by such activities even when they do not take place on their territory. Needless to say, such consultation will be carried out in accordance with a process determined by the Government and in keeping with the relevant legal norms, especially those contained in the Constitution and in Convention No. 169 of the ILO.

Under the particular circumstances of this case, the consultations with the U'wa could be divided into two stages:

a. **A first phase<sub>2</sub>**, which could begin in the near future, would involve the resumption of oil operations outside U'wa territory, meaning not only the U'wa resguardo and the reserve, but also the entire expanse of their traditional habitat, in accordance with the relevant laws. The purpose of this consultation would be: (1) to reach an agreement on the geographical limits of their territory, which should also serve to identify the area outside of which the suspension of oil operations could be lifted; and (2) to draft measures to prevent damage to the U'wa that might otherwise cause the renewed operations to be suspended.

The consultations on territorial demarcation might or might not have any greater official status than is mentioned here. In any event, the consultations could serve as an introductory framework for meetings and cooperation on matters of mutual interest.

b. **A second phase** could take place later, in a distant future when<sup>1</sup> the discussions on resuming of oil production in U'wa territory is deemed appropriate. This consultation would cover all stages of decision-making on any initiative or proposal for renewed operations and would aim at: (1) obtaining the consent of the U'wa to activities proposed for their territory; (2) defining the measures necessary to mitigate negative effects and, in particular, create mechanisms for protecting U'wa culture and the environment; and (3) reaching an agreement with the U'wa as to the benefits they would derive from oil production.

For both of these phases, agreement among the ministries and a clear idea of the process are essential. At present, the ministries are hampered by various difficulties in working out a mutually acceptable agreement and then drafting a decree.

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<sup>1</sup> During an April 1998 meeting, OAS/Harvard Project members and leaders of the U'wa people and ONIC agreed to change the word "when" to "if," to avoid potential misinterpretation.

As an immediate step towards resolving the impasse, a "special commission" with implementation powers could be set up at the presidential level. If some such commission is established and if funds and staff are made available, the OAS/Harvard Project stands ready to provide the technical support necessary to move forward with the consultation process.

**6. Training of and technical assistance to the U'wa for any consultations.**

In advance of any consultations with the U'wa, the Government of Colombia should ensure that they are adequately prepared to evaluate and to decide on the issues under consideration. ONIC has played an important role in providing support in the past, and could do so again if the U'wa people so desire.

Similarly, the U'wa should receive appropriate technical assistance independent of any other interests that could conflict with their own. The assistance at this level should, include, as a minimum, the assignment of professionals with experience in environmental and social impact assessment, petroleum engineering, petroleum economics, and legal advising services in similar situations. This support would have to be independent of any information offered by the national and multinational companies and would therefore have to come from an autonomous, independently funded source.

**7. Creation of a program to promote greater cooperation among the parties.**

As long as the Government remains interested in considering or promoting petroleum exploitation in the Samoré Block in association with Oxy and Shell, it will be important to promote mutual understanding among the parties. A program to facilitate such understanding should be designed with participation from the indigenous, petroleum, and governmental sectors and subject to their approval.

The program should comprise at least the following elements:

- a. Seminars on pertinent topics, with the participation of the oil companies, the Government, the U'wa, ONIC, and others;
- b. Joint visits to places in Colombia and elsewhere to see both the negative and positive impacts of the oil industry;
- c. Technical assistance to the oil companies and the Government on matters of indigenous rights and culture;
- d. Technical assistance to the U'wa and ONIC regarding the oil industry and economic development tools used by indigenous communities in other parts of the world.

**8. Creation of a program for conflict prevention and resolution.**

Any petroleum operations outside or inside indigenous protected zones are likely to produce situations similar to the Samoré case. In anticipation of such conflicts, the creation of a social mechanism to prevent disputes from escalating and/or leading to the violation of rights or to violence is recommended. The OAS/Harvard Project could be a source of assistance in the planning, development and implementation of a program designed to equip the parties with the necessary tools to prevent and/or resolve conflicts peacefully.

The program could include:

- a. Training workshops on conflict analysis and management;
- b. Introductory workshops on facilitating dialogue and mutual education programs;
- c. Workshops for joint problem-solving.