INTRODUCTION

In this chapter we describe one case study which formed part of a broader research project that examined the evolution of communal land tenure in the face of increased globalization and neo-liberal policies that favor individual, private property. Understanding these land tenure dynamics is important not only because much of the remaining forest cover in Latin America is part of indigenous territories, but also because the cultural survival of numerous indigenous and traditional groups depends on the continued existence of their territorial claims. Furthermore, this work contributes to the ongoing land tenure debate on common property resource management. The tenure systems found in many indigenous and traditional territories are not easily accommodated within western legal property systems and it is this tenure pluralism that we have investigated through various case studies in Latin America. In this paper we describe a case study of a Kuna community of Panama.

Those who have heard of the Kuna Indians in Panama usually think of the Kuna living on the Atlantic/Caribbean coast of Panama (see Figure 1 – Map). These Kuna have been in constant contact with westerners for hundreds of years. The Kuna of Comarca Madungandí in central Panama, the focus of this study, have a

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1 The research for this chapter was supported by a grant from the John D. and Catherine T. MacArthur Foundation to Thomas T. Ankersen and Grenville Barnes. Thomas Ruppert served as a research fellow for the grant, and Rubén Orlando González of Alianza para Conservación y Desarrollo acted as a local consultant for field research in Panama.

2 Elinor Ostrom stands as a central figure in the literature on common property resources. Ostrom has authored books such as Governing the Commons: The Evolution of Institutions for Collective Action and Crafting Institutions for Self-Governing Irrigation Systems and Understanding Institutional Diversity. She has also assisted in editing books on common property such as Local Commons and Global Interdependence: Heterogeneity and Cooperation in Two Domains and The Commons in the New Millenium. Growing interest in common property resources has spawned an internation association—the International Association for the Study of the Commons (www.indiana.edu/~iascp)—an international journal—The International Journal of the Commons (www.thecommonsjournal.org/index.php/ijc)—and a “Digital Library of the Commons” (http://dlc.dlib.indiana.edu/).

3 These included comarcas in Panama, ejidos in Mexico, comunidades nativas in Peru, indigenous communities in Bolivia, and extractive communities in Brazil.

4 The Kuna usually prefer to refer to themselves as Dule. See, e.g. http://duelenega.nativeweb.org/english.html.

5 “Comarca” in Spanish means “region.” Due to its use in indigenous legislation in Panama, the word has come to have special significance in Panama as an area or region of special indigenous control.
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much shorter history of interaction with westerners in Kuna territory.6 Comarca Madungandi, located about 100 kilometers east of Panama City, had received only minimal attention by the State of Panama until the late 1950s when the first permanent non-indigenous settlers arrived in the area.

The construction of a major dam and the extension of the Pan-American highway have had a significant impact on the Comarca. The Kuna of the Comarca7 of Madungandi therefore present an ideal opportunity to examine how external influences can affect a culture’s traditional land tenure. In June of 2004 we visited five communities in the Comarca to conduct key informant, semi-structured interviews on Kuna land tenure.8 These communities were selected as they represent different points on a continuum ranging between highly connected and accessible on the one pole to most traditional and remote on the other. The communities visited included Akua Yala, Icanti (Aguas Claras), Capandi (Rio Diablo), Tien Huartuma (Wacuco), and Ibedi9.

We begin the paper with some background on Kuna attitudes towards community spirit and involvement. We then discuss the tenure history of the Kuna in the Bayano/Madungandi area and address the ‘western’ Panamanian legal framework in which the Kuna of Madungandi operate. Next we look at the governance structure that operates within the comarca and contrast this with the external regulatory structure that has been imposed on the more traditional structures. This sets the stage for a more detailed examination of the traditional and evolving land and resource tenure rules in the Comarca. We analyze the major land and resource conflicts which resulted from external developments, primarily the construction of an hydroelectric dam and the extension of the Pan-American highway. In the final section of the paper we present our conclusions and the more general trends that are illuminated through the experience of the Madungandi Comarca.

II. CULTURAL BACKGROUND: KUNA FOCUS ON COMMUNITY

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6 There was no significant movement of non-Kuna settlers into the Bayano region before the late 1960s. Kilowatts and Crisis 321. See also, Dr. José Manuel Reverte Coma, Bioetnogeografía de los Indios Cuna 17 (2001) (noting that the Kuna of the Bayano region in the 1960s were isolated enough from other Kuna and the outside world that they had different pronunciation of language, older forms of dress, and refused any type of acculturation).

7 “Comarca” in Spanish means “region.” Due to its use in indigenous legislation in Panama, the word has come to have special significance in Panama as an area or region of special indigenous control.

8 Information without a cite comes from personal interviews conducted during 2004. The book Kilowatts and Crisis is frequently cited, and many of the propositions for which it is cited were corroborated during interviews conducted by the lead author.

9 Ipetí is the Spanish name for the town. The Kuna name is more properly written as Ibedi. The name most likely translates as “River del Sol” or “River of the Sun.” Dr. José Manuel Reverte Coma, Bioetnogeografía de los Indios Cuna 22 (2001).
Kuna response to external conflict is to withdraw into their own community in order to draw strength from their unity. 10 The Kuna have earned a reputation as a people who value community and working together for the good of the community. This traditional community spirit has led to a concomitant evaluation of individual actions to assess whether these actions further the interests of the community rather than just the interests of the individual actor. A person gains in social status by effectively serving the group. As a result, the Kuna are more effective at achieving goals that require community cooperation. 11

Many Kuna express great pride in their community spirit. They say that communal work is much more agreeable than working alone as it offers friends, jokes, and entertainment. Examples of community spirit in Kuna culture abound. Traditionally the Kuna believed that people were not to charge for anything, but instead were to give things away; current law does not forbid selling medicinal plants, but the more traditional view is that you give them away and your reward comes in the next life. The community spirit of the Kuna manifests itself even in private ventures that are often communal in nature. For example, shops have sometimes been cooperative ventures with responsibilities and profits shared among the cooperative members. 12 House building is a community affair for the Kuna; traditionally all house building and maintenance were communal. 13 Community membership comes with other responsibilities as well. For example, the Kuna maintain the demarcation of their territory by clearing a line through the jungle and vegetation. 14 This boundary must be frequently cleared, and members of communities throughout the Comarca are required to participate in this work or pay a fine. Similarly, some communities require members to participate in community rituals and celebrations or pay a fine and carry out additional community work (such as cleaning up the school). Community members have responsibilities to contribute to the work and maintenance of aqueducts as well as general cleaning of the village.

The services, goods, and support of community constitute valuable goods for the Kuna. If a Kuna wants to move from one community to another, that person must pay a fee to the new community since the newcomer has not contributed either

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10 The Kuna Gathering 63.
11 See, e.g. KILOWATTS AND CRISIS 174 (comparing Kuna ability to organize communities to work on projects and the inability of non-Kuna colonizers to do the same).
12 KILOWATTS AND CRISIS 231.
13 The exception to this is that a newly-married man must build his first home himself.
14 Interview with Pedro Esquivel, second saila of Akua Yala, July 4, 2004. The demarcation of the Comarca of Madungandi was accomplished through a grant given by the World Bank. Id.
labor or capital in the new community. Kuna typically have been free to live in any Kuna community as long as they follow the process for associating themselves with the relevant community.

III. TENURE HISTORY AND THE LEGAL FRAMEWORK

The Kuna tradition is an oral tradition, and the tenure history of the Kuna of Madugandí has been preserved in many oral stories. These stories take place names and events, rather than a western calendar, as the measure of history. Thus, while places and events in early Kuna history are clear to the Kuna, the date of their occurrence often remains shrouded in uncertainty. Since colonization, Kuna history has become more date specific.

Even before the independence of Panama from Colombia in 1903, the Kuna had received official recognition and a reserve from the government of Colombia. Following independence, the treatment of the Kuna deteriorated in the new state of Panama. The Kuna of San Blas—since renamed “Kuna Yala”—located along the Atlantic coast of Panama and sharing its southern border with Comarca Madungandi, eventually led a violent revolt against the Panamanian state in 1925.

Thus, it was not until after the violence of revolution in 1925 on the Atlantic coast that the Panamanian legislature began to take more seriously the issue of land rights for the Kuna. In 1930 the legislature passed Law 59 which created indigenous reserves on the Atlantic Coast. Only four years later in 1934 the Panamanian legislature created additional indigenous reserves through Law 18. This law created, inter alia, the reserve in the Bayano Region that later became known as Madungandi. As with its predecessor four years earlier, the 1934 law

15 To become a member of a community, one must pay a $50 fee. The process is similar to emigrate from another comarca into Madungandi: one must pay a fee of $50 to the General Congress in addition to the community to which one will move.


18 Law 99 of Dec. 23, 1998 (por la cual se denomina Comarca Kuna Yala a la Comarca de San Blas).

19 Law 59 of Dec. 12, 1930, Gaceta Oficial, No. 5901. The territorial limits defined in article one of this act were expressly derogated by Ley 20 of Jan. 31, 1957.

20 Law 59 of Dec. 12, 1930, art. 1.

21 Law 18 of Nov. 18, 1934, Gaceta Oficial No. 6934.

22 Law 18 of Nov. 18, 1934, art. 1.
also made the subject land inalienable, judgment proof, ineligible to be used as collateral and indicated that the land was possessed communally. Before this law was passed, the government of Panama tried to convince the Kuna in the Madungandi area to instead accept individual titles to individual parcels when creating the reserve, but the Kuna rejected this attempt at individualization and insisted on receiving the reserve as communally-held land.

After another four-year interval, the Panamanian legislature introduced the word “comarca” in Law 2 of 1938. This law converted the indigenous reserves created by Law 59 of 1930 into the comarcas of San Blas and Barú. The “carta orgánica” or organic charter of San Blas as drawn up by the Kuna was not legally recognized in Panama until the passage of Law 16 of Feb. 1953.

Law 16 of 1953 recognized local leaders or “sahilas” as well as the “traditional” congresses of the Kuna. However, the provenance of the multi-layered, democratic, and relatively egalitarian “traditional” congresses of the Kuna remains obscured by time. Accounts of Kuna along Panama’s northern coast during the 16th and 17th centuries depicted a political system much more influenced by hierarchal and hereditary concerns. Thus, while these congresses were given legal jurisdiction according to their traditional laws over all legal infractions except those involving the Panamanian penal code and specified that

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23 Law 18 of Nov. 18, 1934, art. 2. The terms commonly used to denote these limitations in Spanish are “inalienable, inembargable, imprescriptible, indivisible.” Thomas T. Ankersen & Thomas K. Ruppert, Defending the Polygon: The Emerging Human Right to Communal Property, 59 Okla. L. Rev. 681, 745 (2006).

24 At one point the Kuna of the Bayano region argued vehemently against changing the status of their reserve to a comarca. Alaka Wali cites the recollection of a Kuna that he had with a government official:

I told him that we Kuna in the Bayano did not want a comarca. We wanted to keep our reserve. There is a big difference. I looked up in the dictionary what the two words mean. Reserve means set aside [or] apart. But comarca means tied to the government. It means the government will control the internal events. The older chiefs were right when they chose a reserve for the Bayano. It means we are free to do as we choose within our boundaries. We don’t have to answer to any intendente [government-appointed liaison officer] or anyone else besides our own leaders. And we want to keep it that way.

Alaka Wali, p. 253.


28 Law 16 of February 19, 1953, art. 13.

29 Law 16 of February 19, 1953, art. 12. The law did specify that Kuna traditional laws could not be enforced or recognized if they contradict the Panamanian constitution.
all the “tierras baldías” in San Blas belonged to the Kuna except that land to which natural or juridical persons already had acquired a legal right prior to the enactment of the Law, the political structures in the law codified what appear to be relatively new “traditions.”

In 1996 the Comarca Kuna of Madungandí was established through Law 24. Law 24, article one, states that the Comarca contains approximately 180,000 hectares. However, more accurate measurements show Comarca Madungandi contains approximately 234,000 hectares. Some non-indigenous individuals around Comarca Madungandí have thus complained that the Comarca contains an “extra” 54,000 hectares since the law says “approximately 180,000.” This argument fails to appreciate that the legal description of the land area of the Comarca is much more specific than the language regarding the “approximately 180,000 hectares.” During creation of the Comarca, the Panamanian government tried again to individualize land titles, and the Kuna again rejected this and opted for a communal title that was more in keeping with their traditional land tenure. Comarca Madungandí has a population of close to 5,000.

IV. THE GOVERNANCE STRUCTURE OF THE KUNA OF MADUNGANDÍ

A. Regulation External to the Comarca

Law 24 establishes that the Comarca belongs to the Kuna as communal property. The law specifies that Comarca Magungandi constitutes a special political division and recognizes and guarantees the existence of the Kuna General Congress in the Comarca as well as the regional and local congresses.

The regulations for the law establishing Comarca Madungandí were adopted by the executive on December 3, 1998. The charter broadly states that its purpose

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30 Law 16 of February 19, 1953, art. 1, para. 3.
31 Law 16 of February 19, 1953, art. 1, para. 2. The law also stipulated that any lands within the comarca that were abandoned for more than five years would become part of the reserve regardless of the former legality of the title. Id. at art. 22.
34 Law 2 of January 12, 1996, art. 2.
35 Law 2 of January 12, 1996, art. 4.
36 Law 2 of January 12, 1996, art. 5.
37 In Spanish this is known as the “Carta Orgánica” which is essentially the executive regulations designed to implement the legislation from 1996 that legally established the Comarca.
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is to “protect and respect the identity, the political, economic, social, and cultural rights of the Kuna of Madungandí within the unity of the nation and the indivisibility of the territory of the State of Panama.”

Although the law creating the Comarca Kuna of Madungandí does not specifically mention customary and traditional laws, the regulations contain several provisions demonstrating that traditional Kuna law does apply in the Comarca as long as this does not create a conflict with the laws of Panama or the Panamanian constitution. For example, the regulations grant administrative authority for the Comarca to the indigenous authorities identified in the law creating the Comarca. Several other articles give specific content to the recognition of traditional Kuna authorities and define their role according to Kuna tradition. These include statements that the Kuna must obey the decisions and rules of the traditional Kuna authorities recognized by the regulations. The regulations also contain two distinct limitations on the authority of the traditional Kuna authorities: First, decisions of the traditional Kuna authorities may not contradict the traditions of the Kuna of Madungandi, and second, their decisions may not contradict Panamanian law.

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38 Executive Decree No. 228, December 3, 1998, Gaceta Oficial No. 23,687.


40 Law 24 of January 12, 1996.

41 See, e.g. Executive Decree No. 228, December 3, 1998, art. 6 (establishing traditional Kuna authorities with authority to administer the Comarca).

42 Executive Decree No. 228, December 3, 1998, art. 6.

43 See, generally arts. 7-29 (recognizing and describing the attributes of the traditional Kuna congresses) article 13 [noting that the decisions of the General Congress may not contravene the Panamanian Constitution or laws], and article 28 [stating that resolutions and dispositions of the various congresses may not contravene the Panamanian constitution, Ley 24 of 1996, the Organic Administrative Charter of 1998 approved by the executive, or the traditions of the Kuna people]

44 Executive Decree No. 228, December 3, 1998, arts. 10 [noting that all decisions of the Kuna General Congress of the Comarca of Madungandi must be complied with by the whole Comarca] and article 18 [requiring everyone in each community to comply with the decisions of the local congress of the community].

45 Executive Decree No. 228, December 3, 1998, art. 28. This language could raise concerns about what exactly constitutes “tradition.” Does this mean that the Kuna cannot change or that their culture cannot evolve? This hardly seems a reasonable interpretation. Furthermore, such forced ossification of culture would make little sense when the culture already confronts massive changes being forced on it from external forces. International documents that address this question note that the intent of honoring tradition is not to stifle change in indigenous cultures. See, e.g., Employment Sector, International Labor Organization, Indigenous and Tribal Peoples: A Guide to ILO Convention No. 169 at http://www.ilo.org/public/english/employment/strat/poldev/papers/1998/169guide/169guide.htm
B. Regulation Internal to the Comarca

The Panamanian regulations governing Comarca Madungandi recognize four distinct “traditional” authorities: the Traditional Congress, the General Congress, the Regional Congress, and the Local Congress.\textsuperscript{47} As intimated above, the development of the traditional congress, the general congress, and the regional congresses may have occurred largely within the Panamanian laws establishing the Kuna comarcas in Panama.\textsuperscript{48} This increase in complexity and relative power of fairly new political structures has been characterized as a result—and sometimes as a cause—of many other factors, including the changing scale of Kuna life and changes in the environment (social and political) surrounding the Kuna.\textsuperscript{49} The Traditional Congress serves to protect the culture, customs, and morals of the Kuna according to their traditional religious precepts; it also has the responsibility to protect sacred sites, archaeological artifacts, and historical documents.\textsuperscript{50} The General Congress operates as a secular body composed of general caciques (leaders) of the comarca: the administrative or first sahila\textsuperscript{51} of each community, the spokesperson of each community, and a community representative from each community; its many legal functions include, among others, the power to approve plans for development in the Comarca, establish regulations, and make agreements or contracts.\textsuperscript{52} The Regional Congress is a traditional authority focused on discussion and resolution of internal community problems.

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\textsuperscript{46} See art. 68 [recognizing the various Kuna congresses and reiterating that decisions of these bodies may not contravene Panamanian law] and article 70 [noting that any problem not contemplated by the organic charter shall be resolved by the General Congress according to traditional Kuna law as long as it does not conflict with the Panamanian constitution, Ley 24 of 1996, or other Panamanian laws].

\textsuperscript{47} article 7 of the Executive Decree Adopting the Administrative Organic Charter of Madungandi, decree number 228, December 3, 1998.

\textsuperscript{48} \textit{Supra}, notes 33-37 and accompanying text.

\textsuperscript{49} James Howe, \textit{The Kuan Gathering} 21-22 (1986).

\textsuperscript{50} Articles 8 and 9 of the Executive Decree Adopting the Administrative Organic Charter of Madungandi, decree number 228, December 3, 1998. It has also been argued that the very fact that the Traditional Congress is overtly religious in orientation rather than political is what helps make it a useful \textit{informal} political avenue. James Howe, \textit{The Kuna Gathering} 76 (1986).

\textsuperscript{51} Sahila means “leader” in the Kuna language.

\textsuperscript{52} Articles 10-13 of the Executive Decree Adopting the Administrative Organic Charter of Madungandi, decree number 228, December 3, 1998.
Finally, there are Local Congresses (headed by the sahlas of each community)\textsuperscript{53} which provide a forum where individual community members have a voice. The Local Congresses determine virtually everything that happens in a community unless the General Congress has decided to effectively preempt the Local Congresses on an issue.\textsuperscript{54} This has occurred with, for example, the prohibition on communities granting new timber concessions.\textsuperscript{55}

One of the main duties of sahlas and other leaders is to ensure that people comply with traditional norms and preserve traditions. The sahlas also appoint individuals to head up committees for community tasks such as maintenance of the external boundary line of the comarca, erecting community structures, or to administer the school; these individuals then have the responsibility for organizing the community members to contribute the work necessary to accomplish the task.\textsuperscript{56} Sahilas typically serve in office for life unless they commit some egregious act.

\section*{V. LAND AND RESOURCE TENURE INSIDE THE COMARCA}

Land holds a special place in the culture of the Kuna. Kuna religion indicates that the Kuna have a divine right to the land,\textsuperscript{57} and the responsibility to protect nature and the environment,\textsuperscript{58} especially the medicinal plants left to them by their ancestors. The Kuna believe that if they are corrupt the land will not produce. The Kuna connection to their land also comes through in the feeling of many Kuna that they do not want money in place of their land. The special importance of land for the Kuna also expresses itself in their metaphors, such as when the Kuna compare mining of the earth to cutting open the belly of one’s mother.\textsuperscript{59}

Kuna territory contains sacred areas which the Kuna believe to be the “houses” of the spirits. The “nele,” or spiritual guides, of the Kuna, identify these areas.\textsuperscript{60}

\begin{itemize}
\item \textsuperscript{53} Article 19 of the Executive Decree Adopting the Administrative Organic Charter of Madungandi, decree number 228, December 3, 1998.
\item \textsuperscript{54} See Law 24, arts. 18-25.
\item \textsuperscript{55} This is discussed further in Part IV.B below.
\item \textsuperscript{56} The first sahila also, with consultation, sets the dates for the Congreso Locale to meet, assign responsibility for preparations for community celebrations, and represent the community outside of the community.
\item \textsuperscript{57} The Kuna Gathering 53.
\item \textsuperscript{58} This is the reason that the Kuna forbid cattle raising on their land—they view this as too harmful to the land. See e.g. The Kuna Gathering 53.
\item \textsuperscript{59} The Kuna Gathering 68
\item \textsuperscript{60} The “neles” are those born with a gift for knowing the spiritual world. The Kuna also have “absoge” that communicate with spirits. One may study to become an “absoge,” but the “neles” have their gift from birth and their skills cannot be learned independent of this gift. Id.
\end{itemize}
When the Kuna founded the community of Ibedi, the nele accompanied those that selected the location of the new village and the nele identified the sacred areas. Sacred areas receive special treatment by the Kuna. The Kuna may still hunt and gather herbs in sacred areas, but they may not substantially alter the character of the place. For example, the Kuna accept that while one may cut saplings in a sacred area, mature trees may not be cut; doing so would disturb the house of the spirit.

A. Land and Agriculture in the Comarca

Agriculture, as Wendell Berry has noted, inherently contains the notion of culture.61 The intimate connection between culture and agriculture presents itself in the Kuna culture of Madungandi. Kuna culture and language focus strongly on rivers and floodplain agriculture. Kuna villages in the area of Madungandi were always established on rivers, and village names ended in the suffix “andi” which means “river” in the Kuna language. The Kuna settled near rivers for reasons of water supply, fish, and transportation, and also because of the rich alluvial soils that exist in the floodplains. These rich soils formed the basis of the Kuna agricultural system.

The traditional Kuna agricultural system included annual crops, such as maize, yams, squash, rice, and manioc, as well as many longer-term trees and crops such as avocado, cacao, coffee and plantain.62 The rich alluvial soils on which the Kuna practiced agriculture along river banks allowed avocado, coffee, and cacao plants to produce for up to twenty years. Each plot would be planted with annual crops for a few years as the trees and longer-term plants matured. The longer-term crops would, after a few years, begin to produce harvests with relatively little upkeep. A Kuna who worked hard to establish several such plots while young would thus be assured an easier source of harvest from perennials and trees as the person grew older and less able to engage in the physically demanding task of clearing forest.

Kuna have a right to establish individual agricultural plots by virtue of their membership in a community within the Comarca. Rights to an individual agricultural parcel are not assigned by the community or any leader but are recognized by them. Individual agricultural plots may be established anywhere within the Comarca provided that the place has not already been appropriated for agriculture and is not a sacred area.63 Once a person has begun to use a plot for agriculture, the right to the area belongs to that person forever.

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63 For the purpose of agricultural plots, the communities in the Comarca do not have borders between them. Rather, each community is defined simply as the group of houses that
The “land rights” one obtains with an agricultural plot must be distinguished from land ownership in the sense western law conceives of land ownership. The rights associated with an agricultural plot do not include many of the most fundamental concepts of “ownership” as found in the western legal property systems. For example, in western law the right to exclude others comprises a fundamental right in the “bundle of sticks” of property rights. The holder of a Kuna agricultural plot traditionally has no right to exclude other Kuna from the plot nor to put up a fence around the plot. Rather, as will be seen below, any Kuna may enter another’s plot for certain purposes.

The closest western property concept to the rights Kuna possess over their agricultural plots is the concept of an usufruct right. Usufruct is a right to use and take the fruits of another’s property without damaging or diminishing the property. In this comparison, one could say that no individual Kuna “owns” an agricultural plot. The community as a whole remains the ultimate “owner” of all property since only the community may exclude others from the Comarca.

The Kuna have three different agricultural plots -- individual, association, and communal. The holder of an individual agricultural plot has the exclusive right to the produce grown on the plot. However, any Kuna may enter any plot and harvest any naturally-occurring plant. Exclusive usufruct rights may include areas next to the house; if someone cultivates a plant next to her or his house, no one else may harvest from that plant without the permission of the cultivator.

Association plots are those developed by community members united together in a voluntary association focused on a particular objective or activity. For instance, it might be a group dedicated to promoting soccer in the community, or a group seeking to enhance the position of women in the community. These associations may either harvest the produce for their consumption or, more commonly, sell the produce for cash income to further the purposes of their particular group.

Community plots are those that belong to the entire community. Confusion over work in community plots has led to these plots typically having a written schedule of who works when. The Kuna listed several advantages to community agricultural plots.

- They provide food for the whole community, even those without money to buy food or families undergoing the hardship associated with an illness or death.

64 PruneYard Shopping Center v. Robins 447 U.S. 74, 82 (1980) (citing Kaiser Aetna v. United States, 444 U.S. 164, 179-180 (1979).) (“It is true that one of the essential sticks in the bundle of property rights is the right to exclude others.”).

• Some Kuna observed that it is easier to be lazy when working alone and work done with others in community comes easier and is more rewarding than working alone.
• Community work makes harvesting much simpler.

Traditionally there were many community plots in which everyone was required to work and everyone shared in the harvest. This has changed in recent years and, as discussed below, these changes are an important indicator of the parallel changes in culture and agriculture.

No registry or maps exist for agricultural plots. Rather, the communities depend on the memory of the people to keep track of who holds what. Individual plots are usually only demarcated, at best, by a line of trees at the boundary. Many Kuna thought that having a map of the community and the individual parcels would be useful, but these same individuals emphasized that this had not been done because the Kuna lacked the resources and expertise to undertake such a venture.

Traditionally individual rights over agricultural plots could not be sold. However, as time went by, land sales began to occur. It is unclear exactly how tradition dealt with sales of land rights from one person to another. It may have been forbidden. In any case, it is now widely accepted that one Kuna may sell rights over agricultural parcels to another Kuna, but not to a non-Kuna.

The Kuna mostly continue to follow tradition forbidding the renting of land either among themselves or to non-Kuna. However, there have been recent cases in the community of Tien Huartuma where Kuna have been allowing non-Kuna to come onto Kuna territory and work the land in exchange for giving the Kuna parcel holder a portion of the harvest. When village leaders discover prohibited actions such as this, they may sanction the Kuna individuals by confiscating the

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66 For example, the border of a plot may be marked by a row of coffee plants, coconut trees, mamey, or nispero. Interview with Pedro Esquivel, second saila of Akua Yala, July 4, 2004.

67 One Kuna interviewed believed it better not to create maps unless a real need for a map arises; this reluctance to map appears to stem from an association of mapping with the efforts of the government to privatize individual parcels in Kuna territory.

68 The law of Panama does not permit this either.

69 It is worth noting that in many respects the community of Tien Huartuma represents the least traditional of the Kuna communities in Comarca Madungandi; Tien Huartuma is the newest of the communities in the Comarca and is comprised entirely of Kuna that emigrated from Kuna Yala—a comarca with a much longer history of frequent interaction with western culture. The traditional Kuna view was that if a family has an illness or for some other reason lacks sufficient food, it is the responsibility of the community to help such a family. Some Kuna in Tien Huartuma said that if a family’s rice crop fails, it is the responsibility of that family to sell something to buy rice rather than relying on the community for help.
crop. However, in Tien Huartuma, there seemed little or no will to actually do this. This created tension with the Comarca’s General Congress as it represents a dramatic departure from the results of a 1980 General Congress meeting during which the question of Kuna partnerships with non-Kuna to work land of the Kuna from Ibedi was expressly debated. As a result of this very heated debate, such practices were strictly forbidden since the Kuna concluded that the risk that it posed to the reserve as a whole outweighed the benefit of increased productivity to the few. Part of the problem with such arrangements from the traditional Kuna view is that the benefit of such arrangements goes only to the Kuna parcel holder, not to the community as a whole.

It appears that such disagreements about the “traditional” rules governing individualized agricultural parcels may be increasing due to varying land pressure in different villages. The village of Tien Huartuma is experiencing land pressure and loss of agricultural land Kuna due to land invasions by non-Kuna. Meanwhile, the village of Akua Yala has suffered limited invasions more distant from the village, but the Kuna in this community have virtually abandoned agriculture as a source of livelihood.

Given that usufruct rights to individual agricultural plots are perpetual, what happens upon the death of the rights holder? These plots may be inherited leading to a situation where a Kuna may live in one place but hold usufruct rights over land located in another community. For example, one Kuna from Ibedi related how he held several parcels in Piriá—another Kuna community in Comarca Madungandi. These parcels have not been cultivated in decades, but they still belong to the Ibedi resident as he inherited them from his father. It remains to be seen how these rules will fare where access to agricultural land is decreasing. Conversations with different Kuna from the Comarca yielded varying rules governing inheritance. It appears that no uniform inheritance rules exist for the Comarca. One Kuna stated that the inheriting children decide how to split up the land. Sometimes this will be done by the person before death. Some Kuna believe in leaving the best land to their daughters since it is believed that they have less capability to clear and cultivate additional land. Others divide the land up evenly among the brothers, who then control what is passed on to any sisters. At least one interviewee indicated that all siblings would take equal parts.

70 When asked about why they confiscate the crop and leave the dispute between the non-Kuna and the Kuna individual, the response was that the non-Kuna showed a lack of respect for the Kuna leaders by only consulting with the individual person instead of consulting with the Kuna leaders as well. This demonstrates the community focus of the Kuna. It appears that such arrangements have been taking place for some time: in 1980 a cacique representing Ibedi and another community was accused of going into partnership with a non-Kuna to cultivate land within the Kuna community. Alaka Wali, Kilowatts and Crisis Among the Kuna, Choco, and Colonos: National and Regional Consequences of the Bayano Hydroelectric Complex in Eastern Panama 261, 263 (Columbia University 1984) (doctoral thesis).

71 Alaka Wali, Kilowatts and Crisis Among the Kuna, Choco, and Colonos: National and Regional Consequences of the Bayano Hydroelectric Complex in Eastern Panama 277-78 (Columbia University 1984) (doctoral thesis).
The traditional “formal” process for resolving a land dispute is as follows. First, those in the dispute attempt to settle it on their own. In the example just given, this is what occurred. If the parties to the dispute cannot resolve it on their own, they refer it to the sahila of the community. The sahila then appoints two people to judge the dispute. These appointees visit the site of the dispute, and each party to the dispute presents witnesses who will testify as to who possesses the rights to what land.

B.  *Forest, Wood, and Timber Concessions*

Wood harvested from the forest occupies an important place for Kuna livelihoods. Trees supply wood for building houses and shelters, for crafts and utensils, for making canoes, and for firewood. In addition to these traditional uses, some Kuna now see trees as a valuable commodity that can be sold for lumber. To better understand the issue of forest concessions in Comarca Madungandí, we will first describe traditional Kuna rules on the cutting of trees.

The current rules for cutting of trees are one of the most consistent and clearly comprehensible expression of resource rights within Kuna culture. The rules that apply depend on the use to which the cut trees will be put. If the tree is for firewood, then no permission is needed to cut the tree. In fact, one may cut trees for firewood anywhere in the Comarca except for sacred areas.72 This includes the right to enter into individual, association, or community agricultural plots held by others to cut down trees appropriate for firewood. However, the rules change if the trees will be used for “commercial” purposes. In this case, permission must be obtained prior to cutting. Even individual plot holders must secure permission from the sahila if (s)he wants to cut and sell trees located within their own plot. The plot holder in this case may keep all the proceeds of the sale, except for a “tax” calculated according to the board-feet of lumber harvested which is paid to the sahila for the benefit of the community.

Timber extraction for commercial purposes in the area began in the early 1960s. At that time, extraction could only occur close to the rivers as there were no roads on which to transport the lumber. Prior to the building of the Ascano Villalaz Dam, tremendous amounts of timber were extracted from the area that would become Lake Bayano with the flooding of the dam.73 Since the Kuna of Bayano received legal title to the land within Comarca Madungandí, timber concessions have ignited contentious debates among the Kuna. Early on, the Kuna wanted to conduct timber extraction within the comarca themselves rather than allow others to do so. However, after some initial attempts, they quickly realized that they

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72 This assumes that one does not cut any trees planted for fruit or other products.

73 However, not enough wood was cut as many trees remained in the flooded area. For the effects of this, see infra at Part V.B.3.
lacked the experience and skill necessary to effectively run a timber operation. They had no previous experience in running and maintaining the necessary equipment and in preparing the lumber in the field. They were also not familiar with different types and sizes of lumber desired by the market, and lacked the accounting knowledge necessary to manage a timber operation. As a result, they began to contract with non-Kuna to run timber operations with the Kuna receiving payment based on the number of board-feet extracted.

Granting of timber concessions brought more than just income to the Kuna—it also brought problems. One common complaint was that non-Kuna with a concession would go beyond the area outlined and would destroy agricultural plots with their equipment. Disagreements also ensued between communities when one community felt that a concession granted by another community infringed on the first community’s area, even though communities did not, at the beginning of the granting of concessions, have boundaries between the communities for this or any other purpose. These problems led the Kuna General Congress of Madungandí to define community boundaries within which each community could grant a forest concession.  

In addition to these problems, communities did not always adhere to official procedures outlined for the granting of concessions. For instance, the community of Ibedi had a timber concession but apparently did not follow the correct protocols of the Kuna General Congress for establishing the concession. Even though the community was rebuked by the General Congress, the logging went ahead since the concession had already been granted. The money generated by the concession went primarily to the community as an entity with the remainder divided equally amongst the adults in the community.

The currently applicable procedure for permission to cut trees in Comarca Madungandí for commercial purposes involves three steps: First, permission must be obtained from the sahila of the community holding the forest concession; Second, the General Congress must approve the concession; and Third, the

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74 These boundaries only apply to the granting of concessions and do not limit creation or holding of agricultural parcels, hunting, firewood collection, or any other activities of the Kuna in Comarca Madungandí. Multiple interviewees insisted that any Kuna from the comarca was free to hunt, collect firewood, or open an agricultural parcel anywhere within the comarca (assuming, of course, that the site of an agricultural parcel had not already been preempted. The limiting factor that allows this to continue seems to be limitations on mobility—Kuna usually only conduct such activities relatively close to their own village because of the difficulty and high cost of travel, whether by land or water.

75 The money helped purchase community supplies such as pots, pans, and clay pots necessary for community celebrations, helped pay for construction of a health center, and contributed to the travel fund that enables community leaders to travel as part of their duties to the community.

76 In response to problems with a timber concession granted by a cacique of the Kuna reserve, the Kuna General Congress of January 1980 held in Aguas Claras decided that any further timber concessions would have to be signed in the presence of the General Congress. Alaka Wali,
Panamanian Ministry of the Environment must approve the concession; approval by the Panamanian Ministry of the Environment also generates a concession fee for the ministry. Still, so many problems have accompanied timber concessions that the Kuna General Congress finally imposed a ban on all new timber concessions, and the General Congress sent a resolution to the Panamanian Ministry of the Environment saying that the Kuna of Comarca Madungandí did not want any more timber concessions. Despite this some Kuna would like to continue logging as a source of income.

Currently only the community of Capandi has a timber concession operating in its timber concession area. Leaders of the Capandi community assert that this concession was granted by the Panamanian Ministry of the Environment without proper consultation with the General Congress of the Comarca of Madungandí. If it is true that the Panamanian Ministry of the Environment granted the concession without the agreement of the Kuna, this violates the right to property of the Kuna since the trees are part of the property of the Kuna, not property of the state. While the Kuna may need permission of the state to cut the trees, the state cannot allow the trees to be cut for the benefit of others without the express consent of the owner—the Comarca of Madungandí.

Even assuming timber concessions properly granted by the Ministry of Environment in consultation and agreement with the Kuna, another problem remains: monitoring of the timber concession. The Kuna of Capandi have a secretary assigned to the job of monitoring the concession, but, with time and travel limitations, it is not possible for this one person to adequately keep track of how much lumber is being extracted from the reserve. Since the Kuna receive their payment from the concession based on the number of board-feet extracted, they understand that this lack of monitoring is a problem. The Kuna are seeking ways to improve their monitoring since they do not necessarily trust the numbers that they receive from the loggers.

C. Hunting and Fishing

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Kilowatts and Crisis Among the Kuna, Choco, and Colonos: National and Regional Consequences of the Bayano Hydroelectric Complex in Eastern Panama 275 (Columbia University 1984) (doctoral thesis).

77 Part of the reason for this ban is that the Kuna had problems with loggers destroying agricultural parcels that contained marketable trees.


79 Executive Decree no. 228, art. 44 (December 3, 1998, Panama).
Hunting also forms a crucial part of traditional Kuna culture. Some traditions appear to have remained relatively unchanged up to the present day. For example, any Kuna who is part of Comarca Madungandí may hunt anywhere in the Comarca, even in individual agricultural parcels or sacred areas. Other traditional rules appear to be changing or becoming less clear over time. Some Kuna claim that it is technically not permitted for non-Kuna to hunt in the Comarca. Others assert that some communities occasionally allow non-Kuna into the comarca to hunt and charge a fee per animal taken; the fee then goes to the community as a whole. Other interviewees admitted that they take non-Kuna hunting in the Comarca without official sanction of the Kuna’s community.

Other changes with regard to hunting also are taking place. Traditionally, when a hunter had excess meat it was shared with the community. This built community spirit and prevented the loss or waste of meat when a hunter caught large game. Additionally, tradition forbade the selling, to anyone, of game hunted by the Kuna. Now, however, some Kuna hunters have begun to sell, to either Kuna or non-Kuna, meat they have hunted but cannot use before the meat spoils.

VI. LAND AND RESOURCE CONFLICTS

A. External Conflicts

“The devil came at night and left his foot prints.”

The Kuna of Madungandí present a poignant case for study of globalization and land tenure since they traditionally hold their land communally and have only recently—in the past thirty to forty years—been suddenly and pervasively forced into much more frequent and sustained interaction with western culture due to construction of the Pan-American Highway through their traditional territory as well as flooding of part of their traditional land through construction of the Bayano Dam. These and related events have dramatically impacted the Kuna of Comarca Madungandí.

80 In one case, a community stated that they did not want to allow non-Kuna hunters into the Comarca, but that the Kuna were powerless to stop them.

81 Pedro Esquivel, second sahila of Akua Yala, July 4, 2004, speaking in reference to the Bayano Dam that flooded part of the Kuna territory in Bayano.

82 While the Kuna of Madungandí have had some interaction with western culture for centuries, most of this interaction took place outside of the comarca as the Kuna have developed a tradition of the men leaving the comarca for extended periods to work. The relative isolation of Kuna of Comarca Madungandí contrasts markedly with the greater direct western presence and interaction common in Kuna Yala (formerly known as San Blas) along the northern coast of Panama.

83 The actual name of the dam is “Hidroeléctrica Ascanio Villalaz,” but it is commonly referred to as the Bayano Dam. We apply common usage in this Article.
The increase of the forced interaction with western culture to which the Kuna of Madungandí have been subjected may contribute to the trends towards individualization. Some Kuna themselves expressly attribute the decrease in community unity and an increase in individualization directly to the influence of western culture. They believe interactions with western culture undermine the traditional Kuna culture and even violate the right to culture of the Kuna.

1. A Road Runs Through It: Pan-American Highway and Land Invasions

During the 1960s the push to develop the Pan-American highway resulted in the extension of the road east of Panama City and towards the Bayano region where the Kuna of Madungandí live. Early on the road was not paved and was only passable during the dry season. Today, the highway is paved up to Yaviza. The Pan-American Highway extends well to the east of Comarca Madungandí, ending at Yaviza, Panama, leaving the famous “Darien Gap” in the Pan-American highway between Colombia and Panama.

The extension of the Pan-American highway impacted the Comarca of Madungandí in several ways. As is typical in Latin American with road construction, colonizers and squatters followed the road into the newly-accessible territory. The many land invasions at one point led the Kuna to block the Pan American highway in an effort to draw attention to the problem and to secure assistance in stemming the flow of illegal colonizers. The Kuna did manage to limit illegal colonization, but a number of settlers did manage to invade Kuna territory and remain there to this day.

Another immediate impact was the reduction in the time that it took to access markets. Whereas previously most markets were accessed by canoe, now goods could go by road. While the road increased the access of some to markets, it also gave rise to middlemen who controlled transport. The Kuna tried to operate a cooperative transport system, but this failed due to difficulty in both obtaining necessary paperwork and lack of sufficient funds to maintain the vehicle that they had purchased. Nevertheless, some communities along the road, such as Ibedi, increased their production of agricultural crops for the market. Increased access to the area also brought the first timber concessions, since equipment and workers could more easily be trucked into the area and more timber transported out.

Individual Comarca communities alongside the new Pan-American have been impacted in specific ways. For example, agriculture in the community of Ibedi


has changed with the coming of the road. Ibedi residents almost immediately began altering their crop production to take advantage of the possibility of selling their agricultural production outside the Comarca. The agricultural patterns in Ibedi now reflect more the agricultural patterns of the invading colonizers, but it is unclear if this is due to the direct influence of the colonizers or a desire to serve markets. While agricultural production plummeted in other communities in the region after road and dam construction, it actually increased in Ibedi during this time; this effect was due not only to better access to markets but also because Ibedi was not a community forced to relocate up onto hills and is located on rich alluvial, floodplain soils.

Two communities have also felt pressure from non-Kuna invading the Comarca. Outside colonizers have established cornfields on the land near the community of Akua Yala. The community has received no assistance from the government to protect its property, and the community has been unable to evict these colonizers. The Kuna view unity as one of their greatest assets in working to protect their land, and according to community leaders, the community’s failure to evict the land invaders on its own reflects the radical changes Akua Yala has experienced over the last four decades and the related decrease in the cohesiveness of the community.

The community of Tien Huartuma has been under the greatest pressure from land invasions and has repeatedly lost land since the creation of the Comarca. This is partly due to its location next to an area of the Comarca that is the subject of a special agreement between the government, land invaders that predated the Comarca, and the Kuna. This agreement granted usufruct rights to land invaders for the land they were already cultivating within a certain area of the Comarca adjacent to Tien Huartuma. The agreement also noted that such lands could not be expanded, given away, rented, or sold. Furthermore, the agreement stipulated that if any land invader should fail to abide by the agreement, all rights to the land of the offending invader would revert fully to the Comarca.

Despite the 1995 agreement, stories of expansion by colonizers near the community of Tien Huartuma continue to the present: One old Kuna told us he had lost his entire rice crop as well as plantains, avocado trees, cacao trees, and coffee plants when a colonizer came through with a tractor and destroyed it all. This destroyed what for the Kuna essentially serves as a retirement fund (see discussion in section IV.A. above). The community of Tien Huartuma expressed a desire to fence individual agricultural plots in an attempt to get the colonizers to

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87 See THE KUNA GATHERING 77 (noting that at many congresses the Kuna say, “We have come together to fight for the land.”). Cf. also KILOWATTS AND CRISIS 329-30.

88 This agreement is incorporated by reference in article twenty-one of Ley 24.
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respect their territory. However, they feel that even fences would not have stopped this particular instance of invasion because the parcel in question sits inside an area subject to the government-colonizer-Kuna agreement. The agreements the Kuna have entered into with the government and the land invaders in order to prevent further land invasions have consistently failed to solve such problems. As a result the Kuna are now seeking to annul the article of the Comarca law that incorporates the 1995 agreement between land invaders, the Kuna, and the government. 89

The Kuna in the community of Tien Huartuma also complained bitterly about a flyer distributed to non-Kuna living near their community seeking to incite them to “struggle against the collective lands.” 90 The flyer promotes fighting to recover the 54,000 “extra” hectares that were added into the Comarca. 91 The community complained to the government about the attempt to incite confrontation that the flyer represented. 92 Many residents of Tien Huartuma have been threatened by invading colonizers, including the second sahila. The Kuna want to avoid violent confrontation, but they feel they need help to avoid this possibility; they feel that their patience with the land invaders and the government for the last ten years has only resulted in increased intimidation and further loss of their land and crops.

It appears that the government of Panama not only fails to help the Kuna protect their land, but that the government is even complicit by studiously avoiding pleas for help. At one point the Minister of Justice issued a dispatch recognizing the legal status of the Comarca of Madungandí, noting that no non-Kuna entering the Comarca after January 31, 1995 had any legal right or claim to land in the Comarca, that anyone illegally invading the Comarca was subject to sanctions under the law, and that it is entirely false to assert that any lands inside the Comarca are available for settlement by non-Kuna. The dispatch also noted that the agreement referred to by article 21 of the law creating the Comarca of Madungandí only gave limited rights to the colonizers present before January 31, 1995. The agreement states that colonizers are not permitted to expand their land holdings from their January 31, 1995 size, nor may they alienate their holdings to third parties outside of the Comarca. 93 Continued entreaties by the Kuna for assistance in protecting their property also led to a statement by the Ministry of Government and Justice setting a date of January 31, 2003 for all illegal

90 Flyer from 2003, on file with authors.
91 Flyer from 2003, on file with authors.
92 Letter dated August 18, 2003 from Cesar Garrido, first sahila of Wacuco and Rauliano Gervasio Urriola, then third sahila of Wacuco, to Dorian Ríos, Director of Legal Consultation for the Department of Indigenous Policy in Panama, copy on file with authors.
93 Dispatch of Aníbal Salas Céspedes, Minister of Government and Justice of Panama, dated April 15, 2002, copy on file with author.
colonizers to leave or be forced to leave by the government.\textsuperscript{94} The community of Tien Huartuma waited expectantly on January 31, 2003 for the government to make good on its commitment to remove the illegal land invaders, but the government never did so. Continuing tensions over land invasions and the Panamanian government’s failure to pay agreed-upon compensation led to a confrontation between the Kuna and police in October, 2007. The failure of the government of Panama to effectively remove illegal land invaders signals a clear failure of Panama to comply with international law granting protection to indigenous property.\textsuperscript{95}

2. Drowning Kuna (Agri)Culture in Madungandi: The Bayano Dam

As part of Panama’s development strategy and to produce electricity for domestic use, executive decree 123 of May 8, 1969 authorized construction of the Bayano Dam,\textsuperscript{96} which was completed in 1976.\textsuperscript{97} The Bayano Dam created Lake Bayano, which covers approximately 350 square kilometers and is fed by a watershed encompassing approximately ten times that area.\textsuperscript{98} At its deepest point Lake Bayano approaches 60 meters.\textsuperscript{99}

Before closing the gates of the newly constructed dam and flooding the land behind the dam, all of the trees in what would become the lake’s bottom were to be cut and removed. This measure is taken during dam construction to prevent rotting biomass from fouling the waters of the reservoir created by dam construction. Much timber harvesting took place during dam construction, but both timber harvesting and dam construction fell behind schedule. The major funder for the project—the Inter-American Development Bank—pressed for faster movement since the project was behind schedule. Once the dam could be closed, it was closed even though much of the future lake bottom had not yet been cleared of timber and vegetation. In addition to leaving trees and vegetation in the lake, many animals were drowned in the rising waters. The area flooded by the dam is not a clearly defined valley, but an area of rolling hills. As the waters

\textsuperscript{94} Document on file with authors.


\textsuperscript{96} While commonly known as the “Bayano Dam,” the actual name of the dam that created Lake Bayano is Central Hidroeléctrica Ascanio Villalaz. This article refers to the dam by its common name of Bayano Dam.

\textsuperscript{97} Iguaniginape Kungiler, Madungandi: Su Realidad y una Breve Visión Introspectiva, http://dulenega.nativeweb.org/madungandi.html.


rose, each hill formed its own isolated island, most of which shrank and shrank until they disappeared under the water. Kuna alive at the time still recall, after all other animals on disappearing islands had drowned, images of the tips of trees above the water swarming with spiders and other insects trying to escape the rising waters. Even the islands that did not entirely disappear became graves for the larger animals that no longer had enough space to support them.

The millions of tons of rotting vegetation and the dead animals created a fetid, polluted lake. The fish in the lake died. The water which had served as the drinking water of the Kuna now made them ill. Diseases flourished and malaria increased dramatically. Survivors of this era still recall the unbelievable stench of the lake which lasted for months. Although the odor has now disappeared, the Kuna are still reminded of the past by the ghostly tree branches that jut up out of the water and which present major navigational hazards underneath the waters of Lake Bayano.

The flooding of Lake Bayano wreaked havoc on the agriculture of the Kuna of Madungandí. The dam waters drowned out agricultural parcels that had been laboriously cleared and destroyed the yearly crops of the Kuna. The waters also destroyed the long-term crops of the Kuna such as cacao, coffee, and plantain on which the Kuna depended for their longer term livelihood. The sahila of Capandi related how his father had lost many fruit trees to the dam waters. Although the government promised to replant these trees after relocation, this was never carried out. In addition to the suffering caused by individual loss of crops and parcels, the dam would change the future of agriculture among the Kuna of Madungandí.

The creation of Lake Bayano flooded the rich alluvial soils on which the Kuna had historically depended for their agriculture. This eliminated most of the good agricultural land, leaving only some moderate agricultural land. As a result agricultural production in the comarca plummeted. Instead of relating the new place name of Akua Yala to rivers, as discussed previously, the name Akua Yala was interpreted as “hill of rock.”

The Kuna that impacted by the Lake were forced to shift their agriculture to less fertile land. The difficulties encountered in this shift caused many to virtually abandon traditional crops like coffee and avocados. Before the dam the Kuna could harvest a single mature plantain plant every two to three months for up to six years. After the dam was built this often decreased to a single harvest. In fact,

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100 Interview with Pedro Esquivel, second saila of Akua Yala, July 4, 2004.
101 KILOWATTS AND CRISIS 52-54.
102 KILOWATTS AND CRISIS 190.
agricultural productivity dropped so much that residents of Akua Yala largely abandoned agriculture and now primarily devote themselves to fishing.¹⁰⁴

The nascent fishing industry focuses on the exotic species tilapia, introduced into Lake Bayano in the late 1990s. No one seems sure of how tilapia was introduced into the lake, but it quickly became the dominant species in the lake. The Kuna have adapted to this by focusing on fishing as a substitute for the food and income lost from decreased agricultural production. This focus on fishing to generate cash for purchasing food from an external market has increased the integration of the Kuna into the western cash economy, with differing effects.

Not all communities relocated due to dam construction have entirely abandoned agricultural production. The community of Icanti still engages in agriculture both for subsistence purposes and for sale in the market. Fishing has not yet surpassed agriculture as the dominant economic activity in this community. The community of Capandi, the furthest community we visited from the road, relocated to the river above the lake rather than on the lake. As a result, subsistence agriculture has maintained a stronger presence in Capandi.

Declines in agricultural productivity led to an increased need on the part of the Kuna to seek access to cash from other sources as a way to purchase food.¹⁰⁵ Increased reliance on and availability of cash that accompanied the reduction of subsistence agriculture led to the growth of community shops, and stores became the most common form of entrepreneurship among the Kuna.¹⁰⁶ The most significant new economic activity of the Kuna is now timber extraction.¹⁰⁷ Many of the timber workers that came in to cut timber in preparation for the dam remained after flooding of the lake and began to work for the government or small businesses.¹⁰⁸ As a result of this activity, Kuna began to get directly involved and learn how to operate chainsaws.¹⁰⁹ By 1980, for example, 11 Kuna men in

¹⁰⁴ A small handful still produce a few plantains, but not nearly enough to supply the needs of the community.
¹⁰⁷ ALAKA WALI, KILOWATTS AND CRISIS AMONG THE KUNA, CHOCO, AND COLONOS: NATIONAL AND REGIONAL CONSEQUENCES OF THE BAYANO HYDROELECTRIC COMPLEX IN EASTERN PANAMA 227 (Columbia University 1984) (doctoral thesis). Wage labor may have increased some, but this was not entirely new as some Kuna men as far back as the 1930s had gone to the city or other parts of the country to work for short periods of time, usually less than a year, before returning, marrying, and beginning to cultivate their own agricultural plots. Id.
¹⁰⁸ Id. at 238.
¹⁰⁹ Id. at 240.
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Incanti had access to chainsaws. However, as discussed above, lack of funds and expertise among the Kuna led to the failure of the Kuna to effectively manage their own lumbering and selling of wood.

B. Effects of External Forces on Kuna Land Tenure

The increased interaction of Kuna with the Panamanian government and other non-Kuna as a result of the construction of the Pan-American Highway and the Bayano Dam has impacted the Kuna in numerous ways. For example, before this construction the meeting of the Kuna General Congress was an annual event which focused in large part on religion. However, as the road and dam projects took shape and in their aftermath, the General Congress became the critical decision making body for the Kuna of Madungandi. This led to increased frequency of meetings, meetings focused more on secular than religious issues, and the attendance of non-Kuna. The governance and focus in the comarca has clearly been impacted by this outside intervention.

The loss of their most fertile soils as well as longer-term trees and crops left the Kuna with no choice but to dramatically increase their involvement in the western market economy. This led to increased entrepreneurial endeavors, including opening shops, timber extraction, and fishing for the commercial market. Each of these activities has had repercussions in the culture of the Kuna, which, in turn, affects the Kuna view of land and property.

The community of Tien Huartuma presents an example of how external forces can impact traditional Kuna concepts of land and culture. Tien Huartuma has suffered land invasions on its relatively good agricultural land (as opposed to the poorer agricultural land around a community like Akua Yala) and land adjacent to the Comarca and bordered by the Pan-American Highway has been sold at prices of up to $1,000 per hectare. It may come as no surprise that Tien Huartuma, more than any other community in Madungandi, has emulated western agriculture and it is the only community that has erected fences around its perimeter. Historically fencing was absolutely forbidden by the Kuna. When asked about the fences, community leaders expressed a desire to also fence individual plots, but added that they lacked the resources to accomplish this. It appears that their desire to fence plots, like their desire to have individual titles, comes from a desire of the Kuna to fight the land invasions with the same tools that the invading colonizers

110 Id.
111 Id. at 265.
112 Id.
113 Id. at 255-56.
114 Community members expressed a desire to have individual titles since they had been misled by land invaders into thinking that the land invaders had titles—which was untrue—and the Kuna lacked a title—also untrue since the Kuna have a communal title through the legislation creating Comarca Madungandi.
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use against them. Leaders in Tien Huartuma think that colonizers may respect Kuna property more if the Kuna, like the colonizers, have fences. In addition, the community of Tien Huartuma has imitated land invaders and broken with Kuna tradition by keeping horses and mules. Leaders feel that fences would prevent problems they have experienced when animals have entered into agricultural plots and damaged crops. These leaders saw no inherent problem with putting up fences around plots, but emphasized that the fences would not be intended to keep other Kuna out of individual parcels. However, it is hard to imagine that the rights to enter plots to gather medicinal herbs or other plants, cut firewood, and hunt will not change with the creation of fences. At a minimum, fences will alter hunting since some game will not be able to move through the fences.

Changing agriculture also affects culture and views of property tenure. In one community, an individual indicated that he had a contract with a non-Kuna to come in with machinery to help the Kuna with rice cultivation on his private agricultural parcel. In the past traditional norms strictly prohibited such types of arrangements. In the community of Tien Huartuma there are no longer any community agricultural plots. While one community member interviewed said he felt community agricultural plots were important, he said the community did not currently feel it necessary to impose community plots upon the community. Several other communities also noted that the number of community plots they maintained was decreasing. Leaders in Capandi said that most agricultural production used to be through communal plots, but that this was no longer the case. Some ascribe such change to new thoughts and technologies to which the Kuna of Madungandí are now exposed.

Even as far back as 1980, a tiny minority of Kuna had been sufficiently influenced by the agricultural and cultural model of non-Kuna colonizers that they were questioning the value of the reserve as collective property instead of individual property more suited to individual farms and pastures. However, the Kuna leaders interviewed for this research clearly represented the more traditional majority that wish to maintain at least some of the traditional communal nature of land and the focus on the community instead of the individual. These same leaders, however, see that change is upon them.

It appears that compliance with traditional norms and regulations is waning, and communal focus is decreasing. One Kuna related that in the past if someone needed to go somewhere on the lake, the community would pay for the gas — which is very expensive in the Comarca since there are no gas stations nearby. Now, if an individual does not have the money to pay for the gas (s)he can no


116 Kuna traditions include many community regulations. In most communities, for example, regulations still require women to wear a gold nose ring, the traditional mola and traditional leg decorations.
longer turn to the community for help. Those that hunt large game now have a
greater tendency to sell the extra meat rather than share it freely as had been the
tradition. It appears likely that the increased ability to market goods outside the
Comarca has contributed to the decrease in community orientation. In addition,
further insertion into the western economy has had different effects on different
Kuna. Some individuals and families have benefited more through education,
work, and other opportunities than others, resulting in greater economic
disparities among the Kuna than previously existed. In addition, specialized
higher education of a small number of younger Kuna has created tension with the
traditional focus on respecting the wisdom and knowledge of older members of
the community. In one interview, a Kuna expressed concern that not enough
Kuna have the training and skills necessary to work with national and
international organizations on projects being realized in the Comarca. The small
number of Kuna currently possessing such capacity have monopolized the
available positions. This has led to various problems such as community
members feeling that those working in national and international projects serve
their personal interests more than the interests of the community.

As the community orientation of the Kuna has decreased, so has the ability of the
Kuna to organize themselves to accomplish tasks. An energetic individual in one
community planted a medicinal plant plot to cultivate non-native medicinal plants
required by the healers in the community. The community felt that the healers
should maintain the medicinal plant plot since they charge for their services,
whereas the healers felt that the community should supply the labor since
everyone benefits from having the plants. The disagreement was never resolved,
so no one maintained the plot and the plants were lost. While a neo-classical
economist might assert that this perfectly demonstrates a case of a public good
that is not valued because it does not have a property right associated with it, this
fails to appreciate that the Kuna traditionally operated quite well in such contexts,
in defiance of some western economic and legal theories about property rights.

Another force at work is the development of a cash and market economy in the
communities of Madungandi. For example, after noting that young people are
resisting community work more and more, one Kuna proclaimed that many young
people now need more specialized skill and training to operate effectively. He
used the example of those trained to run community projects with the cooperation
of national or international organizations. He noted that the projects pay those
involved in cash; when the program funding ends, those working on the project
expect to continue to get paid. This conflicts with the traditional Kuna culture
which, for example, expects the Kuna leadership to work for the community
without getting direct payment for such work. As this interviewee observed,
however, increased specialization presents the problem that it requires an
extensive time commitment that precludes other work but only results in the
respect of the community rather than in food or other goods.

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117 THE KUNA GATHERING 16.
Akua Yala seems to particularly suffer from a breakdown of community due to increasing involvement in a cash economy. Since the Kuna of Akua Yala have no good agricultural land close enough to the village to work, they can no longer rely on traditional agriculture, forcing them to shift to activities that will earn cash so that they can purchase food. The town’s location at the entrance to the Comarca via the Pan American Highway as well as a police checkpoint for all traffic entering and leaving the Darién region means that many people stop there and there is an almost constant interaction with non-Kuna. This community also is unique in residing on both Lake Bayano and the Pan American Highway, thus serving as the main marketing point for tilapia and timber. The town has a small store as well as a small bar, both owned and operated by Kuna.

As residents of the community have become more dependent on individual cash earnings through businesses, so their participation in the community has diminished. In reaction to this, the community has been debating introducing regulations to close all businesses in the community as well as to forbid fishing during community religious events and community meetings and imposing a monetary fine on those that fail to attend.118 One may question whether imposing community spirit by regulation will overcome a situation in which maybe only four to six people from a community of 200 attend meetings of the Local Congress. But, on the other hand, the Kuna do not necessarily conform to the expectations of outsiders: one community member that has not attended any meetings for years felt that community leaders were not doing enough to compel attendance. This community member fully supported the idea of promoting attendance by fining community members that fail to attend and said he would attend.

Land pressure inside the Comarca and on the borders adjoining the Comarca may be a key determinant in the long-term evolution of land tenure within the Comarca. Historically, very little pressure on land existed inside the Comarca since there was always sufficient land available for agricultural production. Ironically, in communities such as Akua Yala the initial turn away from agriculture and towards fishing and involvement in a more western-style market economy has diminished land pressure for traditional Kuna agriculture within the Comarca in some areas in the short term. However, increasing land pressure on borders of the Comarca by non-Kuna is increasing in some areas, leading to increased land pressure within the Comarca as colonos invade land of the Kuna inside the Comarca.

118 In addition, the Local Congress of Akua Yala was considering adopting a regulation which would require permission any time someone leaves the community, such as for a visit to Panama City. This actually appears to have been the historical norm among the Kuna to require permission before leaving the village. See Alaka Wali, Kilowatts and Crisis Among the Kuna, Choco, and Colonos: National and Regional Consequences of the Bayano Hydroelectric Complex in Eastern Panama 228 (Columbia University 1984) (doctoral thesis).
VII. CONCLUSION

In this chapter we have described the land tenure evolution of a group of Kuna communities. These communities were impacted first by the extension of a major highway through their territory and then by the development of a large dam that flooded much of their best agricultural land. The changes in Kuna land agriculture and land tenure is really the story of how these people responded to the changes wrought by the highway and the dam, especially the change in connectivity to global market forces. Kuna livelihood strategies were forced to shift from a primary reliance on subsistence agriculture to increased reliance on new opportunities that arose from the highway and dam. The dam has provided the opportunity to become more involved in fishing for the local and regional market place and the highway has improved the Kuna’s connectivity to outside markets. But this connectivity has also caused outsiders to move into the area – farmers seeking land and lumber companies looking to gain access to the remaining forest resources and extract this for the external market. As a result non-Kuna have increasingly settled in the area bringing with them different ideas and resource extraction practices. As the Kuna continue to increase their economic ties with regional and national markets, the erosion of their traditions and culture appears inevitable. 119

This case study also provides a window into what occurs when an external, western-based tenure system attempts to accommodate an indigenous tenure system that is built on a significantly different concept of property. Western property systems have largely focused on creating well-defined individual parcels that can be exchanged on an open land market. The Kuna system, on the other hand, was concerned with keeping territory intact, spiritual beliefs, and promoting communal tenure rules that explicitly treated land as a resource and cultural base rather than as a marketable commodity.

Our research and interviews demonstrated a trend towards increasing individualization of property within the traditional tenure system of the Comarca and a trend towards viewing land less and less as a communal cultural resource base and more as part of a producer of goods for an individual. Despite the fact that the comarcas in Panama shine as a model for indigenous rights in the region, some Kuna are less sanguine about the benefit of having legal “title” to their land. They see very few advantages over the reservation system that preceded titling. These Kuna believe that a legal title has little more value than the reservation status if the Panamanian government is not committed to protecting the property rights of the Kuna even if the Kuna have “title.”

The Kuna expressed many different opinions about the future of communal lands and the general community participation and spirit of their culture. While all acknowledged the changes that are occurring, there remains a strong desire,

119 Kilowatts and Crisis 330.
especially amongst older leaders, to retain the centrality of community in the culture and daily life of the Kuna.

Thus, while it seems clear that some types of individualization and specialization will continue to grow within the Kuna communities of Comarca Madungandi, many Kuna still seek to maintain a community spirit. One Kuna leader confessed that he feels certain that the government of Panama will someday again seek to grant private titles to the Kuna instead of a collective title and that it will likely succeed next time. In spite of this he contended that the Kuna continue to search for ways to avoid this and to maintain their community focus.

Regardless of how the future develops, any conclusions drawn from the case of the Kuna of Comarca Madungandi must begin with the realization that the options of the Kuna to freely determine their own course have been radically altered by the construction of the Bayano Dam and extension of the Pan-American highway into their territory.