



## Changing the Power Equation: Case Studies of Indigenous Leadership in Panama's Darien Gap





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## DEDICATION

*We dedicate this publication to two indigenous leaders whose legacies remain in the waters of Kuna Yala and in the rainforests of the Darien. **Carlos Lopez Inakeliquina**, General Cacique of the Kuna Yala Comarca, great knower and wellspring of Kuna Cosmology and advocate for the self-determination of indigenous peoples, moved on to Olovigundiwuar (sky in Kuna theology) in August of 2000.*

***Elpidio Rosales**, Regional Cacique of the Embera of Cemaco and tireless advocate for traditional indigenous rights as well as for the Organic Charter of the Embera-Wounaan Peoples, returned to Ankore (God in Embera-Wounaan theology) in June of 2000. Both contributed with their wisdom and understanding to this publication, helping to capture on paper the indivisible spirit of indigenous peoples in their struggle for their rights.*



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# Introduction

Indigenous peoples in Panama are known worldwide for their tremendous capacity to organize. Under the constitution of Panama they have successfully won protection for their cultural rights. They have also secured over a dozen laws that have provided them with collective land titles, helped them to better protect their natural resources and bolstered their own traditional governmental bodies.

Despite these gains, indigenous peoples' way of life in Panama has continued to remain under siege. Panama's modernizing nation state has little by little encroached on indigenous peoples' ancestral lands and used these lands as an extractive source for its development needs.

The three case studies in this report demonstrate the sophisticated strategies indigenous peoples in Panama have developed to protect their lands from mega-development projects that threaten their way of life. All three projects in the report are located in eastern Panama in the ancestral lands of the Kuna, Embera and Wounaan peoples living in this region.

*Case study #1* examines the indigenous response to the construction of the Ascanio Villalez Hydroelectric Dam in a region known as Bayano (herein Bayano dam). This dam, built in the early 1970s, inundated 35,000 hectares of lands inhabited by the Kuna, Embera and Wounaan peoples. The Panamanian government signed almost a dozen laws and agreements to compensate indigenous peoples living in the region with land, money and measures to protect their way of life. Almost without exception, however, the government broke these agreements.

Only through acts of civil disobedience and by building stronger national and international alliances have indigenous peoples in the area been able to pressure the government to begin honoring some of these agreements. In 1996, the Kuna peoples affected by the construction of the Bayano dam were finally able to secure some of their land rights. To

address remaining grievances, they and the Embera and Wounaan peoples have taken their case to the Inter-American Commission on Human Rights of the Organization of American States (OAS) for redress.

*Case study #2* reviews indigenous strategies that enabled indigenous peoples to successfully stop the construction of the Pan-American Highway through their ancestral lands. The project would have for the first time connected North and South America by road and completed the otherwise almost unbroken Pan-American Highway System running from Alaska to Tierra del Fuego in Argentina. Many of the strongest economic powers in the hemisphere were promoting the construction of the highway, including the United States, Colombia and Mexico.

The study shows how indigenous peoples were able to develop their own authentic response to these international plans and then catapult their wishes into the international dialogue regarding the construction of the highway. Their efforts were critical in pressuring the President of Panama and the Inter-American Development Bank (IDB) to withdraw their support for the construction of the highway in 1996. These policy shifts ground plans to a halt.

*Case study #3* depicts the role of indigenous peoples in the IDB's high profile project The Darien Sustainable Development Program. This project aimed to pave a 224-kilometer dirt road into the region that would constitute part of the Pan-American Highway System, as well as preserve the cultural and biological heritage of the region. As part of the initiative, the program included a sequencing component in which certain environmental and social conditions would need to be met before paving sections of the road.

The IDB launched this project as a model for a new era of consultative processes for the bank. However, as the case study shows, the participatory methodologies designed by the bank allowed indigenous peoples and other members of civil society to play





only a limited role in the design and implementation of the project.

The three case studies depict different ways in which indigenous peoples have engaged the state and lending institutions to change the power equation in Panama to include their voices. The three case studies show the power indigenous peoples can have when they are able to develop their own authentic responses to mega-development projects and then link these responses to national and international organizations that can strengthen their political leverage. The third case study also depicts some of the weaknesses common to organizing models in which northern institutions design development strategies and then seek to link their initiatives to indigenous counterparts.

The case studies shed light on ways to ensure that indigenous and other grassroots people remain leading actors in the struggle to preserve their way of life and their environment. By examining these experiences, the report aims to support members of community-based organizations as they continue to develop their ability to lead and manage their own campaigns. In addition, the report is designed for individuals in the non-profit world, the donor community, government agencies and multilateral institutions who are working to hold governments and international lending institutions accountable to grassroots needs.

## Note on Authors

Alicia Korten and Hector Huertas Gonzalez bring to this report their personal experience working on the three campaigns in the Darien Gap. Ms. Korten is a Caucasian-American who lived for several years in Panama and Mr. Huertas is a Kuna lawyer from Panama. Both authors worked under the auspices of the Center for Popular Legal Assistance (CEALP), a Panamanian non-governmental organization (NGO) based in Panama, to support indigenous efforts on these campaigns. CEALP was chosen by several indigenous nations to provide legal and technical expertise for the campaigns.

The involvement of the authors in each of the campaigns gives them a unique perspective on international campaigns that include indigenous peoples. In this report, they step back to reflect on these experiences and to synthesize the lessons they have learned for a broader audience.



# Project Locations

The three development projects outlined in this report are located in eastern Panama in a region internationally known as the Darien Gap<sup>1</sup>. This largely rainforested area is one of the most culturally and biologically diverse areas in the world.

The Darien Gap extends for over five million hectares, a land size bigger than the size of West Virginia, and is situated at the nexus of North and South America along the Panama-Colombia border. In Panama, the region includes the Darien Province and the eastern portion of the Panama Province<sup>2</sup>. Panama's portion also includes the Kunayala, Madungandi and Embera-Wounaan Comarcas (legally recognized indigenous collective landholdings). In Colombia, the region includes the northern portion of the Choco Department.

The Darien Gap is one of the most biologically diverse regions in the world because it acts as a land bridge where species from both continents intermingle. The region hosts so many unique species that biologists at the Smithsonian Tropical Research Institute have described it as similar to discovering a whole new continent. The area also forms part of three of the four major bird migration routes between the Americas. Annually over one million birds use the forests and marshlands as resting grounds during their journey across the continents<sup>3</sup>.

In Panama, almost half of the region is under some form of protected status. In addition to four comarcas, the area also includes the largest park in Central America. The Darien National Park protects 579,000 hectares and runs along the Panama-Colombia border. In Colombia, the Darien Gap includes large communal land holdings by indigenous peoples as well as the Katios and Utria Parks, which cover 72,000 hectares and 54,000 hectares respectively.

In 1981 the **United Nations Educational, Scientific and Cultural Organization** (UNESCO) declared the Darien National Park a Biological and Cultural World Heritage Site and further designated it a Biosphere Reserve in 1983 to highlight its cultural and biological diversity. The park is one of only 24 areas worldwide to hold both these titles.

The three projects are located near the comarcas and other protected areas and in some cases run right through them. The Bayano dam overlaps with the Madungandi Comarca in a region of the Panama Province called Bayano. The Pan-American Highway's 224-kilometer dirt stretch from Chepo to Yaviza passes by the Madungandi Comarca in the Bayano region, as well as between the two separate blocks of land that make up the Embera-Wounaan Comarca in the Darien Province. The Chepo - Yaviza dirt road also cuts through lands in both the Bayano region and the Darien that are inhabited by Embera-Wounaan communities with no legal title to their land. The proposed route for the 107-kilometer "Darien Gap Link" would run right through the Darien National Park. The highway, if built, would for the first time connect by road the towns of Yaviza in Panama and Lomas las Aisladas in Colombia (see maps).

The Bayano dam and the 224-kilometer dirt road have already changed dramatically the landscape of the Darien Gap. In Panama, satellite pictures demonstrate how deforestation in the region has followed the lines of these mega-development projects and is especially pronounced within the areas surrounding the Chepo-Yaviza dirt road. The road has given loggers, miners, cattle ranchers and other developers access to the rich resources of the region and has already begun to threaten its pristine ecosystems and dramatically change the way of life of the people living in the region.

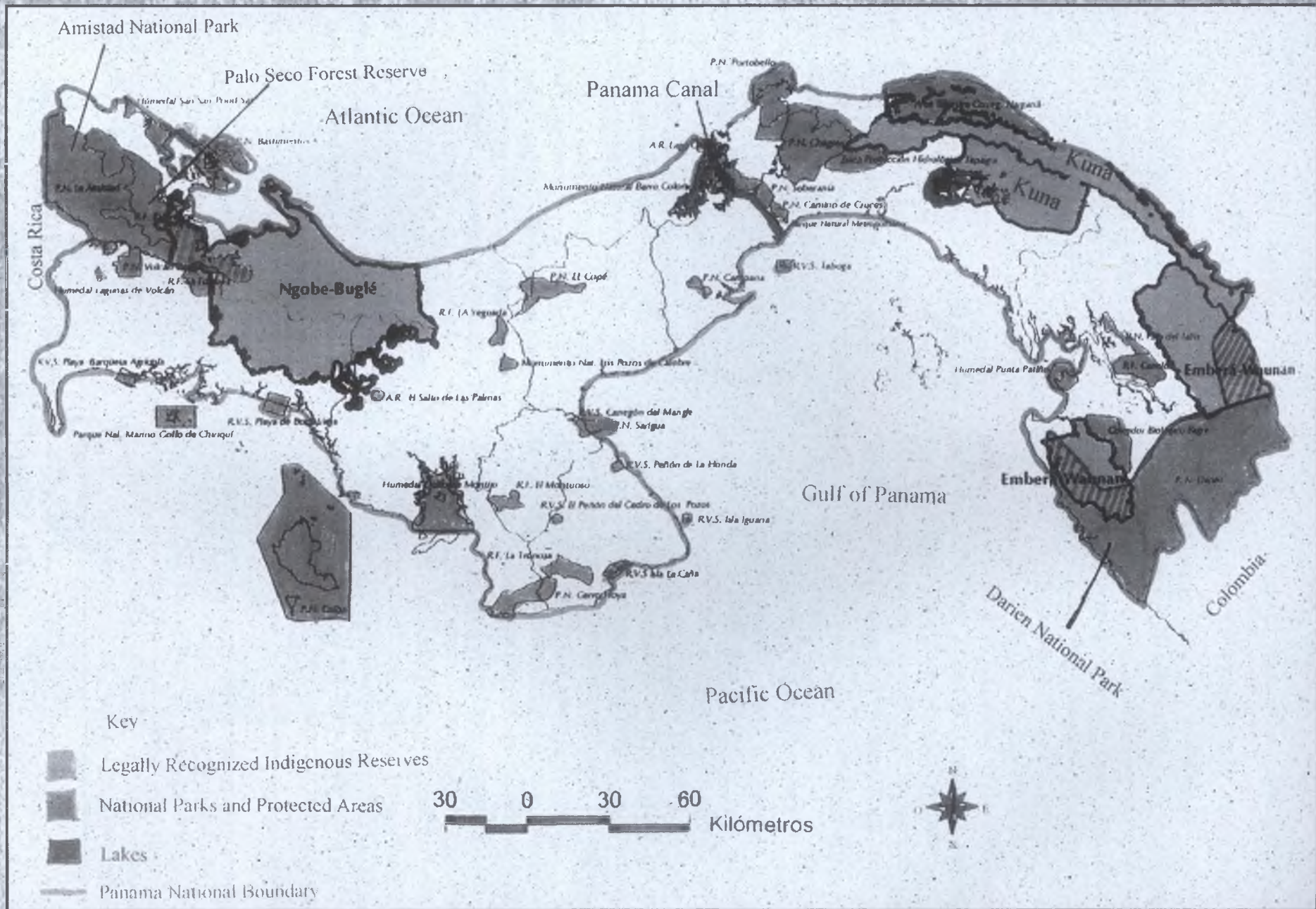
<sup>1</sup> The region's name, the Darien "Gap", comes from the fact that it is one of only two places on the Americas where the Pan-American Highway has not been built.

<sup>2</sup> The Central American isthmus, which runs north-south from Guatemala to Costa Rica, turns eastward in Panama. Therefore Panama borders Colombia in the east.

<sup>3</sup> "Proyecto de desarrollo agrícola y forestal del Darien: Proyecto Ruta II", unpublished document, Vicariato Apostolico de Darien, Panama, 1992, 2

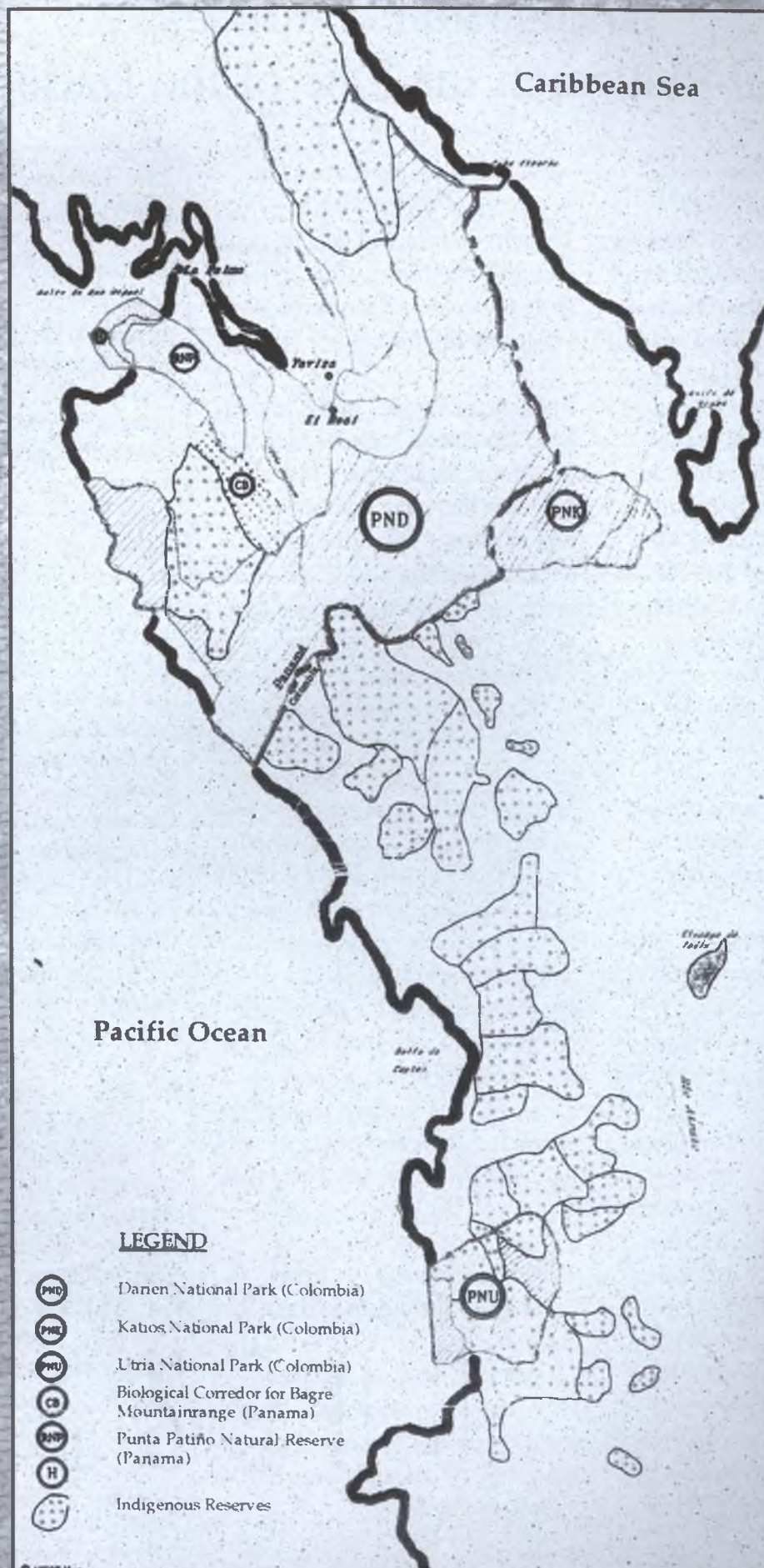


## PANAMA'S PROTECTED AREAS AND INDIGENOUS RESERVES





## DARIEN GAP PROTECTED AREAS





# Indigenous Peoples:

## Critical Players in the Fate of the Darien Gap

The Darien Gap represents the ancestral lands of the Kuna, Embera and Wounaan indigenous peoples who have inhabited the region for 2,500 years. Of the 84,700 inhabitants in the Panama portion of the Darien Gap (Panama Province excluded), roughly 65 per cent are indigenous peoples with the remaining inhabitants being fairly equally divided between people of Afro-Hispanic and mestizo descent<sup>1</sup>. Indigenous collective landholdings cover 738,000 hectares of land, making indigenous peoples the second largest landholder in the region after the state.

Afro-Hispanics migrated primarily to the Darien Province in the 1500s as slaves escaping exploitation by the Spaniards. The growing mestizo populations are the newest arrivals, many of them having migrated since the construction of the Chepo-Yaviza road in the 1970s and early 1980s.

The Kuna, Embera and Wounaan peoples have been strong environmental protagonists for the Darien Gap. They have stopped numerous projects that have threatened the remaining forests in the region including large-scale mining, tourism and road projects. Their spiritual practices are centered on the earth, giving them a reverence for the land and the creatures that inhabit it. While some of their

sustainable use practices have been eroded by the influence of Western culture, indigenous peoples still maintain a strong identity as protectors of the earth, the water and the forests.

Indigenous peoples in the region have developed sophisticated grassroots democracies that are far more inclusive than most nation states. Their traditional decision-making bodies are called *congresses*, which are made up of all the indigenous communities in a defined geographical area and are headed by democratically elected spiritual and political leaders called *caciques*. These congresses hold annual or semi-annual meetings, which are also called congresses, with as many as 2,000 indigenous delegates participating in decision making processes. In addition, each congress has complicated mechanisms for keeping communities informed of upcoming decisions between meetings. These include sending leaders on long trips along the rivers to visit with individual communities to discuss plans.

Their tremendous organizing capabilities have helped them to secure five *comarcas*. A *comarca* is a name used for indigenous lands that are owned and administered by an indigenous congress according to the traditions of the people in that area.

### The Battle for Land Rights: History of the Comarca

Ever since the beginning of Spanish colonialism, indigenous peoples of the Darien Gap have been organizing to protect their lands. In 1870, they won their first major victory when the Colombian government approved the Tulenega Comarca for the Kuna living along the San Blas archipelago.

This law established a precedent of collective land ownership for indigenous peoples that opened the gateway for future negotiations between indigenous peoples and the Panamanian and Colombian governments. In 1904, a year after Panama separated from Colombia to form its own nation state, the newly established Panamanian government approved a constitution, which included special recognition of indigenous peoples' rights, including the right to own their own land collectively.

In 1938, the Panamanian government responded to a Kuna uprising by granting them collective land title to the San Blas islands and the accompanying coastline (Law 2, San Blas Reservation). This represented the first collective land holding in Panama and set a legal precedent, which opened the door to the establishment of the five *comarcas* that currently exist in Panama. The indigenous territories in Panama were regulated first as reservations and then as *comarcas*.



# Indigenous Peoples and Their Territories

## Former Laws

<i>Peoples</i>	<i>Laws and Year Approved</i>	<i>Territories</i>
Ngobe	Law 27, 1958	Tabasara Comarca
Bugle	Law 27, 1958	Bocas del Toro Comarca
Kuna	Law 2, 1938	San Blas Reserve
Embera	Law 20, 1957	Rio Chico Reserve
Wounaan	Law 20, 1957	Rio Chico Reserve
Naso	Law 18, 1934	Cricamola Reserve

## Current Laws and Governing Bodies

<i>Peoples</i>	<i>Population</i>	<i>Law and Year Approved</i>	<i>Territories</i>	<i>Governing Body</i>
Ngobe and Bugle <sup>a</sup>	123,626 <sup>b</sup>	Law 10, 1997	Ngobe-Bugle Comarca	Ngobe-Bugle General Congress
Kuna	40,864 <sup>c</sup>	Law 16, 1953	San Blas Comarca (also known as Kunayala) (2,357 km <sup>2</sup> ) <sup>d</sup>	Kuna General Congress
Embera and Wounaan <sup>e</sup>	14,659 <sup>f</sup>	Law 22, 1983	Embera-Wounaan Comarca <sup>g</sup> (4,180 km <sup>2</sup> ).	Embera-Wounaan General Congress
Kuna (of Bayano region)	---	Law 24, 1996	Madungandi Comarca (1,800 km <sup>2</sup> )	Madungandi General Congress
Kuna	---	Law 34, 2000	Wargandi Comarca	Wargandi General Congress

<sup>a</sup> The Ngobe and Bugle traditionally share their land, though they each speak different languages.

<sup>b</sup> 1990 National Census.

<sup>c</sup> Jorge Ventocilla et al., *Plants and Animals in the Life of the Kuna*, (Austin: University of Texas, 1995), 9. Data from Ministry of Health, 1989 survey.

<sup>d</sup> Zoraida Jimenez, "Cerrando el Tapon del Darien: Aspecto Biologico," unpublished document, Center for Popular Legal Assistance, Panama, 1997, chart #4. Data from National Census 1990 and the Departamento de Cartografía, Contraloría General de la República 1996.

<sup>e</sup> The Embera and Wounaan traditionally share their land, though they each speak different languages.

<sup>f</sup> 1990 National Census

<sup>g</sup> Currently there are 40 Embera and Wounaan communities that are located outside the boundaries of the Embera-Wounaan Comarca. These communities have no legal title to their land.



## Case Study #1: Ascanio Villalez Hydroelectric Dam

### **“The Bayano Nights Will Light Up the Country. . .”**

These famous words were spoken in 1975 by Panama's President Basilio Lakas at the inauguration of the Ascanio Villalez Hydroelectric Dam in the Bayano region. The project was the biggest energy generating initiative in Panama up to that time and was funded by several international institutions including the World Bank and the U.S. Agency for International Development (USAID).

For the Kuna, Embera and Wounaan living in the Bayano region, however, the dam meant the destruction of their lands and a protracted battle. This struggle with the Panamanian government for just compensation and legal title to their land began with the project's inception and has continued to the present day. The Kuna of the Bayano area won a significant victory in 1996 when they received title to the Madungandi Comarca. However, the Embera and Wounaan communities affected have still not received title to their land. Nor has either group received compensation for their losses.



government to modernize its economy. The planners of the project hoped that the dam would meet the growing energy needs of Panama as urban populations surged and the country's major cities built infrastructure to support economic development.

The Kuna, Embera and Wounaan have become increasingly sophisticated in their resistance strategies. In recent years they have reached out to allies in Panama and the United States to pressure their government to respond to their demands. Most recently, they have taken their case to the Inter-American Commission on Human Rights of the OAS for redress.

### **The Plans**

The construction of the Bayano dam was first proposed by USAID in 1963 as part of a larger initiative led by the Panamanian

The project lay dormant until 1969 when the Panamanian government began implementing a program to enhance infrastructure and basic services throughout the country. The dam became an integral piece of this plan.

Before dam construction began, the Panamanian government passed two laws to assure indigenous peoples that their needs would be addressed as part of the project. The first of these laws, Law 123 passed on May 8, 1969, stated that the government would negotiate agreements with indigenous con-



gresses regarding the initiative. On July 8, 1971, Panama's Legislative Assembly passed a second law, Law 156, to create a special fund to compensate indigenous peoples for the lands that they would lose. The law, which was never implemented, stated that the payments should be made to the traditional leadership every six months starting retroactively from June 9, 1971.

### **Dam Construction Begins**

By 1972 construction on the Bayano dam had begun, financed by a \$30 million loan from the World Bank. By March 16, 1975, the dam was in full operation. The dam was built at the convergence of the Canitas and Bayano Rivers, the two largest rivers in the area, and flooded 35,000 hectares of land.

As the waters in the reservoir rose, the lives of the Kuna, Embera and Wounaan living in the region were forever changed. The waters flooded eight of the ten Kuna communities in the region, as well as the Embera-Wounaan community of Majecito. By the time the project was completed, 2,500 indigenous peoples had been relocated. The reservoir had flooded not only their villages, but also their fertile farmlands that had produced coffee, citrus fruits, plantain and other crops. The rising waters had also destroyed the primary rainforests that had provided them medicinal plants, hunting opportunities and spiritual sustenance.

Their new conditions were difficult ones in which to survive.

## **Tension with Farmer Populations:**

Indigenous peoples were relegated to some of the least fertile lands in the region. This was due in part to two other government policies that encouraged over 2,000 small-scale farmers to migrate, without any legal claim to the land, into the area in the early 1970s. These two initiatives were:

- An agrarian reform bill that provided economic incentives and new roads to encourage small farmers, who were being pushed off their lands in the central provinces by large scale cattle and dairy farms, to migrate to less developed rural areas such as the Bayano region;
- The building of the Chepo-Yaviza dirt road, which began in the early 1970s and was completed in 1983.

Newly arrived farmers colonized the lands along the sides of the highway using slash and burn farming practices that further decimated the surrounding forests and threatened the health of the dam watershed.

While the waters of the Canitas and Bayano Rivers had teamed with fish and fresh water shrimp, the salty waters in the reservoir killed much of the aquatic life that had lived in the rivers as well as the flora and fauna that had used these waters for survival. Protein became scarce in the villages. In the case of the Embera community, their new location had no fresh water at all and they were eventually forced to migrate once again to an area called Piriati. The new villages also had a ghostly feel to them, as they overlooked the blackened tops of the dying trees that studded the reservoir.

### **Project Aftermath: More Broken Promises**

Following the construction of the

Bayano dam, the government had little incentive to provide indigenous peoples with compensation. Through continued protests, however, indigenous peoples were able to pressure the government to sign a series of agreements. While never honored, these agreements have legally bound the Panamanian government to appropriately compensate indigenous peoples in the region.

The 1976 *Fallaron Agreement* was the first and most important of these agreements. General Omar Torrijos, the charismatic strongman of Panama's ruling party (the Partido Revolucionario Democrático), signed this agreement with Sahila Dummagan from the Madungandi General Congress at his beach house in



part to demonstrate the revolutionary colors of his government.

Despite the failure of the government to comply with the agreement, the document was an important one for the Kuna, Embera and Wounaan in the Bayano region as it laid out the basic points of understanding between indigenous peoples and the state. The agreement committed the government to do the following:

- Physically demarcate the Kuna territories;
- Relocate mestizo farmers away from indigenous lands;
- Establish forest police and other means to protect the rainforests in the region;
- Give the Kuna exclusive rights to hunt and cut trees for houses and canoes in the surrounding forests;
- Maintain a health center in the region; and
- Begin compensation payments for the loss of their fruit trees.

The agreement, however, was not backed up by an institution with the political will to provide follow through. When the government created the Bayano Dam Corporation on December 22, 1976 to administer the dam, officials added a clause giving this body authority to compensate indigenous peoples and delineate their new territories. However, the Bayano Dam Corporation had little interest in indigenous peoples' concerns. After providing three months of compensation, the corporation declared that there were no funds available, suspended all indemnifi-

cation payments and did not pursue efforts to delineate the land.

The government again committed to providing compensation payments in the Fort Cimarron Agreement signed in 1977 but provided no follow through. In response to the government's continued intransigence, the Kuna peoples organized a three-day protest in which they used their bodies to block the Bayano River Bridge, which is part of the Pan-American Highway. The action stopped all transportation between the Darien Province and Panama City and kept timber trucks, which were hauling logs out of the Darien for export, from reaching vital ports in Panama City. However, even these efforts were unable to sway the government to

comply with the law.

Several more agreements were signed between indigenous leaders and state officials between 1977 and 1983, all of which represented variations of the 1976 Fallaron Agreement. As before, the state did not honor any of these new agreements (*see box for details*).

### **Land Problems Intensify: Government Remains Intransigent**

Throughout the 1980s, land conflicts continued to intensify. Because there were no clearly marked boundaries delineating indigenous lands, non-indigenous farmers had begun to settle on indigenous territories. By the end of the decade sporadic confrontations between the groups were

## **Broken Promises: Agreement Details**

**1977 Fort Cimarron Agreement.** This agreement was signed in a training fort of the National Guard and recommitted the government to pay the late compensation payments, as well as additional monies to compensate indigenous peoples for logging activities that had affected their lands.

**1980 Agreement with Ricardo de la Espriella.** The Kuna signed this agreement with Vice President of Panama Ricardo de la Espriella. The agreement committed the state to provide compensation payments over an eight-year period.

**1983 Boundary Agreement.** The Kuna, Embera and Wounaan signed this agreement with the government on December 6, 1983. The document obligated the state to approve boundaries for indigenous lands.

**1984 Mutual Agreement Act.** The Madungandi Congress signed this agreement with the government on August 3, 1984. In it the state promised to approve the Madungandi Comarca. On August 15, 1984, the Embera signed a similar agreement.



developing. To diffuse the situation, indigenous leaders again pressured the government to help them find resolution to the escalating conflict.

The Kuna, Embera and Wounaan peoples forged ahead in negotiating new agreements with the government to try to resolve the conflicts. On March 23, 1990, the Kuna signed a new agreement with the state that committed the government to relocate non-indigenous farmers who had settled on their lands. On July 16, 1991, they signed a document outlining an action plan called *The Working Agreement to Reorganize the Alto Bayano Territory: Signed between the Panamanian Government and the Kuna Peoples of the Communities of Wacuco, Ipeti and Other Communities*.

Instead of taking action, however, the national government passed responsibility to the local authorities. On March 17, 1992, the local authorities signed *Resolution 002 and Resolution 63*, in which they agreed to relocate farmer populations if they did not resettle of their own accord. Once again, these resolutions were not honored.

### **Protest and Mobilization: The Tide Turns**

After two decades of failed negotiations with the Panamanian government, the Embera, Wounaan and Kuna took action to resolve the land disputes on their own.

In 1992, the Embera and Wounaan mobilized their own people and



went to the farmer communities with the agreements in hand to tell them to leave the area. The action led to the arrest of two of the protest leaders.

In addition, the Embera, Wounaan and Kuna peoples of the Bayano region sought support from indigenous congresses outside the Bayano area, as well as national human rights organizations. For example, Nabguana, a Panamanian non-governmental organization (NGO) run by Kuna indigenous peoples, mounted a national and international media campaign to support indigenous demands. In addition, CEALP began to work closely with the congresses on grassroots organizing strategies and legal battles. With help from these groups and others, indigenous leaders were released from jail, and the plight of the indigenous communities in the Bayano region finally began to receive national attention.

The moment marked a significant

shift in the political strategy of the indigenous peoples of the region and built a new framework for future negotiations with the government. In this instance, the Embera and Wounaan consolidated their own grassroots base through an action to defend their land. Then they, together with the Kuna, leveraged this power by aligning themselves with allies that could amplify their voices and thus strengthen their political muscle vis-a-vis the state. As they developed this new strategy, they began to influence the government in new ways.

### **Concrete Plan for Follow Up**

Following the action, the government for the first time created an institutional structure specifically designed to address the concerns of the Kuna, Embera and Wounaan living in the region. In the early 1990s, Panama President Guillermo Endara (1989 – 1994) established a commission that included state and indigenous representatives to provide follow up.



## CEALP's Role

The Center for Popular Legal Assistance (CEALP), a Panamanian non-governmental organization (NGO) based in Panama City, played an important role in helping the Kuna, Embera and Wounaan peoples to reframe their political strategy. In the early 1990s, CEALP worked closely with the Embera and Wounaan in the Bayano region to develop their governance structures. This work helped the Embera and Wounaan leadership to strengthen grassroots participation in the defense of their land rights.

The Center also provided free legal services that gave the Kuna, Embera and Wounaan a new avenue for defending their rights. This access had many positive results, including the release of the indigenous leaders from jail following the 1992 protest. CEALP also became an important ally for indigenous leaders in their negotiations with the Panamanian government. For example, the Center worked with indigenous leaders to help define the terms of a precedent setting commission established by President Guillermo Endara to resolve indigenous concerns. Once established, the Center provided strategic and legal assistance to the indigenous representatives participating in the commission, including supporting the development of a proposal for the creation of the Madungandi Comarca.

The commission was in charge of developing a plan to a) address land tenure issues including those related to the Madungandi Comarca and the Embera and Wounaan community land titles; b) develop marketing infrastructure for their agricultural products; c) improve schools and health centers; e) better protect the remaining rainforests in the Bayano region; and d) reduce violations to their human rights. CEALP lawyers played a critical role in providing technical support for indigenous representatives on this commission.

Over the next couple years, this commission developed a concrete

proposal for the establishment of the Madungandi Comarca. By the mid-1990s, this groundwork finally began to pay off.

### 1996: A Year of Protests

By the mid-1990s, the new political strategy being pursued by the Kuna, Embera and Wounaan of the Bayano region was firmly in place. By this time they had made tremendous strides in consolidating their own base and aligning with national allies who could support them. With these elements in place, they were able to reposition themselves for greater influence with their government.

During this time, the Inter-American Development Bank (IDB) became an important source of support for indigenous peoples. Sympathetic staff within the IDB included in the initial drafts of an IDB/World Bank-financed transport sector loan, called the *Roads Rehabilitation and Administration Program*, a clause requiring the Panamanian government to approve the Madungandi Comarca before loan money would be disbursed. While later removed, the clause showed the Panamanian government that their international funders were concerned about human rights violations in the Bayano dam case.

The reference to the Madungandi Comarca was also eye opening for indigenous leaders. The leadership realized, many for the first time, that they could pressure international lending institutions to help them secure their land rights. In January 1996, their heightened awareness paid off when their government violated loan agreements by starting to pave the Chepo-Yaviza dirt road before carrying out environmental and social impact studies, as required by the loan documents. The Kuna, Embera and Wounaan worked with NGOs nationally and internationally to successfully pressure the IDB to stop the bulldozers in the region. (*More details are provided in the presentation of the Darien Gap Link and Darien Sustainable Development Program case studies*).

Then in May 1996, the Kuna



staged an armed protest blocking the Pan-American Highway through the Bayano region and stopping transportation between the provinces of Panama and the Darien. One leader was arrested for "threatening state security."

As this report is being written, although he has conditional freedom, the charges against him have not been resolved.

Shortly thereafter the government finally approved the Madungandi

Comarca for the Kuna of the Bayano region – the result of over two decades of negotiation and protest. As of yet, however, this is the only commitment outlined in previous agreements that has been honored.

## International Lawsuit

Having exhausted national channels for negotiation with their own government, indigenous leaders have taken their grievances internationally to the Inter-American Commission on Human Rights of the Organization of American States (OAS). They are working with CEALP and the International Human Rights Clinic at American University to press charges against the Panamanian government. They are charging the government with having violated written agreements with them and for having done the following:

- Violated their property rights by flooding their homelands, including their houses, their farms and the forested areas where they used to hunt;
- Disregarded their cultural rights by flooding their sacred sites including their cemeteries and their biological reserves where they collected medicinal plants and carried out healing rituals;
- Ignored their responsibility to ensure that indigenous peoples' land was properly delineated and protected from encroachment by non-indigenous populations; and
- Failed to provide monetary compensation for the losses that indigenous peoples incurred because of the construction of the dam.

As part of the lawsuit, the Kuna, Embera and Wounaan peoples are demanding compensation for lost farms and income, the relocation of non-indigenous peoples to lands outside of the comarca and the dismissal of charges against indigenous leaders who were arrested during protest demonstrations.

In September 2001, the Inter-American Court on Human Rights at the OAS set an important precedent that has significantly strengthened the Bayano case. The Inter-American Court, which takes cases that cannot be settled by means of the commission, ruled in favor of an indigenous community that had filed a claim against the Nicaraguan government. The community successfully argued that the government had violated their collective rights to land, resources and a healthy environment "when it granted concessions to a foreign company to log on the community's traditional land without either consulting with the Community or obtaining its consent." In addition to monetary compensation, the court has "ordered the government to demarcate and recognize the Community's title to its traditional lands and to establish legal procedures for the demarcation and titling of the traditional lands of all indigenous communities in Nicaragua."<sup>5</sup>

<sup>5</sup> "Awasi Tingni Summary", Washington, DC, Indian Law Resource Center (2001).  
[http://www.indianlaw.org/body\\_awas\\_tingni\\_summary.htm](http://www.indianlaw.org/body_awas_tingni_summary.htm)





## Conclusion

In the thirty-year period since the project was first conceived, the Kuna, Embera and Wounaan of the Bayano region have learned an enormous amount about strategies for influencing their government. After two decades of failed negotiations, the Kuna of the Bayano region were finally able to secure legal title to the Madungandi Comarca. This victory demonstrates the power that indigenous peoples in the region have when they combine protest actions with national and international strategies to pressure their government for change.

This recent success, however, does not take away from the fact that the Embera, Wounaan and Kuna peoples of the Bayano region have already lost many aspects of the way of life that they cherished. Significant portions of their homelands have been flooded and much of what remains has been deforested. The dead, murky



waters of the Bayano reservoir have replaced the clear rivers that ran between their villages.

However, the spirit of the indigenous peoples living in the area has remained. Their continued struggle for justice, against all odds, represents the strength of a people determined to survive and to honor their relationship to Mother

Earth. Their recent success also signals the possibility of some resolution to this thirty-year struggle as the Kuna, Embera and Wounaan peoples take their remaining grievances to the steps of the OAS in Washington, DC.



## Case Study #2: The Pan-American Highway's Darien Gap Link

### PERSPECTIVES

#### Should the Darien Gap Link Be Built?

"The Pan-American Highway is the only international highway that has not yet been completed even though it is the most important in the world. All of humanity is awaiting [its completion]."

*Jorge Bendeck Olivella,  
former Minister of Public Works,  
Colombia*

"The construction of the Pan-American Highway through the Darien Gap will cause massive deforestation by loggers and miners, immigration by outsiders, an increase in drug traffickers and violence and the loss of our culture. We are seeking our legal right to participate in negotiations regarding the development of our homelands."

*Leopoldo Bacorizo,  
former Cacique, Embera-Wounaan  
General Congress*

"The construction of a highway across the Darien Gap would constitute an ecological crisis of hemispheric proportions . . . Forests are being assaulted all up and down the isthmus. In these cases, we are concerned about hectares of habitat lost. If the Darien is a biological plug, a barrier to a biological upheaval that could affect both major continents in the region, then it achieves greater conservation significance than any other forest."

*Archie Carr, II, biologist, Regional Director,  
Mesoamerican and Caribbean Program,  
Wildlife Conservation Society (Formerly  
the New York Zoological Society)*

In addition to the Bayano dam, the Kuna, Embera and Wounaan peoples of the Darien Gap have been under threat by another mega-infrastructure project. The Pan-American Highway, which runs for 26,000 miles between Alaska and Tierra del Fuego, Argentina, lurches to a muddy halt in the Darien Gap.

Completing this break in an otherwise almost continuous line of concrete has been the dream of many Latin American governments and business interests for almost a century.

Most of the debate of the last cen-

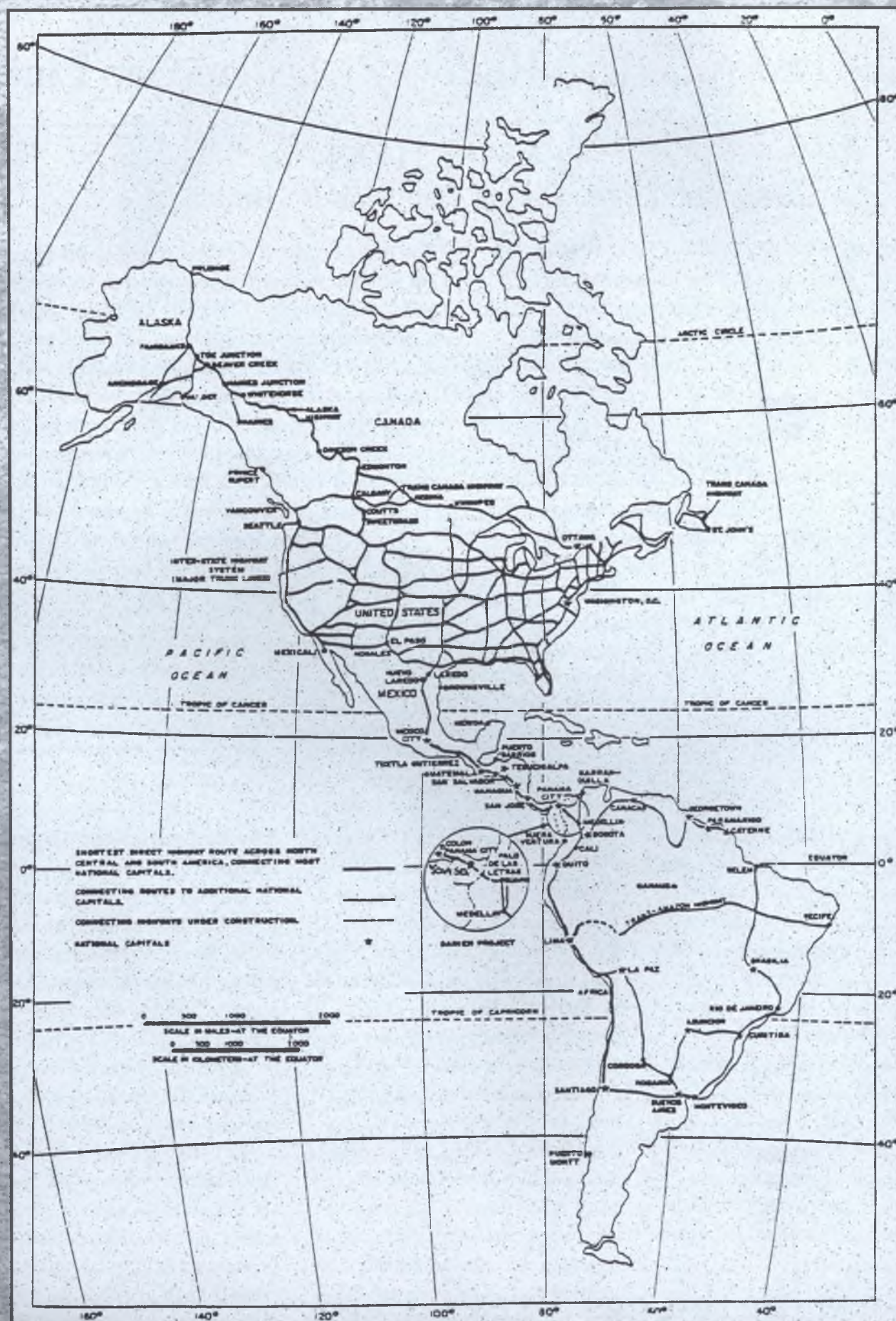
tury regarding the construction of the Darien Gap Link has happened in national and international circles, with almost no participation from the indigenous peoples who would be affected by the project. The following case study shows how the plans for the construction of the Darien Gap Link unfolded in these international circles. In addition, the study depicts how in the 1990s indigenous peoples were finally able to take center stage in this debate and lead a successful national and international campaign that stopped this 107-kilometer link from being built.

#### The Pan-American Highway Project

In 1923 far away from the rural communities that they would affect, government delegates across the Americas approved plans to construct the Pan-American Highway throughout the Americas at the Fifth International Conference of American States held in Santiago, Chile. The highway was part of a larger initiative being led by the United States to promote trade across the hemisphere. This same year, member countries of the Pan American Union founded an international body, called the Pan-



# PANAMERICAN HIGHWAY SYSTEM







American Highway Congress, to oversee its construction. The Congress became a branch of the OAS following the founding of the OAS in 1948.

Within thirty years of the project's approval, the Pan-American Highway System was nearly complete. By 1957, less than 1,000 miles were left unfinished. The biggest stumbling block to the completion of the Pan-American Highway System was the Darien Gap Link. The wet and marshy terrain in the region posed significant technical challenges for engineers.

In 1955, the United States successfully lobbied the Pan-American Highway Congress to create the Darien Gap Subcommittee, with representation from the United States, Panama and Colombia, to address these technical concerns. The Darien Gap Subcommittee identi-

fied three possible routes for the highway a) along the Pacific Coast; b) along the Atlantic Coast; and c) through the Panama-Colombia border community of Palo de Letras in the center of the isthmus. All these routes passed through ancestral lands of the Kuna, Embera and Wounaan, as well as the dense primary rainforests that they inhabited.

After considerable deliberation, the Subcommittee determined that the central route would be the most cost effective and selected it as the official route for the Darien Gap Link. The most difficult construction challenge would be the building of a 1.3-kilometer bridge above the marshes of the Atrato River basin<sup>6</sup>. *The Washington Post* had described this basin as "deep enough to drown a 15-story building."

To address financial concerns, in 1969 the U.S. Congress passed a

law to finance up to two thirds and no more than \$100 million of the costs to construct the highway through the Darien Gap. In 1971, this financial arrangement was formalized as part of two bilateral cooperation pacts signed between the United States and Panama and the United States and Colombia.

Throughout this period, indigenous peoples living along the areas for the proposed routes knew little about the planned project. When news of the possible construction of the highway did penetrate the forest canopy, they often did not understand the implications that such a highway would have for their way of life.

### **1970s: The First Wave of Protests**

Just as the idea for the project had been born in international circles, so too was the first campaign to stop the completion of the final Darien Gap Link. In the mid-

<sup>6</sup> Indra Sofia Candanedo Díaz, "Closing the Darien Gap: Actors and Issues in the Panamerican Highway Project", unpublished document, University of Maryland, College Park, 1997, 7.



1970s, this project, which had remained uncontested in circles of power, finally began to draw controversy worldwide. The campaign that developed included a broad range of international constituents. Unfortunately, only a few of these groups attempted to work with indigenous peoples living in the region, who remained largely outside of the sphere of international debate.



Environmental and human rights groups led the campaign, arguing that the highway would threaten the rainforests and indigenous cultures in the region. Many of these groups were well aware of the destruction that the construction of the Pan-American Highway had already caused in the Amazon Basin and other environmentally fragile areas. The intercontinental highway had opened arteries into these previously isolated areas, attracting an influx of migrants, cattle ranchers and large scale mining and logging operations that had devastated unique ecosystems and indigenous societies.

The initiative to stop the highway also included less likely allies such as the U.S. cattle industry. The industry was concerned that traffic traveling between the continents by road would spread hoof-and-mouth disease from South America into North America. The disease, which kills cattle, has been eradicated in the United States since 1929. Even moderate outbreaks could cost the U.S. cat-

tle industry at least \$4 billion a year, according to Harley W. Moon, director of the U.S. Department of Agriculture's Plum Island Animal Disease Center<sup>7</sup>.

Many biologists also raised their voices in protest, arguing that the destruction of the forests in the region would release deadly viruses found there, such as yellow fever and malaria, and infect people throughout the Americas. Already there were many examples of how disrupted forest ecosystems had caused such outbreaks, including the spread of Venezuelan Equine Encephalitis in the Americas and huge outbreaks of Dengue Hemorrhagic Fever in Southeast Asia<sup>8</sup>.

The campaign to oppose the Darien Gap Link was spearheaded by three environmental organizations – the Sierra Club, Friends of the Earth and the Sierra Club Legal Defense Fund. In October 1975, these groups filed and won a judicial order in a District of Columbia court to block U.S.

funding for the project. They successfully argued that the environmental impact study for the project did not meet the National Environmental Protection Act requirements. The U.S.

Department of Transportation appealed several times before winning the case in March 1978.

Despite losing the case, these environmental groups had achieved their goals and effectively stopped U.S. involvement in the project. The final ruling included a clause that before the United States could fund the project, Colombia must have met the U.S. Department of Agriculture (USDA) minimum requirements to control hoof-and-mouth disease on their side of the border. While the United States had already established a program in Panama and Colombia to eradicate the disease, the region was still far from meeting USDA standards.

In addition, during the protected three-year battle, the U.S. Congress had lost the political will to move the project forward.

<sup>7</sup> "Alcatraz for Animal Disease". Agricultural Research Magazine, Washington: DC, U.S. Department of Agriculture (December 1995). [http://www.ars.usda.gov/plum/news/alcatraz\\_1295.htm](http://www.ars.usda.gov/plum/news/alcatraz_1295.htm)

<sup>8</sup> Candanedo Diaz, 21.





In the 1980s, Panama's government built the Chepo-Yaviza dirt road into de Darien Gap and opened this pristine wilderness to loggers, cattle ranchers, and slash-and-burn agriculturalists. The fate of the region's remaining forests now rests on citizen and indigenous groups' ability to effectively implement a land-use-plan developed as part of the IDB's Sustainable Development of the Darien Program, and to keep the final Darien Gap link from being built. Photography ANCON.

The project had become too controversial, and many politicians no longer wanted to be involved. In addition, the U.S. had abandoned a plan to build an inter-oceanic canal in northern Colombia, which had been one of the impetuses for U.S. support for the Darien Gap Link.

### 1980s: Closing the Darien Gap

The weaknesses of a campaign led internationally, with little support from the people affected by project development, were already evident. In the 1970s, while international groups battled over U.S. funding, Panama and Colombia took actions to build the road without U.S. support. With little national resistance to stop them, both countries began to build dirt roads

that would significantly shrink the length of the road needed to complete the highway. In 1978, when the United States withdrew its support for the project, many of the U.S.-based groups that had led the campaign also lost interest in the initiative. Their withdrawal left Panama and Colombia wide open to chart their own course with respect to the project.

By 1983, Panama and Colombia had completed dirt roads that had shrunk the Darien Gap Link to 107-kilometers, in contrast to the 400-kilometer gap in the official route for the project only a decade earlier<sup>9</sup>. Panama built its 224-kilometer road between the towns of Chepo and Yaviza, a port 54 kilometers from the border of Colombia. Colombia built its road

from Guapa to the town of Lomas las Aisladas, 53 kilometers from the Panama-Colombia border.

With hopes of releasing U.S. funding for the construction of the Darien Gap Link, both countries also made efforts to meet USDA standards for hoof-and-mouth disease by establishing parks that would act as a buffer zone to control the disease. Colombia expanded the Katios Park in 1979 to 72,000 hectares. In 1980 Panama created the 579,000-hectare Darien National Park, which stretches along the Panama-Colombia border. In addition, both governments worked with the USDA to control hoof-and-mouth disease within these parks and surrounding lands.

<sup>9</sup> .Candanedo Diaz, 29.



## 1990s: Darien Gap Link Debate Rekindled

In the 1990s, the debate regarding the Darien Gap Link reemerged in the international arena. Free trade agreements were sweeping across the hemisphere and high level officials in countries such as Colombia, Mexico, Chile and the United States felt that the completion of the Pan-American Highway System would be critical to the success of economic integration within the Americas. At the December 1994 Summit of the Americas in which governments agreed to unite North and Latin America by 2005 in an expanded Free Trade of the Americas, many state representatives noted that the Darien Gap Link would be an important piece of intercontinental infrastructure.

In addition, in 1992 the USDA declared that Colombia had met the minimum requirements for the eradication of hoof-and-mouth disease in the Darien Gap. This ruling removed all restrictions on U.S. funding for the construction of the Darien Gap Link and revived speculation among Latin American countries that the United States might be ready again to take a leadership role in completing the highway. Colombia, however, was the first country to take concrete steps to revive the project. In 1992 Colombia invited Panama to create a bilateral commission called the Colombia-Panama Good Neighbor Commission. One of

## Transport Sector Loan - Panama

In 1993, the World Bank and the IDB each approved loans to support the *Roads Rehabilitation and Administration Program* for Panama that included monies for the paving of the Chepo-Yaviza dirt road. The total budget for the transport program was \$406 million with \$180 million being provided by the IDB, \$60 million by the World Bank and \$166 million by the Panamanian government. The loans funded efforts to a) privatize road construction projects; b) rehabilitate existing roads; and c) strengthen environmental regulations pertaining to roads.

The loan agreements were the cornerstone of a larger governmental initiative to rehabilitate roads throughout Panama. Since the state deregulated the mining code in the late 1980s, almost half of Panama's landmass has been targeted for mining concessions. Rehabilitating old roads and building new ones in environmentally sensitive areas are necessary if mining trucks are to have access to copper and gold rich regions.

In addition to funds provided by the World Bank and the IDB, Panama's Balladares administration (1994 – 1999) received hundreds of millions of dollars and in kind services for road projects and related studies from other international institutions. These included the U.S. military, the U.S. Agency for International Development and private companies that have been recuperating investments with toll fees.

the purposes of this commission was to develop the groundwork for the initiative.

By 1994 the Colombia-Panama Good Neighbor Commission was well on its way to making the Darien Gap Link a reality. Delegates received a verbal commitment from the IDB to fund the environmental impact studies for the project<sup>10</sup>. In addition, they secured loans from both the IDB and the World Bank for the rehabilitation of roads in their coun-

tries. The programs included monies to pave the two dirt roads that would constitute critical segments of the intercontinental highway: the Chepo-Yaviza road in Panama and the Lomas las Aisladas – Guapa road in Colombia. Then in November 1995, the U.S. Congress approved a \$200,000 feasibility study on the Darien Gap Link to be carried out by the Federal Highway Administration, which many hoped would lead to revived U.S. funding for the project.

<sup>10</sup> Candanedo Diaz, 29.

<sup>11</sup> The Colombian Ministry of Foreign Affairs, Cancilleria al Día, (May 119).

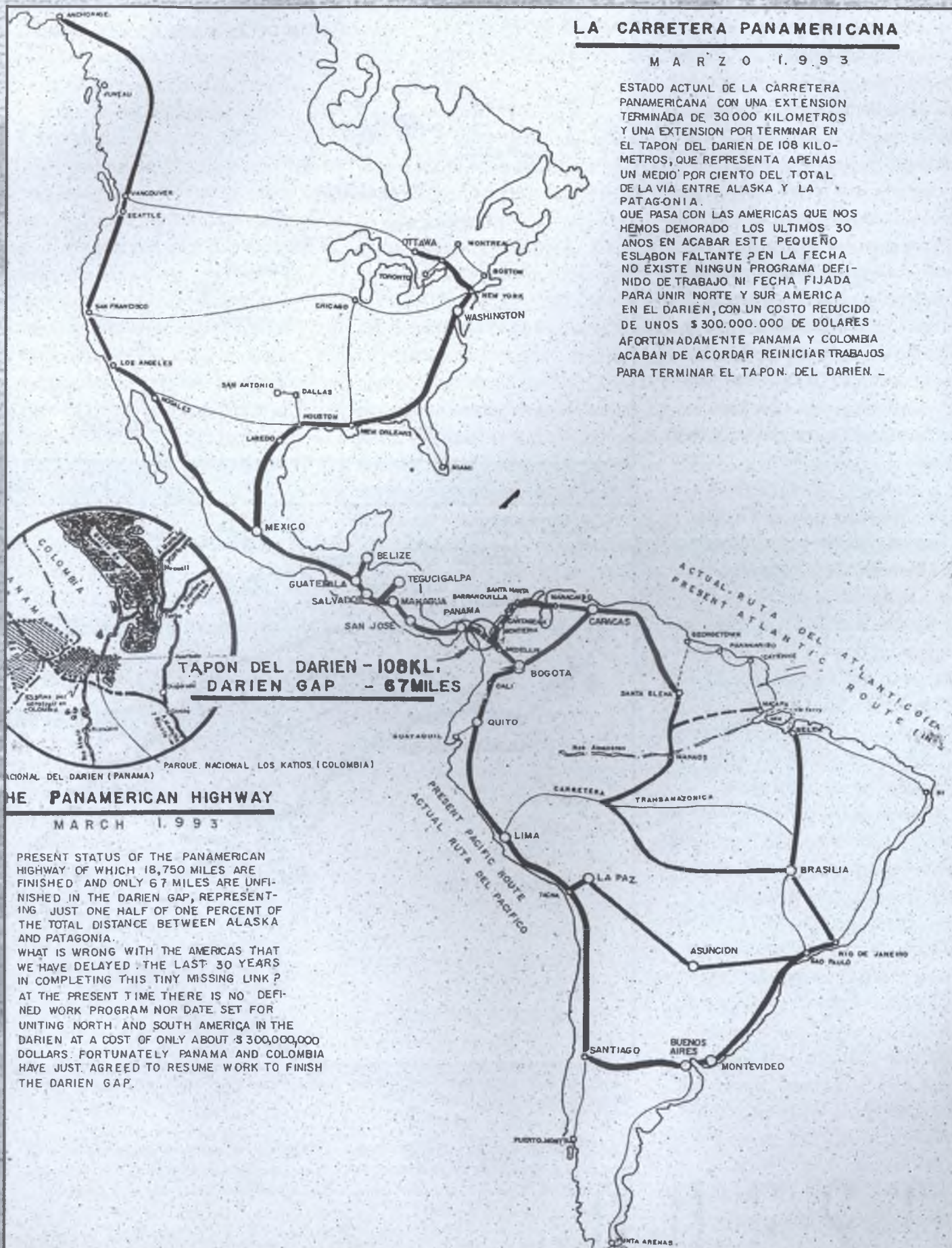


# THE PANAMERICAN HIGHWAY - MARCH 1993

## LA CARRETERA PANAMERICANA

M A R Z O 1.993

ESTADO ACTUAL DE LA CARRETERA PANAMERICANA CON UNA EXTENSION TERMINADA DE 30.000 KILOMETROS Y UNA EXTENSION POR TERMINAR EN EL TAPON DEL DARIEN DE 108 KILOMETROS, QUE REPRESENTA APENAS UN MEDIO POR CIENTO DEL TOTAL DE LA VIA ENTRE ALASKA Y LA PATAGONIA. QUE PASA CON LAS AMERICAS QUE NOS HEMOS DEMORADO LOS ULTIMOS 30 AÑOS EN ACABAR ESTE PEQUEÑO ESLABON FALTANTE EN LA FECHA NO EXISTE NINGUN PROGRAMA DEFINIDO DE TRABAJO NI FECHA FIJADA PARA UNIR NORTE Y SUR AMERICA EN EL DARIEN, CON UN COSTO REDUCIDO DE UNOS \$300.000.000 DE DOLARES AFORTUNADAMENTE PANAMA Y COLOMBIA ACABAN DE ACORDAR REINICIAR TRABAJOS PARA TERMINAR EL TAPON DEL DARIEN.



TAPON DEL DARIEN - 108KL.  
DARIEN GAP - 67MILES

## THE PANAMERICAN HIGHWAY

MARCH 1.993

PRESENT STATUS OF THE PANAMERICAN HIGHWAY OF WHICH 18,750 MILES ARE FINISHED AND ONLY 67 MILES ARE UNFINISHED IN THE DARIEN GAP, REPRESENTING JUST ONE HALF OF ONE PERCENT OF THE TOTAL DISTANCE BETWEEN ALASKA AND PATAGONIA.

WHAT IS WRONG WITH THE AMERICAS THAT WE HAVE DELAYED THE LAST 30 YEARS IN COMPLETING THIS TINY MISSING LINK?

AT THE PRESENT TIME THERE IS NO DEFINED WORK PROGRAM NOR DATE SET FOR UNITING NORTH AND SOUTH AMERICA IN THE DARIEN AT A COST OF ONLY ABOUT \$300,000,000 DOLLARS. FORTUNATELY PANAMA AND COLOMBIA HAVE JUST AGREED TO RESUME WORK TO FINISH THE DARIEN GAP.