TOWARDS RESPECTING INDIGENOUS RIGHTS IN DEVELOPMENT POLICY:
THE CASE OF A COMMUNITY-BASED FOREST MANAGEMENT PROJECT IN
PANAMA

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To the Kuna people of Mortí, among whom I learned to walk and talk
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## LIST OF ABBREVIATIONS

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<th>Full Form</th>
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<tr>
<td>ANAM</td>
<td>Autoridad Nacional del Ambiente</td>
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<td>CBD</td>
<td>Convention on Biological Diversity</td>
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<tr>
<td>CBE</td>
<td>Community-based Enterprise</td>
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<td>GOP</td>
<td>Government of Panama</td>
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<td>IACHR</td>
<td>Inter-American Commission on Human Rights</td>
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<td>IACtHR</td>
<td>Inter-American Court of Human Rights</td>
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<td>IADB</td>
<td>Inter-American Development Bank</td>
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<td>RIL</td>
<td>Reduced Impact Logging</td>
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<td>UN</td>
<td>United Nations</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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<td>STRI</td>
<td>Smithsonian Tropical Research Institute</td>
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<tr>
<td>WB</td>
<td>World Bank</td>
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<td>WWF</td>
<td>World Wildlife Fund</td>
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As Latin American countries continue to modernize and reach new heights of development, perched on the shoulders of an increasingly globalized economy, their local indigenous communities continue to be the most marginalized and impoverished people in the world. Sustainable development initiatives present themselves as a way to contribute to global economic development, while improving and respecting the livelihoods of local peoples, and preserving natural resources for future generations. However, unsustainable exploitation of natural resources continues to threaten the livelihoods and identities of indigenous communities. The economic, legal and political marginalization of indigenous peoples persists. The inevitable result of these trends can be seen in the continuing conflicts arising at the local, national, and international level over the use and control of natural resources available within indigenous controlled territories.

The problem of sustainable development implicates the rights, opportunities, and responsibilities of indigenous people. This thesis takes a law and policy approach to the problems and complexities of sustainable development in the context of forest management among indigenous communities. The approach taken is based on the
legal and social theories of the New Haven School of Law and Policy, a system of inquiry into social problems and the responses to them. The thesis illuminates and considers the decision-making process behind a “community-based” forest management program. The process involves international development policy, the state’s developmental objectives, commercial pursuits, and the interests of a local indigenous community, the Kuna village of Mortí in the Darien Province of Panama.

After providing an overview of trends in sustainable development, community-based forest management and indigenous rights, this work illuminates these trends through a local study. The case study focuses on the methods, perspectives and values behind the actors and decisions guiding the forest management project. Under the normative guidance of the United Nations Declarations on the Rights of Indigenous Peoples, the work then briefly discusses how the development policy decisions bear on the fundamental rights and values of the Kuna. The work concludes that in order to even begin to successfully address the problem of sustainability in community-based forest management among the Kuna and other indigenous forest-dwelling communities, policy changes are necessary. The policy changes must better accommodate the interests, rights, and social-environmental realities of indigenous communities.
CHAPTER 1
INTRODUCTION

Research Questions

This thesis provides an analysis of international development policy through an on the ground look at a local community-based forest management project. The international development project was funded by the United States Development Agency for International Development (USAID) and implemented by Chemonics, Inc. The project targeted five indigenous communities in the rainforests of the Darien Province of Panama. This work focuses on the project’s work in one of these communities, and considers the question of whether or not a greater commitment to respecting the indigenous rights in development policy will lead to more success in achieving specific development goals such as sustainable forest management. This broad question is brought into focus through the interdisciplinary lens of the New Haven School of Jurisprudence, which emphasizes contextual analysis of social problems. The empirical context is provided by my field research among the indigenous Kuna community of Mortí, on the villages targeted by the USAID project. The village of Mortí is one of three villages that make up the Wargandi Comarca, a semi-autonomous indigenous reserve located in the Darien Province.

The field research focused on investigating the implementation and ongoing development of the USAID sustainable community-based forest management project within the Mortí community. Using a qualitative methodology, the research was guided by three main sub-questions. First, what are the national and regional trends that provide context to the forest management among indigenous people in Panama? Second, what are the policies, practices and perspectives of both the USAID
development practitioners and the local indigenous community? Third, from a local perspective, what are the main institutional and legal challenges to the successful, long term implementation of the project? Notice that each of these questions builds on the former, and a reliable answer to the final questions is only possible after careful consideration of the first two. In addition all of these questions required the building of relationships and establishment of trust, especially in regard to working within the isolated indigenous community. Much time and effort was put into fostering and maintaining these relationships, which were valued not just as a means to information, but as inherently meaningful. Naturally, most of this interpersonal work does not lend itself to charts and tables, nor to quantitative nor qualitative methodologies. Due to the dynamic nature of the project coupled with the limits of time and resources, none of the three questions could be answered exhaustively. However, key insights emerged in each of these areas. In addition to whatever academic value these insights may provide, I hope that they might aid in the continued efforts toward the sustainable, locally driven development of the Mortí community.

Influenced by postmodernist philosophy, the New Haven school of inquiry emphasizes the subjectivity of the researcher. In spite of valiant efforts to be objective, every researcher comes to the table with certain value commitments and intellectual and cultural orientations. Thus, I do not pretend that this work emerges from a purely neutral perspective, nor do I assume that my presence in the field had no impact upon the subjects of inquiry. In fact, in many ways it was my intent to influence outcomes. As a lawyer in training, studying indigenous rights and development, my ultimate goal is to advocate for the Mortí community. Not only was this my personal goal, but I was also
invited and requested to do so on behalf of the community. As one of my thesis advisors, Dr. Osvaldo Jordan, reminded me regarding my concerns in this area, “It is often not a question of whether you are an advocate, but for whom you are an advocate.” Underlying all of my work was a desire to assist the community in achieving its own goals. I would go as far as to say that I sought to connect emotionally with the community, as a means of facilitating communication between us. Not only did I seek to embody the role of a scholarly observer, but I also came as one seeking to advance the field of sustainable development and to be an advocate for indigenous peoples. My own background also connected me to a certain extent with the community, which brought certain advantages and disadvantages. I was also viewed by the community as an external elite, with uncommon access to wealth, power and influence. This provided certain advantages as well, yet also defined the limits of my local perspective. Ultimately, the question may be whether the information that I present gives a thorough, honest, and accurate portrayal of the social conditions and policies discussed.

**Overview of Paper**

Chapter 2 provides the theoretical framework for this thesis. First it discusses the intersection of the disciplines of law and the social sciences. This discussion will illuminates some of the difficulties and opportunities presented by this thoroughly interdisciplinary thesis project, which comes from a law student dabbling in the social sciences. Secondly, it introduces the interdisciplinary New Haven approach to law and policy as an appropriate theoretical framework for the ensuing discussion. Chapter 3 offers an overview of the literature addressing community based forest management, and introduces the indigenous rights framework as an area of overlapping concern. Chapter 4 presents the case study, beginning with a review of the methodology used in
the field research. It then presents the main findings as they relate to the three research sub-questions. In keeping with the New Have framework of inquiry, key decision-makers will be identified along with key decisions that they have made. Special consideration is given to the perspectives and values that motivated the key actors. The values represent the normative frameworks within which the stakeholders act. This case study briefly considers the history of indigenous rights, development and forest management in Panama. The subjects of development and indigenous rights are first approached from a broad perspective. Key trends in law and policy are identified at both the regional and national level. These global trends throughout the decision making process help set the foundation for understanding the local social and legal context. This discussion will frame the "on the ground" observation and analysis presented later in the same chapter. The case study continues with a review of the USAID funded community-based forest management development project in the Mortí community, focusing on the problems faced in the project development and implementation from the perspective of the USAID and Chemonics personnel, as well from perspective of leaders and members of the Mortí community. Chapter 5 concludes by considering the implications of the results of the case study in the broader context of sustainable development among indigenous communities. While scientific prediction is not the aim of this study, the research will be used to consider the future consequences of present policy, and to make recommendations for ways to improve international development policy in the area of community-based forest management among indigenous communities. These recommendations represent alternatives to the status quo, and can be thought of as a form of creative thinking, rather than scientific prediction. This section also summarizes
the work by arguing that a greater commitment to respecting the indigenous rights norms of the United Nations Declaration on the Rights of Indigenous Peoples in development policy will indeed advance the goals of sustainable development. The chapter concludes with suggestions of avenues for further research.


2 Dr. Osvaldo Jordan, personal communication. Osvaldo noted being influenced in this regard by one of his own advisors, Ido Oren, as well as by the Italian political scientist Antonio Gramsci. See Gramsci, Antonio and Joseph Buttigieg, *From the Prison Notebooks* 131 (3): 71-83 (Daedalus. 2002) (“The mode of existence of the new intellectual can no longer consist in eloquence, and exterior and momentary generator of sentiments and passions, but in active involvement in practical life, as constructor, organizer, “permanent persuader” – not a mere orator, and yet superior to the abstract mathematical spirit”).

3 The author, Benjamin Goodman, moved to Panama with his family at the age of 11 months and lived there until the age of 17. His parents were nondenominational Evangelical missionaries who began living and working in the isolated community of Mortí when Benjamin was 2 years old.
Law and the Social Sciences

Law and the social sciences make for uneasy bedfellows. This is certainly true in the practice of these fields, and perhaps only slightly less so in the theoretical approaches to these disciplines. Lawyers tend to focus on individual, exceptional cases, whereas social scientists tend to generalize and focus on routine conditions. Law attempts to shape social reality, whereas the social sciences seek to understand it. Thus any interdisciplinary socio-legal work is going to face certain tensions, if not outright contradictions between the epistemologies and methodologies of its two parent disciplines. This provides challenges as well as opportunities to the scholar seeking to work with a foot in both of these fields. Legal theorizing often involves nothing more than a formal review of the history and rules relating to a particular legal outcome or social concern. The legal scholar then applies rational deduction to either criticize the way the law has progressed or to argue the merits of a particular future direction. The result is that law, which has so much impact on human life, often develops in a way that is insulated from the gritty realities which it seeks to govern. On the other hand, the social sciences specialize in identifying and understanding the ‘nitty gritty’ of the human condition. Unfortunately, they can also specialize in finding very rigid methodologies which seek unsuccessfully to mimic scientific certainty. They have also created abstract theoretical frameworks which tend to isolate the relevance of their findings to the halls of a particular wing of a particular institute of higher learning. Of course none of the strengths or weaknesses of these schools of thought would be of any concern outside of the roll calls of their own rosters, were it not for some external standard of evaluation.
The standard for this study, drawn from the principles of the New Haven School, is the resolution of social problems through the successful implementation of development policy. In pursuit of this broad task, this study seeks to minimize the weaknesses and draw on the strengths of each discipline. The goal is to identify, integrate, and produce knowledge that effectively addresses the social problems that present themselves at the intersection of indigenous rights and development practice: problems identified in the development of a community-based forest management system in an indigenous community.

Law students are not generally trained, nor do they typically engage in empirical, ethnographic field studies, though I am by no means the first to have done so. Given my concurrent pursuit of a Master of Arts in Latin American Studies, I was exposed to the basics of empirical research. This exposure itself came in a very multi-disciplinary package, an interesting mixture of classes entitling me to a Master of Arts in Latin American Studies, with a specialization in Development Studies. All of this ambiguity and flexibility actually left me free to craft my own unique study, which was shaped by my own interests and unique background. These interests do not fall under one academic umbrella, and include socio-legal studies, international law, indigenous rights, and development studies. I was guided and encouraged in my interdisciplinary studies by my mentor and thesis advisor, Professor Winston Nagan. Through his classes and our own personal interactions, he introduced me not only to the fields of international law and indigenous rights, but also to the New Haven School of Law and Policy as a compelling method for organizing and analyzing complex socio-legal issues.
The New Haven School of Jurisprudence

The New Haven approach to law and policy is a self-consciously interdisciplinary theoretical framework first conceived by Yale Law School Professor Harold D. Lasswell in the early 1940’s. He worked closely with his friend and fellow Yale Law School Professor Myres S. McDougal to develop the theory, which they referred to as "Policy-Oriented Jurisprudence." Since then, another Yale Law School professor, Professor Michal Reisman has taken up the torch of the theoretical framework, which has been referred to by a variety of names, including "communications theory," the "policy sciences," "law, science, and policy," and "configurative jurisprudence."² My own advisor, Professor Winston P. Nagan, who studied under both Lasswell and McDougal, has continued to develop the jurisprudential framework through his own writings and work, the culmination of which can be found in his soon-to-be-published book.

From the beginning, Lasswell conceived of a framework that could effectively address social problems through the analysis and facilitation of authoritative decision making, whether it be in the form of law, policy, or some other form of public decision-making. The New Haven School of Law and Policy, as it is most often referred to now, was founded on the realization that law is not a static process. Instead, in the view of New Haven theorists, it is a "continuing process through which the common interest of the members of the world community are clarified and secured....The ultimate goal [of the process is] the establishment of a world community of human dignity."³

Though based at Yale Law School, Lasswell was himself a political scientist by training, and did not hold a JD. He was widely known for his interdisciplinary scholarship, and was described by McDougal as a man whose "deepest personal commitment was to the creation of a comprehensive theory for inquiry about the
individual human being in social process." As a political scientist deeply immersed in legal practice and theory, Lasswell saw law as only one component of a broader social process of authoritative decision-making, one by which members of a community seek to define and implement their common interests. Although other sociologically minded jurists had to some extent considered the causes and consequences of legal decision-making, they had fallen short in articulating a precise, systematic way of incorporating these considerations into authoritative decision making. Lasswell insisted on the explicit recognition and analysis of a given decision as being simultaneously a reaction to a particular social process, a process being affected by other social processes, and a process which would affect future social processes. In this way every authoritative decision, indeed every human decision period, should be intentionally and systematically approached as a non-linear, multi-dimensional process. Thus, Lasswell, in partnership with McDougal, worked to develop a system of inquiry that would provide legal scholars and practitioners with an effective, efficient policy-making strategy.

Lasswell and McDougal were responding in part to weakness they perceived in the predominant jurisprudential framework of the day, legal realism. At its heart, legal realism was in turn a skeptical response to the “rules and facts” jurisprudence inherited from analytical positivism. Legal positivism had been developed and championed in the second half of the 19th century by the famous Harvard scholar Christopher Langdell. His brand of positivism viewed law as locked in a strong box of legal rules, waiting to be discovered by the legal scientist. Langdell’s arguments were challenged in the late 19th century by the writings of Holmes, who contended that the life of the law was not in rules, but in experience. Holmes understood the limitations of positivist law towards
achieving justice, claiming that as a judge, he had the ability to give any conclusion, no matter how unjust, a logical form. He also brought to the table an understanding of the importance of the individual’s perspective in legal analysis, rather than merely approaching jurisprudence from the perspective of the Sovereign or its officials.

Reisman has articulated a number of flaws inherent to the formalistic orientation of realism. A review of these flaws illuminates the groundwork on which the New Haven School developed. Reisman first contends that realist jurisprudence failed to engage the goals and backgrounds of the decision-makers. Second, in focusing exclusively on the end result, the rule of the court, realism ignored the process of legal application. Third, realism failed to consider social and political values which provide context to legal rules. Fourth, realism failed to consider the power dynamics at play in the decision making process. Fifth, realism fails to recognize that legal institutions are fluid, the result of an "ongoing constitutive process." The final failure of realism to be pointed out by Reisman was its focus on the local impact of decision-making, thus failing to consider the interaction between the local and the global.

Lasswell and McDougal drew inspiration from current thought in the schools of philosophical pragmatism and a subset of realism known as American Legal Realism. Rather than focusing strictly on rules and facts, this school viewed law as being found in what State officials actually do, exploring indicators such as culture, class, personality and crisis. The development of this school provided a context for legal scholars to self-consciously position themselves outside of the legal and policy-making system in order to systematically observe and analyze the system, an "about law" point of view. In
Despite the progress made away from strict positivism, this brand of realism still failed to provide a framework to understand law from this contextual, configurative perspective.  

In the years leading up to World War II, realism provided a predominantly skeptical view of the emerging international legal order. Moving into World War II, political realism, which was very dismissive of the role of international law, began to dominate United States policy. The New Haven School's response to these rule-based shortcomings was the development of a policy-oriented approach. "Policy" seems to be the stand-in term for the multiplicity of factors that go into the making of an authoritative decision, that is, all of the factors previously ignored by realism and legal positivism before it. As one New Haven scholar has observed, "[D]ivorced from policy and context, rules are skeletons without body and soul." Commenting on the normative ambiguity of rules, this same scholar notes that "[R]ules are commonly phrased in general and abstract ways..." and "cannot be relied on automatically to resolve a controversy without consideration of context and function."  

Rather than a singular top-down approach based solely on state power, the New Haven approach advocated an approach that balanced top heavy notions of "authority and control" with localized understandings of "perspectives" and "operations." Power was not the only value to be maximized, but instead other values needed to be considered, such as enlightenment, wealth, well-being, skill, affection, respect, and rectitude. In Reisman's words "The Copernican Revolution in McDougal's jurisprudence was in unseating rules as the mechanism of decision and installing the human being - all human beings, to varying degrees, as deciders.... McDougal committed himself to developing a theory about law that could establish and sustain a
This emphasis on the freedom of the individual through democratic governance is evident in the title to Lasswell and McDougal's seminal work "Jurisprudence for a Free Society: Studies in Law, Science and Policy."

Key to any discipline which puts human beings at its center, is the idea of perspective, and the inherent subjectivity of analysis. Rather than ignore the element of human subjectivity, the New Haven approach embraces this reality. It does so through the systematic consideration of key human variables. The first task for the scholar, jurist, or decision maker wishing to engage in the New Haven approach is to develop an appropriate "observational standpoint." Only when the observer's own subjective viewpoint is acknowledged, can the observer move forward to analyze other key human variables central to the New Haven approach. These variables are identified by: 1. Clarifying community goals; 2. Identifying intellectual tasks that will assist decision-makers to clarify their goals and to implement them in ways compatible with the common interests of the most inclusive community; 3. Considering alternatives before making decisions; 4. Identifying values; and 5. Taking into account the social context surrounding rules.

The identification of values, in particular is central to the New Haven approach, which essentially sees social behavior as the process of accumulating value and law as a tool for regulating this process. The process of accumulating value can be understood in terms of who gets what, from whom, how, and under what prevailing social conditions. Participants in this process are understood to be seeking to enrich their "value positions" through the utilization of whatever assets they have available to them in an effort to shape the outcome of a particular decision. The utilization of valuable
assets to achieve other valuable ends signifies that values can serve as both means and ends in the process.\textsuperscript{37}

The New Haven jurisprudence of Lasswell, McDougal, Reisman, and others has had the most impact on international law theory. It is not a surprise that consensus driven international law should be more receptive to the process-oriented theories of the New Haven School than the traditionally positivist leanings of domestic law. Given its lack of strong centralized institutions and enforcement mechanisms, international law, in its many forms, often relies on broad consensus among parties and the moral weight of its prescriptions. As such it is a much more horizontal, rather than a vertical, hierarchical decision-making structure. The horizontal nature of international law belies the multiplicity of actors and social contexts within which international legal norms emerge.

Under the New Haven School of thinking, international law or authoritative decision-making is understood as a process of communication.\textsuperscript{38} The communication process involves four components: 1. communicator and a target audience, 2. a prescription or "policy content," 3. the "authority signal," and 4. the "control intention."\textsuperscript{39} The process involves an authoritative institution (communicator) verbally directing a message (rule or policy content) to the community (target audience). The community serves as the basis for authority in international law. Therefore, any legitimate prescription must be accompanied by the community’s acceptance of some institutionalized control mechanism (the control intention). \textsuperscript{40}

While the New Haven approach encompasses traditional positivist authoritative structures such as the domestic legislature, judiciary, and executive, it is also flexible enough to comfortably incorporate the plurality of actors within the international legal
arena. These actors include "those formally endowed with decision competence" as well as those who may not have been formally endowed with decision competence, but "nonetheless play an important role in influencing decisions." Focusing primarily on local events and decision-making, this paper focuses on these less formal authority structures, which nonetheless play key roles in development decision-making. These include not only the State and society, but also local State agencies, development practitioners, commercial timber interests, and the indigenous community. All of these entities are also made up autonomous individuals whose own values and perspectives come into play.

In spite of its attempts to provide an interdisciplinary, comprehensive theory of law and authoritative decision-making, the New Haven School is not without its critics. Some claim that its emphasis on authoritative decision making and the need for enforcement bring it too close to the Sovereign/sanction model of positivist jurisprudence. However, drawing this parallel alone is not a legitimate criticism of the theory in the absence of an alternative model that does not rely on the concepts of authority and compliance in a discussion of law and policy. Others have criticized the New Haven approach because of its emphasis on human dignity as the central value to be pursued in law and policy. This approach has been described as an attempt to reduce international law to an instrument for spreading post-war American liberalism upon the world. This criticism would argue that New Haven jurisprudence not only forces American morality on the world, but also ignores law's "internal morality." Again, these arguments bear little weight in the absence of a viable alternative. If human dignity is not to be the central concern of law and policy that reaches across
communities, what is? Though first articulated by post-war American liberalism, the principles of self-determination, equality, and human rights, which are based upon the idea of human dignity, are by no means uniquely American ideals. The problem arises when these universal humanitarian ideals are equated with American law and policy through shortsighted analysis and the elevation of the American voice above those of the rest of the global community. This holds true not only in international law, but in international policy, including development policy. The New Haven dedication to context and balancing of values across multiple actors could go a long way towards finding and building consensus in these arenas. Broad consensus, in turn, is the driver behind policies which effectively implement the goals of sustainable development.

A final criticism worth noting that has been leveled at the New Haven approach is that its faith in the ability of scientific knowledge and systematic inquiry to produce accurate normative conclusions does not gel with our modern conceptions of chaos and uncertainty. Some charge the New Haven School with being prone to the belief that “enough information will render decisions value-free.” This criticism reflects a concern with muddying the waters between objective scientific knowledge and the political and contextual application of that knowledge in policy decision-making, the difference between science and science policy. Again, the answer to this criticism would be to consider the alternative. If incorporating scientific knowledge and systematic inquiry into policy-making runs the risk of confusing policy with science; then would ignoring science in policy-making and instead basing policy on rigid norms or arbitrary whims be preferable? The New Haven approach to inquiry focuses less on the logical empiricism of the hard sciences, and more on the configurative, yet empirical approach to
knowledge sought in the social sciences. Contrary to the contention that the New Haven approach seeks to render decision-making value-free through illusions of objectivity, the review has shown that framework actually seeks to produce policy that incorporates broad value positions and integrates multiple sources of knowledge.

**Applying the New Haven approach to development policy and practice**

**The Vicos Project**

Development policy is not often the subject of conventional jurisprudence: community development policy even less so. However, from its earliest days, the ideas of the New Haven school have been applied to the problem of development. Lasswell saw development as one of the "great and continuing problems of our present age." The Vicos Project was one of the first development initiatives to put the policy sciences framework to test by facilitating community empowerment through the transfer of a comprehensive set of decision-making skills to a rural indigenous Peruvian agricultural community. Developed by Cornell University anthropologist Allan R. Holmberg in Peru in 1952, the Vicos Project targeted an indigenous peasant community living at subsistence levels as serfs. At the time, this community and others like it had long been thought to be immune from meaningful development. The project sought to engage the basic motivations and drives of the community by giving them an economic stake in agricultural production and a role in decision making. At the forefront of the process was the importance of contextual decision making, a functionalist approach that echoed the work of such early anthropologists as Radcliffe-Brown and Malinowski. The contextualized goals of the project included not only the directors’ goals of advancing knowledge and productivity in the community, but also included the community’s own
articulated goals. These goals included being treated with dignity and the ability to make
decisions that enhanced the common interest of each community member.

According to Lasswell, the idea was to facilitate the community’s progress towards
modernization by "sett[ing] in motion a process of community-wide decision that would
survive the withdrawal of control by [the external] personnel." Lasswell and Holmberg
were committed to the formation of institutions that would allow for the greatest level of
community participation in the shaping and sharing of values. The focus on
maximizing value accumulation within the community was central to the project’s
methodology. These values included not only wealth, but also well-being, status, and
enlightenment. It was hoped that treating these values as akin to independent
variables, would result in positive movement in more sensitive value areas of affection
(family and kinship) and rectitude (religion and ethics). According to Lasswell,
progress in the project was measured as "movement toward a stable decision process
in which participation was widely shared and in which the institutional practices involved
characteristically led to realized results." Generally speaking, the results sought after
in Vicos, as well as in most development projects, can be thought of in the New Haven
terminology as "a process in which participants seek to maximize net value outcomes
(social commodities) by employing practices (institutions) affecting resources…"

The key contribution of the Vicos experiment was its facilitation of the value
accumulation process through its focus on transferring decision-making skills that
supported critical community values. The ultimate goal of the project, and of the New
Haven approach in general, was the advancement of human dignity. The Vicos
Project was ahead of its time in its normative framework. Devolution of power and
decision making to the community level is gaining traction as the most effective and arguably most normatively justifiable methodology in contemporary development policy. It is also central to the indigenous rights framework. As such, de-centralization in development policy represents a current trend in decision-making. Identifying trends in decision-making, as has been noted, is one of the key entry points of inquiry in the New Haven framework. Community forest management is a point of intersection between the legal and political trend of indigenous empowerment through indigenous rights and the devolution of power within development policy. Chapter 3 provides a review of the intersection of these two fields in the literature.

**Problem-focused Policy**

As the Vicos Project illustrated, the New Haven approach is explicitly oriented around not only understanding, but also addressing complex social problems. Social problems, as well as their resolution, are understood as resulting from human decisions on every level. The New Haven approach provides a five-tier analytical framework for dissecting policy. First, is the clarification of goal values; second, is the description of trends; third is the analysis of conditions; fourth is prediction of problems, and finally the invention and evaluation of policy programs. The New Haven approach has identified certain intellectual tasks to aid in the process of identifying and defining policy problems. These include, among others, identifying trends in decision-making, clarifying the social and legal context, identifying key decision-makers, clarifying values and value conflicts, prediction of problems. This concern for the sequential impact of policy decisions also requires an emphasis on the informed prediction of problems, in order to minimize negative intervention. Problems generally are the result of conflicts of values, which reflect competing claims and expectations, with one side making the claim, and the
other denying or opposing the claim. Thus effective problem solving policy can be seen as thoroughly rooted in empirical methods. Because of the complex nature of human problems, the empirical methods advocated are by necessity multi-disciplinary.

Lawmaking is essentially a form of decision making, whether it be in the form of rules, principles or policies. Authoritative decision-making is usually an attempt to remedy a perceived problem. Consequently, when a decision is made, there is a general expectation that it be effective in addressing the perceived problem. Conventionally speaking, in order to be effective, a decision must be accompanied by both power and authority. In the language of the New Haven School, power is what gives a decision its "controlling intention and effect." In order for the power to be effectively engaged, it must be backed by authority. Authoritative decision, in turn is derived through a process legitimized by reflecting the shared expectations of the members of a community about how decisions should be made.

The New Haven approach emphasizes that a given problem emerges from a particular social context. Any response to the problem should therefore emerge from an understanding of the context. Not only must the response emerge from the context, but the sought after solution must also be understood in context. The solution must be understood in terms of its impact on the particular community from which the problem emerged, as well any collateral impacts the policy decision may have had. However, communities should not be viewed in isolation, but rather as belonging to a hierarchical network of "interpenetrating communities" that span from the local to the global.

**The Problem of Development: To Be Sustainable or Not To Be Sustainable?**

If development policy is understood as a response to the problem of development, what then is the nature of the problem? The problem of development is
essentially whether it can be accomplished sustainably or not. Sustainable development is understood broadly as “the satisfaction of human needs in a fashion that does not impede the ability of future generations to also satisfy their needs.”

Emerging from the industrial revolution, the western world had a newfound sense of control of the natural world. The environment was viewed as a closed mechanistic system that could be manipulated and exploited for the benefit of human material development with minimal negative consequences. However, by the middle of the 20th century, awareness began to grow among the public, scientists and policy makers that the environment was a dynamic, multi-scale, open system, over which humans did not have precise, mechanistic control. It became evident that rather than absolute control over the environment, humans were an integral part of the natural system and depended upon it. As early as 1969, the United Nations recognized a "rising [environmental] crisis of worldwide proportions." Since then, a series of international agreements have worked to create a sort of global consensus regarding the core values of sustainable development. Thus, over the last 40 years, an international discourse has been developing, driven largely at the State level, but also involving a diverse set of non-State actors.

The sustainable development discourse centers around two broad international interests or values. The first is the desire to fight global poverty and maximize human potential. The second is the desire to conserve the environment for human survival and fulfillment. These values have also been conceptualized as the three "interdependent and mutually reinforcing pillars," of economic development, social development, and environmental protection. Of course, widespread agreement in principle does not
necessarily translate to agreement in practice, and in the aggregate, human development continues to surge forward along unsustainable trajectories.  

   International development policy has been shaped by many different institutional processes over the last five decades. One of the first articulations of international development policy was in the 1972 Stockholm Declaration, in which it was recognized that humans could "do massive and irreversible harm to the earthly environment on which our life and well-being depend." In 1982, the UN released the Declaration on the Right to Development. In 1992, the United Nations Conference on the Environment and Development (The Rio Conference) brought global attention to specific problems of unsustainable human activity through its release of the Rio Declaration. The first principle of the Rio Declaration clearly reflects the New Haven commitment to anthropocentric policy, declaring unwaveringly that "[h]uman beings are at the center of concerns for sustainable development." Principles 8, 10 and 22 convey principles that are particularly relevant to sustainable development practices among indigenous people. They speak to the values of education, informed decision making, and local participation that are all central to the respecting of indigenous rights in development. Discussions regarding the need for authoritative mechanisms at the Rio Conference ultimately led to the establishment of the U.N. Commission on Sustainable Development.

   A true commitment to sustainable development, as with human rights law and international law, generally requires a conscious rejection of what Lasswell called the "syndrome of parochialism." Rather than a mechanistic, reductionist, parochial approach to the complex social-environmental problems of sustainable development,
the New Haven approach provides a dynamic, system-based, cross-cultural framework from which to address the problems. The authoritative decision-making process of sustainable development is often conceptualized at an international level with State actors and agencies; however the actual decisions that make a difference are often made at the local level, among local communities and traditional institutions. It is not only legislators, judges, executives, or large State and private institutions that exercise decision-making authority. Even these powerful institutions ultimately derive their authority from some level of community recognition. Recognition of the complex socio-environmental dynamics of sustainable development calls for an understanding not only of the interpenetration of communities from the global to the local, but also of the deep interdependence of people and the environment. This is not just the relationship between people and the environment in the grand scheme, but an understanding of the way people think about and interact with the physical places they inhabit.

The New Haven School's deep concern for the promotion of human dignity demands "both an ecological perspective and a futurist concern with assuring the life-chances of subsequent generations." In order to make progress in addressing the problems of development, international sustainable development norms must be based on a global concept of community "premised on the interdependence of the entire earth-space arena in which people interact." From this perspective, sustainable development is an integral component in the overriding question of the survival of the human species known as the "anthropocene challenge," which has received significant attention from New Haven scholars. Indigenous societies have managed to survive
and adapt in relative harmony with nature and in the face of the most challenging of social conditions. As the global community considers the broad challenges to its very survival, indigenous communities beckon to be understood, respected, and emulated.

**Indigenous Communities as Participants in Development Policy**

Indigenous communities are key actors in the creation and implementation of development policy, especially efforts that incorporate conservation initiatives under the umbrella of sustainable development. Many development initiatives are not backed by rigid legal norms. This is especially true of international development norms and programs which evolve from broad trends across multiple disciplines and nationalities. However, these policies and practices come backed by enormous financial, institutional and political weight. Development implies change, as a response to both internal and external forces. From a local perspective, development often involves an inducement towards change by external parties.\(^83\) Whether this inducement is in the form of binding legal norms, or is induced through financial incentive, may not make much difference. In fact in regions that lack consistent implementation and enforcement of national legal policy, the inducement that comes from promises of material gain may be the most powerful. As Lasswell explained, "No matter how ambitious the goals of development may be, changes are usually a step-by-step process. The overall problem of a strategy of induced innovation is to persuade specific persons at particular places and times that they will be better off by adopting new rather than repeating old social practices. Thus the aim is to change perspectives and operations, and eventually to consolidate the perspectives and operations conforming to the innovation sought."\(^84\)

As communities interact with development practitioners, they essentially become participants, intentionally or unintentionally in the creation of international development
policy norms. For example, forest-dwelling indigenous communities certainly participate in authoritative decisions making when it comes to the policy question of whether tropical rainforests are managed sustainably or not. Thus, it is important that policymakers enter this world, and respect the indigenous voice, the local voice, in the creation and implementation of policy norms.

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5 Id. Lasswell served as both president of the American Political Science Association and the American Society of International Law. See Lasswell & Myres McDougal, Jurisprudence for a Free Society: Studies in Law, Science and Policy 803-33 (1992) (Lasswell VIII) (“A distinctive emphasis in Lasswell’s orientation to problem-solving is grounded in the wisdom that every discipline can provide methods and insights which may be of use to those who can use and/or understand them. Hence his injunction to become multi-disciplinary, and no one heeded this advice better than Lasswell himself.”)

6 Supra note 5.

7 Id.

8 Id.; See also Lasswell VIII, supra note 7 at 206 (“if legal education in the contemporary world is adequately to serve the needs of a free and productive commonwealth, it must be conscious, efficient, and systematic training for policy-making”) (emphasis added).


10 Nagan, Configurative.


13 Oliver Wendell Holmes, The Path of the Law, 10 HARV. L. REV. 457 (1897).

15 See Reisman, supra note 17 at 936; Chen, supra note 5.

16 Id.

17 Id.

18 Id.

19 Id. at 937

20 Id.

21 Nagan, Configurative.

22 Id.

23 Id.

24 Id.


26 See Hathaway, 32 Yale J. Int’l L. 553.

27 Chen, supra note 5, at 12.

28 Id. at 13.


30 Lasswell VIII, supra note 7 at 803-33.

31 Reisman, supra note 17, at 937.

32 Lasswell VIII, supra note 7.

33 See Lasswell VIII, supra note 7, at Preface.

34 Nagan, Configurative.


36 Harold D. Lasswell, A Preview Of Policy Science 18 (1971) (Lasswell VII)


39 Lasswell VIII, supra note 7.


41 Reisman supra note 17 at 12; Marong, 16 Geo. Int'l Env'l L. Rev. 21.

42 Marong, 16 Geo. Int'l Env'l L. Rev. 21

43 J. Brunnée & S.J. Toope, International Law and Constructivism: Elements of an Interactional Theory of International Law, 39 COLUM. J. TRANSNAT'L L. 19, 100, 209-210 (2000) (indicating that “law cannot be understood as a fully realized system sprung full-born from the head of a sovereign, or bequeathed intact from the implicit terms of a social contract. Law can exist by degrees, so it is possible to talk about law that is being constructed.”).


45 Id.

46 Id. (noting the ongoing debate over these two perspectives); See, e.g., Rescuing Science from Politics: Regulation and the Distortion of Scientific Research (Wendy Wagner & Rena Steinzor eds., 2006); Wendy E. Wagner, The Science Charade in Toxic Risk Regulation, 95 Colum. L. Rev. 1613, 1639-40 (1995).

47 Nagan, Configurative.


51 Nagan, Communications Theory.

52 Lasswell VI.

53 Holmberg.

54 Id.

55 Holmberg.

56 Lasswell VI.


58 Nagan, Communications Theory.

59 Id..

60 Nagan, Configurative.; Lasswell VI.
See Lasswell, supra note 7 at Preface; Nagan, Configurative.

Nagan, Configurative.

This widely accepted definition was first put forth in the “Bruntland Commission.” See World Commission on Environment and Development, Our Common Future 42 (1987); Bratspie, supra (“A situation becomes unsustainable when natural capital is depleted more rapidly than it can be replenished. Thus, at a minimum, sustainability requires that human activity not exceed the regenerative rate for natural resources and capacities.”)

Clarke, 46 Nat. Resources J. 571


Marong.


Stockholm Declaration, P. 6; Bratspies.


Nagan, Configurative.

Batt & Shorta, supra note 37.

Lasswell WPO.

Lasswell TAO.


Nagan, Configurative.

Id.

Lasswell VII, at 32.
CHAPTER 3  
COMMUNITY FOREST MANAGEMENT, INDIGENOUS COMMUNITIES AND INDIGENOUS RIGHTS

Due to the extent of forests inhabited by indigenous people in Latin America, an understanding of the dynamics of forest management among forest-dwelling indigenous communities is essential to the success of conservation and sustainable development efforts. Approximately 540 million indigenous people live in Latin America, representing 11% of the total population. According to FAO estimates, Latin America and the Caribbean retain around 22% of the world’s remaining forest cover, and 57% of the world’s primary forest cover (FAO 2011). The low estimate of official indigenous control of forest in developing countries is 22%, that is, without accounting for areas under de facto control by indigenous communities. In Latin America, 80-85% of protected areas alone are inhabited by indigenous people. Researchers point to a significant positive correlation between the geographical distribution of the remaining forests in Latin America and the distribution of indigenous communities, including the areas of highest biodiversity. The same correlation holds for the distribution of the world’s poor communities. This statistical overlap underscores the reality that indigenous communities are among the poorest in Latin America, ranking at or near the bottom of all development indicators. These correlations are likely to persist as the proportion of forested land under the control of local communities steadily increases.

Community-Based Forest Management

Among scientists, conservationists, international development practitioners, and national policy makers, there is a growing recognition of the importance of involving local communities in the management and conservation of the forests in and around which they live. Community management of forests is thought to hold promise both for
the conservation of forests and biodiversity, as well as for improving the livelihoods of low income rural communities. Given these trends in deforestation, conservation, and development a better understanding of the dynamics of community based forest management among forest-dwelling indigenous communities is crucial to the success of conservation and sustainable development in the coming years.

Given the lack of focus on timber management throughout indigenous communities, the question becomes how to begin to approach and understand the issues. The New Haven framework provides a compelling entry point into the complex legal, social and political dynamics of conservation and development among indigenous people. As a subset of human rights, the indigenous rights framework has emerged as a method of formalizing and applying human rights values within a subset of experiences common to many indigenous people, including forest-dwelling indigenous communities.

In the wake of heavy global deforestation and rapid development, community management of forests is evolving as a means of support for the development of rural communities through sustainable use of forest resources. Forests now cover around 30% of the earth's land area (FAO 2006), but millions of hectares are lost every year, mainly as a result of conversion to agriculture, although there are many other complex factors at play. 10 Despite these continuing losses, over 500 million people globally continue to depend heavily on forests for their livelihoods. 11 Increasingly, policy makers, development agencies, and local communities themselves are realizing the importance of actively managing forest resources on a local level, rather than through strictly centralized mechanisms.
Though definitions of community forestry abound,\textsuperscript{12} it is important to provide a well-informed, useful set of characteristics for understanding the practice in the context of modern development initiatives. These characteristics include: (1) a degree of responsibility and authority formally vested in the community by the government; (2) a central objective being to provide local communities with social and economic benefits from the forests; (3) ecologically sustainable forest use as a central management goal and commitment of the community.\textsuperscript{13} Communities vary in their capacity to successfully manage forests without outside support and intervention, but as the above characteristics suggest, nearly all management projects involve some degree of external management and support. This paper utilizes the term “community-based forest management” rather than “community forest management” to designate localized management of forests which relies to some extent on externally driven or supported development projects, rather than forest management by communities without external support. Although isolated forest dwelling indigenous communities have to some extent managed the forests around them without external support for generations, contemporary conservation and development theory and practice is instead concerned with modern, complex, multi-stakeholder management.

Community-based forest management has implications for the conservation of natural resources,\textsuperscript{14} cultural identity,\textsuperscript{15} local livelihoods,\textsuperscript{16} and the economic development\textsuperscript{17} of local communities. When framed in economic terms, three main productive categories have emerged: timber, non-timber forest products (NTFP) and most recently ecological forest services. These categories reflect differences not only in the primary source of income generation, but also in the scale and complexity of
management activities. Forest dwelling indigenous communities vary in their relative participation in these separate production categories. Most management projects include some level of NTFP development, but whether timber is actively harvested varies significantly with economic and legal factors. Both of these systems profess the goal of ecological sustainability, promoting the perpetuation of ecosystem integrity while continually providing income from timber and non-timber forest products.

While the sustainable management of all of the resources of a tropical forest is important to its long-term health, the sustainability of timber harvesting is at the core of the very existence of many remaining tropical forests. Next to the land itself, whose value is often realized only through deforestation, timber has historically been the most valuable economic asset associated with forests. Sustainable timber management implies the long term, if not perpetual, availability of timber as a source of income for its owners. As such, the successful planning, implementation and management of sustainable timber harvest models could be key, not only to the continued conservation of tropical forests, with their many known and unknown resources, but also to the continued economic development of forest-dwelling indigenous people. These are the reasons this paper focuses on sustainable timber management, albeit at the risk of overlooking the forest for the trees.

The ecological variables of tropical timber management in Latin America are relatively unknown. Sustainable timber management of any kind in Latin America, rather than unrestricted extraction of select tropical species, is a recent phenomenon. The long term effects of harvesting in tropical forests are still unknown raising doubts as to whether commercial timber production can ever be ecologically or economically
sustainable. 22 Relatively little is known about tropical timber species, such as the nature of regeneration and recovery processes, or the effects of tree removal on forest structure, biodiversity, genetic diversity, and ecosystem processes. 23 Although over the long run, tropical forests subject to logging inevitably lose substantial biodiversity, 24 tropical forests have also shown the resilience and capability to significantly regenerate even after logging has taken place. 25

The question of whether tropical timber management is sustainable is likely to hinge on social and economic factors that influence the nature and extent of timber extraction, rather than on technical or ecological questions. 26 Even crucial technical and ecological questions become irrelevant in the face of widespread deforestation or the lack of any management structure. In spite of the unknown ecological variables and concerns surrounding tropical timber management, there are some human variables that are abundantly clear. In the absence of successful sustainable forest management systems, or designation as protected areas, tropical forests are usually cleared and converted for agricultural uses. Protected areas themselves can be problematic as they do not adequately account for the presence of local people who have deep historic, cultural and economic ties to the forests. These strict conservationist tactics often exacerbate poverty and lead to conflict. They have also been shown to often not even effectively achieve their conservation goals. Even so, some scientists, uncomfortable with the uncertainties of sustainable timber management models, continue to call for the expansion of strictly protected forest regions. 27 The key word is “successful,” which may seem redundant when paired with “sustainable.” However, a system may be sustainable in its theory and design, yet never be successfully implemented or managed.
Increasing the likelihood of a successful sustainable timber management plan requires a thorough commitment to working with and understanding the local managers. Forest-dwelling indigenous communities in particular as local managers, bring many unique variables to the table.

One of the principle logging techniques to have evolved in the context of sustainable tropical timber management is the practice of reduced impact logging (RIL), which consists of a series of guidelines designed to minimize damage to the overall forest ecosystem, promote regeneration, and protect workers. Along with the many other uncertainties surrounding logging in tropical forests, the long term effects and successes of this practice are largely unknown and increasingly questioned. Nonetheless, RIL represents the primary technical approach behind sustainable timber harvesting policy throughout Latin America for government actors, NGO’s, and development agencies. From a technical standpoint, RIL is a step in the right direction towards sustainability, but its primary benefits come from the knowledge and training invested in local managers. RIL programs generally train local community members in a variety of silvicultural and management techniques, such as conducting pre-harvest forest inventories, road and skid trail planning, pre-harvest vine cutting, and directional felling. Independent of the long term viability of these practices, the technical knowledge gained, and the experience and investment in protection and management of the forest may prove, for local community members, to be the most valuable contribution of RIL to the future of sustainable community timber management. This investment complements local people’s intricate knowledge of the local ecosystem.
along with what anthropologists have noted as the “long-term commitment to place” exhibited by many local people in relation to their home territory.\textsuperscript{32}

However, the benefits of RIL to local communities are debatable.\textsuperscript{33} In order to maximize the benefits accrued to the local communities, RIL planners and managers must approach local community members not just as savvy cheap labor, but as partners. Recent research has shown that there are distinctive elements to successful forest-related partnerships with local communities.\textsuperscript{34} These elements include 1. fairly-negotiated partnership objectives, 2. active involvement of the public sector with impartial brokers, 3. equitable and cost-effective institutional arrangements, 4. sufficient and equitably-shared benefits for all the parties involved, 5. consideration of socioeconomic drawbacks, and 6. incorporation of measures to maintain sustainable exploitation levels. These six elements emphasize a multifaceted, landscape approach to community partnerships which incorporate a basket of forest-related goods, as well a strong awareness of the historical, socio-economic, political and spatial contexts in which local communities are embedded.\textsuperscript{35} As if on cue, we now move to a more focused consideration of the unique contexts in which forest-dwelling indigenous people in Latin America are situated.

**Indigenous Communities and Forest Management**

Within the field of tropical conservation and development, there is a lack of research and understanding of the unique dynamics of community forest management among forest-dwelling indigenous people. The unique historical, cultural and political context of indigenous communities in Latin America poses challenges and opportunities to the growing field of community based forest management, both in theory and in practice. However, these challenges and opportunities are not well understood.
Research and theory focused on community forest management is a relatively new and growing field.\textsuperscript{36} Even though most forest-dwelling indigenous communities operate within unique legal, social, and territorial frameworks, with a few notable exceptions,\textsuperscript{37} most scholars writing on community based forest management lump these communities with all the other rural communities involved in forest management. Thus, there is a particular lack in scholarly attention to the unique challenges of indigenous community managed timber projects in Latin America. Scholars and policy makers are also recognizing that it is difficult to generalize findings regarding community based natural resource management and conservation initiatives across the spectrum of social and natural environments. Each case is context-specific, and does not necessarily fit well within established typologies.\textsuperscript{38} These realizations emphasize the crucial need for a more nuanced understanding of the conservation and management dynamics within forest dwelling indigenous communities in the tropical forests of Latin America.

**Indigenous Identity**

Historical indigenous management practices may contribute to a sense of identity and empowerment in indigenous communities through their capacity to manage their own forests, yet its real value is questionable in the complex, multi-stakeholder, modern world in which indigenous communities inevitably find themselves. It is the present social and economic capacity of any given community that will likely determine its success in managing its forests, rather than the success of generations long past in a world that no longer exists. Even so, the extensive ethnoecological and ethnobotanical knowledge maintained by indigenous people is undisputed.\textsuperscript{39} The complex knowledge of forests that forest-dwelling indigenous people possess continues to be documented\textsuperscript{40} and often misappropriated.\textsuperscript{41} This body of knowledge, contrasted with "western-style"
scientific knowledge, is often referred to as traditional knowledge (TK). The implications of this knowledge for community forest management are just beginning to be explored.\(^{42}\) There is a growing sentiment among western intellectuals and scientists that conventional scientific approaches to resource management are inadequate to deal with the environmental and social complexities of these regions.\(^{43}\) In contrast, the benefits of more traditional ways of approaching knowledge are gaining favor alongside a growing recognition of the depth of useful, context specific knowledge possessed by indigenous people.

As we move towards an understanding of community-based timber management within the framework of indigenous rights, it might be best to take a step back and ask: Who are “Indigenous Peoples” and why do indigenous peoples get special rights?” Regarding the first question, respected indigenous rights advocate and legal scholar, James Anaya\(^{44}\) cites the following definition as the most often used in the international legal and political forums:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.\(^{45}\)
While this definition in particular, and the very idea of definition in general, is not without issues, it provides a widely accepted base upon which to build legal principles. Imbedded in this definition itself are key points which inform and frame the discussion that is to follow regarding indigenous rights and development. Within this definition are the seeds of the issues and challenges which indigenous peoples often face, and the stages on which their interactions with external forces are often set. The term “indigenous rights” or “indigenous people’s rights” can be misleading in that it suggests that indigenous people possess or should possess special rights not possessed by other social groups. An alternative, and arguably more accurate understanding of the terms, would be that indigenous rights represent the contextualization of human rights norms to the unique circumstances of indigenous people. This development of the indigenous rights framework is discussed in more detail below. Indeed, historically and culturally indigenous people and societies have very distinctive features.

**Historical Considerations**

The concept of a cohesive community with shared values and preferences, inherent in any discussion of community forest management, is not without its problems. However, by nature of their shared history, ethnicity, family relationships, customary norms, culture, geographical concentration and isolation, the members of any given forest-dwelling indigenous community are as likely as any community to share similar values and preferences relevant to forest management. Even so, within these communities there are bound to be significant differences in values and use of natural resources, whether by age, group, gender, family or other classification. Even a given individual is likely to have conflicting values related to his or her use of forest resources. The point is not that indigenous people or communities are all the same, but
that forest-dwelling indigenous communities usually self-identify and are identified by others as a collective unit distinct in many ways from other types of communities. Social scientists recognize that shared community identities such as these can be important in achieving concrete social and resource objectives.\textsuperscript{48} This is not to say that a perfect understanding of these sociological patterns is necessary to arrive at any meaningful conclusion regarding conservation and development. Even if these patterns were static and fully understandable by external stakeholders, the values and motives of these external stakeholders are certainly not unified, consistent or uncompromised. It is in this ever shifting and unknowable web of relationships and values that the indigenous rights framework emerges as a guiding principle for interaction with forest-dwelling indigenous communities.

The pre-Columbian history of the nature and extent of indigenous people’s relationships with forests was for a long time largely a matter of speculation and misinformed idealization of pre-Colombian indigenous societies.\textsuperscript{49} However scientists have made some basic discoveries which can inform our understanding of historical indigenous management of forests.\textsuperscript{50} These pre-Columbian forest management practices include swidden agriculture, succession management of agricultural plots, harvesting for construction and medicinal uses, burning to improve plant and animal distribution, and planting and enriching soil for the purpose of creating forest patches.\textsuperscript{51} To the extent that a particular indigenous community continues in these forms of traditional forest management, it is unclear whether it is as a result of cultural knowledge passed down over the generations, or whether it is a practice that has developed in more modern times in response to changing circumstances. Lest we
forget, when European powers began colonizing and decimating indigenous populations in the 16th century, they also physically expropriated much of the forested areas of Latin America. These areas were home to an estimated 50 to 100 million indigenous people prior to colonization, 90 to 95% of whom were wiped out by war, displacement and disease. What the colonizers did not immediately physically expropriate they did so legally and ideologically under the power of the Church, the Crown, and continuing today, under the power of the State. Under these conditions, many ancient customary tenure and management practices were lost or seriously undermined.

**Balancing Livelihoods, Conservation and Development**

Given the strong correlation between the location of impoverished communities and forest, conservation of forests is inextricably linked, and often at odds with development. Paradoxically, the livelihoods of poor people can be both threatened by deforestation, as well as dependent upon it. This tension sets the stage for conflicting interests not only between conservationists and the indigenous community, but within the communities themselves. What must be understood further are how the local assumptions and values concerning development contrast with the “dominant discourse” of international financial and development institutions. In contrast to this dominant discourse, is one that could be thought of as a "livelihood" discourse, which is held and developed by local actors in the community.

Inherent to the livelihood discourse is the idea of community empowerment, which Horton (2007) defines as “pathways that reinforce the power, meaning and integrity of local settings.” The key difference between the two discourses is that the dominant discourse sees local agency and empowerment in strictly instrumentalist, utilitarian terms whereas the livelihood discourse sees local empowerment as intrinsically
Horton focuses on the interaction of the livelihood discourse with the dominant, since the eco-centric is predominantly an American and Western European phenomenon. The livelihood discourse tends to be that conveyed by grassroots and local actors and is critical of development models which emphasize GDP growth and aggregate national figures. The dominant discourse, while adapting over time to include a "post-Washington Consensus" incorporation of sustainable development still relies on the traditional values and assumptions of development: economic growth, free markets, efficiency, rationality, and individualism. In the case of forest-dwelling indigenous communities, not only the livelihood, but the very identity of an individual, family, and community is inextricably interwoven with the existence of a healthy forest. This essential connection does not guarantee that these communities will not degrade their forest homelands, but it may explain why studies are identifying positive results with community-based forest management among indigenous forest-dwelling communities, even when these forests face high external pressure for deforestation.

**Indigenous Peoples and the Environment**

Climate change and environmental degradation often have an especially harmful effect on indigenous communities. This is due to the persistence of subsistence level living that depends heavily the existence of intact natural ecosystems. The relatively undisturbed natural spaces in which indigenous communities are often found as central to their very survival, whether cultural, economic, spiritual or outright physical. Large scale development and globalization that is destructive to the environment has often resulted in widespread disruption of traditional indigenous livelihoods and culture. In extreme, but not infrequent circumstances involving chemical spills and nuclear testing, the term 'biological genocide' has even been used to describe the outright destruction of
whole indigenous communities due to the destruction of the environment.\textsuperscript{63} Thus, the protection of the indigenous relationship to the environment and their traditional territory is essential to both the protection of the environment and to the general advancement of respect for indigenous rights.

\textbf{Indigenous Rights and Community Forest Management}

The correlation between forest-dwelling communities and forest conservation is highest among communities who having gained legal recognition and control of their land through national and international struggles, are invigorated by the indigenous rights movement. Indigenous rights expert James Anaya has identified the two pressing concerns for indigenous peoples. Each of these has important implications for development projects among indigenous peoples, including projects which promote community forest\textsuperscript{64} management. The first is the need for external actors who are seeking to engage with communities to engage in a process consultation with the local indigenous communities, and to achieve consent from these communities before moving forward with projects. The second issue is the need for nondiscrimination in law and policy towards indigenous peoples. Dedication to nondiscrimination can cut both ways though, as non-indigenous local communities often feel that they receive the short end of the stick when special measures are taken to support indigenous groups. On the issue of nondiscrimination Anaya’s own views come out when he takes lengths to make the point that indigenous rights are not new or unique human rights, but instead are human rights applied to the unique contexts of indigenous communities. In other words, it is not that indigenous communities are being given special privileges, but are instead only being guaranteed basic human rights. Given the unique context of indigenous peoples, as reflected in the definition provided above, the assurance of their basic
human rights requires a certain amount of selective treatment. While Anaya and others make a strong argument for the special treatment of indigenous communities, the problem of perceived discrimination remains and will only grow stronger as indigenous communities continue to assert their often contested “rights.” So far, indigenous communities in Latin America have not made outright calls for separation and complete sovereignty, but even as the relative position of sovereignty continues to shift in their favor, the limits of their “contextual” human rights will be tested.

Support for legal sanctioning of the rights of indigenous communities to their traditional territories in Latin America received a major boost from the International Labor Organization Conventions (ILOC) #107 in 1957, and its significant revision #169 in 1989. This convention produced a document pronouncing that indigenous people had certain previously unrecognized rights. These rights included, among others: the right to the communal ownership of their ancestral lands; the right to the exercise of their customary laws; the right to represent themselves through their own institutions; the right to not be removed from their lands except under very exceptional circumstances and with compensation; the right to be consulted and to participate in decision-making processes that affect their way of life, and finally, the right to management of the natural resources on their territories. Although powerfully symbolic, enforcement of these rights was lax and largely left up to the individual countries.

The international legal framework of indigenous rights first emerged within the UN human rights structure of the Human Rights Committee (UNHRC), as this body worked in part to advance and enforce human rights norms in situations involving indigenous
communities. This is the treaty-based multi-lateral organization responsible for enforcing the International Covenant on Civil and Political Rights (ICCPR). Articles 1 and 27, in particular, provide for special rights of indigenous groups and their members.

In 1982 another significant project was initiated by the United Nations Working Group on Indigenous Populations. The initial result of this effort was the development of the United Nations Draft Declaration on the Rights of Indigenous Peoples, which developed and codified many of the principles expressed in the ILOC document. After a long and arduous process of negotiation, a draft of the document was completed in 1994. However, not until 13 years later, and 25 years after the process was first initiated, was the Declaration finally approved through a UN resolution in 2007. Article 3 of the Declaration gives indigenous people the right to self-determination and Article 9 guarantees the right to belong to an indigenous community and live in accordance with indigenous customs and traditions. Further, Articles 19 and 20 recognize the right of indigenous people to participate in all levels of decision-making in matters concerning them. Article 26, in particular, speaks to the relationship of indigenous communities to their land and resources.

In 1992, the Convention on Biological Diversity was passed, giving indigenous peoples the right to share benefits derived from biological and genetic resources belonging to them. This has led to one of the most recent developments within the indigenous rights framework, guaranteeing intellectual property rights to certain forms of traditional knowledge. This came about as a response to the growing incidents of misappropriation of indigenous knowledge regarding the therapeutic benefits of various
plants by parties connected to large pharmaceutical companies in a practice that has come to be known as biopiracy. 80

Enforcement of rights guaranteed under international law is never a sure thing, especially for indigenous communities with limited resources and social capital. However with the support of indigenous lawyers, NGO’s, and non-indigenous supporters, indigenous communities around the world have made significant strides in the enforcement of their rights both in international tribunals, such as the Inter-American Court of Human Rights, and in domestic courts. The international attention and support given to indigenous communities has served to pressure States to formally recognize indigenous land tenure rights in many cases. However, many communities’ land rights are not formal, and even the formal rights many communities do have are tentative, especially when tested against the power of the State and its perceived conflicts of interest. As Murphree (1993) predicted, the key to actual meaningful involvement of local communities in the planning and practice of resource management has proven in many cases to mirror the extent to which the local communities become proprietors of their own land and resources. In the case of isolated, disenfranchised forest-dwelling indigenous communities, the main impetus to the recognition of their proprietary rights is through the indigenous rights framework.

A key function of the ownership of land and resources is the ability to restrict uncontrolled access and exploitation of resources. 81 In this way the tragedy of the commons can be minimized. Many forest-dwelling indigenous communities in Latin America remain without these rights, either formally or in practice. Even those with formalized rights, having already experienced some practical benefits, will benefit even
more with equitable partnerships in timber management. These partnerships are encouraged and made possible by the dignity and respect afforded through the indigenous rights framework, both within the community and with external stakeholders.

Decades of development intervention in Latin America spurred by the neoliberal agenda expressed in the "Washington Consensus" has left a mixed legacy. Part of this legacy is the general disregard for equitable inclusion of the indigenous voice in development policy. To the extent that indigenous movements have taken the national stage, it has usually been as a counterpoint to the general trends toward globalism in State policy. This can be seen in the 1990 Ecuadorian "General Uprising" and the Bolivian "March to La Paz," which are part of a broader recognition of the multicultural dynamics of national citizenship.\textsuperscript{82} Formal recognition of indigenous rights through constitutional reform has occurred in countries such as Nicaragua (1987), Brazil (1988), Colombia (1991), Ecuador (1998), and Venezuela (1999).\textsuperscript{83}

The growth in the recognition of the unique circumstances and needs of indigenous people in national law and policy has been mirrored to some extent by changes in priorities in development policy. Whereas the World Bank (WB) and the Inter-American Development Bank (IADB) had been criticized for their policies toward indigenous people in the 1970s, moving into the 1980s, they also began to take into account indigenous rights in their policy by enacting special guidelines.\textsuperscript{84} However, most development assistance is conditioned on adherence to conditions favoring specific institutional and economic models which are often at odds with indigenous rights values. This is most evident in development theory's emphasis on market-based reforms, such as the leveraging of personal private property.\textsuperscript{85} While land titling and registration
projects have been the staple of international lending institutions such as the World
Bank and the Inter-American Development Bank, these projects rarely take into account
the common property regimes of traditional indigenous communities. Typically, these
land titling mechanisms have been based on mechanisms foreign to most indigenous
communities. However, though most indigenous communities have a communal
understanding of their land, and do not actively engage in the buying and selling of their
land, it is naively inaccurate to suggest that they have no concept of ownership and title.
For nearly a century, anthropologists have recognized the presence of sophisticated
customary legal systems within indigenous communities, which protected social needs
through norms and prescriptions. Given that the very identity and survival of many
indigenous communities is tied to their relationship with their land, this lack of
consideration of indigenous concepts of property in development practice has left many
indigenous communities alone in the struggle to face the challenges of rapidly changing
economic and environmental realities. The human rights community has led the way in
assisting indigenous communities to face these struggles.

In addition to the international legal regimes listed earlier that have helped to put
broad human rights norms into a context relevant to indigenous communities, there
have also been a series of treaty-based human rights decisions that have dealt with
cases specific to the Americas. The Inter-American Human Rights System has
produced key decisions which have helped to shape the national and international
dialogue regarding the place of indigenous communities in development. The Inter-
American System is a treaty-based regional human rights system formed by the
Organization of American States (OAS). The system includes two principle quasi-
legal bodies, the Commission and the Court, and operates principally under the American Convention on Human Rights, which was adopted in 1969 and came into force in 1978. Both the Commission and the Court have passed down decisions that have helped to define and uphold a spectrum of rights relevant to indigenous development. These include rights related to the relationship between religion and land, the recognition of communal property. As early as 1972, the Inter-American Commission on Human Rights (Commission) had made note of the need for States to take special measures of protection in order to secure the human rights of their indigenous populations. One of the first Commission cases to actually help to define the notion of special measures in the development context was the 1977 case Diana Ortiz v. Guatemala. In Diana Ortiz, the Commission determined that the denial of a person’s access to lands significant to that person’s practice of religion was a violation of her human rights.

The Inter-American Court of Human Rights (IACtHR) has also recognized the right to communal property as a human right under the Inter-American Convention. This monumental decision was made in the case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua. The Nicaraguan State had provided for formal recognition of indigenous rights, but had not taken steps to ensure that these rights were respected in practice. This Court's decision made the important distinction that the terminology of human rights agreements have an autonomous meaning derived from human rights case precedent, rather than from domestic law. For example, use of the word "property" in human rights documents includes communally-held indigenous property, even if a particular signatory State’s legal system does not. The Court also held that when in the
absence of real title under State law, the mere possession of land by indigenous communities should be sufficient to signify ownership of that land.\textsuperscript{95} The \textit{Awas Tingni} case reiterates the idea that true protection of human rights requires “special measures of protection” to be taken by States, in order to assure the protection of the human rights of their indigenous peoples.\textsuperscript{96}

Another important decision was handed down in the \textit{Saramaka Case}, which affirmed the right of indigenous people to the use and enjoyment of natural resources that lie on and within the land, including the sub-soil natural resources.\textsuperscript{97} The idea expressed in State law and policy that indigenous people have only a privilege or permission to use and occupy State land, rather than full property rights, is common throughout Latin America. This trend in State decision-making represents the heritage of colonial oppression and paternalism, and continues to lead to conflict and lack of legal certainty over valuable resources.

Research confirms the importance of community-based management of timber for the conservation of valuable forest resources as well as for the economic development of forest-dwelling indigenous communities. Further investigation also confirms the importance of forming strong partnerships between these communities and stakeholders at multiple levels. More and more the developed world is realizing that “it takes a village” to achieve conservation and sustainable development. However, the village is not the isolated, marginalized, misunderstood and mistreated village of yesterday, but instead is the empowered, holistic, and dynamic village of tomorrow – the village that is possible through a commitment to greater respect for indigenous rights in community-based forest management.


7 Davis.


12 Charnley & Poe.

13 Id.

14 Porter-Bolland.
Charnley & Poe.

Chomitz 2007, Byron & Arnold 1999


Charnley & Poe.

Id.


Vandermeer & Perfecto.

Harthorn 1995; Pearce; Putz et al. 2000.


Chazdon; Vandermeer & Perfecto.


Bowles; Terborgh, 1999


Bawa & Seidler; Putz et al., 2001; Rockwell.; Webb, 1997


Bennet 2002.

Ros-Tonen 2008.


Belcher & Schreckenberg; Nagan, Communications Theory.

Berkes 2007.

Klooster 2002.

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Id.

Agrawal & Gibson; Nygren 2005.

e.g., Cederlof & Sivaramakrishnan 2006, Hale 2006, Cromley 2005

Agrawal & Gibson.


Davis.

Id.; Van Cott 2007.
Charnley & Poe.; Ribot & Peluso; Poffenberger 1999, 2000

Chomitz 2007,

Horton, Lynn. 2007. *Grassroots Struggles for Sustainability in Central America*. Lynn Horton is Assistant Professor of Sociology at Chapman University, California. She received her Ph.D. from the University of Texas, Austin. Her research interests include development, globalization, social movements, and gender in Latin America. She has conducted extensive research, writing and grassroots NGO work in Central America.

Berkes 2007.; Horton.

Horton.

Id.

Id.

Bray.; Nepstad.

See Westra, Laura. 2008. *Environmental Justice and the Rights of Indigenous Peoples: International and Domestic Legal Perspectives*. Aspen Publishers. Westra is Professor of Environmental Law at University of Windsor. She obtained a Ph.D. in Philosophy from University of Toronto and a Ph.D. in Jurisprudence from Osgood Hall Law School. She serves as Co-chair of International Union for the Conservation of Nature as well as on the Commission on Law and Environment (IUCN-CEL) Specialist Indigenous Peoples Group. She is an internationally renowned writer, activist and consultant in environmental ethics, policy, law, human rights, and global justice.


Id.

Id. at art. 6.

Id.

Colchester.


Article 1 indicates that "[a]ll peoples have the right to self-determination [and] by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development." Id., at art. 1. Article 27 protects the rights of individuals within the indigenous groups to the enjoyment of their culture, religion, and language. ("In those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.") Id., at art. 27. Article 27 has been broadly interpreted by the UNHRC to protect an array of rights related to indigenous groups' cultural integrity. Anaya, supra. The UN System generally
only allows claims between state parties against another, 121 there is an Optional Protocol within the Covenant that enables individuals to bring claims for the violation of individual’s rights like those covered in Article 27. Id.


74 Id.


What is critical is that the decision-making capacity of indigenous nations has had to evolve to meet the threats to their survival, and to protect the fragile rainforest ecosystem from further deprivation. Thus, it may be that there is an evolutionary necessity which stresses the need to engage in decision-making strategies, which include litigation and which is able to appropriate global legal resources to secure the protection of what is in effect a global commons in which the indigenous people are both stakeholders and guardians. Id.

76 Id. at art.3 and art.9.

77 Id. at art. 19 and art. 20.

78 Art. 26 states:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. Id. at art. 26.

79 Belcher & Schreckenberg.

80 Id.; Nagan, Anthropocene.

81 Agrawal & Gibson.

82 Interview with Osvaldo Jordan.

83 Id.

84 Id.

85 A very popular, and much-critiqued example of this market-based philosophy is evident in the work of Peruvian Economist Hernando de Soto. See Hernando de Soto, The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else 2000.

86 Van Cott, 2007


88 Secretariat of the Inter-American Court of Human Rights, Basic Documents Pertaining To Human Rights In The Inter-American System 45, July 2003, 9 OEA/Ser.L/V/1.4 Rev. 9, available at http://www.corteidh.or.cr/docs/libros/Basingl01.pdf.

89 Id.


93 Anaya 2002.

94 Id.

95 Id.

96 The "special measures" language has been reflected in many cases. See e.g., Indigenous Community Yakye Axa v. Paraguay 17 June 2005, Inter American Court of Human Rights; Case of the Sawhoyamaxa Indigenous Community v. Paraguay, Inter-American Court of Human Rights, Judgment of 29 March 2006; See The Mayagna Awas Tingni v. Nicaragua, Inter-American Court of Human Rights, 2001).

CHAPTER 4
THE CASE OF MORTI FOREST MANAGEMENT PROJECT

Methodology

I gathered the information for the Mortí case study over the course of three trips to Panama between August of 2010 and January of 2012. The first trip, which was three weeks long, served as a preliminary investigation to narrow the topic of inquiry and begin to establish relationships with contacts. It was during the second trip, which lasted five weeks, that the main body of research was accomplished. Given the ongoing nature of the development project and the constantly shifting dynamics of the problems identified, another trip was made for two weeks at the end of January of 2012.

The field research was approached from a qualitative, rather than a quantitative perspective. While not adhering to the strict methodologies of grounded theory, I did utilize some of its techniques. For instance, I would evaluate and use the information that I was gathering in the field, in order to identify key issues and stakeholders and to formulate further research questions. This analysis would then serve as the impetus and guide for further investigation. This conforms to the inductive approach of grounded theory, in which the research questions themselves are "grounded" in the empirical data as it is gathered. I also utilized to some extent the methodology and epistemology of participant observation, which emphasizes intersubjective understanding and empathy.¹

The goal of this project was inherently subjective since its purpose was to address human problems and to suggest solutions. In some many ways, my presence was intended to have an effect on the audience, although I constantly sought to achieve a balance between the opposing roles of observer and actor in order to maximize the
goals of the project as stated above. The detailed, first hand gathering of information was intended to increase the face validity\textsuperscript{2} of the information gathered as well as the presence of trust and rapport established through interpersonal connection.\textsuperscript{3}

During the three trips to Panama, I was based in Panama City where the project had its central office. I also took several trips ranging from two to five days each into the Mortí community. Over the course of the three periods in Panama, I was able to conduct and record 42 conversations with 20 separate individuals. I spoke with several of the interviewees on multiple occasions. I use the term conversation because the format ranged from unstructured and semi-structured in depth interviews to open ended casual discussions, to group meetings.

I was given access, both by project directors and Mortí community leaders, to many internal documents for review. Those that were not already in electronic format I either photocopied or took a digital picture of the documents that were not already in electronic format. I also obtained a fair amount of knowledge and understanding of the project dynamics and local issues faced by the community through semi-regular email contact with project directors and occasionally with community members as well. I also obtained various legal documents and commentaries online. In order to familiarize myself with some of the local events, I also did some archival research of national newspapers online.

A series of recordings was made of regular, casual open-ended discussions that I had with one particular member of the Mortí community who was living and working in Panama City at the time. Several of the recordings were also made during village meetings in which I was an observer as well as a participant. One of the recordings was
made during a private meeting that I conducted with the chiefs and their assistants while in Mortí. The other interviews covered a range of perspectives, including project directors and managers, Panamanian indigenous rights scholars and activists, a Kuna lawyer, a national lawyer, a Chinese timber company owner, and last but not least, a variety of Mortí leaders and community members. In addition to the conversations that were recorded, I had numerous unrecorded conversations and interactions with project staff and with members of the Mortí community, which helped to inform my understanding of the context, and also helped to guide my inquiry. When I was in the village, I stayed with a community member and his family which provided further opportunity for insight into the social context and issues faced by the community and development practitioners. Most of the conversations were in Spanish. When I participated in village meetings or separate meetings with chiefs, there was a local interpreter available to translate between Spanish and Kuna. Most of the Kuna with whom I spoke were fluent in Spanish, although some of the older chiefs were not. It is also part of the Kuna custom for the chiefs to work through their personal interpreters when engaging in official business with outsiders, even if they do know how to speak Spanish fluently. I have a basic comprehension of the Kuna language, which also helped me in relating and communicating with the Kuna.

**Study Site**

The Mortí community is located nearly 30 km off the Pan-American Highway in the headwaters of the Chucunaque River, in one of the least developed areas of Panama. There are no roads into the community, and the only access to the village is through the jungle, by river, or by spur roads bulldozed back into the jungle by timber companies.
These roads are only passable for a couple of months each year, during the dry season period between December and March.

Each one way trip to or from the village takes at least a full day from Panama City, even though the direct distance to the community is not that far. The road trip back to the point in the Darien Province where one ventures off of the highway, takes from 3 to 5 hours. The time range depends on whether one can manage a ride in a 4X4 Toyota pickup, or whether one has to take public transportation - likely to be an old recycled school bus shipped down from the United States. Once back in the Darien, there are a couple of options for proceeding to the village. In the height of rainy season, most people go by dugout canoe equipped with an outboard motor of 15 to 30 hp. The river "port," most commonly used is called Puerto Limon, and is located about an hour down a dirt road off of the Panamanian Highway near the frontier town of Metetí. From the port, there is a 7-12 hour boat ride up the winding Chucunaque River to the mouth of the Mortí River, where the community is located. As the crow flies, the distance from the Pan-American Highway to Mortí is less than 30km, yet the indirect approach and countless loops of the river, stretch the river trip out to 85km. The large window of time estimated for this trip is due to the variations in traveling conditions such as the size of the outboard motor used, the flood stage of the river, and whether or not one runs into debris jams along the river. The jams are created by logs and trees that have been uprooted or dislodged by the torrential floods that frequently overwhelm the river in the rainy season.

The other travel option involves taking a dirt road from the highway community of Zapallal, near Agua Fria. This road is taken for an hour or so by off-road 4x4 pickup taxi
through the cattle pastures, agricultural areas, and tree farms that now occupy the land around the Pan-American Highway. If the trails are not flooded or too muddy, there awaits another 1-2 hour hike through humid, sunbaked pastures and tree plantations and finally into the shaded and cooler forests that begin at the edge of the indigenous territory. Another hour hiking along the narrow, winding, thorn adorned trail; jumping over streams or shimmying across on fallen logs will bring one to the same Chucunaque River, but much further upstream. From here the boat ride is only about an hour to the Mortí community. The village of Mortí is a rustic village with no electricity or running water.

**The National Context**

**Panama, the Comarca, and the Kuna**

Panama has been globally recognized for its relatively enlightened treatment of its indigenous peoples since it became a State in 1903. The economic dependency of Panama to its geographic resource, the Panama Canal, may have indirectly helped its indigenous populations during the nation-building process, by keeping the Nation’s attention focused on its metropolitan center. Panama has used a legal, political and territorial framework known as the "comarca" as the primary means of managing its relationship with indigenous communities. The use of the comarca has been criticized as a mechanism that makes it easier for the State to exploit human and natural resources. However, it has also been defended as a mechanism to help the indigenous community to establish internal conditions for economic and social development. Both narratives can be supported with selective evidence, although Professor Francisco Herrera, one of the foremost experts on Panama’s indigenous peoples, argues that the former narrative has dominated in most cases, due to the
absence of strong political organization with the comarca. The one possible exception has been with the Kuna of the Kuna Yala Comarca, who have benefited from the system due to, among other elements, their strong political sensibilities and a longer history of organized interaction with the State.

The comarca is Panama’s special political and legal structure to accommodate its indigenous populations. Between 1953 and 2000, the Government of Panama designated five different geographical zones as semi-autonomous indigenous territories, or comarcas. In order of their creation, they are 1. Comarca Kuna Yala, 2. Comarca Ngobe-Bugle, 3. Comarca Embera Wounaan, 4. Comarca Madungandí, and 5. Comarca Wargandi. Each of the comarcas is divided into at least one electoral circuit. Elected representatives from these circuits represent the Comarca before the National Assembly. In spite of the relative stability of the comarca regime, Panamanian policies toward its indigenous peoples have varied significantly over the decades, ranging from Liberal assimilation to corporatist indigenismo and finally to the neoliberal reforms in the 1990s, and most recently to open conflict over access and control of natural resources and development projects. The way that the comarca system deals with indigenous populations reflects something of a hybrid in land tenure theory, showing both civil law influences inherited from the Spanish, and the common law influences from the United States. Whereas the Spanish tended to treat the indigenous populations in their colonies as wards of the Crown, in the U.S., indigenous people were treated as independent nations. This influenced the way that the colonial powers conceived of the rights of the indigenous peoples to the property under their control. Professor Herrera believes that Panama was influenced by the U.S. reserve
system.\textsuperscript{15} However, they also clearly held on to the Roman, Spanish, and Colombian heritage of viewing indigenous communities as subjects of the Sovereign, with limited rights to the land.\textsuperscript{16} In addition to the comarca, Panama has also used the term "reserva," (reserve) to designate special areas of administration. However the "reserva" and the "comarca" were not simply alternative names for the same concept. Rather, they were two separate types of administration with the reserve generally existing as a legal designation within the comarca.\textsuperscript{17}

The notion of the comarca within the Panamanian political and legal system has evolved significantly over time, and continues to lack a precise definition. The first time the term "comarca" was used was in 1938 with the creation of the two separate administrative unites of Baru and San Blas.\textsuperscript{18} However, there were few similarities between the two areas. While San Blas was the home of the Kuna Nation which had managed to achieve relative autonomy from the Panamanian State, Baru was not even an area under the control of indigenous people.\textsuperscript{19} Thus, the current notion of the comarca as an area of semi-autonomous indigenous control is something that has evolved into what is today. Generally speaking it has referred to an area that was claimed as part of the State of Panama, but was not under its active administrative control.\textsuperscript{20}

The term "comarca" has been used and understood differently at the same time by different groups, as reflected in the current differences in understanding between the Ngobe and the Panamanian State. The Ngobe have had a comarca since 1952, but have been fighting for a "real" comarca, with more autonomy akin to what the Kuna enjoy in Kuna Yala.\textsuperscript{21} Law 72 of 2008 made some advance in clarifying the concept.
Before then, there was much ambiguity, and even now the lines are not clear. This lack of clarity is partly due to the fact that in Panama there is no "ley marco" or fundamental legislation that normalizes the status of its indigenous nations. Dr. Jordan argues that the idea that Panama is somehow advanced in its relationship towards its indigenous people is the "great myth." He notes that unlike so many other Latin American countries, Panama has yet to have significant constitutional reform incorporating indigenous rights protections and provisions. The last constitutional text from 1972 is not very favorable. It talks about "reserving the lands necessary," but nothing about autonomy or political or indigenous rights. In regard to the overall discussion of indigenous rights in Panama, questions regarding the ambiguity of the comarca regime get pushed aside in light of ongoing conflicts with indigenous populations that continue to live outside of the existing comarca designations. These areas are known either as "tierras colectivas" or in areas adjacent to the comarcas known as "areas anexas."

There are presently estimated to be between 60 and 70 thousand Kuna in Panama, making it the second largest indigenous nation in Panama behind the Ngobe. In addition to the four Kuna Comarcas noted above, as many as 10 thousand Kuna live in Panama City. There are also the communities of Pucuro and Paya located in the border region with Colombia. Although the bulk of the Kuna population now live on a string of islands along the eastern half of Panama's Caribbean coastline, at the time of the arrival of the Spanish in Panama in the early 16th century, they lived in the inland area near the modern day border with Colombia. The reasons for the mass migration, first to the inland coast, and then to the coastal islands, is the subject of some
speculation, with reasons ranging from pressure by the Spanish, to the allure of trade goods available on the coast, to the desire to escape from plague and disease inland.\(^{29}\)

The community-based forest management project studied in this work involves the Kuna community of Mortí, which is one of three villages making up the Wargandi Comarca in the interior of the Darien Province. Unlike their well-known cousins along the coast, these communities have had relatively little interaction with outsiders and have received little academic attention. The Wargandi communities notwithstanding, the Kuna are one of the most studied and well known native societies in Latin America.\(^{30}\) The Kuna have long had the ear of a variety of interested westerners, as well as non-western listeners, with extensive accounts recorded as far back as 1680 by the French pirate Lionel Wafer.\(^{31}\) The message delivered from the Kuna was often garbled, due in part to the limitations of the Kuna, but also through the constant misinterpretation and misrepresentation of the Kuna by a host of interested parties.

The Kuna of the Kuna Yala Comarca (formerly known as San Blas) present a relatively rare example of indigenous community/State interactions, where over time something resembling mutually acceptable outcomes have been achieved.\(^{32}\) Professor James Howe tells the story of how the Kuna have, albeit not without setbacks, been able to selectively interact with and adapt the tools of the State in order to largely define their own identity and achieve their own ends.\(^{33}\) Howe weaves the narrative thread of the story of a collaborative ethnographic effort in which Kuna have actively participated as both subjects as well as agents in the creation of their own identity and reality. As an anthropologist and ethnographer himself, Howe chooses to focus on the Kuna’s relationship to writing in the shaping of their identity. The story progresses from the
Kuna’s general resistance to literacy, to their limited acceptance of western education, to their extensive use of writing to convey their grievances and requests to the national government, to the drafting of laws, and most importantly for Howe, to the use of writing by the Kuna to record their own history, habits and customs as ethnographers. Howe sheds light on the role of a small but growing class of young, educated men known as “letrados,” or “sikkwis” in Kuna, as scribes and intermediaries, who were often recruited by chiefs in order to facilitate communication with outside officials and dignitaries. By focusing on the integral role that the Kuna have played in facilitating and shaping the delivery of their own history and identity, Howe shows the importance, even inevitability, of a collaborative approach to ethnography. As indigenous communities become more accessible and integrated into modern societies, and they continue to cultivate their own scholars, it is essential that western scholars begin their interaction with indigenous societies firmly entrenched in the tenets of the collaborative approach, as they being their interaction with indigenous societies. Howe’s enthusiastic championing of the growth of an educated, scholarly class among the Kuna raises broader questions regarding modernization and development among indigenous people. How far are the non-indigenous advocates of indigenous empowerment and agency willing to go? What happens when indigenous development, whether through greater autonomy, environmentally unstable economic growth, or legal and academic prowess grows to levels that threaten the traditional face of these cultures? Will the special conditions of the “indigenous rights” discourse stand up under this transformation?

**The Kuna, the Comarca, and Development**

The Kuna took the comarca concept and over time molded it into their own legal, political, and socially recognized institution. This example would serve the later
indigenous movements, not only in Panama, but across Latin America and the world. The Kuna were able to take whatever the original undefined concept was and mold it into something akin to autonomy.\textsuperscript{34} One of the tools used to accomplish this was what has been referred to as "strategic essentializing." Through the process of strategic essentializing, the Kuna of Kuna Yala were able to take advantage of the stereotypical imagery that foreigners had of them, and use it to their advantage.\textsuperscript{35}

The gains that the Kuna made had a significant influence on the development of future comarcas.\textsuperscript{36} Indeed, according to well-known Kuna lawyer and indigenous rights advocate, Aresio Valiente, all of the indigenous legal protections have come about thanks to the work of the Kuna of Kuna Yala.\textsuperscript{37} According to Mr. Valiente, the lawyers that worked on the Ngobe-Bugle comarca were Kuna, namely Hector Huertas and Mr. Valiente himself. The principle lawyers that worked on getting the comarca status for the Wargandi Comarca in 2000 were also from Kuna Yala, although there are conflicting accounts of who played the principle role.\textsuperscript{38} Often credit is given to the Alvarado family, who had established the NGO called Dobo Yala. However, Mr. Valiente maintains that he was instrumental in the process along with Hector Huertas as early as 1995.\textsuperscript{39} He notes that at the time, the government agency COONAPI (Coordinadora National de los Pueblos Indigenas) was more actively involved in supporting indigenous rights than they are now.\textsuperscript{40} He maintains that before their involvement, those advocating for the Wargandi communities were only seeking the status of a biological reserve, rather than full comarca status. He proudly notes his involvement, along with Hector Huertas, in practically every indigenous rights issue in Panama in the last 15 years. Kuna lawyers also played a key role in the establishment of the tierras colectivas.\textsuperscript{41} Mr. Valiente is one
of only about 10 Kunas who are currently lawyers, all of them having roots in Kuna Yala.\textsuperscript{42} He notes that only three of them work in legal aid or indigenous rights issues. Aresio is perhaps best known for his work in achieving intellectual property protection for the mola, though he has written extensively regarding the legal status of indigenous communities in Panama.\textsuperscript{43}

The Kuna were so adamant about the level of autonomy they should be afforded under the Comarca system, in part because of their desire to achieve something similar to what they had achieved under Colombia in the 18\textsuperscript{th} Century with Tule Nega Comarca.\textsuperscript{44} It is important to remember that the Kuna have always been a free society. Colonial literature makes a key distinction regarding indigenous nations – between those who had been brought under Spanish rule and those who had not.\textsuperscript{45} Those who had not been integrated into Spanish colonial life normally signed peace treaties with the Spanish, and experienced a much greater level of freedom. The Kuna were one of these nations. They were never conquered.\textsuperscript{46}

One of the main Kuna experiences with an internationally assisted development project was the Project for the Management of the Wildlands of the Kuna Yala, Panama (PEMASKY).\textsuperscript{47} The project, which proposed to create a wilderness forest preserve in the Kuna Yala Comarca, enjoyed support from a wide array of international organizations, such as the Inter-American Foundation, the World Wildlife Fund, the STRI, USAID, and the MacArthur Foundation.\textsuperscript{48} The project was developed in the 1970's as a countermeasure to the proposed expansion of the Pan-American Highway into the largely undeveloped Darien Province.\textsuperscript{49} However, like the proposed highway expansion, the plans for the reserve never coalesced.\textsuperscript{50} Overall, PEMASKY had mixed
success. For the international conservation movement, important inventories of the flora, fauna and ecosystems of the Comarca were created, and for the Kuna, some educational programs, professional training and clarification of boundary issues.\textsuperscript{51}

Overall, the Kuna have shown little interest in large-scale development in their territories. In the mid-1970’s, the Kuna blocked a multi-million government-initiated tourism development project.\textsuperscript{52} Recently the Kuna have resisted large-scale development projects and have focused more on small-scale sustainable community-based tourist projects, although they do selectively allow cruise ships and yachts sailing through the area to dock and come ashore to interact and buy traditional crafts. USAID has done some work to develop and capitalize on ecotourism with the Kuna of Kuna Yala through the Foundation for the Promotion of Indigenous Knowledge.\textsuperscript{53} Overall the Kuna openness to development seems to be gauged largely by whether or not they feel in control of the project and its effect on their communities.\textsuperscript{54}

\textbf{Panamanian Policies, Values, and Perspectives}

Professor Herrera is perhaps Panama’s foremost expert on the history of the Panamanian State and society’s relationship with its indigenous population.\textsuperscript{55} He recounts how 15 or so years ago, after a review of the indigenous situation in Panama, he concluded that Panama had made significant advances in indigenous rights and relations.\textsuperscript{56} However, in recent years there seems to have been a regression in these areas due to the discovery of important natural resources on indigenous territory, and the State’s desire to exploit those resources.\textsuperscript{57} Up until the 1960s, indigenous peoples were not viewed as much of a threat to the economic development of the country, but instead were seen mostly as a threat to the socio-cultural integrity of the nation.\textsuperscript{58} The population was small enough at the time, that there were not so many conflicts over
land. However, as land and population pressure increased in the western provinces, the State adopted a policy which released this pressure through offering land in the largely undeveloped Darien Province to the east. At that time, the overall space between a colono and an indigenous community was relatively large, resulting in relatively few conflicts. He notes what an important role the price of global commodities can play on the State’s policy toward local development conflicts. In the 70’s, he had participated with indigenous efforts in trying to halt copper mining operations in Cerro Colorado. The project was eventually abandoned due in part to the work that they did, but mostly due to a drop in the global price of copper. However in recent years, the price has been climbing again, which makes these operations once again financially desirable. This is a phenomenon that affects indigenous communities across the board. Thus, he sees this growing national and international demand for natural resources as driving the regression in national policy towards its indigenous people populations.

Professor Herrera conveyed that even now there have even been rumors circulating of legal proposals to eliminate the comarca status from certain areas, the Ngobe-Bugle Comarca in particular. He sees these rumblings as evidence of a growing antagonism towards indigenous rights in Panama due to the desire to exploit resources on indigenous territory. In regard to the legal status of natural resources within the comarcas, he echoed Dr. Jordan’s perspective regarding the legal ambiguities that persist. He noted that from the community’s perspective, the land and resources are theirs. However, from the perspective of government agencies and their employees, it belongs to the State. He illustrates the issue by telling the story of reforestation
projects in the western part of Panama in the 70’s. The government paid the local people with food supplies to plant "pino caribena" trees within their traditional territorial boundaries. After 20 years, the trees had grown up and it came time to harvest the wood. The indigenous people wanted to harvest some of the wood, but the government prohibited it, saying that it belonged to the State, since they had paid the local people for the rights with food supplies. The indigenous people disagreed.\(^65\) This situation represented a serious lack of communication between the government and indigenous people, which he sees as also being the case in the Wargandi situation.

Dr. Jordan fears that if the indigenous communities were to ultimately refuse to acquiesce to government development policy, they will cease to exist, because it is the goal of the government to have them disappear.\(^66\) He hopes that one day the attitudes will change, but doesn't see this happening without a concerted national policy of affirmative action, with education towards tolerance and diversity. He recalls the account of the Malaria epidemic in the Bayano region where the Kuna would not allow government officials in to the community to fumigate because the community was engaged in a traditional religious pipe smoking ceremony.\(^67\) They had let the health officials enter the community before the ceremony, and again allowed them to enter afterward. However, the way the situation had been portrayed in the Panamanian media was that out of superstition, the Kuna leaders wanted to let their people die of malaria.\(^68\) He concludes that as long as the Panamanian society continues to think that way-judging that what the Kunas have is only superstition, but what the non-indigenous people have is faith, there will be no understanding or acceptance of Kuna culture by the broader Panamanian society.
Though the Panamanian governments of Torrijos, Moscoso, and now Martinelli have had slightly different policies toward indigenous people, they have all basically operated from the same assumptions. The assumption is that indigenous people are backward, and need to be modernized. Panamanian law considers the natural resources of the country to be the patrimony of the State. However, the indigenous nations of Panama do not accept that concept. They argue that they have rights that go beyond mere use of the land, and there have been a string of recent conflicts over that disagreement. The State claims the resources for the sake of income. According to Dr. Jordan, all the State really wants is money. In his view the issue comes down to balancing between the interests of money and people. He notes that his inclination is towards people, but for many, especially in government, the inclination is towards money. This is a struggle that goes on not only at the State or national level, but also within indigenous communities. One of the great threats to indigenous people is the interests of outside people. However, perhaps an even greater threat is the interests of people within who have been manipulated, or opted on their own, to serve the interests of the outside world. This is a trend happening within all indigenous communities. This is especially difficult, because as part of the community, they have the voice and ear of the community.

When asked whether the State should allow internally destructive behaviors or decisions to continue, Dr. Jordan provides an insightful response that speaks to the heart of the debate between top down development vs. community development models. He notes that ultimately the state should allow the internal, local decision to stand, and more importantly to not manipulate what is going on. It is not a question of
whether the State is permitting internally destructive decisions, but to what extent the State is enabling or feeding those decisions.\textsuperscript{79} What the State of Panama often does, as evident in James Howe’s book about the Kuna, and from Dr. Jordan’s own work on the Ngobe, is to work to find people within the community who are amenable to advancing the money driven interests of the State.\textsuperscript{80} Once the State has identified these people, it then does everything possible to manipulate the local situation to make sure that those compliant individuals are the ones in power.\textsuperscript{81} In his opinion, the indigenous communities ultimately lose out most when they are integrated into the dominant society of the State.\textsuperscript{82} Ultimately, he would never put the fault on the indigenous people. He puts it on the Panamanian society because he feels that in their depths they want to eliminate indigenous identity. They do not want to allow people to live that kind of lifestyle.\textsuperscript{83} They want them to modernize, and if they do exist, that it only be in posters, as a type of adornment to the national face.\textsuperscript{84} In contrast to the Panamanian model, Dr. Jordan notes the Colombian model as perhaps the best system that he is aware of for equitably incorporating indigenous communities into the national fabric. Rather than the dualistic model that Panama has embraced, the Colombian model treats local indigenous communities in a more integrated fashion, as a type of local municipality, responsible for its own governance.\textsuperscript{85}

Another type of manipulation of indigenous people was evident in the international environmental conservation discourse of the 80’s and 90’s that elevated and essentialized indigenous people as idyllic guardians of the environment.\textsuperscript{86} This movement tended not to view indigenous people as agents of their own destiny; rather it saw them as objects to be used in the environmental movement.\textsuperscript{87} That focus was
bound to lead to disenchantment. In the end it played into the hands of the State, who through acknowledging the error of that movement, now had an argument for returning to classical development models. According to Dr. Jordan, indigenous people were key allies for a time in the environmental movement, but in the end, the movement did not account for a true understanding of the indigenous worldview. Dr. Jordan feels that the main failure of conservation and development projects aimed at indigenous people can be found in the very seeds of the project concept, that is, in the initiative behind the project. He estimates that 90% of development project design initiatives come from outside the community. This ends up causing the community to feel like the project is something being imposed upon them. The community is only left with a few different options. They can reject the project, ignore it, or try to make the most of it. Occasionally, given the opportunity, the community members themselves will ask for a project. What usually happens though is that the people that live in the communities still have a very different way of thinking than the people that live in the cities. This causes a problem of lack of dialogue and understanding. Project developers think in terms of methodology, deadlines and indicators, whereas communities have distinctive cycles. Often the methods used by projects are not appropriate for work in a community. However the project staff and community participants are forced to work that way because that is what they have been directed to do. This causes things to be very difficult and ultimately leads to very low success rates.

Whether a project is deemed successful may vary significantly depending on the standards being used to assess the project. If a project is judged by its methodology and achievement of indicators, it may be judged a success. However, if a project is
judged by whether the overall goals were achieved, often the judgment is less optimistic. The way projects are usually measured is by the reports that are submitted. However, the problem is that development project reports are an “art-form.” First, there are the people who know how to write them, and what they are expected to include. Then, those who review them have incentives and are motivated to approve them. Finally, those who ultimately evaluate the reports, follow the same standards and methodologies of those who produced them. They are also responding to incentives to produce favorable evaluations. This makes it very difficult to evaluate a project honestly, especially if you do it based on the reports from the actual project.

Dr. Jordan argued that a truly effective evaluation could only come from an independent, academic standpoint. In contrast, in the project reports, no one wants to say that the project turned out poorly.

Dr. Jordan advised that there are usually two ways that project directors tend to respond to independent academic researchers. They can see the researcher as a potential asset to the project, as someone who can document everything that is happening and share it in a positive light. The other option is that they are afraid that the researcher will have a negative perspective and interpret and report on the project negatively. It is very rare that an independent observer can come in and actually help to rectify mistakes. It is very hard for project developers and directors to accept that they make mistakes. In the end, whether the project directors themselves find the academic’s insights useful, the research that is done helps to shed light on what is actually happening at the local scale.
The Panamanian Timber Industry

In one of my first inquiries into the Panamanian Timber industry, I was informed that the industry has “partes...blancas y partes oscuras,” literally "white parts, and black parts," referring to the dark, illegal underside of the industry. According to Professor Herrera, the original regulations of the "Reforma Agraria," the Panamanian agency responsible for land regulation, allowed all local farmers and indigenous landowners to cut one quality tree and one or two lesser quality trees per year for personal use, such as to build a boat or for their own house. However, under a new law presented by a lawyer who had worked for INRENARE, the system of Permisos Comunitarios was created. The new system basically allowed for the same level of consumption, but on a community-wide basis. This change in regulation was supposedly to allow for increased revenues in the community, but in practice, this turned into a mechanism for "practically giving away" large quantities of wood at very low prices. The woodcutters would contract with the community leaders for the rights to large numbers of trees from the community allotment, allowing them to go onto communal lands and harvest large quantities of the most valuable species. The going rate throughout the 1970’s, and 80’s, and early 90’s was $50.00 per tree, for the most valuable timber species, including Caoba (Swietenia macrophylla) and Cedro Espino (Bombacopsis quinatum). The timber concession system described was the norm throughout the communally owned indigenous territories within the Wargandi, Madungandí, and Embera Comarcas. Professor Herrera identifies the regulatory system that allowed...

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1 See Salazar, Mauro. PROGRAMA FORESTAL COMUNITARIO DEL DARIEN USAID-FCD, “Plan Integrado de Manejo Forestal Sostenible de la Comunidad de Mortí, Comarca Wargandi, Darién Panamá. Septiembre 2010.
these practices as one of the largest legal loopholes in the whole timber system. He notes that is has been long criticized, but still continues to this day. He notes that is has been long criticized, but still continues to this day.115

The largest timber operations shut down in the 70's, and that those that remain operate at a relatively small-scale. The last "reductos" or remaining sectors of valuable, naturally growing timber species are in the indigenous territories.116 The large timber companies shut down, in part, because of it was not a well-conceived industry in Panama.117 First of all, there was not a comprehensive system of reforestation to allow for future harvest.118 Secondly, even though timber-related legislation has undergone various reforms, it has not kept up with the realities and challenges of the modern world. Legislative reforms were primarily designed to benefit the timber industry, and even that, on a short term basis.119 It allows the industry to work faster, at lower costs, without paying taxes.120 Over time, the cost of extracting timber continues to increase due to the growing distances and difficulties of harvesting the trees, as well as the financial limitations imposed by the smaller scales of operation.121 These factors largely explain why the large scale timber industry had to shut down in Panama.122 In the 70s, many companies developed and operated for a short period of around five years, extracted as much as possible, and then shut down their operations when they were no longer profitable, or at least no longer as profitable. The current regulations allow for 20 year concessions to allow for greater profitability.123

Professor Herrera notes that many of the forestry engineers come from the interior of the country and are versed more in the process of plantation forestry, rather than in tropical forestry which requires a longer term investment.124 Also coming from an economic standpoint, they are accustomed to looking for short term profits, rather than
long term sustainability.\textsuperscript{125} Not only do they not understand the workings of tropical forests, but they know even less about the relationship of local communities with these forests.\textsuperscript{126} For the forestry engineer, the timber and the land on which the timber is located, is often seen as a national, economic resource to be extracted for the economic development of the state as a whole, rather than as community resource that sustains and defines the community, and requires careful long-term consideration.

Another factor that speaks to the way that Panamanian society views its forests is that the GOP has never developed a comprehensive forest research program.\textsuperscript{127} Those that work in the forestry sector in ANAM know what they know only through experience in the field.\textsuperscript{128} When I pointed out that the USAID project was providing some of the missing forestry expertise through their independent consultants, Professor emphasized that this missing element was something that not only USAID should be providing, but instead that the GOP should also be taking responsibility. The GOP should have developed a large-scale research institute through the Ministry of Agriculture and the national universities.\textsuperscript{129} Instead, he felt that in the next 20 years, Panama may no longer have a commercial timber industry.\textsuperscript{130} The government itself treats forestry as a type of mining, where the resources are extracted but nothing is returned.\textsuperscript{131}

Although there is an extensive Yale research project on tropical forestry going on at the Smithsonian Institute for Tropical Research (SITR) in Panama, which is producing a wealth of information on tropical forestry, none of this information is being transferred to the industrial sector due to failures in development policy.\textsuperscript{132} [More on Tropical Institute] Although the University of Panama has recently opened a school of forestry, Professor Herrera feels like it may be too little too late. He notes that the circumstances
in Panama aren't really favorable now for an extensive forestry program. This might have worked 50 to 100 years ago, when there were still lots of forests available.\footnote{133}

**ANAM**

ANAM is the government agency responsible for... and is a key player in the question of whether timber is harvested sustainably among indigenous communities in Panama. The timber concessions process for timber on communally held land involves the community applying each year for the permits to its allotment of timber for that year. Typically, the communities have subcontracted the rights to these concessions to the local non-indigenous timber industry.

Though ANAM is the government agency that approves these permits, in reality it is a process in which there is very little oversight.\footnote{134} Professor Herrera, who worked for INRENARE, the precursor to ANAM, in the 70's, notes that ANAM officials tend to be very cautious in the information that they share, since much of what they do on an individual basis is not necessarily legal. He, along with many others that interviewed, contends that local ANAM officials frequently accept bribes to put their stamp of approval on permits or timber shipments that have not fully complied with national legislation.\footnote{135} The timber industry and local woodcutters will gladly pay off a local official rather than go through the mountains of paperwork called for on the books, and in the process opening their own books to inspection and their revenues to taxation. Ultimately most of the timber harvested from indigenous reserves through the system of "permisos comunitarios" or community permits, escapes taxation and meaningful oversight.\footnote{136}
The Colonos

The term "colono" roughly translates as "settler." It is a term widely used by both the Kuna and non-Kuna to designate non-indigenous Panamanians living in the Darien, especially those that trace their ancestry to the Panamanians of the eastern provinces of Los Santos and Coclé. The term refers to the fact that the Darien was relatively unpopulated by non-indigenous Panamanians until the 70's when government policy began to encourage farmers and ranchers from the depressed and over-exploited areas of western Panama to resettle in the Darien. Generally speaking, Panamanian society does not view its indigenous populations as a productive part of the society. Instead they are viewed as a marginalized and impoverished sector of the country that needs to be brought into the modern world, that is, into the "true" Panamanian society. On the other hand, the colonos are viewed very positively, similar to the frontier settlers of the western United States. The consequence of this social trend is that all of the policies are designed to bring the indigenous people out of their backwardness and into the developed Panamanian society. The forests are viewed as something to be conquered, as impediments to the full development of the land. The forest is a wild and uncivilized place, and the campesino or colono is the one charged with this noble task. Because of this narrative, policy tends to develop in ways that favor this ongoing process of deforestation and land invasion. The Kuna and other indigenous people have complained a thousand times about these invasions. The State will occasionally bring them to the diplomatic table and listen to their complaints, but very little is ever done, other than the creation of a perpetual "dialogue" which never leads anywhere and only serves to pass the time.
Professor Herrera was working for the GOP in the Bayano region when the Bayano Dam project was getting under way. He recounts how through a process of negotiation, they were able to relocate 80% of the colonos living in the area. The move was an attempt to preserve the forest for the Bayano Dam watershed. Since the colonos were or tended to be cattle ranchers, it was thought that they would end up deforesting the area surrounding the lake, which would be detrimental to the water supply. The State ended up allowing a small percentage of colonos to stay in the area. This small group turned out to be the seed to the large-scale development growth that would ensue in the area.

In 1978, the government released a resolution through the Department of Agriculture opening up the whole eastern part of Panama to a process of stake-holding with an allotment of 50ha per person. However there was never any oversight to determine how much land each person was actually claiming, and many people settled much more than the legal allotment. During this process, most of the people that they had removed during the Bayano project ended up returning. Now there is an overwhelming numerical advantage for the colonos in the area, which has significant political implications in favor of the colonos, over and beyond the general bias in favor of the colonos throughout the country. During this period, the idea of the comarca was very unpopular. To support the idea of setting aside territory for indigenous people was to be in opposition to the colonos. Even now, there are proposals to get rid of the comarca. The main reason that the Comarca of Madungandí was approved was because it was deemed necessary to protect the area’s forest as part of the watershed feeding the Dam. Before approving the comarca, the government made attempts to
merely designate the area as a hydrological reserve.\textsuperscript{155} The government and private industry consultants intentionally allowed the Kuna and Embera communities living in the area to stay as a stopgap measure to deforestation, acknowledging that their forest-based lifestyle would help to maintain the health of the forests.\textsuperscript{156}

\textbf{Development Agency Policy, Values, and Perspectives}

\textbf{USAID and Chemonics in Panama}

USAID Panama has always had two main avenues of involvement.\textsuperscript{157} The first is the protection of the Panama Canal Watershed, and the second has been the Darien National Park.\textsuperscript{158} In the Darien, USAID is currently involved in two separate areas: the three communities of the Wargandi Comarca and six communities in the Rio Chico region of Embera-Wounaan Comarca.\textsuperscript{159} Although USAID is funding the project, the implementing company was Chemonics.\textsuperscript{160}

I was able to talk with one of the Washington based project directors who was in town dealing with some administrative issues. She was very pleasant and gracious with her time. She explained to me that Chemonics is a private consulting firm that has been in business for around 36 years.\textsuperscript{161} They are just coming up on having completed 1000 projects around the world.\textsuperscript{162} They are designed around managing U.S. government contracts, and 95\% of their portfolio comes from USAID contracts.\textsuperscript{163} They are organized along regional lines, and also have virtual practice area groups.\textsuperscript{164} There is a three tiered project management structure, which includes a director, a manager, and an associate on each team.\textsuperscript{165} Chemonics is one of the biggest, if not the biggest USAID contractors, but they do have to compete with other companies for federal USAID contracts. In order to win a bid, very complicated and extensive requirements have to be met. She noted that they are one side of the ongoing debate regarding
whether federal aid should be distributed as grants through NGO’s or as contracts through private consulting companies such as Chemonics. That issue, while interesting and no doubt relevant to the issues presented in this thesis, goes beyond the scope of this paper.\textsuperscript{166}

**The Nature of the Development Project**

The USAID project seeks to address the practice of unsustainable timber harvest through the implementation of a system of forest management that allows for regeneration of species and a cyclical, renewable timber harvest.\textsuperscript{167} The funding for this phase of the project was approved for two years.\textsuperscript{168}

One project director, at least, realized and expressed that two years was an extremely insufficient amount of time to develop and implement the project, much less to achieve the long term goals of the project. He noted that this deficiency in planning was even more pronounced given the particular social and physical conditions associated with working with the Mortí and other Darien communities. This particular director felt that a 5 to 10 year minimum was required for this kind of project to even get off the ground. He noted that it takes a good two years just to start any business in the best of conditions, many more a community-based forest management system with remote, culturally and economically isolated indigenous communities. He noted that the funding did have a provision for extending the project for another two years after the initial two years. However, he found it strange that the extra funding was contingent on opening work in a new community, rather than on strengthening and continuing the operations already in place. While this perspective raises interesting questions, the issues surround USAID funding and approval of project proposals project are beyond
the scope of this paper and would require level of access to information and perspectives to which I not have significant access.

Mr. Montenegro explained that over the years, the communities engaged in number of harmful practices that have hurt their own interests, and have contributed to the continued unsustainable harvest. From his perspective, many of these practices were the result of the communities having typically negotiated the sale of timber with “a ciega,” or blindly. The lack of information and understanding on the part of the community in these negotiations led to a number of bad business practices. These bad practices have included lack of sufficient oversight of timber operations within the community, and bad valuation strategies. He indicated that he major failure in valuation was the practice of selling the wood according to a per tree price, rather than by board foot.169

Regarding lack of oversight by the community, Mr. Montenegro noted that often the communities had no idea going into a season how many trees were going to be cut or how many had been cut in the past. In response to this problem, the overall strategy of the project was to work within the community to develop a "plan de manejo," or management plan for sustainable timber harvest. In addition to development of the management plan, the project was designed to train the community members in how to carry out the plan.170 Thus there is a technical, forestry component to the project, and a socio-economic component. The project also envisioned helping the community to increase efficiency and production of some of the already existing alternative revenue sources such as coffee, plantain, and sale of the traditional textile called the mola.171
The overall idea behind the development of the management plan would be for the community to know what the quantity and quality of the timber was that would be available in a particular parcel each year. This way, the community would be able to invite different companies in each year to bid on the trees in a controlled and systemized fashion. The community would sign a contract with one or more timber interests, and use advancements from the sale to pay their own people to oversee the harvesting. Intensive replanting of trees was not part of the Chemonics forest management model. Instead the model counts on selective cutting and protection of seed-bearing individuals to allow for natural regeneration over the 25 year cycle. Even so, there was some talk regarding planting along the rivers to help prevent erosion, although to my knowledge this has yet to be carried out in the Mortí community.

That is how the system is supposed to work anyway. In the case of Mortí, issues were complicated by the fact that at the time the project was initiating its contact with the village, a timber company operative came into the community with 20 thousand dollars in cash and convinced them to sign a contract giving him the rights to operate exclusively in their territory for the next 20 years. This complex issue will be explored in more depth in below in the subsection dealing with the problems identified by the Mortí leaders and community members.

As part of the management plan, Chemonics developed a series of maps of the territories that were to be part of the harvest cycle. The project foresters, along with community members that were trained by the project personnel divided the territory up into quadrants using GPS devices to record coordinates, which were then plugged into
computerized maps. In the case of the Mortí community, the territory was divided into 25 parcels of around 800 hectares a piece. Each year, one quadrant was to be harvested.

For the upcoming harvest year, a "commercial census" is conducted, in which every tree is supposed to be accounted for by going from tree to tree and taking measurements and GPS coordinates. These measurements are also incorporated into the computerized maps and spreadsheets as part of the management plan. When I first interviewed Mr. Montenegro, they had not yet developed a computerized model for the Mortí territory, since they were still in the early stages of working with the community. By the end of my active research a comprehensive set of maps had been completed of the territory, as well as the commercial census of the first quadrant to be harvested. Harvest of the first quadrant in the community of Mortí began during my last trip to Panama before completing this thesis, in January of 2012.

Although the maps were not available when I first interviewed Mr. Montenegro, he did show me how the system worked using a computer model from a Chemonics project in Bolivia. Through later research, it became clear that many of the foresters involved in the Darien projects in Panama, including the national project director were drawn from the ranks of Bolivian forestry professionals. These foresters had cut their teeth in an extensive USAID collaboration with the Bolivian government during the 80's and early 90s. This collaboration was known as BOLFOR. None of the technical forestry directors were Panamanian, which confirming Professor Herrera account of the lack of silvicultural professionals in Panama. The same was true for a host of consultants that
were called in from time to time. Instead these professionals were brought in from, among other places, Guatemala, the U.S., Bolivia, and Colombia.

There were a couple of key exceptions to the lack of Panamanian expertise. One of the foresters employed full time by Chemonics was a Kuna man originally from Kuna Yala, Práxedes Vásquez. To my knowledge, Mr. Vasquez is the only Kuna who has completed university level training in forestry. Although he had no previous contacts within the Kuna communities of Wargandi, he was very instrumental in facilitating the project’s communication with the local community leaders. He linguistic and cultural knowledge was also key in the process of training members of the community who hired by the project to implement various project initiatives.

When the project first got under way, Mr. Montenegro, a Panamanian educated and trained economist specializing in community development, was serving as the director of the socio-economic component of the project. However, shortly after interviewing him, about a year into the project implementation, he resigned from the project. From then on, the focus of the project took a decidedly technical turn as the field operations became overseen primarily by a Guatemalan forestry engineer with vast experience all over Latin America and the world, Mauro Salazar. Mr. Salazar, a genius in his own right was the former regional director for the World Wild Life Foundation (WWF) in Central America. Although after Mr. Montenegro’s departure, the project became heavily focused the challenges of implementing the technical elements of the forest management plan, it did continue to have a scaled down socio-economic component, which focused generating and strengthening alternative economic sources.
of income. The projects were managed from the Panama City office and implemented in the field by a younger crew of up and coming Panamanian development practitioners.

One of the alternative economic projects being developed was a community coffee plantation plot. The development and management of the plot was to serve as an educational opportunity, and would eventually be able to produce a source of group income for the village. The project members specifically designated this project for the women of the community. Chemonics supplied the seedlings, hired a project manager, purchased tools, and provided ongoing training and consultation. The plot was to contain 1000 plants and to be managed by the woman's cooperative with the assistance of the Chemonics personnel. Another alternative program was designed to train the agricultural producers of the community in ways to improve the output and commercialization of their products. This was ostensibly to help the community deal with the devastating loss of much of their crops during record flooding the previous year. They took a list of the people from the community who had been affected by the floods. They were developing a program of training to help those people improve their agricultural production methods. As part of this program, Chemonics brought in a couple of members of a CBE that had already been established in the Rio Chico Embera community to help out. He noted an example of the difference between how USAID conducts its operations and how other projects do, such as the “Cambio Climatico,” or UN funded Climate Change project. They had gone into the communities during a Congreso General to present their work and ended up paying people to stay for the presentation. This is something that USAID would not permit, as the distribution of funds follows a very strict process.
Chemonics is trying to promote business within the community, such as agriculture. They wanted to try to find businesses outside of the community that would be willing to work with the village. However, he now sees this as very unlikely given how unreliable the village seems to be. He repeated his idea of the Kuna community representing "un tipo de gente que hoy dicen una cosa y mañana otra," or "a type of people that says one thing today and something else tomorrow." He and his boss had been asking themselves what kind of business would want to work with this type of community. He summarized his feelings on the various problems they were facing with the idea of the phrase "pan hoy, ambre mañana," or "bread today, hunger tomorrow." His perception was that the community was only interested in taking handouts rather than implementing long term change. He understood that in order to really make changes, and not just give handouts, they would really need to try to find ways to change the way these communities operate.

Problems in project implementation identified by Chemonics staff

Earlier, it was noted that development projects directors tend to approach independent academic researchers in one of two ways: either as an asset to the project goals, or as a threat to be avoided. Overall, and certainly at the beginning of my investigation, I was welcomed as an asset. There was a high level of frustration among the project staff regarding working with the Mortí community because of their unique history, culture and characteristics. Because of my family's history with the community, they saw me as someone that could perhaps help them to break through in their attempts to communicate and work with these people. With this in mind, early on one of the project directors identified some of the unique challenges of working with the Mortí community. These problems serve as a good reference point for the overall inquiry into
the problems faced by the project as it relates to working with indigenous communities. These problems will be contrasted with the main problems as viewed from the perspective of the Mortí leaders and community members. Of the various indigenous communities being targeted by the USAID project, Wargandi was considered the most "atrasado," which might be translated as either the "least developed" or the "most backward." However, out of the three Wargandi communities, Mortí was considered to be the most open, though the differences between the communities were not substantial. He surmised that this may be due to the historical presence of evangelical protestant missionaries within the community.

**Problem One: Lack of sufficiently educated and trained personnel within the community:** When Chemonics personnel sought to begin working with the Mortí community, they had difficulty finding people within the community who had sufficient education and technical skills to work with the project. Most of those from the community who had pursued higher education or specialized training no longer lived within the community. The project had approached some of these people, but found that they were not available for one reason or another. The director surmised that the reluctance to work within the community might have to do with the easier living conditions and higher wages available outside of the community. The one person in particular that he identified happens to be a good friend of mine, Teobaldo Martinez. This is the Kuna with whom I had a series of extended conversations on Mortí-related issues. My conversations with him regarding his thoughts on the project and his relationship to the community provide an interesting point of contrast between the perspectives of the project managers and that of an actual member of the community.
who had chosen to live outside of the community. The insights that he provided will be found throughout the work and noted accordingly. A brief biography of Teobaldo and another young Kuna man involved in the project will be included in the section on Mortí.

The Kuna culture of Mortí dictates that in order to work within the village on community projects, one must be part of the village work force and be living within the Mortí community. As noted earlier, most of the individuals who were identified as good candidates to work with the project because of their education and training were no longer living within the community. This reality made working with these individuals logistically challenging if not impossible. The project was primarily seeking people who would spend the majority of their time within the village. Not only did these individuals have work and relationship commitments outside of Mortí, they would also not be allowed to hold official positions of leadership within the community.

**Problem Two: political divisions within the community.** There have traditionally been two political parties who vie for influence and votes in the Mortí Community, the PRD and Arnulfista parties. In Wala the political divisions are particularly strong. This division has led to opposing groups taking side regarding the project, and contributed to the delay in Wala’s approval of the Chemonics project within the Wala territory.

**Problem Three: local “bad” attitudes:** The director found one custom within the village to be particularly troubling and difficult to understand. Anytime a private or governmental body wished to enter to community, they were subjected to a number of substantial fees. This was the case, even when the purpose of the trip was explicitly to provide aid to the community. The project members continued to be subjected to these fees even after several trips to the community when the benevolent purpose of their
trips should have been well understood. This practice of the Mortí community of constantly charging fees for permission to work within the community and for various services was one that would come out throughout the study, and one that caused much frustration among the project staff. The director that I first interviewed noted that he was brought to the point of nearly resigning each time he visited the community because of the lack of gratitude among the community. Interestingly, for reasons that are not clear to me, he did end up resigning from the project shortly after our meeting.

One example of the practice of charging outsiders for their services to the community comes from the fee structure for transportation by boat along the Chucunaque River into and out of the community using the village dugout and motorboat. According to the director, the standard rental fee for a member of the community was $40.00. The charge for teachers was $100.00, and the charge for private or governmental project members was $300.00, or over 7 times what was charged to a community member. This fee was begrudgingly paid by the project due to their need to move forward with the project. It was noted that this practice of charging aid workers to enter a community was not exclusive to Mortí, but that it was especially extreme in this community. He compared the people of Wargandi to the Marxist concept of the "lumpen" or "lumpenproletariat." In his frustration he described the community as "juega vivo," a term denoting a Machiavellian, "any means necessary" mentality. Tipping his hat to my own family’s evangelistic involvement with the Kuna, and his own Jesuit background, Mr. Montenegro concludes that these are the people who need the bible. If Jesus were here today, these are the ones to whom he would go.
Mr. Montenegro recounted how Chemonics had donated a water filter to each of the three communities, since none of the three communities have purified water. Typically the communities get their water from the rivers, even when they are brown and dirty from flooding. These filters were given as donations from USAID through the embassy. For some unknown reason, Nurra refused to accept the filter, which he was baffled him. To him, the rejection of the water filter was a symbol of the irrationality present in many of these communities.

The living conditions in Mortí are difficult. They had considered ecotourism options, but he conditions are too difficult. He said that they don't have a hospitable mindset. They charge $5.00 for a bowl of rice and an egg, when it cost no more than .50 cents to make. He mentioned the teachers that work in Mortí and how much they hate it. They get charged for everything. It is very difficult to work in Mortí. He understand that they are struggling to make ends meet, but in other areas of Panama people are in similar conditions and don't have that attitude. Again, he encouraged me to do a cross-community analysis, to show that it's not a Kuna thing, but rather a Wargandi thing. He mentioned Teo again, that he helped them with translating some materials into Kuna. He notes that Teo doesn't seem interested in working with the project, and again surmises that it has to do with the difficult living conditions. He mentions how difficult and dangerous climbing the bank is. He doesn't understand why they don't do anything about it. If the project offers to help, they want to charge them. He again mentions how frustrating it is to work with them, and how he has nearly resigned twice because of them. He feels like his work is being wasted and not making a difference.
There is a perception among the project directors that the Mortí community is a place where one's word is not valid. People say they will do one thing one day, and then something else the next. He noted that this makes doing business with these types of communities extremely challenging.

**Problem Four: consensus democracy:** Another problem that the project encountered had to do with local governance. In Mortí, and the other Wargandi communities, the Kuna concept of democracy is based largely on broad consensus among the working males, rather than majority approval or representative decision making. The “onmaket neg,” also referred to as the “congreso” is the village meeting hall, where the village gathers regularly to conduct its religious and political affairs. These meetings, which are held regularly several times a week and on an as needed basis, are open to the public and serve as the public space in which all issues are hashed out, grievances aired, and decisions made. From the Chemonics perspective, this form of governance leads to stagnation in decision making, making it difficult for the project to plan and implement activities with efficiency. More than just a difficult system to navigate, one director went as far as to pronounce this system a failed system of governance.

An example is the experience with another of the Wargandi communities, the village of Wala. At that point Chemonics had been waiting for six months on a decision from Wala on whether the project would be allowed to continue. Chemonics sought this approval in the form of a "convenio de trabajo" or project agreement which would be signed by the village authorities. Apparently there was broad community consensus regarding moving forward with the project, but there was a group of around three
individuals who were adamantly opposed. By consistently making their voice heard, they had been able to hold up the project approval.

At various points throughout the project, the project sought to identify and hire individuals to perform a variety of project related duties or functions. Perhaps the most significant of these was the creation and selection of a board of directors for the community based enterprise (CBE) that was being developed and registered as an essential part of the long term community project management. In addition to eventually taking over as the entity in charge of managing the community’s sustainable timber enterprise, the CBE was also a necessary component for complying with USAID funding requirements. In order to make grants or "donations" directly to the community, the community had to have a legally validated commercial identity. This was a completely foreign concept to the village on so many levels. Over the course of several months, the village went through the process of selecting and withdrawing several candidates for the position before finally settling on a set of young men for the positions. However, in the end, even these men were rejected. This caused the project staff no end of frustration, which they were not shy about sharing with the community. Their model required a stable set of capable community members to serve on the board of the CBE in order to begin to receive training, learn the necessary skills, develop working relationships with the project staff, and serve as liaisons between the project staff and the community and community leadership.

**Problem Five: weak governance:** Ricardo Montenegro explained how certain differences in governance between the Wargandi and Embera-Wounaan communities that Chemonics was working with made a big difference in the development of the
project. The Embera-Wounaan Congreso General is better organized and has more authority within the comarca. The Congreso General of Wargandi is very weak and has almost no authority. Because of this the Wargandi communities decided to leave the decisions regarding working with Chemonics up to each individual community, whereas in the Embera-Wounaan Comarca, the Congreso General was able to make that decision for all of the communities. Nurra has gone back and forth several times regarding approval of the project. According to the sahila, most of the community does want to move forward, but again, there are a few who do not who are holding up the project.

The Comarca as a whole is having territorial disputes. The legal boundaries are set on paper in Ley 34, but the physical boundaries are maintained by clearing a path along the traditional boundaries. They are having problems with people entering their territories. This is a problem not just with colonos, but also with the Kuna of the Madungandí and Kuna Yala comarcas, which share some territorial boundaries with Wargandi. Mr. Montenegro thought that the way I could help the community the most would be to work with them on their decision-making and governance practices. He drew my attention back to the Carta Organica, which he says they treat as if it was their Bible, yet they do not understand it very well. He pointed out the first article of the Carta Organica mentioning the Congreso General and notes how they have no written regulations and the Congreso General has no effective power. He continued with suggestions of how I could be involved with the strengthening of the decision-making institutions in the community. He suggests doing a comparative study between Mortí and other Kuna communities, such as Kuna Yala, which have stronger institutional
structures in order to show them that it can be done. He thinks if they see an example from Kuna Yala, they would be more apt to take note.

Another example was offered of how Chemonics had an agreement with village regarding transportation of project staff into and out of the village. On one instance the village did not come through on an arrangement for transportation. The project leader went to the sahila to try to discuss the situation, but the sahila dismissed him, saying that the failure was not the sahila’s responsibility. Instead, the sahila directed the project member to go work the issue out with the owner of the motor. Mr. Montenegro saw this as an inconsistency, in that on one level everything requires approval of the village, but when something doesn’t come through the village authorities don’t take responsibility.

**Mortí Community Policies, Values, and Perspectives**

**General Characteristics of the Wargandi Comarca**

The Wargandi Comarca was established by Law 34 of 2000, making it the third Kuna comarca to be established, behind Kuna Yala, and Madungandí. There are also two other Kuna communities that are not part of any comarca, the communities of Pucuro and Paya, located near the Colombian border. Mortí, Nurra, and Wala are the three village communities that make up the Wargandi Comarca. The total population of the three villages is estimated to be between 1500 and 2000 individuals, making it the least populated of the three comarcas. The name "Wargandi" comes from the Kuna words "war," meaning tobacco and "di," which means water or stream.

Before the legal formation of the Comarca, there were efforts to legally categorize the area under the “reserve” model, but this was never actually accomplished. Thus the area remained in legal limbo, though the three Kuna communities maintained de facto control of the area. It was not until the early 90’s, when the Pan-American
Highway was improved and extended further into the Darien that the Wargandi communities began to get much notice on the national scene. It was at this time that efforts were begun in earnest to establish a comarca in the region.  

Though separated politically and geographically, the Kuna of all three comarcas and of the Pucuro and Paya communities still consider themselves to share the same essential cultures and beliefs. However, the Kuna of Kuna Yala feel that the other Kuna communities have begun to lose a fair amount of their traditional culture due to prolonged exposure to Latin culture. Aresio Valiente noted that the chiefs outside of Kuna Yala chant more about Simon Bolivar than they do about their own ancient Kuna heroes. He notes that the people of Pucuro and Paya have lost the most, to the extent that they do not even chant anymore and many of them speak Spanish better than Kuna. Even though these communities live the farthest from Panama City, the country’s political and population center, he notes that they have had a lot of contact with the "wagas" (Kuna term for non-indigenous Panamanian nationals) over the years. Unlike their better-known Kuna Yala cousins, the Kuna of Wargandi and Madungandí have not made a presence for themselves in the national political dialogue. This is not to say that national party politics has not infiltrated the local villages, since it clearly has in Mortí. However, Aresio Valiente feels that the Kuna of Kuna Yala have been more successful in drawing the boundaries between national political issues and internal community issues.

The Mortí Community: A History of Concessions and Neglect

Whereas the Kuna of Kuna Yala have generally prohibited commercial timber concession on their land along the coast the Kuna of Wargandi and other area of the Darien, have a long history of granting concessions dating back into the mid-70’s. This
has occurred in spite of general disapproval from the Kuna of Kuna Yala and direct criticism by Kuna Yala leaders.\textsuperscript{193}

Chemonics Forest Operations Manager, and former World Wild Life Fund Central American Regional Coordinator, Mauro Salazar recounted to me how the area is crisscrossed with old lumber roads and skid trails.\textsuperscript{194} The majority of the most traditionally valuable commercial species have been long gone. These were the softer wood species used primarily for construction and furniture, such as Cedro Espino and Caoba. However, there is now a strong enough market demand for tropical hardwoods, which are still abundant in the area. Historically these trees were left behind because they were very difficult to work with, and it was much more profitable to concentrate on the other species.\textsuperscript{195}

The first wood to be extracted was the soft wood, which is much easier to harvest and run through saw mills.\textsuperscript{196} What is being targeted now is hardwood, and he figures they must be using different kinds of machinery now.\textsuperscript{197} The fact that wood is still being sold in "tucas," or large unprocessed portions, is indicative of the lack of modernization.\textsuperscript{198} This continues to be done in spite of all of the talk of "value adding" and whatnot.\textsuperscript{199} The intermediary timber companies are the ones coming out on top, rather than the indigenous communities or the Panamanian society at large.

The Project Comes to Town

When the Mortí community was first approached by USAID and Chemonics staff regarding the possibility of developing a project, the community was not sold on the idea.\textsuperscript{200} There was a fear that the project would either seek to put limitations on the community’s ability to continue to harvest timber, or would in some way be pursuing its own ulterior motives to the detriment of the community’s interests.\textsuperscript{201} After years of
marginalization, neglect, and outright deception by any number of outside interests, the community is generally suspicious of outsiders that come seeking to conduct business.202

On my first research related trip into the community, I requested a meeting with the sahilas (chiefs) of Mortí. I had alerted them ahead of time by letter as well as through personal contacts of my arrival and interest in working with the community. I told them about the investigatory purpose of my trip, emphasizing my interest in hearing their perspective on the Chemonics project, and my willingness to hear any concerns or questions that they might have. I also informed them that I was in the process of studying to become a lawyer, and that I had a particular interest in working with indigenous communities. I noted that I was focusing on legal and institutional issues of the project, so I would like to hear about any legal concerns or issues that they were facing. I also told them that I would try to help them to the extent that I could to work through some of these issues. During that first meeting, the village chiefs with the help of their "secretarios" or "sikkwis," presented a number of concerns. Interestingly, they had very little to say at the time about the details of the Chemonics project, but instead had concerns which were not directly related to the project. These issues will be summarized below. Although the project dynamics were of little concern to them, the issues that they did raise bear directly on the long term success of the forest management project.

Problems Identified by Mortí Leaders and Community Members

Problem One: the colonos and land invasions: The Kuna community of Mortí, as with virtually all of the indigenous communities in the Darien, has had long standing and persistent problems with colonos. These problems center around two issues. The first
has to do with land grabbing and encroachment into indigenous territory. The second issue is the cutting and theft of valuable trees. In the case of Mortí, both of these problems are exacerbated by the fact that the colono ranches now extend all the way from the Pan-American Highway to the edge of the Mortí territory, some 25-30 kilometers away. In the late 70’s when the Mortí community first realized the need to demarcate a territorial boundary, there were still miles and miles of virgin forests between their territorial boundary and the highway. In 2000, when the Comarca was officially recognized by the GOP, not only had the colonos deforested everything between the highway and the territorial boundary, there were also a number of colono families that had expanded their ranches past the well-defined traditional boundaries and into Kuna territories.

Even though these invasions had been contested by the Kunas and had been the source of several confrontations between the Kuna and the colonos, when the law was created defining the Comarca boundaries, a provision was included that stating "La Reforma Agraria reconocerá los derechos posesorios de los habitantes no indígenas que tengan estos derechos, dentro de los límites de la Comarca Kuna de Wargandi, al momento de entrar en vigencia la presente Ley. Las tierras reconocidas a los no indígenas no forman parte de la propiedad colectiva de la Comarca." ("The Agrarian Reform will recognize the possessory rights of the non-indigenous inhabitants that have those rights, within the boundaries of the Kuna Wargandi Comarca, at the time of entry into force of this Law. The lands granted to the non-indigenous do not constitute part of the collective property of the Comarca.")
With this brief background in mind, the first issue that the Mortí leaders brought to my attention was a couple of documents that had been causing fear and confusion in the Mortí Community for years. The brief and poorly drafted document contained the signatures of the authorities of the Congreso General of Wargandi appearing at the top of the document. The signatures appeared to have been pasted from another document, as they were misaligned with the rest of the document. The document attempted to convey, albeit poorly, that the authorities of the Comarca had agreed to grant a particular colono and his 11 children, the rights to an additional 1000 hectares of land within the Wargandi Comarca, in an area belonging to the Mortí community. To make a long story short, it turns out that this family was one of the original families that had possessory rights within the Comarca in the year 2000. At least this is what the official list provided by the Reforma Agraria office indicated. This list was not made available until 2008, and it is unclear how the determination was made regarding which colonos actually had the possessory rights in 2000. Nonetheless, this obviously fraudulent document had been circulating and causing confusion and fear among the Mortí community for the last 10 years. The issue was fresh in their minds, because they had recently received notice from the Reforma Agraria office that they needed to do something about this document because the family was still petitioning the office to extend their land holdings into the community. I assured them that from a legal standpoint the document was clearly fraudulent and the request being made was illegal. However, I also told them that it was important that they determine the administrative status of the petition just to make sure that the Reforma Agraria was not actually giving credence to this document. I agreed to do what I could to help them with this.
On my trip out of the community, I stopped by the regional Reforma Agraria office in Santa Fe, a small town along the Pan-American Highway. I discovered that while the colono family was no longer relying on the shady document to make their request, they had just that month submitted 11 different petitions for 100 hectares each. The official was helpful enough and even made a list of the names and petition numbers for me, but seemed to be completely ignorant as to the legality or implications of the situation. In accordance with the procedure conveyed to me by the Reforma Agraria official, I ended up drafting an official letter denouncing the petition for the community. The chiefs signed the letter and attempted to submit it to the regional office. However, they were notified that they would have to take it to the central office in Panama City. This is where it might be useful for the reader to take note of the educational, cultural, technological, economic, and geographic complexities of this task in this indigenous context. What might otherwise seem to be a relatively simple task is actually quite difficult in this context. The difficulty is evidenced in part by the 10 years it had taken to resolve this simple legal issue. Of course, the issue is only resolved on paper, if that. The actual situation with this colono family living on and within the territorial boundary of the Mortí community is another question that remains unanswered and unresolved.

**Problem two: colonos and the cocobolo curse.** The village leaders also brought up the second related issue of the constant cutting and theft of valuable trees, especially cocobolo (*dalbergia retusa*). Later, I was to find out the full extent of this problem, and how in many ways it threatens the very fabric of the local society and the viability of any meaningful forest management project. Mauro Salazar first explained to me that there is an ongoing rape of the Mortí forests of valuable timber species, especially of the prized
hardwood cocobolo. He explained that since the eastern boundary of the Mortí territory is formed by the Chucurtí River, there are cattle ranches all along that eastern side of the river. He recounted how all along that river there has been a huge extraction of trees, and that this year there have been tractors that have illegally entered the Mortí territory. They are primarily taking trees of high value such as Cocobolo and Balsamo (myroxilum balsamum). Every day there is rough cut lumber being brought down the river to the ports nearest the highway near Metetí. ANAM is supposed to be working to prevent this but they do very little to help the indigenous people to guard their territory and worse yet are complicit in the approval of the wood for sale and transport out of the Darien. The community itself does not have the economic resources to be doing constant vigilance of their whole territory. The community is very vulnerable and is constantly being invaded by colonos.

Problem Three: "El Chino" and the “contrato leonino." The second issue brought to my attention by the village leaders was the timber concession contract that they had signed the previous year. (See Appendix B) The contract was between the village and a timber operator referred to widely as "el Chino," whose legal name is Guo Jian Zhang Zeng. Mr. Zhang is immigrant owner and operator of International Woodwork Corporation, Inc., a local timber company that had set up operations in the Darien in the last couple of years to harvest and process tropical hardwood species into high end flooring products. It is believed that these products are primarily marketed and shipped to China. The year before, Mr. Zhang had made a trip into the village after some precursory negotiations with the community in order to enter into an agreement to
harvest the community’s wood in the upcoming years. As a little incentive to the offer, he brought with him 20 thousand dollars in cash, as an “advancement.”

This story was corroborated by several different people, including community leaders and Chemonics directors. As the story was recounted to me by a Chemonics director, prior to the signing of the contract, Chemonics had also been in discussion with the Mortí community about entering into an agreement to develop a sustainable forest management project. Chemonics had a preliminary commitment from the village and was scheduled to sign a work agreement on a Monday. The woodcutter undercut this process by coming into the village two days before on a Saturday with the 20 thousand in cash to distribute to the village in exchange for their commitment to working with him and signing the contract. Realizing they had been duped, Chemonics and USAID members used their clout and contacts to intervene in the situation. Since they had already been in conversations with ANAM to get permits to work in Mortí, they told the woodcutter that if he did not convince the village to work with USAID, they would not allow him to get the necessary permits through ANAM. Chemonics has a "convenio institucional" or institutional arrangement with ANAM, in which ANAM has agreed to only accept management plans from Chemonics, WWF, or other internationally recognized environmental agencies.

The woodcutter, holding the purse strings, and seeing his operations at stake, then called the community and directed them to agree to work with USAID. It was also noted that woodcutter has a lot of clout in the community. Whenever the project runs into institutional barriers involving the village, they have been in the habit of calling the woodcutter to have him sort things out. USAID has no control over the woodcutter,
since it is a commercial enterprise. It is a "relacion equitativa." They want to help the village have a good contract, but instead what they got was a "contrato leonino" or an unfair, one-sided contract. Apparently USAID warned the village not to sign the contract, that they would help them to have a better one, but the village did not take heed of these warnings.\textsuperscript{211} The contract bound the parties for 20 years and there were witnesses to the signing. The 20 year period reflect the legal limit imposed by Panamanian law on timber concessions.\textsuperscript{212}

A year after the signing of the contract, the true nature of the contract was beginning to sink in for the village. They had a sense that they were bound by the contract but felt as if it was unjust that the lumber company could possess such control over their land, just because they had signed some document in the heat of the moment. I agreed to review the contract for the village to determine what their options might be. After reviewing the document and relevant law, talking to national lawyers, and reviewing model contracts, I found a number of weaknesses in the contract. However, no open and shut case for nullifying the contract presented itself.

A full review of the contract is beyond the scope of this work, but below I provide a summary of the main issues presented by the contract. First of all, the Congreso General of Wargandi did not approve the contract. Any exploitation of natural resources within the Comarca requires the approval of the Congreso General. This requirement is listed in the law that created the Wargandi Comarca, as well as in the Carta Organica of the Comarca.\textsuperscript{213} However, given the operational weakness of the Wargandi Congreso General, this approval was never provided.
We began by discussing some of the commercial, contractual issues involved, including the issue of the contract with the Chino. Mr. Salazar notes that there are important provisions missing such as fines for non-completion of work. The Chino gains everything and has nothing to lose. There is not a provision for revising prices. The price is per tree, rather than per board foot. He said that all contracts can be broken, but that they did not want to get involved in that aspect. They want the Congreso General to assert itself to negate the contract. He said that they are not going to "mover ni un dedo" to resolve that situation because it is up to the community. Apparently they do not want to send the message that it’s ok to break contracts. Chemonics needs to work with the woodcutters and doesn’t want to create insecurity in regard to the value of a contract. As the Washington-based director had told me, an integral part of the sustainability of the project is the establishment of strong working relationships with the private commercial sector.

Mr. Zhang is one of many woodcutters in the area. He has been working in the area for many years. I asked if there is a way to compare the contract to others. He said the woodcutters have no interest in creating fair contracts and that there is no mechanism to ensure that. He said that they have very poor "plan de manejos" which they pay ANAM "funcionario" or employees to approve. The woodcutter should be financially responsible for replanting the trees, but that was not included in the contract. I asked him again if there was some way to force the woodcutter to change the contract, and he reiterated that they could not, because it was a contract between two fully-informed voluntary parties.
I ended up drafting a model contract, which I presented to the village along with a summary of my findings. I used the model contract to demonstrate the weaknesses of the former contract and encouraged them to use their newfound knowledge to pressure the timber operator into renegotiating the contract for the next harvest season.

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2 [more on face validity]

3 Id.


5 Id.

6 Id.

7 Id.

8 Herrera is Director of Anthropology and History at the University of Panama. He obtained his Master of Arts in Latin American Studies from University of Florida. Herrera is also Director of Human Ecology at the Institute of Renewable Natural Resources in Panama. He has conducted extensive research, writing and activism on the process of political involvement of Panama's indigenous peoples and its relation to the environment and history of Panama.

9 Interview with Francisco Herrera.

10 Id.


12 For instance, the 1994 Constitution provided that the San Blas Comarca (renamed Kuna Yala), would be divided into two electoral circuits, with each electing one legislator to the National Assembly. Constitución Política de la República de Panamá de 1972 Const., as amended, tit. V, ch. 1, art. 141, 1994. Article 141 divided the Darién Province (home to three of the five Comarcas) into two electoral circuits. The 1972 Constitution created a separate electoral circuit for the Chiriquí province, due to its majority indigenous population. Constitución Política de la República de Panamá de 1972 Const., as amended, tit. XV, ch. 2, art. 321(1)(l), 1994. This area was later incorporated into the larger Ngobe-Bugle
Comarca, and prior to the 2004 elections was divided into three electoral circuits. See Decreto Ejecutivo No. 194, 25 August 1999, La Carta Orgánica Administrativa de la Comarca Ngöbe-Buglé Administrative Organic Law for the Ngöbe-Buglé Region arts. 162-63, Gaceta Oficial No. 23.882, 9 September 1999 (Pan.), reprinted in LOPEZ, supra note 273, at 172.

13 Interview with Osvaldo Jordan.

14 Interview with Francisco Herrera.

15 Id.

16 Id.

17 Interview with Osvaldo Jordan.

18 Id.

19 Id.

20 Id.

21 Id.

22 Id.

23 Id.

24 Id.

25 Id.


27 Id.


30 Id.

31 Id.

32 James Howe is currently a professor of Anthropology at the Massachusetts Institute of Technology. Professor Howe received an A.B. degree from Harvard College (1966), an M.A. from Oxford University (Social Anthropology, 1967) and a Ph.D. from the University of Pennsylvania (Anthropology, 1974). His research is focused on political and historical anthropology, indigenous-state relations, and missionization. He has worked closely with the Kuna for nearly 40 years, beginning his ethnographic studies with the Kuna in the early seventies.

33 Id.

34 Interview with Osvaldo Jordan.

36 Id.

37 Interview with Aresio Valiente, title, organization (Month day year).

38 Id.

39 Id.

40 Id.

41 Id.

42 Id.

43 [Cite works of Valiente]

44 Interview with Osvaldo Jordan.

45 Id.

46 Id.

47 Chapin, 2006, Forthcoming.


49 Cycon.


51 Id.


53 Mapes, Forthcoming.

54 Id.

55 Interview with Francisco Herrera.

56 Id.

57 Id.

58 Id.

59 Id.

60 Id.

61 Id.

62 Id.
Interview with Francisco Herrera.
Interview with Osvaldo Jordan.

Interview with Osvaldo Jordan.

Interview with Osvaldo Jordan.

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Interview with Jordan.

Interview with Francisco Herrera.

Interview with Francisco Herrera.
Interview with Francisco Herrera.

Interview with Francisco Herrera.

Interview with Osvaldo Jordan.

Interview with Francisco Herrera.

Interview with Francisco Herrera.
Interview with Francisco Herrera.

Interview with Ricardo Montenegro, title, organization (Month day year).

Interview with Amy Bodman, organization (Month, day, year).

Interview with Amy Bodman.

Interview with Ricardo Montenegro.

Interview with Montenegro.

Interview with Montenegro.

Interview with Montenegro.
Id.
Id.
Id.
Interview with Montenegro.
Id.
Ley 34
Interview with Teobaldo Martinez.
Francisco Herrera, personal communication.
Id.
Interview with Aresio Valiente.
Interview with Aresio Valiente.
Id.
Id.
Interview with Aresio Valiente.
Id.
Interview with Mauro Salazar, title, organization (Month day year).
Id.
Herrera.
Id.
Id.
Id.
Interview with Teobaldo.
Id.
Id.
Id.
Personal communication, Joseph Goodman.
Ley 34, art. 2
Id.
See Appendix A
Interview with Reforma Agraria official, Santa Fe, Darien.
Interview with Mauro Salazar

See www.iwcpanama.com. (last visted 3/10/12) The web site names Guo Jian Zhang Zeng as the current operator of International Woodwork Corporation Inc. It goes on to note that he, along with his partners have 5 years of experience in the wood flooring business, with products that offer the durability, efficiency and versatility that their customers require. The site claims that the wooden flooring offered has been developed according to every standard of quality and professionalism. The site emphasizes that the company is in strict compliance with national laws and conscientious in all aspects that relate to the protection of the environment. (author’s translation) The corporation’s central office is located at Ave. Ricardo J. Alfaro (Tumba Muerto), Edif. Century Tower Ofic.421 piso 4, Panamá, República de Panamá. Id.

Id.

Ricardo

Interview with Francisco Herrera.

See Ley Nº 34 de 25 de julio de 2000, que crea la Comarca Kuna de Wargandi y promulgada en la Gaceta Oficial Nº 24,106, 28 de julio de 2000; Decreto Ejecutivo No. 414 (De 22 de octubre de 2008) "Por el cual se adopta la Carta Orgánica Administrativa de la Comarca Kuna de Wargandi. The Carta Organica or organic charter, which is created by Executive decree, is roughly equivalent in Panama to an indigenous constitution that codifies internal norms of conduct based on customary law (usos y costumbres). See Jordan, supra at n. 29.
CHAPTER 5
CONCLUSION

This work has dealt with an important issue at the intersection of the disciplines of law and the social sciences. The New Haven approach to law and policy has served to focus the work on policy trends, participants in policy-making, and the values and perspectives represented by these trends and participants. This thesis has focused on international development policy as it relates to community-based forest management among indigenous communities. This focus has been provided through both the review of literature and trends in development, as well as through the presentation of the Mortí case study. The questions now are, “What general insight or recommendations might be drawn from the case study with regard to the broader context of sustainable development among indigenous communities?”, and “What might be the consequences if the present policies illuminated by this study are not reformed?”

The recommendations represent alternatives to the status quo, and can be thought of as a form of creative thinking, rather than scientific prediction. The recommendations drawn from a local case study follow the New Haven School’s emphasis on localized understandings of "perspectives" and "operations." The perspectives and operations indicated the various participants’ attempts to maximize their value positions. While the indigenous community does have a certain amount of power to work with, it would be short-sighted to view power as the only value to be maximized. Instead other values need to be considered. The review of problem perspectives in this work makes the case that the top down development policy approach, even in the case of a community-based project such as the one in question,
still belies a wide gap in values between the development practitioners and the local indigenous community.

Many of the problems faced by the development practitioners in working with the indigenous community may be understood as a conflict of values. The conflicts of values were partially inherent in the competing interests between the parties. However, many of the problems that have been examined may have been better addressed through a better understanding of the values being expressed by the Mortí community. The primary values expressed were those of respect and security, and to a lesser extent wealth accumulation. Many of the community’s actions might come into focus when understood as a process of value accumulation and the regulation of that process. A similar process is at work in the individual motivations of the project directors, as well as in broader development and national policy. In order for the “prescription” of development policy to take hold in the local indigenous context, the community must accept the control mechanisms being implemented. In the same way, the development practitioners must understand the local control mechanisms at work in the community’s expression of its own policy norms. The perspectives and problems presented in this case study reveal that these dynamics are poorly understood, and scarcely addressed.

One way to better understand these dynamics in future project development and implementation would be to engage in a thorough process of research and knowledge integration before attempting to move forward with technical operations. This process would benefit from disciplines of inquiry called for by the New Haven school, such as trend identification in local decision-making, clarification of the social and legal context, identification of key decision-makers, clarification of values and value conflicts, and
prediction of problems. Although some of these tasks were implicitly at play to varying degrees in project development and implementation, overall they were lacking. This oversight tended to ignore the sequential impact of policy decisions and has led to negative repercussions. Indeed the very continuance of the development operations have been hanging in the balance for some time. This is not to mention the limited probability that any sort of sustainable timber management practices will actually continue once the USAID project pulls out later in 2012.

The problems of sustainable development in general, and those faced in the USAID project in particular, emerge from a particular social context. Any response to the problem should therefore emerge from an understanding of the context. This thesis has shed light on this context as a humble attempt to contribute to more sustainable development policy decision-making. The apparent goals of the sustainable development project were noble, to fight global poverty and maximize the human potential of the local indigenous communities while also conserving the environment for human survival and fulfillment. The project concept certainly reflected the three basic characteristics of community-based development. It did vest a degree of responsibility and authority in the community. It did have as its central objective the goal of providing the local communities with social and economic benefits from the forests. Finally it had as a central management goal, the ecologically sustainable use of the forest. However, it is questionable whether the project invested enough time and resources to confidentially obtain the commitment of the community in these goals. By most measures, the community was not involved at all in the actual conception and planning of the overall project. To the extent that it did come on board, it was more as a reaction
to the costs and benefits associated with accepting or rejecting the project. In this sense the project failed to fully develop a partnership with the community, especially on that did not conflict with the traditional social and governance structures. The elements of successful community-based partnerships that were identified earlier were weak at best. Partnership objectives were not fairly and openly negotiated. The public sector was not actively involved through impartial brokers. Neither was it apparent from the investigation that much consideration was given to any possible socio-economic drawbacks. The assumption was that the project would be overall beneficial to all of the stakeholders, regardless of the various obstacles and setbacks. On the other hand, it does seem that equitable and cost-effective institutional arrangements were sought to the extent possible and the benefits of the project were arguably sufficiently and equitably-shared across stakeholders. The project certainly incorporated measures to maintain sustainable exploitation levels, but there is little evidence that these measures will survive the withdrawal of the investment of extensive oversight, involvement and resources by USAID.

The nature of the problems identified and anticipated as a result of current development policy reveals the potential benefits of a greater commitment to respecting the indigenous rights norms of the United Nations Declaration on the Rights of Indigenous Peoples in development policy. The study reveals that there are constant efforts at every level of policy making to force indigenous communities into policy-molds that are not only foreign to them, but also destructive to their community integrity. Article 3 of the Declaration gives indigenous people the right to self-determination and Article 9 guarantees the right to belong to an indigenous community and live in accordance with
indigenous customs and traditions. Further, Articles 19 and 20 recognize the right of indigenous people to participate in all levels of decision-making in matters concerning them. Article 26 in particular, speaks to the relationship of indigenous communities to their land and resources. It upholds not only the broad right to land and other resources traditionally owned, occupied, or otherwise acquired, but also the rights to use, develop, and control these resources according to the traditional customs and land tenure systems. An explicit, systematic development and implementation of these principles in every level of development policy is necessary in order to increase the legitimate participation of local indigenous stakeholders.

The incorporation of indigenous rights norms into development policy is not merely a burden to be borne by development practitioners, but also represents an ongoing evolution in the decision-making capacity and governance of indigenous communities. These communities are engaged in a struggle to meet and adapt to the threats to not only their cultural and political survival, but also to the fragile rainforest ecosystem with which they have historically maintained a sustainable relationship. There may be something akin to an evolutionary necessity which stresses the need to engage in decision-making strategies which seek to advance indigenous rights norms through political and legal action. Only through informed adaptation in decision-making, are indigenous communities and their advocates able to appropriate global political and legal resources to secure the protection of their role in what is in effect a global commons in which the indigenous people are both stakeholders and guardians. Thus explicit incorporation of the norms of the Declaration into international development policy will indeed advance the goals of sustainable development by ensuring that
indigenous communities are full participants in the creation of and implementation of development norms. The problem of sustainable development will only be successfully addressed through the establishment of partnerships based on broad consensus among all parties.

This study has only scratched the surface of the issues presented, whether in general or in the particular case of the Mortí community. The field is ripe for further research and advocacy. Thus this work concludes with just a few suggestions of avenues for further research and advocacy. First, the political and financial motivations that lead to the creation of specific development projects among indigenous communities must be better understood and openly addressed. This openness is crucial in order to address the deep seeded inconsistencies in development policy that lead to unsustainable policy initiatives that do not adequately incorporate indigenous perspectives and norms. Second, more research and advocacy needs to be targeted at the policy and regulations governing State level agencies such as ANAM. These agencies in the best of scenarios merely ignore the needs of indigenous communities in the oversight and regulation of natural resources. However, more often the overly-bureaucratic, corrupt regulatory system that has been imposed on the local practices and realities serves to actively harm the interests of indigenous communities. Thus, the State is complicit in the ongoing destruction of indigenous livelihoods and natural resources. To the extent that development agencies ignore these realities, they too are complicit in this destruction. Third, avenues must also be investigated and pursued to encourage efficient and transparent cooperation between international development agencies and local government agencies. Efficiency and transparency between these
stakeholders is crucial if indigenous rights norms are going to be implemented with any consistency or efficacy. Fourth, more research and advocacy must be dedicated to understanding and addressing the conflicts that arise between indigenous communities and the non-indigenous settlers, or “colonos” who live near them. Finally, more research must be dedicated to the cultural and environmental consequences of unsustainable timber harvest upon local indigenous communities. These negative consequences persist nearly unaddressed in the community of Mortí, both through poorly conceived and regulated government approved harvest plans, and through the ongoing theft of valuable timber species.
Dada en la Comunidad de Nurna, Comarca de Wargandi a los 12 días del mes de mayo del año 2001.

Osvaldo Alvarado
Primer Cacique General

Pinel García
Segundo Cacique General

Artemio Lozano
Tercer Cacique General

COMARCA KUNA DE WARGANDI
Congreso General

Resolución N° 8.

CONSIDERANDO

Primero: La ley 34 de julio 25 del año 2000, en el artículo de la propiedad de tierra, Indica que aquellas personas que tienen derechos posesorios antes de la creación de la mencionada ley será respetado por el congreso General de Wargandi y sus miembros.

3. El señor Paulino Rodríguez Mayor Panameño con cédula de identidad personal Nº 9 70 675, tiene certificado RACDP Nº 05=08, Mantiene la solicitud 1995, reconocemos tienen derecho a 100 has cada uno de los hijos de Paulino Rodríguez, ubicada en la localidad de Qda. Asnati, corregimiento, Yaviza, Distrito de Pinogana, Provincia de Darién, de eso da un cantidad de 1,200 hectárea comprendida dentro de los siguientes linderos:

Norte: Río Asnati
Sur: Comarca Kuna de Wargandi
Este: Comarca Kuna de Wargandi
Oeste: Comarca Kuna de Wargandi.

Resuelve

Primero. Reforma Agraria certificará si tienen los derechos posesorios cada uno de ellos.

Segundo. Aquellas personas que no tienen sus derechos posesorios serán desalojadas.

Fundamentos legales: Artículo Nº 855 y 876 del libro III del código Administrativo y artículo 127 de la Constitución de la República Cúmplase, Firman los caciques.
CONSIDERANDO

Primero: La ley 34 de julio 25 del año 2000, en el artículo de la propiedad de tierra, Indica que aquellas personas que tienen derechos posesorios antes de la creación de la mencionada ley será respetado por el congreso General de Wargandi y sus miembros.

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Norte: Comarca Kuna de Wargandi
Sur: Comarca Kuna de Wargandi
Este: Comarca Kuna de Wargandi
Oeste: Comarca Kuna de Wargandi.

Resuelve

Primero. Reforma Agraria certifiquele los derechos posesorios los señores Rodríguez cada uno de ellos.

Segundo. Aquellas personas que no tienen sus derechos posesorios serán desalojadas.

Fundamentos legales: Artículo Nº 855 y 876 del libro III del código Administrativo y artículo 127 de la Constitución de la Republica.

Cúmplase, Firmado a los 24 días de marzo de 2008.

Joselino Pérez García
Corregidor Policial de Wargandi
APPENDIX B
MORTI COPY OF CONTRACT WITH INTERNATIONAL WOODWORK, INC.

CONTRATO DE COMPRA VENTA DE APROVECHAMIENTO DE PERMISO COMUNITARIO DE MORTI

Entre los suscritos, a saber GUO JIAN ZHANG ZENG, varón, de nacionalidad panameña, mayor de edad, portador de la cédula de identidad personal No. N-19-2079, con domicilio en Edificio Century Tower, piso 4, oficina 421, Vía Ricardo J. Alfaro, corregimiento de Betania, distrito y provincia de Panamá, en mi condición de representante legal de la sociedad INTERNATIONAL WOODWORK CORPORATION INC, sociedad debidamente inscrita a Ficha 544029 Documento 1036962, de la sección de microempresa mercantil del Registro Público, quien en adelante se denominará EL COMPRADOR, y por la otra, la Comunidad Indígena de Morti, debidamente representada por sus autoridades OSVALDO ALVARADO TURIÑO, varón, panameño, mayor de edad, portador de la cédula de identidad personal 5-pi-2-826 – Tercer Cacique General MAURICIO CASTAÑA GONZALEZ, varón ,panameño, mayor de edad, portador de la cédula de identidad personal 5-pi-3-966, SAILA VALERIANO VALDES GONZALEZ,varón, panameño, mayor de edad, portador de la cédula de identidad personal 5-pi-3-967, en su condición de SAILA Forestal y JOHN MARTINEZ VALDES, varón, panameño, mayor de edad, portador de la cédula de identidad personal 5-7-07103, en su condición de Secretario Forestal , todos ellos residentes de la comunidad indígena de Morti actuando en nombre y representación legal de la COMUNIDAD DE MORTI, quien en adelante se denominará EL VENDEDOR , convienen en celebrar el presente contrato de compra – venta sujeto a las siguientes condiciones y términos:

PRIMERO: Declara EL VENDEDOR , que la comunidad de Mortí pertenece a la Comunidad Indígena de Wargandí , Ubicada en el D istrito de Pinogana, Provincia de Darién.

SEGUNDO: Declara EL VENDEDOR, que en virtud de lo anterior , la comunidad de Mortí, obtendrá los PERMISOS COMUNITARIOS necesarios con la AUTORIDAD NACIONAL DEL MEDIO AMBIENTE DE PANAMA (ANAM) , para el aprovechamiento forestal.

TERCERO. Declara EL VENDEDOR, que autoriza al COMPRADOR, para que presente, gestione, subsane y se notifique ante la AUTORIDAD NACIONAL DEL AMBIENTE , de los Permisos Comunitarios que se presenten en virtud del presente contrato de aprovechamiento forestal.
CUARTO: Declara **COMPRADOR**, que desarrollará un proyecto **Plan de Manejo y Aprovechamiento Forestal Sostenible**, durante **veinte años (20)** en el área de Mortí, previo a las autorizaciones y aprobaciones (inventarios, estudios, planes, entre otras) de las autoridades. Los gastos necesarios para realizar el inventario del bosque, serán cubiertos por el **COMPRADOR-PROMOTOR**.

QUINTO: **EL VENDEDOR**, se compromete, exclusivamente con el **COMPRADOR**, a venderle toda la madera, producto de los Permisos Comunitarios obtenidos con la **AUTORIDAD NACIONAL DEL AMBIENTE**, por árbol en pie, independientemente del tamaño (diámetro y altura) y según la especie, que a continuación se detalla.

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<td>Almendro</td>
<td>70.00</td>
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</table>
SEXTO. En el evento de que surjan circunstancias que impidan que COMPRADOR, el aprovechamiento comercial de las maderas extruidas, EL VENDEDOR, deberá reembolsar todos los gastos efectuados, por el COMPRADOR.

SEPTIMO: Declaran las partes, VENDEDOR Y COMPRADOR, que la superficie total objeto del PERMISO COMUNITARIO mediante el Plan de Manejo y Aprovechamiento Forestal Sostenible, según lo aprobado por la ANAM, es de ___________ () hectáreas, cuya unidad de corta anual es de ___________ () hectáreas.

OCTAVO: Declara EL VENDEDOR, que una vez obtenido el PERMISO COMUTARIO expedido por la Autoridad Nacional del Ambiente, concederá a COMPRADOR, INTERNATIONAL WOODWORK CORPORATION INC, un periodo de veinte años (20) contados a partir del corte del primer árbol para ejecutar la extracción de la madera. Asimismo declara EL VENDEDOR, que durante ese periodo, ninguna persona natural o jurídica podrá intervenir en el área de extracción de LA EMPRESA.

NOVENO: Declara EL VENDEDOR, que si por motivos de fuerza mayor o caso fortuito, EL COMPRADOR no logra extraer la madera, en el plazo expedido por la ANAM, EL VENDEDOR se compromete a solicitar las prórrogas respectivas del mismo, a fin de que la empresa extraiga el producto sin mayores complicaciones.

DECIMO: Declaran EL VENDEDOR y EL COMPRADOR, que durante los veinte años (20) de aprovechamiento, que se comprometen a con el cumplimiento y seguimiento de todas las obligaciones contraídas en el Plan de Manejo y Aprovechamiento Forestal Sostenible, correspondiente. Así mismo asumen responsabilidades compartidas derivadas de ellas según sea el caso, siempre y cuando no haya intervención de terceros sobre el área de extracción.
DECIMO PRIMERO: Declara EL COMPRADOR, que la forma de pago del producto se efectuará por cada árbol derribado, y dicho pago se efectuara ______________ (describir si es semanal o mensual).

DECIMO SEGUNDO: Declara COMPRADOR que asume los costos por la ejecución del aprovechamiento forestal, así como también el pago de los impuestos propios de la actividad.

DECIMO TERCERO: Entienden las partes, VENDEDOR Y COMPRADOR, que las obligaciones derivadas del presente contrato deben ser acatadas y su incumplimiento dara derecho a demandar por daños y perjuicios ante los tribunales de justicia.

DECIMO CUARTO: Estando de acuerdo en las condiciones aquí pactadas, firman las partes que en ella han participado, como muestra de aceptación, a los días del mes de del 2010.

EL VENDEDOR.

OSVALDO ALVARADO TURIÑO
CED. 5-PI-2-826
Tercer Cacique General

INTERNATIONAL WOODWORD INC
GUO JIAN ZHANG ZENG

MAURICIO CASTAÑA GONZALEZ
CED. 5-pl-3-966
Saila.

VALERIANO VALDES GONZALEZ
Ced. 5-pl-3-967
Saila Forestal

JOHN MARTINEZ VALDES
CED. 5-7-07103
Secretario Forestal
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BIOGRAPHICAL SKETCH

Benjamin Goodman was born in Michigan, but grew up in Panama as the son of evangelical missionaries working with the Kuna of the Darien. Benjamin remained in Panama until his senior year of high school when he returned to Michigan. He went on to attend Wheaton College in Illinois and to complete his Bachelor of Arts in Philosophy and International Relations at the University of Michigan. Benjamin continued his education by pursuing a dual-degree program at the University of Florida. He expects to graduate with a Juris Doctor from the Levin College of Law and a Master of Arts in Latin American Studies from the University of Florida in May of 2012.