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# Globalization and the Pan-American Highway: Concerns for the Panama-Columbia Border Region of Darién-Chocó and its Peoples

Daniel Suman

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# Globalization and the Pan-American Highway: Concerns for the Panama-Colombia Border Region of Darién-Chocó and its Peoples

Daniel Suman\*

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## I. INTRODUCTION

The Darién - Chocó Region is a privileged but abandoned region - privileged because it enjoys rich biological and cultural diversities. As one of the most species-rich regions on earth, the region truly deserves its natural world heritage classification.<sup>1</sup> It

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1. See United Nations Environment Programme [UNEP], Protected Areas

is a biological, political, and economic crossroads that connects North and South America and the Atlantic and Pacific Oceans.

The region suffers, however, from a number of unfortunate realities. It is isolated from centers of power in Colombia and Panama, and government services and transportation infrastructure are clearly deficient. Active colonization and deforestation fronts eat at the tropical forest ecosystem on both sides of the border along existing roads.<sup>2</sup> The region's communities display high levels of poverty and unsatisfied basic human needs. The area is rife with conflicts over land, power, and geopolitics. The Colombian portion of the region has been the scene of extreme political violence for more than twenty years that has caused a grave humanitarian crisis for indigenous and Afro-Colombian populations.<sup>3</sup>

Today, once again, strong initiatives are afoot to construct a highway through the region. Termination of this segment of the Pan-American Highway remains a major symbol for hemispheric integration and emerging forces of globalization in Colombia and Panama. While the Pan-American Highway today ends at Yaviza (Panama) and Lomas Aisladas (Colombia), the debate continues to focus on the Darién Gap (referred to in Spanish as the *Tapón de Darién* – the Darién Bottleneck) and the possibility of connecting the two nations' highway systems. The 108 km stretch of tropical rainforest in Darién Province (58 km in Panama) and Chocó Department (50 km in Colombia) remains the only unfinished link in the 25,800 km Pan-American Highway System from Alaska to Patagonia. Ironically, although Panama was a “department” of Colombia for almost a century until its independence in 1903, today these two nations are probably the only neighboring countries in the world without a road connection.

Seldom does road construction present such glaring and contrasting realities. Globalization and trade present arguments for the road, as does the need to increase provision of government services to the region. However, the area's ecology and human communities stand to lose much in the process. This region will be a showcase struggle in the coming decades between the forces of globalization and neo-liberal economic integration on the one

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Programme, *World Heritage Sites: Darién National Park*, [http://www.unep-wcmc.org/protected\\_areas/data/wh/darien.html](http://www.unep-wcmc.org/protected_areas/data/wh/darien.html) (last visited Feb. 25, 2007) [hereinafter *World Heritage Sites: Darién*].

2. See *supra* Part II.E.1.

3. See *supra* Part II.E.4.

hand and environmental conservation and community-based development on the other.

## II. CHARACTERIZATION OF THE PANAMA-COLOMBIA BORDER REGION

The Panama-Colombia border region, formed by two administrative units (Darién Province in Panamá and Chocó Department in Colombia), is a unique biogeographical region containing a large area of wet tropical rainforest.<sup>4</sup> This Darién-Chocó region, bordered by both the Atlantic and Pacific Oceans, has traditionally been a frontier area for both nations, poorly integrated into the national economies and largely ignored by government entities – yet of great strategic importance.<sup>5</sup>

### A. *Natural Features*

The Continental Divide is only about twenty kilometers from the Atlantic Ocean in eastern Panama at the boundary of Darién Province with the Kuna Yala Indian *Comarca* (an autonomous administrative area).<sup>6</sup> To the south is Darién Province, Panama's largest (16,671 km<sup>2</sup>).<sup>7</sup> As the Colombian Pacific coastal range enters Panama from the south, it divides into three ranges that define the watersheds of three of Darién's major rivers – Tuira, Balsas, and Sambú – all flowing into the Pacific.<sup>8</sup> The northernmost range separating Darién from Kuna Yala is known as the *Serranía del Darién*.<sup>9</sup> The province has precipitation between two and five meters per year, and its vegetation (until recent years)

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4. See ARDEN & PRICE CONSULTING & THE UNIVERSITY OF MIAMI, ATLAS DE LOS RECURSOS MARINO-COSTEROS DE LA PROVINCIA DEL DARIÉN [ATLAS OF MARINE-COASTAL RESOURCES OF DARIÉN PROVINCE] A-1, C-3 (2003); GRAN ATLAS Y GEOGRAFÍA DE COLOMBIA [GREAT ATLAS AND GEOGRAPHY OF COLOMBIA] 34, 44, 138 (Intermedio Editores, 2004) [hereinafter GRAN ATLAS].

5. See Pascal O. Girot, *The Darién Region between Colombia and Panama: Gap or Seal?*, in HUMAN RIGHTS & THE ENVIRONMENT: CONFLICTS AND NORMS IN A GLOBALIZING WORLD 172, 179, 183 (Lyuba Zarsky ed., 2002).

6. See INSTITUTO GEOGRÁFICO NACIONAL "TOMMY GUARDIA" ["TOMMY GUARDIA" NATIONAL GEOGRAPHIC INSTITUTE], ATLAS NACIONAL DE LA REPÚBLICA DE PANAMÁ [NATIONAL ATLAS OF THE REPUBLIC OF PANAMA] 2-3 (1988) [hereinafter NATIONAL ATLAS OF THE REPUBLIC OF PANAMA].

7. *Id.* at 216.

8. AUTORIDAD NACIONAL DEL AMBIENTE [NATIONAL ENVIRONMENTAL AUTHORITY], PARQUES NACIONALES DE PANAMÁ [NATIONAL PARKS OF PANAMA] 102-03 (2004) [hereinafter PANAMANIAN NATIONAL PARKS].

9. See NATIONAL ATLAS OF THE REPUBLIC OF PANAMA, *supra* note 6, at 206.

was largely tropical rainforest.<sup>10</sup> The eastern half of Darién that borders Colombia and forms Darién National Park still is covered with tropical forests.<sup>11</sup> One of the major geographic features in Darién is the Gulf of San Miguel, Panama's largest estuary (1,760 km<sup>2</sup>) surrounded by extensive mangrove forests.<sup>12</sup> Over ten major rivers flow into this estuary, including two of Panama's largest, the Chucunaque and Tuira.<sup>13</sup>

Chocó Department (46,530 km<sup>2</sup> in area) in Colombia shares the biogeographical region with Darién Province, Panama.<sup>14</sup> The 700 km long Atrato River, draining northward into the Gulf of Urabá (Caribbean Sea), largely defines Chocó.<sup>15</sup> At the complex Atrato Delta lies a major wetland system, called the Tumaradó Wetlands, which forms a natural obstacle to road transportation across the Atrato.<sup>16</sup> Precipitation in Chocó is even higher than in Darién and generally ranges between three and six m/yr.<sup>17</sup> Natural vegetation includes primarily tropical rainforest and swamp forests (*cativales*).<sup>18</sup> However, extensive deforestation has occurred in many areas adjacent to the Atrato River, surrounding

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10. See ATLAS OF MARINE-COASTAL RESOURCES OF DARIÉN PROVINCE, *supra* note 4, at B-3a.

11. See *id.* at C-3.

12. See *id.* at B-1, C-4.

13. See CONSULTORÍA PARA ELABORAR EL PLAN DE MANEJO COSTERO INTEGRAL EN EL GOLFO DE SAN MIGUEL Y ZONAS ADYACENTES EN EL MARCO DEL PROGRAMA DE DESARROLLO SOSTENIBLE DEL DARIÉN [CONSULTING PROJECT TO DEVELOP THE INTEGRATED COASTAL MANAGEMENT PLAN FOR THE GULF OF SAN MIGUEL AND ADJACENT ZONES WITHIN THE FRAMEWORK OF THE DARIÉN SUSTAINABLE DEVELOPMENT PROGRAM] 7 (Arden & Price Consulting and the University of Miami, 2003) (on file with author) [hereinafter CONSULTORÍA]; Daniel Suman, *The Case of the Shrimp Industry in Eastern Panama (Darién Province): Unsustainable Harvest of a Valuable Export Product and its Limited Impact on Local Community Development*, in GLOBALIZATION AND SUSTAINABLE DEVELOPMENT: ISSUES AND APPLICATIONS 192, 193-95 (Rebecca Lee Harris ed., 2006), available at [http://www.patelcenter.usf.edu/assets/pdf/SustDev\\_Suman.pdf](http://www.patelcenter.usf.edu/assets/pdf/SustDev_Suman.pdf).

14. GRAN ATLAS, *supra* note 4, at 138.

15. *Id.* at 138-39.

16. *Id.* at 35, 41, 117; INSTITUTO NACIONAL DE VÍAS [INVÍAS] [NATIONAL HIGHWAY INSTITUTE], ESTUDIO DE DIAGNÓSTICO AMBIENTAL DE ALTERNATIVAS: PROYECTO "CONEXIÓN TERRESTRE ENTRE COLOMBIA Y PANAMÁ" [DIAGNOSTIC STUDY OF ENVIRONMENTAL ALTERNATIVES: PROJECT TO CONNECT COLOMBIA AND PANAMA BY LAND] 3 (1998) [hereinafter INVÍAS]; U.N. Educ., Sci., & Cultural Org. [UNESCO], Parque Nacional Los Katíos [Los Katíos National Park], <http://www.unesco.org/delegates/colombia/katios.htm> (last visited Apr. 10, 2007).

17. See GRAN ATLAS, *supra* note 4, at 29; Brian Mapes et al., *Diurnal Patterns of Rainfall in Northwestern South America. Part I: Observations and Context*, 131 MONTHLY WEATHER REV. 799, 801 (Nov. 2003).

18. See GRAN ATLAS, *supra* note 4, at 34-35.

the Gulf of Urabá, and near Juradó on the Pacific coast.<sup>19</sup>

### B. Political-Administrative

Panama's Darién Province is divided into two districts (Chepigana and Pinogana) that both share the international border. In addition, two Emberá-Wounaan Indian *comarcas* (autonomous administrative regions), Sambú and Cémaco, were each created in 1983 from the two districts mentioned above.<sup>20</sup> The Cémaco *Comarca* shares borders with Colombia, the Kuna Yala *Comarca*, and also partially overlaps with the Darién National Park.<sup>21</sup>

Darién National Park – created in 1980 - is Panama's largest protected area with an extension of 579,000 ha - essentially one third of the province.<sup>22</sup> Additionally, it was declared a UNESCO World Heritage Site in 1981 and a Biosphere Reserve in 1983.<sup>23</sup> The protected area extends across the entire international border of Darién Province but does not include the short international border of the Kuna Yala *Comarca* and its Caribbean watershed.<sup>24</sup> The park, home to 2,440 species of flora, contains great biological diversity and high incidence of endemic species and is certainly one of the most species-diverse areas in Central America.<sup>25</sup> According to some scientists, "Darién forests. . . [are] the most diverse ecosystems of tropical America."<sup>26</sup>

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19. See *id.* at 92.

20. FUNDACIÓN DOBBO YALA, PUEBLAS INDÍGENAS EXISTENTES EN LA REPUBLICA DE PANAMÁ [EXISTING INDIGENOUS PEOPLES IN THE REPUBLIC OF PANAMA], <http://www.doggoyala.org.pa/pagcuadro.htm> (last visited May 1, 2007); CONTRALORÍA GENERAL (Pan.) [COMPTROLLER GENERAL], PANAMÁ EN CIFRAS: AÑOS 1998-2002 [PANAMA IN STATISTICS: 1998-2002], Map Insert (2003).

21. See Map 1; INSTITUTO GEOGRÁFICO NACIONAL "TOMMY GUARDIA" (PANAMA) ["TOMMY GUARDIA" NATIONAL GEOGRAPHIC INSTITUTE], SÍNTESIS GEOGRÁFICA – EDICIÓN 4 [GEOGRAPHIC SYNTHESIS – 4TH EDITION] (2006).

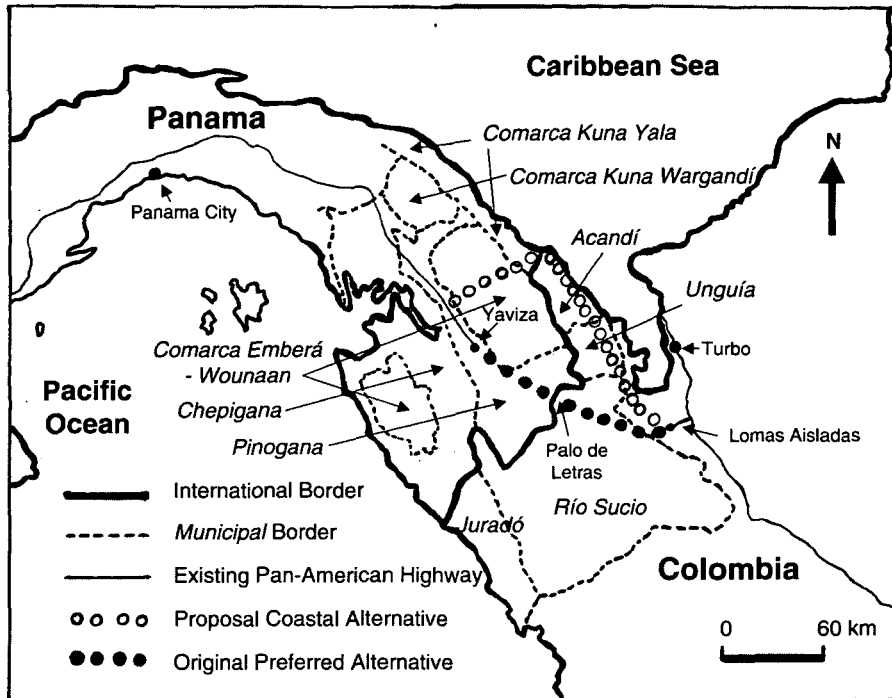
22. See AUTORIDAD NACIONAL DEL AMBIENTE (PANAMÁ) [NATIONAL ENVIRONMENTAL AUTHORITY OF PANAMA], LISTADO DE LAS ÁREAS PROTEGIDAS, SEGÚN CATEGORÍA DE MANEJO, SUPERFICIE, AÑO DE CREACIÓN Y BASE LEGAL: AÑO 2004 [LIST OF PROTECTED AREAS, CLASSIFICATION, SURFACE AREA, YEAR OF CREATION, LEGAL BASIS, 2004], <http://www.anam.gob.pa/PATRIMONIO/areasprotegidas.html> (last visited Feb. 25, 2007); PANAMANIAN NATIONAL PARKS, *supra* note 8, at 102-03.

23. See *World Heritage Sites: Darién*, *supra* note 1 (stating that prior to the national park designation on Aug. 7, 1980 by Executive Decree no. 21, 700,000 ha of the same area had been declared the Alto Darién Protective Forest in 1972 by Executive Decree no. 84).

24. See Map 2; PANAMANIAN NATIONAL PARKS, *supra* note 8, at 8-9, 102-03.

25. Centers of Plant Diversity, Middle America & Caribbean Islands, <http://www.mnh.si.edu/botany/projects/cpd/ma/ma20.htm> (follow hyperlink at Darién region of map) (last visited Feb. 25, 2005).

26. See *World Heritage Sites: Darién*, *supra* note 1.



Map 1 — Map of the Darién (Panama) — Chocó (Colombia) border region. The map indicates the border municipalities and the two principal proposed routes for the Pan-American Highway across the Darién Gap.

Four municipalities (Juradó, Río Sucio, Unguía, and Acandí — from west to east) form the international border in Colombia's Chocó Department.<sup>27</sup> Juradó belongs to the Pacific Coast subregion while the other three municipalities (Río Sucio, Unguía, Acandí) comprise the Lower Atrato subregion, also referred to as *Urabá chocoano*.<sup>28</sup>

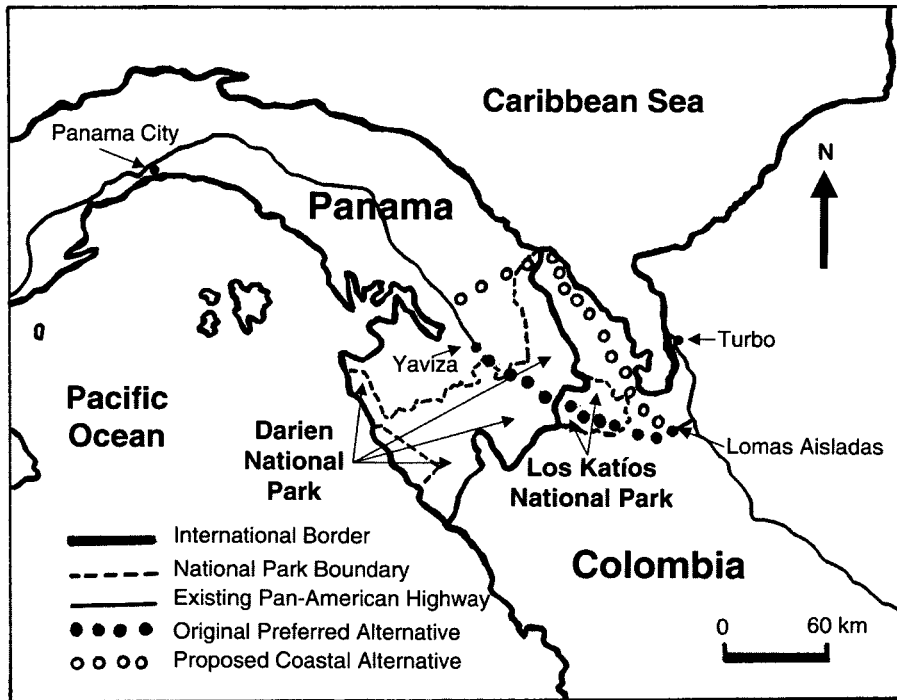
Los Katíos National Park in Colombia is adjacent to Darién National Park and was created in 1974.<sup>29</sup> Its original area of 52,000 ha was expanded to 72,000 in 1979 to protect the riparian

27. See Map 1; OBSERVATORIO DEL PROGRAMA PRESIDENCIAL DE DERECHOS HUMANOS Y DIH [OBSERVATORY OF THE PRESIDENTIAL PROGRAM FOR HUMAN RIGHTS AND DIH], MUNICIPIOS Y SUB-REGIONES DEL CHOCÓ [MUNICIPALITIES AND SUB-REGIONS OF CHOCÓ], [http://www.derechoshumanos.gov.co/observatorio/04\\_publicaciones/04\\_03\\_regiones/choco.pdf](http://www.derechoshumanos.gov.co/observatorio/04_publicaciones/04_03_regiones/choco.pdf) (last visited Feb. 25, 2007) [hereinafter Presidential Human Rights Program].

28. See *id.*

29. See Map 2; UNEP, Protected Areas and World Heritage, *Los Katíos National Park*, <http://www.unep-wcmc.org/sites/wh/katios.html> (last visited Feb. 25, 2007) [hereinafter *World Heritage Sites: Los Katíos*].





Map 2 — Map of the Darién (Panama) — Chocó (Colombia) border region. The map indicates the two national parks in the region and the two principal proposed routes for the Pan-American Highway across the Darien Gap.

forest of the Atrato River and adjacent Tumaradó swamps.<sup>30</sup> Due to its location on the land bridge between North and South America, this park is the only area in South America where Central American species exist.<sup>31</sup> Inscription of Los Katíos National Park on the World Heritage List occurred in 1994.<sup>32</sup>

In addition to the Los Katíos National Park, another management area also exists in the Chocó border region. The Natural Resource Institute (INDERENA) declared the Darién Forest Reserve of 61,973 ha in 1977.<sup>33</sup> This reserve is located on the Colombian-Panamanian border in the mountains of the *Serranía del Darién* in the municipalities of Acandí and Unguía.<sup>34</sup> The area

30. *Id.*; Girot, *supra* note 5, at 172, 174.

31. *See World Heritage Sites: Los Katíos, supra* note 29.

32. *Id.*

33. *See* Acuerdo de Inderena no. 09 de 1977 aprobado por la Resolución no. 36 de 1977 del Ministerio de Agricultura, Resolución no. 1225 de 1977 (containing INDERENA's legal authority for the creation of the Darién Forest Reserve).

34. *See* RESERVAS FORESTALES PROTECTORAS NACIONALES DE COLOMBIA: ATLAS BÁSICO [NATIONAL FOREST PROTECTIVE RESERVES OF COLOMBIA: BASIC ATLAS] 120-21 (Víctor Hugo Vásquez-V. ed., 2005).

includes small agricultural communities and native lands (*resguardos*) and has been greatly impacted by deforestation.<sup>35</sup> A special management area designated the Darién Special Management Area (*Área Especial de Manejo del Darién*, AME-D) covers about 500,000 ha of lands in the border municipalities to facilitate special management consideration by the Regional Autonomous Development Corporation of Chocó (CODECHOCO).<sup>36</sup> This special management area includes native lands (*resguardos*), Los Katíos National Park and buffer zone, private reserves, the Darién Forest Reserve, as well as land adjudicated to Afro-Colombian communities.<sup>37</sup>

### C. Ecology

The Darién-Chocó region is the center of the Chocó Biogeographical Province, recognized as one of the world's rich and most diverse areas in terms of biological diversity.<sup>38</sup> Its ecosystems include tropical humid forests, premontaine humid forests, riverine swamp forests (*cativales*), mangrove forests, and freshwater wetlands.<sup>39</sup> Recently, scientists have included the Chocó/Darién Biogeographic Region on a list of the world's twenty-five "biodiversity hotspots" – areas of exceptional endemism that are highly vulnerable to habitat loss.<sup>40</sup> The international environmental organization - Conservation International - lists the Tumbes-Chocó-Magdalena region as one of its global biodiversity hotspots.<sup>41</sup> This larger region subsumes the Panama-Colombia border region (Darién-Chocó) that this environmental organization

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35. See *id.*

36. See Parques Nacionales Naturales de Colombia [Colombian Natural National Parks], Area de Manejo Especial Darién [Darién Special Management Area], [http://www.parquesnacionales.gov.co/organiza/dt\\_norocc/Ame%20Dari%C3%A9n%5CAme1.htm](http://www.parquesnacionales.gov.co/organiza/dt_norocc/Ame%20Dari%C3%A9n%5CAme1.htm) (last visited Apr. 10, 2007).

37. See JUAN RODRIGO VEGA HENAO, DIAGNÓSTICO SOCIOPOLÍTICO DEL MANEJO DE ECOSISTEMAS EN ZONA DE FRONTERA EN COLOMBIA: ESTUDIO DEL CASO DE LA FRONTERA COLOMBO-PANAMEÑA [SOCIO-POLITICAL STUDY OF ECOSYSTEM MANAGEMENT IN THE COLOMBIAN BORDER ZONE] 36 (Universidad Nacional de Colombia 2006).

38. See INVÍAS, *supra* note 16, at 14-15.

39. See Conservation Int'l, Biodiversity Hotspots: Tumbes-Chocó-Magdalena, [http://www.biodiversityhotspots.org/xp/Hotspots/tumbes\\_choco/index.xml](http://www.biodiversityhotspots.org/xp/Hotspots/tumbes_choco/index.xml) (last visited Feb. 25, 2007) [hereinafter Hotspots: Tumbes-Chocó-Magdalena]; GRAN ATLAS, *supra* note 4, at 35, 138; NATIONAL ATLAS OF THE REPUBLIC OF PANAMA, *supra* note 6, at 28-31.

40. See Norman Myers et al., *Biodiversity Hotspots for Conservation Priorities*, 403 NATURE 853, 854 (2000).

41. See Hotspots: Tumbes-Chocó-Magdalena, *supra* note 39.

calls the “Chocó-Darién wet and moist forests”.<sup>42</sup> This area may contain the most diverse flora in the Neotropics with over 5,000 species of vascular plants.<sup>43</sup>

#### *D. People – Social Situation and Cultural Diversity*

Human populations, trends, and cultural characteristics are quite similar in Darién and Chocó – reflecting a human geography that parallels the natural geography.

In Darién Province, Panama, the population has increased from 26,524 (1980), 43,832 (1990) to 48,530 (2000).<sup>44</sup> Annual population increase 1980-1990 of 6.5 percent compared to a national figure of 2.9 percent.<sup>45</sup> This rapid growth in the 1980s was likely due to the termination of the Pan-American Highway to Yaviza and resulting colonization opportunities.<sup>46</sup> The 1990-2000 annual population growth was only 1.07 percent in Darién – below the 2.19 percent national figure. Colonization slowed with deforestation and government removal of agricultural subsidies.<sup>47</sup> Today, population densities in the province are a low 2.9 inhabitants/km<sup>2</sup>.<sup>48</sup>

The population in Chocó Department, Colombia, in 2003 was 411,844 people.<sup>49</sup> Considering the four border municipalities of Juradó, Río Sucio, Unguía, and Acandí, however, the demographics are very similar to those in Darién Province. The following table presents populations of these four border municipalities.<sup>50</sup>

42. *See id.*

43. *Id.* (follow “Unique Biodiversity” hyperlink).

44. CONSULTORÍA, *supra* note 13, 33-34.

45. *Id.* at 33-34, 37; Daniel Suman, *Globalization and Development: Using the Coastal Area of the Darién Region of Panama as a Case Study*, 2 OCCASIONAL PAPERS ON GLOBALIZATION 8 (2005) [hereinafter Suman, *Globalization*].

46. *See* CONSULTORÍA, *supra* note 13, 33-34.

47. *See id.* at 33-34, 37.

48. The population of Darién Province in 2000 was 48,530 people, and the area of the province is 16,671 km<sup>2</sup>. Thus, the population density of the province is a low 2.9 people per square kilometer. *See supra* text accompanying notes 7 and 44.

49. *See* DEPARTAMENTO ADMINISTRATIVO NACIONAL DE ESTADÍSTICA [NATIONAL ADMINISTRATIVE DEPARTMENT OF STATISTICS] [DANE], COLOMBIA EN CIFRAS [COLOMBIA IN STATISTICS] 98 (2004).

50. DANE, XVI Censo Nacional de Población y Vivienda – 1993 [16th National Census of Population and Housing — 1993], [http://www.dane.gov.co/files/investigaciones/poblacion/poblacion\\_vivienda/](http://www.dane.gov.co/files/investigaciones/poblacion/poblacion_vivienda/) (follow “Población\_Colombia.XLS” hyperlink) (last visited Feb. 25, 2007); Telephone Interview with DANE, in Bogotá, Colombia (Sept. 8, 2006) (notes on file with author) (soliciting census information contained in XVII Censo Nacional de Población y de Vivienda 2005).

MUNICIPALITY	POPULATION (1993)	POPULATION (2005)
Juradó	4,280	5,322
Río Sucio	28,635	36,240
Unguía	11,666	14,444
Acandí	10,056	11,319

The average annual population increase during the period from 1993 to 2005 in these municipalities ranged between 1.0% (Acandí) and 2.2% (Río Sucio).<sup>51</sup>

Both Darién and Chocó have similarly low social indicators that are far below the national averages for either country.<sup>52</sup> For example, the 2000 Panama National Census reported that 40.9 percent of homes in Darién lacked potable water; 63.2 percent lacked electricity; 37.9 percent lacked sanitary waste systems; and 22.8 percent of residents were illiterate.<sup>53</sup> Similar statistics for the nation were 9.2 percent, 18.5 percent, 6.9 percent, and 7.6 percent, respectively.<sup>54</sup> In Chocó less than 20 percent of the population satisfies its basic human needs, and poverty levels exceed 81 percent of the population.<sup>55</sup>

Despite the region's deficient social conditions, it houses a rich cultural diversity comprised primarily of three major ethnic groups: Emberá and Wounaan Indians, Afro-Colombians and Afro-Darienitas, and Mestizo colonists and immigrants from other regions of both countries.

## 1. Emberá and Wounaan Indigenous Peoples

Emberá and Wounaan traditionally lived in riverine communities and engage in agriculture although in Panama government policy in the 1970s concentrated them in communities to facilitate provision of services.<sup>56</sup> Today, they account for 34.6 percent of

51. This calculation averages the population increases in each municipality over the twelve year period.

52. COLOMBIA EN CIFRAS, *supra* note 49, at 15, 100 (comparing, for example, the percentage of people whose basic necessities are not met in Colombia (37.2%) with those of Chocó Department (80.4%)). Panama and Darién Province present a similar contrast between the nation compared to the border province.

53. See CONTRALORÍA GENERAL DE LA REPÚBLICA [COMPTROLLER GENERAL OF THE REPUBLIC], CENSOS NACIONALES DE POBLACIÓN Y VIVIENDA [NATIONAL POPULATION AND HOUSING CENSUS] 20-21 (2000); *see also* CONSULTORÍA *supra* note 13, at 38-39.

54. *See id.* at 10-11; Suman, *Globalization*, *supra* note 45, at 8-9.

55. *See* INVÍAS, *supra* note 16, at 16-17; GRAN ATLAS, *supra* note 4, at 139.

56. REINA TORRES DE ARAÚZ, PANAMÁ INDÍGENA [INDIGENOUS PANAMA] 155, 159-61, 194 (1980); Suman, *Globalization*, *supra* note 45, at 7.

Darién Province's population.<sup>57</sup> As a result of pressure from the indigenous communities, the Panamanian Government created two autonomous regions (*comarcas*) in Darién in 1983 – Cémaco and Sambú.<sup>58</sup> The Emberá – Wounaan General Congress embodies the traditional government of the Emberá – Wounaan.<sup>59</sup>

Significant numbers of Emberá and Wounaan peoples inhabit lands that are outside the two *comarcas*. These collective lands (*tierras colectivas*) lack effective native control and are the source of current conflicts between the indigenous peoples and mestizo colonists who do not recognize traditional land tenure systems.<sup>60</sup>

About 8.5 percent of Chocó Department's population is Indian.<sup>61</sup> The Colombian Government recognized the territorial claims of the Emberá and Wounaan peoples in the Lower Atrato and Pacific Coast regions through the 1991 Political Constitution (Arts. 7 & 8) and Law No. 160 of 1994.<sup>62</sup> The Colombian Government recognizes a type of native land claim, called a *resguardo*, which includes a community and surrounding lands.<sup>63</sup> The number of Emberá and Wounaan *resguardos* in Chocó Department totals 105 with a population of 33,896 and land area of 1,222,444 ha.<sup>64</sup> OREWA (*Organización Regional Emberá Wounana*) was

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57. CONSULTORÍA *supra* note 13, 40-41.

58. See Zeddy Herrera, *Grupos Aborígenes de Panamá [Indigenous Groups of Panama]*, <http://www.monografias.com/trabajos14/indigenas-panama/indigenas-panama.shtml> (last visited Mar. 20, 2007); Suman, *Globalization, supra* note 45, at 7.

59. See KEVIN E. SÁNCHEZ S. & MARTA DE GERDES, *Escuchemos a las Autoridades Emberá-Wounaan [Let's Listen to the Emberá-Wounaan Authorities]* (2006), <http://www.binal.ac.pa/panal/choco/sp/autoridades.php>.

60. Alexis Alvarado, *Conflicto Socio-Ambiental de las Comunidades de Arimae y Emberá Puru [Socio-Environmental Conflict in the Emberá Puru and Arimae Communities]*, <http://www.geocities.com/RainForest/4043/conflicto.html> (last visited Mar. 20, 2007); Suman, *Globalization, supra* note 45, at 7.

61. See GRAN ATLAS, *supra* note 4, at 138.

62. See Ley No. 160, De Reforma Agraria y Desarrollo Rural Campesino [Agrarian Reform and Rural Development], arts. 85-87, Aug. 3, 1994 (Colom.), available at <http://www.incora.gov.co/capitulo14.htm>; Girof, *supra* note 5, at 187.

63. See Fundación Hemera, Los Resguardos Indígenas, [http://www.etniasdecolombia.org/grupos\\_resguardos.asp](http://www.etniasdecolombia.org/grupos_resguardos.asp) (last visited Mar. 20, 2007).

64. RAÚL ARANGO & ENRIQUE SÁNCHEZ GUTIÉRREZ, LOS PUEBLOS INDÍGENAS DE COLOMBIA EN EL UMBRAL DEL NUEVO MILENIO [THE INDIGENOUS PEOPLE OF COLOMBIA ON THE THRESHOLD OF THE NEW MILLENNIUM] Annex 1 (Departamento Nacional de Planeación, 2004), available at [http://www.dnp.gov.co/paginas\\_detalle.aspx?idp=452](http://www.dnp.gov.co/paginas_detalle.aspx?idp=452) (follow "Anexo 1" hyperlink). The legal origins of the *resguardo* can be traced to the late 19th Century and Ley 89 of 1890. See Ley No. 89, Por la cual se determina la manera como deben ser gobernados los salvajes que vayan reduciéndose a la vida civilizada [To Determine the Manner in Which the Savages who are Adapting to Civilized Life Should be Governed] arts. 14-22 (Nov. 25, 1890) (Colom.).

formed in the 1980s to defend natives' rights in Chocó.<sup>65</sup>

## 2. Afro-Colombian and Afro-Darién Peoples

In Panama, the Afro-Darienita population tends to live in coastal communities and engages in the extraction of natural resources (timber, fish and shrimp).<sup>66</sup> This ethnic group controls provincial politics.<sup>67</sup> Many coastal communities in Darién (particularly La Palma, Punta Alegre, Garachiné, Puerto Piña, and Jaqué) have large Afro-Colombian populations that have migrated in search of better economic opportunities, and to escape the political violence in their home country.<sup>68</sup>

The situation of the Afro population in Chocó Department is similar to that of Darién. The Afro-Colombian population comprises the majority of the population - about ninety percent according to some figures.<sup>69</sup> These communities' land tenure is more complex than Panama's, however. Colombian Law No. 70 (August 27, 1993) created the possibility of collective property rights for Afro-Colombian communities occupying riverine lands on the Pacific region.<sup>70</sup> The objectives of this landmark legislation were to protect the cultural identification and community rights of this ethnic group and to further its social and economic development.<sup>71</sup> The Colombian Institute of Agrarian Reform (INCORA) [but today the Colombian Institute of Rural Development - INCODER] grants the collective titles to communities that request it.<sup>72</sup> Article 7 stipulates that the collective use of these lands is "inalienable and non-prescriptive." Lands can be transferred only to other community members or Afro-Colombians.<sup>73</sup>

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65. See Girot, *supra* note 5, at 191; see also Interview with César Monje, Fundación Natura, in Bogotá, Colombia (May 22, 2006) (notes on file with author) (noting that OREWA was a strong voice for community autonomy and organizations in Chocó - even for non-indigenous residents).

66. See Suman, *Globalization*, *supra* note 45, at 7-8.

67. See CONSULTORÍA, *supra* note 13, 40-41.

68. See Suman, *Globalization*, *supra* note 45, at 7.

69. See U.N. DEVELOPMENT PROGRAMME [UNDP], EL CONFLICTO, CALLEJÓN CON SALIDA: [THE CONFLICT, AN ALLEY WITH AN EXIT] 129 (2d ed. 2003) [hereinafter UNDP, EL CONFLICTO]; see also GRAN ATLAS, *supra* note 4, at 138 (stating that the Colombian Government reports that more than 64 percent of the department's population is Afro-Colombian).

70. See Ley No. 70, Por la cual se Desarrolla el Artículo Transitorio 55 de la Constitución Política [By Which the Transitory Article 55 of the Political Constitution is Developed] (27 Aug. 1993) (Colom.).

71. See *id.*, art. 1.

72. See *id.*, arts. 8, 11.

73. See *id.*, art. 7 (translation by author).

Non-Afro-Colombians who occupy land granted to Afro-Colombian communities will not obtain legal title.<sup>74</sup> The legislation requires that any commercial use of forests be sustainable and appropriate for the sensitive conditions of the area – highlighting practices of agroforestry.<sup>75</sup>

### 3. Mestizo Colonists

The third ethnic group in the region represents the immigrants from other regions of the two countries. Mestizos from Panama's central provinces, known as *interioranos*, have migrated to Darién over the past twenty years and settled in or near towns along the Pan-American Highway. Cattle-raising and rice cultivation are their primary economic activities.<sup>76</sup> Entry of this ethnic group has resulted in land conflicts with the other two groups because of their different property rights systems. Conflicts are particularly severe between *interioranos* and native peoples, particularly those Emberá who live outside the *comarcas* (autonomous administrative areas), and lack title recognition of their traditional community property.<sup>77</sup> Migrants to Darién towns from Colombia's Antioquia Department also play an important role in business and commerce in that province.<sup>78</sup>

A similar immigration situation has occurred in Colombia. Migration of small farmers from Sucre and Córdoba departments to the Urabá area, as well as to lands further west in Chocó, represents an important situation.<sup>79</sup> Many immigrants were initially attracted to the banana plantations established in the 1960s.<sup>80</sup> In addition, people from Antioquia Department have also entered the region via the Medellín-Turbo and the Medellín-Quibdó roads.<sup>81</sup>

#### *E. Threats and Concerns in the Region*

As this article describes below, few roads exist in this border

74. See *id.*, art. 15.

75. See *id.*, art. 6.

76. See Suman, *Globalization*, *supra* note 45, at 15.

77. See CONSULTORIA, *supra* note 13, 44.

78. See *id.* at 41.

79. See Napoleón García Anaya, *La Solidaridad es la Defensa de las Minorías: Indígenas y Negros en Medio de la Guerra en el Chocó* [*Solidarity is the Defense of the Minorities: Indigenous Peoples and Blacks in the Middle of the War in Chocó*], in CONFLICTOS REGIONALES – ATLÁNTICO Y PACÍFICO [REGIONAL CONFLICTS – ATLANTIC AND PACIFIC] 171, 174 (Instituto de Estudios Políticos y Relaciones Internacionales de la Universidad Nacional, 1998).

80. See Giro, *supra* note 5, at 177.

81. See *id.*

area. The Pan-American Highway ends in Yaviza, Panama, and only begins again 108 km further (in Lomas Aisladas, Colombia).<sup>82</sup> Government presence in the region has been minimal<sup>83</sup> despite the area's strategic importance as a border region, geographic connection point between the Atlantic and Pacific Oceans and North and South America, and position as a corridor from the interior of Colombia to the coast.

### 1. Colonization

The Darién-Chocó region, also known as the "Darién Gap", is an active colonization frontier on both sides of the international border. Deforestation occurs as settlers inhabit and clear the land. The processes in Colombia and Panama are similar, although those in Colombia are more acute.

In Panama, the construction in the late 1970s of the Pan-American Highway to Yaviza in the center of Darién Province permitted the disorganized influx of colonists from central and western Panama and stimulated the rapid deforestation of the western half of Darién.<sup>84</sup> A short-lived agricultural era (producing rice, corn, beans) followed the initial tropical hardwood extraction.<sup>85</sup> As soil quality degraded, the dominant land use has become extensive (low-density) cattle-ranching.<sup>86</sup>

In Colombia, many families originally from other departments (Córdoba, Sucre, Bolívar, Antioquia), as well as from the Alto Atrato in Chocó Department (upper reaches of the Atrato Watershed) settled in the *Urabá chocoano* to the west of the Gulf of Urabá, particularly in the municipalities of Unguía and Acandí.<sup>87</sup> Hunters and loggers arrived first, followed by small farmers and, ultimately in the 1970s, land investors and large farmers (*latifundistas*).<sup>88</sup>

The road from Medellín to Turbo, on the east side of the Gulf of Urabá, was completed after World War II and in the subsequent decades facilitated settlements along the road (Chigorodó, Apartadó, Dabeiba) that formed new economic centers for the region.<sup>89</sup> The towns along the Atrato River (Quibdó, Murindó,

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82. See Suman, *Globalization*, *supra* note 45, at 15.

83. See Giro, *supra* note 5, at 192.

84. See CONSULTORÍA, *supra* note 13, at 11-15; Giro, *supra* note 5, at 184.

85. See CONSULTORÍA, *supra* note 13, at 11-15.

86. See *id.*

87. See Anaya, *supra* note 79, at 174.

88. See *id.*

89. See Giro, *supra* note 5, at 177.



Arquíá, Pavarandó) stagnated from the 1950s forward.<sup>90</sup> The road also stimulated the entry of new capital into the region, particularly the banana plantations around the Gulf of Urabá.<sup>91</sup>

Colonization pressure has extended to the areas to the west of the Atrato River near Los Katíos National Park, largely due to ranchers and farmers displaced by the plantation crisis in Urabá and the political violence.<sup>92</sup>

## 2. Timber Extracción

In Panama, the western half of Darién Province was largely deforested during the past twenty-five years after the opening of the Pan-American Highway to Yaviza.<sup>93</sup> Significant logging of tropical hardwoods continues today in the Cémaco Emberá *Comarca* and even within Darién National Park.<sup>94</sup> Commercial logging largely occurs today via an often-abused loophole in the Forestry Law that allows “subsistence use” of forest products by Native peoples.<sup>95</sup>

The rich forest resources in Chocó Department have been a target of large forestry exploitation for over fifty years. The introduction of mechanized techniques in the 1960s by logging companies, such as Pizano, S.A. and Maderas del Darién, especially targeted the *cativo* forests adjacent to major river courses.<sup>96</sup> These woods are largely used for triplex and particle-board for the furniture and construction industries.<sup>97</sup> The result has been the substantial reduction in fine tropical hardwoods and *cativo* in Chocó, as well as severe ecosystem impacts. Conflicts between timber companies and Afro-Colombian communities with collective title, as well as Emberá *resguardos* are common.<sup>98</sup> Recently, as paramilitary groups have extended their control of Chocó, displac-

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90. *See id.*

91. *See id.*

92. *See id.* at 178.

93. *See* Suman, *Globalization*, *supra* note 45, at 12.

94. *See id.*

95. *See id.*; Ley No. 1, Por la cual se Establece la Legislación Forestal en la República de Panamá y se Dictan Otras Disposiciones [Through Which the Forestry Law in the Republic of Panama is Established and Other Arrangements are Set Forth], art. 27(1) (Feb. 3, 1994) (Pan.).

96. *See* Eduardo Veja et al., *Agroindustrias, Explotación Forestal y Violencia en el Bajo Atrato* [Agroindustry, Deforestation and Violence in the Lower Atrato], *REVISTA SEMILLAS*, Dec. 2005, at 40.

97. *See id.* at 41.

98. *See* Benjamín Castaño, *Las Políticas Gubernamentales Sobre Incentivos Forestales* [Governmental Politics On Forestry Incentives], *REVISTA SEMILLAS*, Aug. 2003, at 13-14.

ing traditional communities, a new forest extraction model has developed.<sup>99</sup> The paramilitary land occupiers also extract large quantities of tropical hardwoods from these areas.<sup>100</sup> In other cases, large timber and agroindustry companies have approached displaced community members offering to facilitate the bureaucratic steps necessary to obtain collective title, forming associations with the companies but actually gaining permission to log collective lands.<sup>101</sup>

### 3. Mega-Projects

Large-scale development projects in this region may not be far off. The Colombian Government and private investors have proposed a number of large projects including construction of the Pan-American Highway through to Panama, secondary departmental roads, an inter-oceanic canal, a deepwater Pacific port in Tribugá, large agricultural projects, a Colombia-Panama electric transmission route, gas pipelines, and hydroelectric dams.<sup>102</sup> All these potential projects would have major regional environmental and social impacts.

The Panamanian Government's plans for Darién are not quite as pharaonic as Colombia's. The government recently refurbished its section of the Pan-American Highway to Yaviza and invested in a multi-sectoral development project called the Program for the Sustainable Development of Darién (PDSO), financed largely with loans from the Inter-American Development Bank (IDB).<sup>103</sup> Its goals are to improve delivery of social services to Darién,

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99. See Veja, *supra* note 96, at 41.

100. See *id.*

101. See Comisión Intereclesial de Justicia y Paz, *¿Ecocidio Certificado?: Pizano S.A. en el Territorio del Bajo Atrato (Chocó)* [*Certified Ecocide: Pizano S.A. in the Territory of the Bajo Atrato (Chocó)*], REVISTA SEMILLAS, Dec. 2005, at 45-46; Comisión Intereclesial de Justicia y Paz, *Pena de Muerte a Bosques y Afrocolombianos* [*Death Penalty for Forests and Afro-Colombians*], Dec. 16, 2005, <http://www.peaceobservatory.org/index.php?id=211>; Comisión Intereclesial de Justicia y Paz, *La Tramoya: Derechos Humanos y Palma Aceitera Curvaradó y Jiguamiandó, Caso Tipo 5* [*La Tramoya: Human Rights and African Palms, Curvaradó and Jiguamiandó, Case Study Number 5*] (Oct. 2005) (on file with author) [hereinafter *La Tramoya*].

102. See Uribe: *Colombia Seeks Continental Integration*, BUS. NEWS AMERICAS, July 19, 2006, available at <http://www.peaceobservatory.org/index.php?id=574>; GRUPO DE INTEGRACIÓN, LA INSERCIÓN DE COLOMBIA EN EL SISTEMA INTERNACIONAL CAMBIANTE, POLICY PAPER 14: LA AGENDA INTERNA Y EL PLAN PUEBLA PANAMÁ 6-7 [GROUP OF INTEGRATION: THE INTEGRATION OF COLOMBIA IN THE EVOLVING INTERNATIONAL SYSTEM: POLICY PAPER 14: THE INTERNAL AGENDA AND THE PLAN PUEBLA PANAMÁ] (May 2005) [hereinafter POLICY PAPER 14], <http://www.colombiainternacional.org/DOC%20PDF/Policy%20paper-14.pdf>.

103. See Suman, *Globalization*, *supra* note 45, at 1.

strengthen local government capabilities, encourage land use planning, and improve transportation infrastructure.<sup>104</sup>

#### 4. Political Violence

The Colombian portion of the region has become a “hotspot” in that nation’s civil war, and the civilian population has suffered most due to violence originating from all involved parties. Until the late 1980s Chocó remained at the margin of Colombian violence. However, the situation changed, stimulated by the expansion of capital via large-scale banana and African palm plantations particularly around the Gulf of Urabá, as well as timber extraction companies.<sup>105</sup>

The roots of political violence in Chocó begin in the Urabá region, surrounding the Gulf of Urabá on the southwestern corner of the Caribbean Sea and adjacent to Panama.<sup>106</sup> In the 1980s, narco-traffickers from Antioquia began to purchase lands near the Gulf of Urabá in Acandí and Unguía municipalities. Conflicts also arose over border areas of the Pacific coast in Juradó municipality, important as well for drug shipments to the United States.<sup>107</sup>

Additionally, beginning around 1960, the United Fruit Company began banana production in Urabá.<sup>108</sup> Today over 400 small banana plantations with more than 300 owners oversee the production.<sup>109</sup> Banana workers’ unions grew stronger and more active in the 1980s (particularly Sintagro and Sintrabanano) in their demands for improved labor conditions.<sup>110</sup> Leftist political movements, associated with armed insurgent groups (*Fuerzas Armadas*

104. UNDP, *VISIÓN DARIÉN: LA GESTIÓN DEL DESARROLLO EN LA REGIÓN DE DARIÉN A TRAVÉS DE PROGRAMAS Y PROYECTOS* [DARIÉN’S VISION OF DEVELOPMENT ADMINISTRATION IN THE DARIÉN REGION THROUGH PROGRAMS AND PROJECTS] 16, PAN/01/003 (2003), available at <http://www.mef.gob.pa/programadarien/vision%20Darien/documentos.htm> (click on PDF file for this title).

105. See Darío Fajardo Montaña, *Tierra, Territorios y Desplazados* [Land, Territories, and Displaced Persons], *REVISTA SEMILLAS*, June 2005, at 10-15.

106. See UNDP, *EL CONFLICTO*, *supra* note 69 (stating that Colombians refer to the area as the “Colombian Darién”, and that it includes portions of the departments of Chocó, Antioquia, and Córdoba).

107. See PROGRAMA PRESIDENCIAL DE DERECHOS HUMANOS [PRESIDENTIAL PROGRAM OF HUMAN RIGHTS] (Colom.), *PANORAMA ACTUAL DEL CHOCÓ* [CURRENT PANORAMA OF CHOCÓ] 3 (2003) [hereinafter *CURRENT PANORAMA OF CHOCÓ*], available at [http://www.derechoshumanos.gov.co/observatorio/04\\_publicaciones/04\\_03\\_regiones/choco.pdf](http://www.derechoshumanos.gov.co/observatorio/04_publicaciones/04_03_regiones/choco.pdf).

108. CENTRO DE INVESTIGACIÓN Y EDUCACIÓN POPULAR [CENTER FOR INVESTIGATION AND POPULAR EDUCATION] [CINEP], *URABÁ: INFORME DE LA COMISIÓN VERIFICADORA DE LOS ACTORES VIOLENTOS EN URABÁ* [URABÁ: REPORT OF THE VERIFYING COMMISSION ON VIOLENT ACTORS IN URABÁ] 14 (1995) [hereinafter *URABÁ*].

109. *See id.*

110. *See id.* at 16.

*Revolucionarias de Colombia* [FARC] and *Ejército Popular de Liberación* [EPL]), led these organizations.<sup>111</sup> The left also controlled local governments in the region at that time.<sup>112</sup>

During the 1980s, and particularly after the 1991 demobilization of the EPL and its members' "reinsertion" into civilian life, the FARC, especially Front 57, occupied the political space in northern Chocó along the Panamanian border, east of the *Serranía del Darién*, and on the west bank of the Atrato River.<sup>113</sup> This border area was of great strategic importance to the FARC as an entry point for arms and munitions into Colombia and a safe zone for FARC guerrillas from other fronts in Colombia.<sup>114</sup>

A response from the right and its paramilitary forces, however, was forthcoming. The paramilitary groups are essentially private counterinsurgency armies supported by cattle ranchers, owners of banana plantations, and businessmen with broad participation and support from the National Police and Army. The paramilitary group AUC (*Autodefensas Unidas de Colombia* – Colombian Self-Defense Forces) moved into the banana zone in Urabá from its strongholds to the east around 1995 to attack FARC zones, as well as because of the strategic importance of the region for arms supplies and drug shipments.<sup>115</sup> The years 1996-1997 and 2002 were peak periods for civilian murders and kidnaping in the Acandí, Unguía, and Río Sucio municipalities.<sup>116</sup> Moreover, this paramilitary push attempted to stop the process of granting of land titles to Afro-Colombian communities that had begun in the zone as a result of Law No. 70.<sup>117</sup> In a sense, this was an agrarian counter-reform sponsored by large cattle ranchers, agroindustry, timber interests, and commercial interests.<sup>118</sup>

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111. See *id.*; see also Clara Inés García, *Urabá: ¿Cruce o Articulación de Conflictos?* [*Urabá: Crossroads or Articulation of Conflicts?*], in *CONFLICTOS REGIONALES – ATLÁNTICO PACÍFICO* [REGIONAL CONFLICTS – ATLANTIC AND PACIFIC] 99-106 (Instituto de Estudios Políticos y Relaciones Internacionales de la Universidad Nacional, 1998).

112. See *Una Subregión con 26 Años en Medio de la Guerra* [*A Subregion with 26 Years in the Midst of the War*], *EL ESPECTADOR* (Colom.), May 21-27, 2006, at 2A.

113. See URABÁ, *supra* note 108, at 23; Anaya, *supra* note 79, at 175.

114. See CURRENT PANORAMA OF CHOCÓ, *supra* note 107; URABÁ, *supra* note 108, at 23.

115. See URABÁ, *supra* note 108, at 31; FERNÁN E. GONZÁLEZ ET AL., *VIOLENCIA POLÍTICA EN COLOMBIA: DE LA NACIÓN FRAGMENTADA A LA CONSTRUCCIÓN DEL ESTADO* [POLITICAL VIOLENCE IN COLOMBIA: FROM A FRAGMENTED NATION TO THE CONSTRUCTION OF THE STATE] 124 (CINEP, 2003); García, *supra* note 111, at 107; Anaya, *supra* note 79, at 176.

116. See Presidential Human Rights Program, *supra* note 27, at 10.

117. See GONZÁLEZ, *supra* note 115, at 141.

118. See *id.* at 141-42; UNDP, *EL CONFLICTO*, *supra* note 69, at 75.

By the late 1990s until 2003, lands further to the west in the strategic Chocó Department became a battle ground between leftist guerrillas from the FARC and right-wing AUC paramilitaries.<sup>119</sup> Civilians were caught in the middle of the generalized violence between the FARC and *Esperanza, Paz y Libertad* (Hope, Peace, and Liberty) (demobilized guerrillas of the EPL) [1991-1994], the FARC and paramilitary AUC, and the FARC and National Police and Army.<sup>120</sup> This dirty war involved techniques against the civilian populations suspected of collaboration with opposing groups, such as selective murder, collective threats and displacement, kidnapping, and collective murder.<sup>121</sup> In many areas of Chocó, the paramilitary's strategy appeared to involve "cleansing" a region of any type of social organization.<sup>122</sup> The impoverished Afro-Colombians and Native peoples in Chocó have suffered the most during these two decades of violence.<sup>123</sup>

One byproduct of the years of political violence, drug trafficking, and the growth of *latifundios* in northern Chocó has been forced displacement of communities and individuals.<sup>124</sup> Although exact numbers of refugees do not exist, an estimated 50,000 people have been displaced from their homes in Chocó Department between 1996 and 2001.<sup>125</sup> Incursions of paramilitary forces, FARC guerrillas, and the military have displaced people from Río Sucio, Juradó, Cacarica, Unguía, and Acandí – all close to the Panamanian border.<sup>126</sup> Chocó refugees have relocated to other towns in Chocó, other areas of Colombia, or to neighboring Panama. Over 20,000 people, of whom ninety percent were Afro-Colombians, were expelled from Río Sucio in 1996.<sup>127</sup> Over 7,000 people – the majority of the town's population – fled political violence in Juradó in December 1999.<sup>128</sup>

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119. See GONZÁLEZ, *supra* note 115, at 134; see also Presidential Human Rights Program, *supra* note 27, at 6-10.

120. See URABÁ, *supra* note 108, at 40-41.

121. See GONZÁLEZ, *supra* note 115, at 124; García, *supra* note 111, at 107.

122. See GONZÁLEZ, *supra* note 115, at 124; García, *supra* note 111, at 108.

123. See GONZÁLEZ, *supra* note 115, at 124.

124. See URABÁ, *supra* note 108, at 40-41; Presidential Human Rights Program, *supra* note 27.

125. *Voces de aliento y compromiso: Organismos humanitarios y no gubernamentales [Voices of Hope and Compromise: Humanitarian Organizations and NGOs]*, in FORJAMOS ESPERANZA: AFRODESPLAZADOS [WE BUILD HOPE: DISPLACED PERSONS OF AFRICAN DESCENT], 58 (La Asociación de Afrocolombianos Desplazados [AFRODES], June 2001) (on file with author) [hereinafter *Voces de Aliento*].

126. See *id.*

127. See *id.*

128. See *Chocó: Desinterés Oficial y Desintegración Comunitaria [Chocó: Official*

The impact of violence in Chocó on Emberá peoples has also been particularly severe.<sup>129</sup> Reports indicate that almost one quarter of the Katío Emberá (living west of the Atrato River near Los Katíos National Park) has been displaced.<sup>130</sup> This figure is nine times the national average of displaced people.<sup>131</sup> The suffering and humanitarian crisis of the Emberá and Afro-Colombian communities in Chocó remains largely invisible to the world community – “our deaths aren’t news” (“*nuestras muertes no son noticia*”).<sup>132</sup> Some commentators have noted the irony of the Chocó situation – the area’s rich biodiversity and, at the same time, the extermination and displacement of many of its human residents.<sup>133</sup>

The Uribe Administration’s policy of demobilization of paramilitary forces (DDR - Disarmament, Demobilization, and Reincorporation)<sup>134</sup> has yet to be fully felt in Chocó. Some indices reflect that murders have decreased in paramilitary zones in Chocó but that kidnappings have increased significantly.<sup>135</sup> However, the last paramilitary front to be demobilized is based in northern Chocó (Acandí), so the violence has tended to continue longer there than in areas where demobilization occurred earlier.<sup>136</sup> Moreover, most of the demobilized “paras” remain in the

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*Disinterest and Community Disintegration*] in FORJAMOS ESPERANZA: AFRO-DESPLAZADOS [WE BUILD HOPE: DISPLACED PERSONS OF AFRICAN DESCENT] 16-17 (AFRODES, June 2001) [hereinafter *Chocó: Official Disinterest*].

129. See generally ORG. OF AM. STATES, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, CH. X – THE RIGHTS OF INDIGENOUS PEOPLE (1999), <http://www.cidh.org/countryrep/colom99en/chapter-10.htm> (reporting on the situation of indigenous Colombians, including those in the Chocó Department) [hereinafter INTER-AMERICAN COMMISSION ON HUMAN RIGHTS].

130. See William Villa, *Violencia Política Contra Los Pueblos Indígenas en Colombia (1974-2004)* [Political Violence against Indigenous Groups in Colombia], REVISTA SEMILLAS, June 2005, at 21-26.

131. See *id.*

132. See Anaya, *supra* note 79, at 180.

133. *Id.* at 171-72 (“Paradójicamente, en la región del mundo con mayor biodiversidad pasaron a estar en peligro de extinción los pueblos pobres.”).

134. See Andrea González Peña and Jorge Alberto Restrepo, *Desmovilización de las AUC: ¿Mayor Seguridad Humana?* [Demobilization of the AUC: Better Human Security?], UN PERIÓDICO, May 21, 2006, at 8 (a publication of the Universidad Nacional de Colombia).

135. See *id.*

136. See Consultoría para los Derechos Humanos y el Desplazamiento [CODHES], *Cruce de Fronteras, Salida Compleja* [Frontier Junction: A Complex Outcome], Jan. 2, 2004, available at <http://www.acnur.org/pais/docs/259.pdf> (stating that the last paramilitary group to demobilize under President Álvaro Uribe’s plan was the Block Élmer Cárdenas (BEC) in northern Chocó Department). This process occurred in two phases in 2006). See also ALTO COMISIONADO PARA LA PAZ, REVELA ACERCAMIENTOS CON BLOQUE ÉLMER CÁRDENAS PARA POSIBLE DESMOVILIZACIÓN [HIGH COMMISSION FOR

region and continue to threaten the local populations.<sup>137</sup> Many of these demobilized forces continue to accumulate lands for cattle ranches, African palm plantations, and eco-tourism projects at the expense of the traditional poor inhabitants.<sup>138</sup> Reports continue of illegal armed groups continuing to pressure residents to sell their lands with statements such as “if you won’t sell it to us, we’ll buy it from your widow”.<sup>139</sup> Thus, while Colombian political violence may be decreasing nationwide, business as usual continues in Chocó.<sup>140</sup>

## 5. Extension of the *Latifundios*

Not divorced from the political violence in northern Chocó is the violence that has resulted from the extension of agroindustry (extensive cattle-raising, banana and African palm plantations), as well as the interest in accumulating land in a region that might be the site of mega-development projects. The principal factor behind this violence, human suffering, and resulting displacement of populations of Afro-Colombians and native peoples has been the struggle for land.<sup>141</sup> Concentration of lands dedicated to the

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PEACE REVEALS CLOSENESS WITH OUTREACH TO ÉLMER CÁRDENAS BLOCK FOR POSSIBLE DEMOBILIZATION] (July 14, 2005), [http://www.altocomisionadoparalapaz.gov.co/noticias/2005/julio/jul\\_14\\_05d.htm](http://www.altocomisionadoparalapaz.gov.co/noticias/2005/julio/jul_14_05d.htm); INSTITUTO LATINOAMERICANO DE SERVICIOS LEGALES ALTERNATIVOS [LATIN-AMERICAN INSTITUTE OF ALTERNATIVE LEGAL SERVICES] [ILSA], EN PLENA DESMOVILIZACIÓN, ‘PARAS’ DEL BLOQUE ÉLMER CÁRDENAS SIGUEN APROPIÁNDOSE DE FINCAS [IN TOTAL DEMOBILIZATION, PARAMILITARIES OF THE ÉLMER CÁRDENAS BLOCK CONTINUE EXPROPRIATING FARMLANDS] (June 12, 2006), [http://www.ilsa.org.co/article-imprim.php3?id\\_article=229](http://www.ilsa.org.co/article-imprim.php3?id_article=229) [hereinafter ILSA].

137. See INT’L PEACE OBSERVATORY [IPO], MORE FAMILIES FLEE UNREST NEAR COLOMBIA’S NORTHERN BORDER WITH PANAMA (Aug. 2, 2006), <http://www.peaceobservatory.org/index.php?id=772> [hereinafter FAMILIES FLEE].

138. See Enrique Rivas, *Urabá Feudal [Feudal Urabá]*, EL ESPECTADOR, May 21-27, 2006, at 2A; see also ILSA, *supra* note 136. The paramilitary Block Élmér Cárdenas conditioned its recent demobilization on the government’s support of its agroindustry and African palm cultivation. Lands of interest to “paramilitary agroindustrialists” are often those that they obtained by force and intimidation from Afro-Colombian communities. See also BRUNO MATAPAY, AGENCIA PRENSA RURAL [RURAL PRESS AGENCY], LA DESMOVILIZACIÓN DEL BLOQUE ÉLMER CÁRDENAS - EL SHOW DEBE SEGUIR [THE DEMOBILIZATION OF THE ÉLMER CÁRDENAS BLOCK - THE SHOW MUST GO ON] (Aug. 12, 2006), <http://www.prensarural.org/spip/spip.php?article17> [hereinafter MATAPAY]; Carlos Salgado, *Sin Fe, se Espera que el BEC Devuelva Tierras [Without Faith, Hope Exists that the BEC Will Return Lands]*, EL COLOMBIANO, available at [http://www.elcolombiano.com.co/BancoConocimiento/S/sin\\_fe\\_se\\_espera\\_que\\_el\\_bec\\_devuelva\\_tierras/sin\\_fe\\_se\\_espera\\_que\\_el\\_bec\\_devuelva\\_tierras.asp?CodSeccion=7](http://www.elcolombiano.com.co/BancoConocimiento/S/sin_fe_se_espera_que_el_bec_devuelva_tierras/sin_fe_se_espera_que_el_bec_devuelva_tierras.asp?CodSeccion=7).

139. See Rivas, *supra* note 138 (stating that some observers of the Chocó situation consider that the paramilitaries’ principal interest in the region was obtaining land and that fighting the FARC was merely an excuse for the land grab).

140. See FAMILIES FLEE, *supra* note 137.

141. See García, *supra* note 111, at 96; Amnesty Int’l, *Colombia: The Right to Live*

above-mentioned activities limits jobs, utilizes the “best” lands, and forces small farmers to colonize and deforest new areas.<sup>142</sup>

Investors, supported by paramilitary forces, have attempted to gain control of lands held in collective title by Afro-Colombian communities made possible via Law No. 70.<sup>143</sup>

Accompanying the increase in the influence of the paramilitary forces in Lower Atrato region is an increase in the cultivation of African palm. Colombia today is the largest producer of African palm in the Western Hemisphere and the fourth largest in the world, and Chocó is considered to be a prime area for expansion of this crop.<sup>144</sup> In recent years, palm plantations have increased on “collective territorial” lands of Afro-Colombian communities. New investors are able to obtain private land titles for collective territorial lands through political pressure of claims of existing titles, illegal agreements with communities or individuals, or simple fraud.<sup>145</sup> One result of what appears to be official strategy is the displacement of traditional Afro-Colombian communities followed by the subsequent entry of agroindustry and large investors.<sup>146</sup> These outside interests are imposing exogenous development models on lands, which until now, were occupied by Afro-Colombian and Indian peoples.

One particularly egregious example of this policy is that of the Afro-Colombian communities of Curvaradó and Jiguamiandó.<sup>147</sup> Since the presence of the AUC in 1996, many members of these communities have opted to abandon their homes for their own safety.<sup>148</sup> Upon returning to their communities, they discovered African palm plantations occupying their former lands.<sup>149</sup> Those people who remained were often illegally forced to sell their lands

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at Home, AI Index AMR 23/043/2000 (June 20, 2000), available at <http://web.amnesty.org/library/print/ENGAMR230432000>.

142. See *id.* at 96-97.

143. See *Voces de Aliento*, *supra* note 125, at 58; see also *Veja*, *supra* note 96, at 38-39; *La Tramoya*, *supra* note 101, at 13-15, 93-95.

144. See Grupo Semillas, *Palma Africana en los Territorios de las Comunidades Negras de Jiguamiandó y Curvaradó, Chocó* [African Palm in the Lands of Black Communities of Jiguamiandó and Curvaradó, Chocó], *REVISTA SEMILLAS*, June 2005, at 28-33 [hereinafter *Palma Africana*].

145. See *id.*; *La Tramoya*, *supra* note 101, at 95-111.

146. See *Palma Africana*, *supra* note 144, at 28-33.

147. IPO, AVANZA SIEMBRA ILEGAL DE PALMA AFRICANA EN CHOCÓ [CULTIVATION OF AFRICAN PALMS ADVANCES ILLEGALLY IN CHOCÓ] (Aug. 7, 2005), <http://www.peaceobservatory.org/index.php?id=3>; *Veja*, *supra* note 96, at 38-39; *La Tramoya*, *supra* note 101, at 95-108.

148. See Iván Cepeda Castro, *Jiguamiandó*, *EL ESPECTADOR*, Aug. 21, 2005, at 19A.

149. See *id.*



for extremely low prices.<sup>150</sup>

Indigenous peoples in Chocó also experienced similar losses of their *resguardo* lands due to occupation of land by settlers or faulty titles.<sup>151</sup> These land conflicts often are intertwined with paramilitary activities, as has also occurred with Afro-Colombian peoples.<sup>152</sup>

### III. HISTORY OF THE PAN-AMERICAN HIGHWAY AND THE ROAD CONSTRUCTION

Transportation systems are the key to connectivity within and among nations for the flow of people and goods.<sup>153</sup> Roads have only recently linked Darién Province to the rest of Panama.<sup>154</sup> Prior to the construction of the road system, connection to Panama City from Darién was primarily via wooden cargo vessels that sailed from the Municipal Pier in Panama City to the various Darién riverine and coastal villages.<sup>155</sup> Inter-provincial transportation relied on the extensive river systems.<sup>156</sup> Water transportation still exists today, but the Pan-American Highway moves an ever increasing share of goods and people between the province and Panama City.<sup>157</sup>

Similarly, the transportation networks in Chocó Department are inadequate. The road connecting Medellín to Turbo on the Gulf of Urabá – actually in Antioquia Department – provides the existing link for the Pan-American Highway system from Colombia.<sup>158</sup> This road was completed after World War II and has created similar impacts on the transportation systems in Chocó as has the existing highway in Darién.<sup>159</sup> No roads exist west of the Atrato River – except an isolated stretch on the western shore of the Gulf of Urabá – and no bridge spans this river.<sup>160</sup> The road from Medellín to Quibdó, the capital of Chocó Department, illus-

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150. Rivas, *supra* note 138, at 2A; Castro, *supra* note 148; Interview with Enrique Sánchez, Eco-Trópico, in Bogotá, Colombia (May 23, 2006) (notes on file with author) [hereinafter Sánchez Interview].

151. See Inter-American Commission on Human Rights, *supra* note 129, paras. 22-27.

152. See *id.*

153. Suman, *Globalization*, *supra* note 45, at 15.

154. *Id.*

155. *Id.*

156. *Id.*

157. See *id.*

158. See Giroto, *supra* note 5, at 176-77.

159. See *id.*

160. See GRAN ATLAS, *supra* note 4, at 139.

trates this department's isolation. The 238 km trip can take at least twelve hours – or possibly several days.<sup>161</sup>

The history of the potential road link across the Darién Gap is long. Since the Fifth Inter-American Hemispheric Conference in 1923, the nations of the Western Hemisphere have urged road connections between their countries.<sup>162</sup> The First Pan-American Highway Congress (COPACA) in 1925 also ratified the importance of creating a hemispheric road system.<sup>163</sup> The United States realized the strategic importance of the road system during World War II and was a key force behind the construction of the road from Texas to Panama through Central America which was finally completed in its entirety in 1963.<sup>164</sup>

The 398 km road section between Tocumen just east of Panama City and the León River near the Gulf of Urabá in Colombia is known as the Darién Gap.<sup>165</sup> About eighty percent of this stretch is in Panamanian territory and twenty percent in Colombia. Technically, the most challenging portion is the 29 km section between Lomas Aisladas and the Atrato River.<sup>166</sup> Rainfall is particularly high in this area, and the unconsolidated soils reportedly extend up to seventy meters below the land surface.<sup>167</sup>

### A. 1950s Proposals

In 1955, the Executive Committee of COPACA created the Darién Subcommittee, composed of representatives of Colombia, Panama, and the United States.<sup>168</sup> This group coordinated design studies and recommended various alternatives – four in Panama and nine in Colombia.<sup>169</sup> The major alternatives were 1) a northern route crossing the border at Palo de Letras and eventually linking to Chigorodó, Colombia (south of Turbo on the Turbo-Medellín road) and 2) a southern route crossing the border at Aspavé at linking Pacific towns in Chocó Department (Puerto

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161. See Néstor Alonso López, *Viaje a Chocó: 115 Kilómetros de Abismos, Derrumbes y Pantanos* [*The Trip to Chocó: 115 Kilometers of Precipices, Mud, and Swamps*], *EL TIEMPO* (Colom.), May 21, 2006.

162. See INVIAS, *supra* note 16, at 2 (1998).

163. See *id.*; see also TEODORO E. MÉNDEZ, *EL DARIÉN: IMAGEN Y PROYECCIONES* [DARIÉN: IMAGES AND PROJECTIONS] 275 (Instituto Nacional de Cultura, 2004).

164. See INVIAS, *supra* note 16, at 3.

165. See *id.*

166. *Id.*

167. *Id.*

168. See JOSÉ E. MOSQUERA, *LAS GUERRAS Y LOS CONFLICTOS DEL DARIÉN* [DARIÉN'S WARS AND CONFLICTS] 182 (Editorial Lealon, 2002).

169. See *id.* at 185-88; Giro, *supra* note 5, at 179.

Mutis / Bahía Solano).<sup>170</sup> By 1960, both Colombia and Panama had agreed that the road would pass the international border at Palo de Letras.<sup>171</sup> That same year, the Eighth COPACA unanimously accepted this route.<sup>172</sup>

Despite the agreement that the highway would cross at Palo de Letras, debate ensued in Colombia and in Panama, regarding a northern route feeding into the Turbo region or a southern route connecting Pacific coastal areas.<sup>173</sup> Backed by U.S. legislation that supported the project<sup>174</sup> and funding of \$100 million from the U.S. Government, construction began in Panama during the 1970s in Canglón in the center of Darién (1971–1978).<sup>175</sup> Panama and Colombia would respectively allocate an additional \$30 million and \$20 million for construction within their territories.<sup>176</sup> In 1974, the U.S. Department of Transportation prepared an Environmental Impact Statement (EIS) for the road project.<sup>177</sup> This document failed to include a full alternative analysis as required by the National Environmental Policy Act (NEPA).<sup>178</sup> The U.S. agency considered that the 1971 agreement between Colombia, Panama, and the United States regarding the agreed route obviated this discussion.<sup>179</sup>

### *B. Legal Challenge by Environmental Groups in the United States*

In the 1970s, legal action in the United States on NEPA grounds frustrated the completion of the Pan-American Highway project.<sup>180</sup> Concern had developed in the 1960s regarding animal

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170. JOSÉ M. REVERTE, RÍO BAYANO: REGIÓN DE MAÑANA [BAYANO RIVER: REGION OF TOMORROW] 357-78 (Imprenta Nacional 1961); MOSQUERA, *supra* note 168, at 185-88.

171. Colombia selected the route El Tigre-Río León-Lomas Aisladas-Río Atrato-Palo de Letras. See Law No. 121 (Dec. 3, 1959) (Colom.). Weeks later, Panama adopted the route Yaviza-Pinogana-Palo de Letras for its portion of the highway. See Decreto No. 41, (Jan. 13, 1960) (Pan.). Palo de Letras sits at the international border between the two nations.

172. See INVÍAS, *supra* note 16, at 4; MOSQUERA, *supra* note 168, at 194-95.

173. See INVÍAS, *supra* note 16, at 4; MÉNDEZ, *supra* note 163, at 277-83; MOSQUERA, *supra* note 168, at 191-92.

174. See Darien Gap Highway, 23 U.S.C. § 216 (2006).

175. See *Sierra Club v. Coleman (Sierra Club injunction)*, 405 F. Supp. 53, 54 (D.D.C. 1975); MOSQUERA, *supra* note 168, at 196.

176. See *Girof*, *supra* note 5, at 180.

177. See *Sierra Club injunction*, 405 F. Supp. at 54.

178. See *id.*

179. See MOSQUERA, *supra* note 168, at 205.

180. See National Environmental Policy Act of 1969 § 102, 42 U.S.C. § 4332 (2000); see also *Sierra Club injunction*, 405 F. Supp. at 53.

diseases in Colombia that could potentially spread into Panama and points north.<sup>181</sup> Foot and mouth disease was the primary concern because Panama, Central America, Mexico, and the United States were free of the disease while it was widespread throughout South America.<sup>182</sup> In the mid-1960s, Panama established cattle inspection and control zones in eastern Panama and actually prohibited cattle-raising in Darién.<sup>183</sup>

The disease proved to become the primary obstacle to construction of the road through the Darién Gap. Two 1975 NEPA suits by environmental groups in U.S. District Court in Washington, D.C., led to an injunction of U.S. funding for the road through the Darién Gap because of impacts on the ecology of the region and indigenous peoples.<sup>184</sup>

The EIS failed to discuss alternatives to the selected shortest route across the Atrato River through Palo de Letras.<sup>185</sup> The existence of livestock disease – particularly foot and mouth disease – in cattle in Urabá, Colombia, and its potential spread to Panama and north were also primary factors cited in the opinion.<sup>186</sup> The Federal Highway Administration had approved funding for road planning and construction without preparing an environmental document that considered potential impacts, such as foot and mouth disease, and various alternatives to the road.<sup>187</sup> In the second case concerning the extension of the preliminary injunction, the court noted that “defendants propose to build the first major highway through a region until now almost wholly undisturbed by any encroachment of modern civilization, an area by all accounts constituting an ecosystem virtually unique to the world. . . . [Nevertheless,] defendants’ compliance continues to reflect a minimalist approach to those [NEPA] requirements.”<sup>188</sup>

The U.S. Department of Transportation appealed the opin-

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181. See *Sierra Club injunction*, 405 F. Supp. at 53; *Sierra Club v. Coleman (Sierra Club injunction extension)*, 421 F. Supp. 63, 66 (D.D.C. 1976).

182. See *id.*

183. See MÉNDEZ, *supra* note 163, at 288-89.

184. See *Sierra Club injunction*, 405 F. Supp. at 53; *Sierra Club injunction extension*, 421 F. Supp. 63. The Sierra Club was joined by the National Audubon Society, Friends of the Earth, and the International Association of Game, Fish, and Conservation Commissioners in these suits.

185. See *Sierra Club injunction*, 405 F. Supp. at 55-56; *Sierra Club injunction extension*, 421 F. Supp. at 67-68.

186. See *Sierra Club injunction*, 405 F. Supp. 55; INVÍAS, *supra* note 16, at 4-5; MÉNDEZ, *supra* note 163, at 291; Giroto, *supra* note 5, at 180.

187. See MÉNDEZ, *supra* note 163, at 291.

188. See *Sierra Club extension*, 421 F. Supp. at 65.

ions in 1977, presenting the required EIS that the Batelle Institute had prepared.<sup>189</sup> The appellate court vacated the injunction and found that the final EIS satisfied NEPA requirements.<sup>190</sup> Construction of segments in Panama initiated before 1975 were allowed to continue, but additional segments were conditioned on U.S. Department of Agriculture (USDA) certification that control of foot and mouth disease in Colombia was adequate, therefore, helping prevent the spread of the disease from Colombia to Panama.<sup>191</sup> The two national parks on both sides of the international border were created as buffer zones at that time (Darién National Park in Panama in 1980 and Los Katíos National Park in Colombia in 1974).<sup>192</sup>

### C. Continued Construction after the NEPA Challenge

On August 23, 1979, the Presidents of Panama and Colombia signed the Declaration of Montería, in which they agreed to continue working to support the construction of the Pan-American Highway.<sup>193</sup> This proved to be all but impossible without financial support from the United States.<sup>194</sup> By 1984, the road extended twenty-three km further in Darién to Yaviza, on the Chucunaque River.<sup>195</sup> The road remained unpaved for over two decades, creating transportation difficulties during the rainy season.<sup>196</sup> The opening of Darién to land traffic from the rest of Panama permitted the influx of colonizers and stimulated extensive deforestation in the western half of the province.<sup>197</sup>

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189. See *Sierra Club v. Adams (DOT appeal)*, 578 F.2d 389 (D.C. Cir. 1978); Girot, *supra* note 5, at 180.

190. See *DOT appeal*, 578 F.2d at 397.

191. See *id.*; Girot, *supra* note 5, at 180.

192. See MÉNDEZ, *supra* note 163, at 293.

193. See MOSQUERA, *supra* note 168, at 210.

194. See *id.* at 211. The Presidents of Panama and Colombia wrote a joint letter to U.S. President Ronald Reagan requesting his support for the project. Reagan in turn responded that it would be impossible to comply, given budget restrictions and limited interest for the project in the U.S. Congress. See *id.*

195. See MINISTERIO DE ECONOMÍA Y FINANZAS [MINISTRY OF ECONOMY AND FINANCES] (Pan.), UNIDAD DE COORDINACIÓN DEL PROYECTO [UNIT FOR PROJECT COORDINATION], PROGRAMA DE DESARROLLO SOSTENIBLE DE DARIÉN [PROGRAM FOR SUSTAINABLE DEVELOPMENT OF DARIÉN] 6 (Jan. 1999) [hereinafter PROGRAM FOR SUSTAINABLE DEVELOPMENT OF DARIÉN] (stating that even twenty years after its construction, the road is clearly over-dimensioned. Only 400 vehicles per day pass over the Darién road, and at least fifty of these are heavy trucks carrying recently harvested logs). See *id.*

196. See *id.*, Annex 1. Annex 1 is entitled *Plan de Mejoramiento del Servicio de Transporte de Darién* (Plan to Improve Darién Transportation Services).

197. See Suman, *Globalization*, *supra* note 45, at 12.

The Colombian government continued construction of a 28 km segment from the Río León to Lomas Aisladas even without funding from the U.S. Federal Highway Administration, completing this final segment in 1983.<sup>198</sup> During the 1980s the highway project largely disappeared from public debate. No construction has occurred since that time in either country. Thus, the Pan-American Highway ends today in Yaviza, Panama, and resumes again 108 km later in Lomas Aisladas, Colombia.<sup>199</sup>

*D. Renewed Interest from the Colombian Government in Construction of the Highway*

During the 1980s, the USDA and Colombian Ministry of Agriculture implemented a project to control foot and mouth disease in Chocó Department.<sup>200</sup> A decade later in 1991, the USDA declared that Colombia had eradicated foot and mouth disease.<sup>201</sup> This reopened the debate about completing the road through the Darién Gap that apparently would have to pass through both national parks.<sup>202</sup>

The Departmental Government of Antioquia brought the Pan-American Highway to the forefront again in 1991.<sup>203</sup> In its Departmental Highway Plan, the Antioquia Public Works Secretariat noted that

the Darién Gap – by its location – easily constitutes the best vehicle for the global projection of this country because it would open a new international connection with Panama and its canal, as well as with the countries of Central and North America. . . . Regionally its impact in Colombia will be immense, especially in northwestern Colombia [Antioquia].<sup>204</sup>

The 1994 Meeting of the Colombia-Panama *Comisión de Vecindad* (Commission of Neighbors) considered the highway issue again,

198. See INVÍAS, *supra* note 16, at 5.

199. Ministerio de Transporte, *Proyectos de Carreteras con la República de Panamá* (Ministry of Transportation, Highway Projects with the Republic of Panama), <http://www.mintransporte.gov.co/Ministerio/Programas/integracion/proyectos.htm> (last visited Mar. 20, 2007) (scroll to section D.1. “Carretera del Tapón Darién”).

200. See INVÍAS, *supra* note 16, at 5; MOSQUERA, *supra* note 168, at 211-12.

201. See INVÍAS, *supra* note 16, at 5; MOSQUERA, *supra* note 168, at 211-12.

202. See Peter H. Herlihy, *Central American Indian Peoples and Lands Today*, in *CENTRAL AMERICA: A NATURAL & CULTURAL HISTORY*, 215, 230 (Anthony G. Coates ed., 1997).

203. See MOSQUERA, *supra* note 168, at 215.

204. *Id.* (translation by author).

and the following year Colombian President Samper requested the preparation of technical and environmental studies.<sup>205</sup> The environmental consulting firms Ecology & Environment, from the United States, and Hidromecánicas de Colombia conducted these studies.<sup>206</sup>

### E. 1996 – Colombian Environmental Consultancy

A recent feasibility study contracted by Colombian government<sup>207</sup> (*Inviás – Instituto Nacional de Vías*) and prepared by Ecology and Environment analyzed thirteen alternative routes for the road. The study concluded that the remaining section of the Pan-American Highway across the Darién Gap was environmentally and technically feasible.<sup>208</sup> The recommended route crossing the border at Palo de Letras passed through both national parks.<sup>209</sup> The study served as the basis for the Environmental Diagnosis of Alternatives (DAA – *Diagnóstico Ambiental de Alternativas*), an initial environmental document preceding the EIS, as required by the Colombian Environmental Law.<sup>210</sup> The DAA compares the impacts of various alternatives while the subsequent EIS examines in detail the impacts of the alternative that the authorities have selected.<sup>211</sup> The study recognized the potential commercial benefits of the highway to Colombia. The nation's increasingly globalized economy required improved transportation infrastruc-

205. See INVÍAS, *supra* note 16, at 5.

206. See *id.* The studies were completed in 1998.

207. *Proyecto – Estudio de Inviás Muestra 6 Posibles Trazados para una Futura Carretera* [*Inviás Study Shows 6 Possible Routes for a Future Highway*], EL TIEMPO (Bogotá, Colom.), Nov. 28, 2004, <http://colombia.indymedia.org/news/2004/12/19861.php> (scroll to area with this title) [hereinafter *6 Possible Routes*]. Guillermo Gaviria was the Director in Inviás who signed the consulting contract in 1996. Five years later, as Governor of Antioquia Department, Gaviria continued to advocate for the road construction. However, soon after, FARC guerrillas kidnapped and eventually killed Gaviria, effectively removing the road's strongest spokesman – until the appearance of President Uribe in 2002. See *id.*; see also INVÍAS, *supra* note 16, at 9-13, 23, 25; Auto No. 16, 2005 (on file with author) [hereinafter MAVDT]. This document was issued by the Colombian Ministry of the Environment, Housing, and Territorial Development, Office of Environmental Licenses, Permits, and Procedures (Ministerio de Ambiente, Vivienda y Desarrollo Territorial, Dirección de Licencias, Permisos, y Trámites Ambientales). See *id.*

208. See INVÍAS, *supra* note 16, at 9-13, 23, 25; MAVDT, *supra* note 207.

209. See Sara Gallardo M., *Panamericana en la Mira* [*Pan-American Highway Under Examination*], LA PRENSA (Pan.), Jan. 9, 2005, at 5A.

210. See INVÍAS, *supra* note 16, at 7.

211. See Ley 99, art. 56, Dec. 1993 (Colom.), reprinted in SISTEMA NACIONAL AMBIENTAL: LEY 99 DE 1993; DECRETO 1753 DE 1994; DECLARACIÓN DE RÍO (Eladio Moreno Moreno ed., Cooperativa Editorial Magisterio 1997).

ture so that its exports would be more competitive.<sup>212</sup> The road would also allow Colombia to access the Panama Canal and Panama's modern port infrastructure, as well as to develop its Central American markets.<sup>213</sup> Were the road to exist, the Colombian Government could improve its delivery of services (security, education, health, productive systems, and infrastructure) to communities in Chocó.<sup>214</sup>

The feasibility study characterized the physical, ecological, and socio-cultural nature of the region; evaluated thirteen alternatives for the highway route; and identified potential environmental and social impacts of the project through Chocó.<sup>215</sup> At the same time, the documents emphasized that they merely attempted to identify preliminary issues and recommend a preferred alternative.<sup>216</sup> Once the preferred route was identified and accepted, additional studies would evaluate environmental and social impacts in depth and attempt to mitigate their adverse impacts.<sup>217</sup>

The study's thirteen alternatives for positioning the road represented three major highway corridors: along the Caribbean coast and the Gulf of Urabá to the east; through the central zone of Chocó; and along the Pacific coast.<sup>218</sup> The consultants selected six alternatives for a detailed multi-criteria analysis that included various environmental and economic factors.<sup>219</sup> The study concluded that the six alternatives did not vary significantly in their environmental and social impacts.<sup>220</sup> The primary differences among the alternatives were the relative costs and, therefore, the length of the highway.<sup>221</sup> The study selected the shortest route of the six alternatives as the Preferred Alternative with international connection at Palo de Letras and endpoints at Yaviza (Panama) and Lomas Aisladas (Colombia).<sup>222</sup> This 148 km route would bisect both national parks (Darién and Los Katíos), passes over the Atrato River and 13 km of adjacent wetlands, cuts through 36

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212. See INVÍAS, *supra* note 16, at 6.

213. See *id.* at 7.

214. See *id.* at 6.

215. See *id.* at 20-30.

216. See *id.* at 25-30.

217. See *id.* at 9-10.

218. See *id.* at 20.

219. See *id.* at 27.

220. See *id.* at 21-23.

221. See *id.*

222. See *id.* at 22, 29-30.



km of forest, and passes through 35 communities.<sup>223</sup> The study suggested that this route would cause the smallest environmental impact even though it was routed through both national parks.<sup>224</sup> The projected cost of the Preferred Alternative in 1998 was \$231 million.<sup>225</sup> Others have suggested a lower cost of \$80 million for Colombia.<sup>226</sup>

Following this study, individuals in the Colombian power structure voiced support for the highway and began to express that its termination was a global necessity. For example, the ex-director of Inviás, Guillermo Gaviria, stated that “[t]his work is not only important for Antioquia, Chocó, Colombia, and the Americas, but also for the world.”<sup>227</sup>

#### *F. President Álvaro Uribe’s Unilateral Efforts to Advance the Highway Project*

Colombian President Álvaro Uribe’s first administration (2002-2006) signaled a clear change in strategy for completion of the Pan-American Highway, because the road had emerged as a priority. The administration based its neo-liberal rationale on themes of hemispheric, economic, and trade integration, Colombian access to the Panama Canal and Colon Free Zone, and Colombia’s trade potential with Central America and the United States.<sup>228</sup> Uribe’s initiatives often appeared personal and unilateral and did not involve joint planning with Panamanian authorities.<sup>229</sup>

223. *See id.* at 27.

224. *See id.* at 30 (noting that “the majority of parks in the world have roads and in the Colombian case, it is desirable to strengthen the institutional control of the area to avoid unwanted colonization.”).

225. *Id.* at 27.

226. *See* URABÁ, *supra* note 108, at 80.

227. MOSQUERA, *supra* note 168, at 229 (translation by author).

228. *See* POLICY PAPER 14, *supra* note 102; Presidencia de la República de Colombia, Palabras del Presidente Uribe en la Universidad Pontificia Bolivariana [Statement of President Uribe in the University Pontificia Bolivariana] (Apr. 5, 2006), <http://www.presidencia.gov.co/sne/2006/abril/05/29052006.htm> [hereinafter Uribe University Speech]; México — Presidencia de la República, Conferencia de Prensa Conjunta de los Presidentes Vicente Fox y Álvaro Uribe [Joint Press Conference Between Presidents Vicente Fox and Álvaro Uribe] (May 30, 2004), <http://fox.presidencia.gob.mx/actividades/?contenido=8259> [hereinafter Presidential Conference].

229. *See* Presidential Conference, *supra* note 228; Roberto López, Untitled Article, LA PRENSA (Pan.), Jan. 9, 2005, available at <http://biblioteca.prensa.com/contenido/2005/01/09/9-1a-nota1.html> (quoting the Panamanian Minister of Government and Justice, who said that “[t]he road has not been a proposal of the Government of Panamá but only a proposal of Colombia that the Panamanian Government is

The Colombian administration's enthusiasm for the road has centered on several key themes. Completion of the highway to the western bank of the Atrato River in Chocó Department would help integrate the department into national markets. Highway infrastructure would promote economic development of the region via increased exploitation of natural resources (timber) and improved surface access of Chocó products (bananas, cattle, timber) to Colombia's industrial centers.

The highway infrastructure would also permit increased governmental presence and provision of services in a troubled region of Colombia. Occupation of that space and deepening of institutional presence in Chocó would make it easier to control the region's many problems, including political violence, drug trafficking, and illegal immigration.<sup>230</sup> In January 2005, Colombian Defense Minister Jorge Uribe stated that opening the Darién Gap would allow the Colombian government "to exert a stronger control over persons who act outside the law . . . and allow better control over arms, money, and drug smuggling."<sup>231</sup>

The road would also facilitate government agencies' efforts to improve social services, such as health care, education, electricity, security, and access to markets, as well as the quality of life for residents of the communities in this isolated department, thus promoting sustainable development. Many people in the forgotten, poor, and violence-ridden communities of Chocó anxiously await construction of the Pan-American Highway that will connect their communities with Panama.<sup>232</sup> Today's Colombian terminus of the highway is case in point. Residents of Lomas Aisladas, a poor village of 200 inhabitants only forty miles from the Panamanian border dream of the day the bulldozers will arrive and remove them from the "hell" in which they live.<sup>233</sup> As a result of the violence, residents have lost their parcels of land to "paras" and "narcos."<sup>234</sup> Although they are fishermen, they do not

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analyzing" (translation by author); *Minding the Gap: Panamá and Colombia*, *ECONOMIST*, Oct. 2, 2004, at 38 [hereinafter *Minding the Gap*].

230. See Interview with Emersson Forigua, Ministry of Defense, in Bogotá, Colom. (May 23, 2006) (notes on file with author) [hereinafter Forigua Interview] ("The highway infrastructure will permit control of the Darién territory while the lack of infrastructure allows negative elements to enter the area.")

231. Roberto López Dubois, *Colombia Insiste Hay que Abrir el Tapón [Colombia Insists Upon Opening the Gap]*, *LA PRENSA* (Pan.), Jan. 5, 2005, at 1A (translation by author) [hereinafter López, *Colombia Insists*].

232. See Rivas, *supra* note 138, at 2A.

233. See *id.*

234. See *id.*

care if a road causeway dams the Tumaradó Wetlands.<sup>235</sup> They have even changed the name of their village – Lomas Aisladas (Isolated Hills) – to El Cuarenta (The Fortieth) to remind the government that only forty miles separate them from the Panamanian border.<sup>236</sup>

Uribe's central arguments, however, focus on the benefits of increased commerce between Colombia and Panama.<sup>237</sup> Colombian exports would benefit from the nearby surface linkage to the Panama Canal which would provide modern deepwater ports like Cristóbal, Manzanillo, and Balboa with access to Atlantic and Pacific destinations.<sup>238</sup> The Canal, after all, is a foundation of international maritime commerce through which four percent of global trade passes.<sup>239</sup> The highway link would reduce transportation costs for Colombian exports, allowing them to be more competitive internationally. The international border would be a short eight hour truck ride to the Panama Canal. Colombia lacks modern Pacific ports; Buenaventura clearly does not effectively serve Colombia's maritime requirements in the Pacific Basin.<sup>240</sup> Perhaps, the absence of modern Pacific ports explains the extremely low percentage of its foreign trade (three percent) that Colombia conducts with the Asian Pacific zone.<sup>241</sup>

An additional benefit to Colombia of surface access to Panama would be the Colón Free Zone, which serves as a major re-exporter to Latin America of goods, particularly those from Asian producers, entering Panama via maritime routes.<sup>242</sup> Re-exported goods from the Colón Free Zone to Colombia in 2005 totaled at least \$735.6 million according to the Colombian Ministry of Commerce, Industry, and Tourism.<sup>243</sup> The road could significantly reduce transportation costs to Colombia for these imports. The project might also alter northern Colombia's export strategies. For exam-

235. *See id.*

236. *See id.* Such perspectives are typical of Afro-Colombian communities. *See also* Sánchez Interview, *supra* note 150.

237. *See* POLICY PAPER 14, *supra* note 102, at 8-9.

238. *See generally id.* at 5-6 (describing Colombian ports).

239. RUBÉN SÁNCHEZ ET AL., *SEGURIDADES EN CONSTRUCCIÓN EN AMÉRICA LATINA, TOMO 1: EL CÍRCULO DE COLOMBIA: BRASIL, ECUADOR, PANAMÁ, PERÚ Y VENEZUELA* [SECURITIES UNDER CONSTRUCTION IN LATIN AMERICA: VOL. 1: THE COLOMBIAN CIRCLE: BRAZIL, ECUADOR, PANAMA, PERU, AND VENEZUELA] 102 (Centro Editorial Universidad del Rosario, 2005) [hereinafter *EL CÍRCULO*].

240. *See* POLICY PAPER 14, *supra* note 102, at 5-6.

241. *Id.* at 2.

242. *See* Dustin Guerra, *Aumentan Exportación a Colombia* [Exports to Colombia Increase], *LA PRENSA* (Pan.), May 30, 2006, at 41A.

243. *Id.*

ple, Turbo, on the Gulf of Urabá, could become an important container port for Atlantic departments of Colombia with its road link to Balboa, Panama's Pacific Port.

Uribe met several times with Panamanian President Mireya Moscoso (1999-2004) and expressed his interest in the road construction.<sup>244</sup> In a November, 2004 meeting between Colombian President Uribe and the new Panamanian President Torrijos, Uribe again conveyed his interest in completion of the highway that would connect the two neighboring countries.<sup>245</sup>

The Uribe Administration's sights extend further than neighboring Panama. Colombian industry and the United States could benefit from access to new markets in Central America and the road would maintain the comparative price advantage of Colombian products. Transportation costs for Colombian exports could fall dramatically. At the end of his first administration, Uribe initiated efforts to establish free trade agreements with the Central American nations, as well as with the United States.<sup>246</sup> Adoption

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244. See *Business & Economy Briefs: Uribe Calls for Road through the Darién Gap*, PANAMA NEWS, Aug. 22 – Sept. 4, 2004, [http://www.thepanamanews.com/pn/v\\_10/issue\\_16/business\\_briefs.html](http://www.thepanamanews.com/pn/v_10/issue_16/business_briefs.html) (scroll down to article); Presidencia de la República de Colombia, Colombia y Panamá Ampliarán Integración Energética [Colombia and Panama Will Increase Energy Integration] (Dec. 18, 2002) [http://cne.presidencia.gov.co/prensa\\_new/sne/2002/diciembre/18/19122002.htm](http://cne.presidencia.gov.co/prensa_new/sne/2002/diciembre/18/19122002.htm); Lucero Maldonado, *Consejos del Vecino [Neighborly Advice]*, MARTES FINANCIERO (El Suplemento de LA PRENSA (Pan.)), Sept. 7, 2004, available at <http://www.martesfinanciero.com/history/2004/09/07/columna/nacionales/3.shtml>; *El Tapón del Darién es Nuestro [The Darién Gap is Ours]*, REVISTA INSURRECCIÓN, Sept. 15, 2004, available at <http://colombia.indymedia.org/news/2004/09/17148.php>.

245. See *Vía / Canciller Dice Que Sólo Hay una Propuesta de Colombia [Chancellor Says that Colombia Is Merely Offering a Proposal]*, EL TIEMPO (Bogotá, Colom.), Nov. 28, 2004, available at <http://colombia.indymedia.org/news/2004/12/19861.php> (scroll down to article).

246. Colombia began negotiations for a Free Trade Agreement with three Central American nations in June 2006. The potential for Colombian exports in Central America is great. Colombia currently exports \$551.7 million annually to Central America – a mere 1.3 percent of the region's imports. See *Uribe Lanzará TLC con Centroamérica [Uribe Will Launch FTA with Central America]*, LA PRENSA (Pan.), June 3, 2006, at 29A; RICARDO TRIANA, PROEXPORT COLOMBIA, OPORTUNIDADES DE EXPORTACIÓN A CENTRO AMÉRICA Y PANAMÁ [EXPORT OPPORTUNITIES TO CENTRAL AMERICA AND PANAMA], <http://www.mincomercio.gov.co> (last visited Mar. 27, 2007). President Uribe's attempt to craft a Free Trade Agreement (FTA) with the United States has met numerous obstacles. Most recently in early 2007 a U.S. Central Intelligence Agency report alleged that the head of the Colombian Army collaborated extensively with Colombian right-wing paramilitary groups including a militia led by a major drug trafficker. See Paul Richter & Greg Miller, *Colombia Army Chief Linked to Outlaw Militias*, L.A. TIMES, Mar. 25, 2007, at A1. The fallout from this scandal involving the Uribe government, known as "paragate", led in April 2007 to the freezing of U.S. military aid to Colombia under "Plan Colombia", as well as U.S. Congressional questioning about the future of an FTA with Colombia. See *EUA*

of a coveted Free Trade Agreement with the United States argues for road links to North America. Consolidation of globalization and increased trade between Colombia and countries in Central and North America requires a modern transportation infrastructure.<sup>247</sup> Thus, land access to Panama would be the key to stimulation of the globalization of the Colombian economy.

The Uribe Administration has also been deeply interested in the discussions involving the Plan Puebla Panama (PPP).<sup>248</sup> The PPP was officially launched in mid-2001, and it proposed social development projects for Meso-America.<sup>249</sup> Colombia will likely become an official associate of the PPP during President Uribe's second administration that began in mid-2006.<sup>250</sup> The Plan attempts to enhance the internal and external links of the regional economy and promote regional economic integration through several initiatives. These include the Meso-American Transport Initiative and the Meso-American Energy Initiative, which proposes to integrate electric transmission lines.<sup>251</sup> In December 2005, presidents from Central America, Panama, and Colombia agreed to link their power grids to reduce the region's dependency on oil imports.<sup>252</sup> The construction of an electric transmission line between Colombia and Panama across the Darién Gap is under consideration as an important element of this initiative.<sup>253</sup>

The PPP complements the North American Free Trade Agree-

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*Retêm Verba Destinada à Colômbia [USA Places Colombian Military Funding on Hold]*, FOLHA DE SÃO PAULO (Braz.), Apr. 20, 2007, at A17; *Al Gore Cancela Participación en Conferencia por Presencia de Álvaro Uribe [Al Gore Cancels Participation in Conference due to the Presence of Álvaro Uribe]*, LA TERCERA (Chile), Apr. 21, 2007, at 19; *Leahy Puts Colombia Aid on Hold*, L.A. TIMES, Apr. 20, 2007, at A3.

247. See NAZIH RICHANI, *SISTEMAS DE GUERRA: LA ECONOMÍA POLÍTICA DEL CONFLICTO EN COLOMBIA [SYSTEMS OF WAR: THE POLITICAL ECONOMY OF THE CONFLICT IN COLOMBIA]* 226 (Instituto de Estudios Políticos y Relaciones Internacionales, Universidad Nacional de Colombia 2003).

248. See POLICY PAPER 14, *supra* note 102, at 1-2; Presidential Conference, *supra* note 228; EL CÍRCULO, *supra* note 239, at 106-08.

249. Fernando Arellando Ortiz, *Implicaciones del Ingreso de Colombia al Plan Puebla Panamá [Implications of Colombia joining the Plan Puebla Panama]*, <http://www.peaceobservatory.org/index.php?id=586> (last visited Mar. 20, 2007).

250. *See id.*

251. See EL CÍRCULO, *supra* note 239, at 106; POLICY PAPER 14, *supra* note 102, at 2-5; Ortiz, *supra* note 249.

252. See Mike Power, *Panama Jungle Power Plan Worries Environmentalists* (Dec. 21, 2005), <http://www.peaceobservatory.org/index.php?id=214>.

253. *See id.*; POLICY PAPER 14, *supra* note 102, at 8. The electric transmission line will export relatively cheap Colombian power to Panama and then on to Central America.

ment (NAFTA)<sup>254</sup> and the Central American Free Trade Agreement (CAFTA)<sup>255</sup> in facilitating private investment in natural resources and infrastructure, as well as regional infrastructure links like transportation links, electric transmission lines, and gas pipelines. In this context of regional integration, the Pan-American Highway clearly would advance the PPP agenda.<sup>256</sup> Panama would be an operational base for Colombian exports to Central America. In a May, 2004 meeting with Mexican President Vicente Fox, Uribe commented that the “[f]irst task [of Colombia once it formally begins to participate in the PPP will be] construction of the road that will communicate Colombia to Panama.”<sup>257</sup> Speaking of the road as a project of “transcendental importance”, Uribe subsequently commented that “Chocó needs it, Antioquia needs it, all Colombia needs it, and Central America needs it.”<sup>258</sup>

Uribe’s Pan-American Highway initiative has enjoyed strong support from the Medellín (Antioquia) industrial sector and the Antioquia Departmental Government. Uribe, a former Governor of Antioquia Department himself from 1995 to 1997,<sup>259</sup> understands the special interest that these industrial entrepreneurs have in the highway project. In its *Vision of Antioquia in the 21st Century*, Corpes de Occidente proposed the creation of a special zone in the Colombia-Panama border region, “one of the regions with the greatest potential for the relocation of [Colombian] export industries.”<sup>260</sup> Such a projection in favor of the road connection with Central America is a priority given the new market focus toward Central and North America that industrialists in northwest Colombia have embraced.<sup>261</sup>

The governor of Antioquia Department in 2004, Aníbal

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254. See North American Free Trade Agreement (NAFTA), U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993).

255. See Dominican Republic-Central America-United States Free Trade Agreement Act, Pub. L. No. 109-53, 119 Stat. 462 (2005), available at [http://www.ustr.gov/Trade\\_Agreements/Bilateral/CAFTA/CAFTA-DR\\_Final\\_Texts/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/CAFTA/CAFTA-DR_Final_Texts/Section_Index.html).

256. See EL CÍRCULO, *supra* note 239, at 102; Uribe University Speech, *supra* note 228.

257. See Presidential Conference, *supra* note 228 (translation by author); Uribe: *Colombia Seeks Continental Integration*, BUS. NEWS AMERICAS, July 18, 2006, <http://www.peaceobservatory.org/index.php?id=574>. The road is clearly the top priority in Uribe’s encouragement of integration with Central America.

258. Uribe University Speech, *supra* note 228 (translation by author).

259. See Juan Forero, ‘91 U.S. Report Calls Colombian Leader Ally of Drug Lords’, N.Y. TIMES, Aug. 2, 2004, at A6.

260. See MOSQUERA, *supra* note 168, at 233.

261. *Id.*

Gaviria (brother of Guillermo Gaviria, the ex-Director of Invías and assassinated former governor of Antioquia<sup>262</sup>), also expressed strong support for the project.<sup>263</sup> He considered arguments that the highway would result in the forest destruction ungrounded, but also said that the road would permit better governmental control of the region and reduce illegal activities.<sup>264</sup>

G. *Evolution of the Preferred Alternative within Colombian Agencies: Shift in Pan-American Highway Alternatives to the “Darién Colombiano” Coastal Route – Unguía & Acandí*

Meanwhile, analysis of the alternatives continues today in various agencies of the Colombian Government. The protracted debate between Invías, the agency responsible for oversight of highway planning and construction, and the Ministry of the Environment (MAVDT), grantor of the required environmental license, has continued for eight years.<sup>265</sup> On October 28, 1998, Invías submitted its DAA to the Ministry of the Environment based largely on the feasibility study prepared by the consulting group Ecology and the Environment several years earlier.<sup>266</sup> Within a month, the Ministry of the Environment had suspended the process to request an environmental license for the Pan-American Highway project and requested additional information and responses to eighteen questions from Invías.<sup>267</sup> The debate between the two agencies continued for years with administrative challenges and requests for time extensions and additional information.<sup>268</sup> Finally in June, 2005, the Ministry of Environment, Housing, and Territorial Development (MAVDT - formerly the Ministry of the Environment) sent the responses it had obtained from Invías to its various administrative units for evaluation.<sup>269</sup> These included the

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262. See *supra* text accompanying note 207.

263. See *6 Possible Routes*, *supra* note 207.

264. See *id.*

265. See MAVDT, *supra* note 207; Interview with Blanca Hernández, Sub-Director of Environment and Social Assessment, Invías, in Bogotá, Colom. (May 24, 2006) (notes on file with author) [hereinafter Hernández Interview]; Interview with Carlos Alberto Londoño and Juan David Herrera, Directorate of Environmental Licenses, Permits, and Procedures, Ministry of the Environment, Housing, and Territorial Development (MAVDT), in Bogotá, Colom. (May 22, 2006) (notes on file with author) [hereinafter Londoño and Herrera Interview].

266. See MAVDT, *supra* note 207, at 1.

267. See *id.*; *6 Possible Routes*, *supra* note 207.

268. See MAVDT, *supra* note 207.

269. See *id.* at 2.

Special Administrative Unit for the National Park System, the Alexander von Humboldt Institute, the Environmental Research Institute of the Pacific (IIAP), and the Autonomous Regional Development Corporation for Chocó (CODECHOCO).<sup>270</sup> Subsequently, in September 2005, the Directorate of the MAVDT responded to Invías.<sup>271</sup>

The concerns from the MAVDT centered on the direct impact that the road would have on primary forests and on Los Katíos National Park; the lack of involvement of the Panamanian Government in the planning process; the need to give greater consideration to socio-environmental risks; the greater integration of the highway project into planning for the sustainable development of Chocó; and the use of the road project to promote peace, ecological and social restoration, and community development in the region.<sup>272</sup> The MAVDT generally considered that the DAA should address these wider issues while the Invías position was that the subsequent Environmental Impact Assessment (EIA) stage was the more appropriate vehicle.

During the same period and given the developing opposition to the Preferred Alternative through Palo de Letras and the national parks, Invías modified its route proposal, recommending another alternative (Alternative 5) that would start at Lomas Aisladas, cross the Atrato River bearing to the north, and pass on the east side of the Gulf of Urabá through the municipalities of Unguía and Acandí.<sup>273</sup> This alternative route, though longer and more costly, appears to address many of the concerns of the MAVDT and its various administrative units; it keeps the road from passing through the center of Los Katíos National Park and other areas with primary forests. Moreover, one of the most likely routes for the future electrical transmission line connection between Colombia and Panama also runs through Unguía and Acandí. Contiguous siting of the road and the electric transmission route might reduce overall environmental impact. In his recent comments about Colombia's priorities in the PPP, President Uribe also referred to the "coastal route" for the highway connecting Colombia and Panama.<sup>274</sup> Other Colombian officials refer

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270. *See id.*

271. *See id.* 3-4.

272. *See id.*

273. *See id.*; Londoño and Herrera Interview, *supra* note 265.

274. *See* Uribe University Speech, *supra* note 228; POLICY PAPER 14, *supra* note 102.



to this route as a “bi-national development corridor.”<sup>275</sup> Inviás officials consider that, irrespective of Panama’s actions, the road to Acandí and Unguía would have independent utility and would facilitate integration of these regions.<sup>276</sup>

The MAVDT will base its official selection of a preferred alternative on the recommendations of its various affiliated sections (National Parks Unit, the Ecosystem Directorate, CorpoUrabá, and the Corporación Autónoma de Desarrollo Sostenible de Chocó).<sup>277</sup> The Ministry will develop terms of reference for the route, and Inviás will prepare the EIA.<sup>278</sup> Upon eventual approval of the EIA, the MAVDT will grant an environmental license for the project.<sup>279</sup>

#### *H. Panamanian Reaction to the Colombian Initiatives*

In the recent discussions regarding termination of the Pan-American Highway, Panama has merely reacted to Colombian initiatives rather than being an active player in the planning process. During the Administration of President Mireya Moscoso<sup>280</sup> (1999-2004), the Colombian Government advanced the issue through presidential dialogue, the *Comisión de Vecindad* (Commission of Neighbors), and a 2002 Memorandum of Understanding between the two countries’ Ministries of Foreign Relations, which agreed to promote sustainable development in the border region.<sup>281</sup> A high-level Panamanian Ministry of Agricultural Development official stated that “. . . we shouldn’t let the disease slow down the development of Darién Province.”<sup>282</sup> However, this official formed part of the Moscoso Administration and does not represent the current perspective of the Panamanian Government led by President Martín Torrijos.<sup>283</sup>

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275. See Londoño and Herrera Interview, *supra* note 265.

276. See Hernández Interview, *supra* note 265.

277. See Londoño and Herrera Interview, *supra* note 265.

278. See *id.*

279. See *id.*

280. President Moscoso’s Administration will be remembered for its own unsuccessful, but dogged, attempt to construct an “ecological road” through Panama’s Volcán Barú National Park.

281. See MAVDT, *supra* note 207, at 45.

282. Juan Carlos Díaz, *Una Larga Lucha Contra la Aftosa [A Long Fight Against Foot and Mouth Disease]*, LA PRENSA (Pan.), June 9, 2001, at 6A (translation by author).

283. In Panama’s May 2004 presidential elections, Martín Torrijos of the Revolutionary Democratic Party (PRD) defeated several candidates, including José Miguel Alemán of the Partido Arnulfista. The right-wing government of Mireya Moscoso, also of the Partido Arnulfista, occupied the Presidency from 1999 to 2004.

The new Torrijos Administration (2004-2009) has expressed a clear lack of support for Uribe's highway initiative, as well as the absence of a proactive position.<sup>284</sup> Olga Gólcher, Vice Minister for Government and Justice, clarified that "no official policy or plan exists to support the construction of a road" between Panama and Colombia.<sup>285</sup> Panama's Vice President and Minister of Foreign Relations Samuel Lewis Navarro stated that Panama would not open the Darién Gap without conducting the required studies that would analyze environmental, socio-economic, and socio-political themes.<sup>286</sup> Panama's official opposition to the project centers on environmental concerns and the potential environmental impacts of the road construction, particularly through Darién National Park.<sup>287</sup> The current Administrator of Panama's National Environment Authority (ANAM), Ligia Castro, stated that "in these five years (of the Torrijos Administration) there will be no road."<sup>288</sup> Panama's largest and most influential environmental organization, ANCON, strongly denounced the initiative because it would aggravate "unplanned colonization, indiscriminate deforestation, and intentional forest fires . . . ."<sup>289</sup>

Concern continues to exist in Panama about foot and mouth disease, which was the original cause for suspension of highway construction in the 1970s.<sup>290</sup> Although Chocó Department is certi-

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The new Torrijos Administration assumed power in September 2004. See *El Opositor Martín Torrijos Gana las Elecciones Presidenciales en Panamá* [The Opponent Martín Torrijos, Wins the Panamanian Presidency], EL MUNDO.ES (Spain), May 3, 2004, <http://www.elmundo.es/elmundo/2004/05/03/internacional/1083541264.html>; *Torrijos contra Moscoso, Panamá ya tiene nueva Administración* [Torrijos Against Moscoso, Panama Now Has a New Administration], AMÉRICA ECONÓMICA.COM, Sept. 3, 2004, <http://www.americaeconomica.com/numeros4/281/reportajes/vanesa281.htm>.

284. See *Minding the Gap*, *supra* note 229.

285. *Panamá Se Opone a Abrir Tapón del Darién* [Panama Opposes Opening the Darién Gap], EL COLOMBIANO.COM (Colom.), Nov. 24, 2004, (translation by author) [hereinafter *Panamá Se Opone*].

286. See Cynthia Sánchez, LA PRENSA (Pan.), Nov. 27, 2004, available at <http://biblioteca.prensa.com/contenido/2004/11/27/27-5anota1.html>. Though Ms. Sánchez's article likely included a title in its original publication in *La Prensa*, the author does not have the original newspaper in his files. Copies are available only from *La Prensa* in Panama. The preceding web page provides the full text of the article.

287. See López, *Colombia Insists*, *supra* note 231; Roberto López, *Gobierno proyecta integrar a Darién* [Government Proposes to Integrate Darién], LA PRENSA (Pan.), Jan. 9, 2005, at 1A [hereinafter López, *Government Proposes*].

288. *Panamá Se Opone*, *supra* note 285 (translation by author).

289. *Ecologistas Rechazan Construcción de Carretera Colombia - Panamá* [Ecologists Reject Reconstruction of the Colombia-Panama Highway], FUNDACIÓN ECOLÓGICA DE COLOMBIA, <http://fundacionecologicadecolombia.org/CARRETERA.htm> (translation by author) (last visited Mar. 20, 2007).

290. See *supra* Part III.B.

fied to be free of the disease, Panama is fearful of the potential introduction of foot and mouth disease from Colombia into Panama. Euclides Díaz, General Secretary of the Panamanian National Association of Cattle Ranchers (ANAGAN), hypothesized that the road would allow entry of the disease into Panama and would “destroy the 85,000 head of cattle in Darién.”<sup>291</sup> The Minister of Agricultural Development, Laurentino Cortizo, warned that Panama would have to undertake “a very serious risk analysis when considering whether to open the Darién Gap to avoid devastating consequences for the Panamanian cattle industry.”<sup>292</sup>

Major concerns for Panama touch on national security issues related to illegal immigration and border security. An estimated 240,000 undocumented Colombians currently reside in Panama.<sup>293</sup> Colombians lead the list of undocumented people there.<sup>294</sup> Ramón Lima, Director of Immigration in Panama, noted that the road would require a large government budget to address the issue of illegal immigration.<sup>295</sup> In the context of national security, Gustavo Pérez, Director of Panama’s National Police, commented that opening the Darién Gap would “cause serious problems for Panamanian security, including problems related to narcoterrorism, kidnapping, and elevated budgets required for strengthening the police presence in the area.”<sup>296</sup> Panama has long feared the spillover into Panama of armed Colombian groups (right-wing paramilitary groups and the left-wing FARC guerrillas) with a subsequent increase in violence inside Panamanian borders.<sup>297</sup>

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291. See LA PRENSA (Pan.), Oct. 25, 2004 (translation by author), available at <http://biblioteca.prensa.com/contenido/2004/10/25/25-6anota1.html>. Though this article likely included a title and author in its original publication in *La Prensa*, the author does not have the original newspaper in his files. Copies are available only from *La Prensa* in Panama. The preceding web page provides the full text of the article.

292. Roberto López Dubois, *Cortizo Objeta Apertura del Tapón de Darién [Cortizo Objects to Opening the Darién Gap]*, LA PRENSA (Pan.), Jan. 6, 2005, at 2.

293. See LA PRENSA (Pan.), Nov. 6, 2004, available at <http://biblioteca.prensa.com/contenido/2004/11/06/6-28a-cuadro.html> [hereinafter LA PRENSA, Nov. 6, 2004]. Though this article likely included a title and author in its original publication in *La Prensa*, the author does not have the original newspaper in his files. Copies are available only from *La Prensa* in Panama. The preceding web page provides the full text of the article.

294. See *id.*

295. See *Panamá Se Opone*, *supra* note 285.

296. See *Desmienten Información en Sentido Contrario [Contrary Information Denied]*, EL TIEMPO (Colom.), Nov. 26, 2004, <http://colombia.indymedia.org/news/2004/12/19861.php> (scroll down to article).

297. See Interview with Vladimir Franco, Director of Foreign Relations, Ministry of Foreign Relations, in Panama City, Panama (June 1, 2006) (notes on file with author) [hereinafter Franco Interview].

Panama is also sensitive to sovereignty issues in the border region with Colombia. Panamanian officials tend to view Colombia as a large and powerful neighbor with serious social and economic problems that historically maintained political control over small and vulnerable Panama. Yet, this neighbor has been unable to resolve its serious social and political problems. Increased numbers of Colombians in Darién (and Panama), in addition to the spillover of Colombian problems, generate concern about the “colombianization” of Darién.<sup>298</sup>

Other concerns about the project in Panama focus on the lack of local input into the decision-making process. Darién’s only newspaper, the bimonthly *La Voz de Darién*, recently discussed the current debate surrounding the road. The paper’s position is that Darién’s residents and Native communities have been ignored in this broader debate between high-level officials from Panama, Colombia, and the United States governments.<sup>299</sup> The newspaper commented, “[w]ho has asked us if we agree with the opening of the Darién Gap? Who has asked us if we agree with the highway connection to South America? The answer is no one.”<sup>300</sup>

Road opponents do note that alternatives to the road exist. From 1994-1996, a ferry transported 200,000 persons, 4,000 containers, and 2,000 vehicles between Colón (Panama) and Cartagena (Colombia) before abandoning this route to become a floating casino in Tampa, Florida.<sup>301</sup>

As of mid-2006, many Panamanian officials did not even appear to be aware of the recently discussed route for the highway through Unguía and Acandí perhaps adjacent to the potential

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298. See *id.*; Jorge Conte, LA PRENSA (Pan.), Jan. 31, 2006, <http://biblioteca.prensa.com/contenido/2006/01/31/31-13a-not1.html>; Rubén Darío Paredes, *Insistencia o Injerencia [Insistence or Meddling]*, LA PRENSA (Pan.), Jan. 9, 2005, available at <http://biblioteca.prensa.com/contenido/2005/01/09/9-13a-not2.html>. Though Mr. Conte’s article likely included a title in its original publication in *La Prensa*, the author does not have the original newspaper in his files. Copies are available only from *La Prensa* in Panama. The preceding web page provides the full text of the article.

299. See Mario Echeverría Palomino, *El Tapón de Darién, una Polémica por Resolver [The Darién Gap, Controversy to Resolve]*, LA VOZ DE DARIÉN (Pan.), Feb. 15, 2005, at 13 [hereinafter *Polémica por Resolver*].

300. *Id.*

301. See Rodrigo Gómez, *Preservemos el Tapón de Darién [Let’s Preserve the Darién Gap]*, LA PRENSA (Pan.), Jan. 6, 2005, at 12A. The passenger ferry service ended when Colombia wanted to transport agricultural products which Panama rejected because of concerns about plant health and security. See Franco Interview, *supra* note 297.

electric transmission line.<sup>302</sup> However, this route could pass the northern tip of the Darién National Park, the *Comarca Kuna-Yala*, and/or the *Emberá Cémaco Comarca*. Indeed, it would have to pass through one or more of these areas. Even without road construction, the electric route could cause many of the same impacts as the highway.

In short, the general perspective of Panamanians with respect to Colombia and the construction of the Pan-American Highway in particular is characterized by ignorance, fear, and apprehension.

#### IV. CONCERNS ABOUT THE PAN-AMERICAN HIGHWAY

The proposed highway construction raises many issues that are broader than concerns of individual government officials in Panama or Colombia, representatives of economic sectors or environmental organizations, or social and ethnic groups. All these concerns would have to be evaluated in a holistic manner by officials responsible for the appropriate environmental and social assessments and, ultimately for the decision whether to allow the road to be built or not.

##### A. *Human and Animal Health Concerns*

Opening a highway through a tropical rainforest and, subsequently, creating a new vehicle for land communication between South and North America raise numerous health issues for animals, plants, and even humans. One could even imagine the intentional introduction of a disease for political purposes, i.e. "bioterrorism," occurring as a result of the new highway.

##### 1. Foot and Mouth Disease – *Fiebre Aftosa*

The first epidemic of Foot and Mouth Disease, a viral disease affecting hoofed animals, appeared Argentina in the late 19th Century.<sup>303</sup> By 1961, this extremely contagious and deadly disease had spread throughout Colombia.<sup>304</sup> The forests and wetlands of Darién served as an effective barrier for the disease, and it never

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302. From the sum of his interviews, the author sensed that he was bringing this news to some Panamanian officials.

303. COMISIÓN PANAMÁ – ESTADOS UNIDOS PARA LA ERRADICACIÓN Y PREVENCIÓN DEL GUSANO BARRENADOR DEL GANADO [U.S.-PANAMA COMMISSION FOR THE PREVENTION AND ERADICATION OF CATTLE SCREW-WORM], HOJA INFORMATIVA SOBRE LA FIEBRE AFTOSA [FACT SHEET ABOUT FOOT-AND-MOUTH DISEASE], <http://www.copeg.org/aftosa.html> (last visited Mar. 20, 2007) [hereinafter U.S.-PANAMA COMMISSION].

304. *See id.*

spread into Panama or to points north.<sup>305</sup> In fact, Panama, Central America, and the Caribbean Islands have never experienced a case of the disease.<sup>306</sup> The *Comité para la Prevención de la Fiebre Aftosa* (Committee for Prevention of Food-and-Mouth Disease — COPFA) was established in 1974 to prevent the spread of the disease from Colombia into Darién, and subsequently into Central America, Mexico, and the United States.<sup>307</sup> An outbreak of the disease in the United States could result in a loss of more than \$20 billion.<sup>308</sup> COPFA employs field surveillance, training programs, data analysis, and infrastructure.<sup>309</sup> The United States and Colombia created a similar commission in 1973.<sup>310</sup> Today Chocó Department is free of Foot and Mouth Disease, and the cooperative program between the USDA and the Colombian Agricultural Institute (ICA) maintains a sanitary barrier between endemic areas and disease-free areas in northern Colombia.<sup>311</sup> The road connection and its secondary impacts, such as increased deforestation and conversion to savanna grasslands, could create the risk of spread of the disease from infected areas of Colombia to Chocó and then to Darién.

## 2. Cattle Screw-Worm - *Gusano Barrenador*

Recent efforts in Panama involving the *Comisión Panamá-Estados Unidos para la Erradicación y Prevención del Gusano Barrenador del Ganado* (U.S.-Panama Commission for Eradication and Prevention of Cattle Screw-Worm) have focused on eradication of the screw-worm larvae (*Cochliomyia hominivorax*) which attacks cattle, feeds on animal flesh, and can kill individuals within a week.<sup>312</sup> Annual losses in the Panama cattle industry as a result of the screw-worm are estimated to be \$10 million.<sup>313</sup> The flies are found throughout South America, but today North America remains free of the insect.<sup>314</sup> Campaigns involve spraying

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305. *See id.*

306. *See id.*

307. *See* U.S. DEP'T OF AGRIC., FOOT-AND-MOUTH DISEASE ERADICATION / FOREIGN ANIMAL DISEASES 2-4 (on file with author) [hereinafter USDA].

308. *Id.*

309. *See id.*

310. *Id.*

311. *See id.* *But see* Interview with José Pérez, UN Foundation, in Panama City, Panama (May 30, 2006) (revealing that some experts consider that Chocó's foot and mouth disease warning system's effectiveness is "poor").

312. *See* U.S.-PANAMA COMMISSION, *supra* note 303.

313. *See id.*

314. *See id.*

and releasing sterile male flies throughout Panama, as well as twenty miles into Colombia in the municipalities of Acandí, Unguía, Río Sucio, and Juradó.<sup>315</sup> In July 2006, Panama and a twenty-mile buffer zone in Colombia were declared free of the screw-worm.<sup>316</sup> The area east of the Panama Canal remains an alert area that should serve as a permanent prevention barrier, while the area west of the Canal is a vigilance area or buffer zone.<sup>317</sup> Darién Province bordering on Colombia remains a critical alert zone in the efforts to control this insect pest.<sup>318</sup>

While it appears that this insect is currently under control in Panama, a highway connection between Panama and areas in South America where the disease is prevalent creates a risk that could lead to reinfection in Panama.

### 3. Human Diseases

Road construction across the Darién Gap could increase the likelihood of outbreaks of tropical diseases and their spread either to North or South America. Possible diseases include Venezuela Equine Encephalitis (VEE), yellow fever, oncocercosis, cutaneous leishmaniasis, visceral leishmaniasis, and Chaga Disease. Although cutaneous leishmaniasis exists in Panama, visceral leishmaniasis is in South America, principally in areas of Brazil, and could potentially spread to the north.<sup>319</sup>

#### *B. Environmental Concerns*

This biogeographical region, which is one of the most species-rich areas on the planet and which is fairly undisturbed by humans, could suffer grave impacts as a result of road construction.

#### 1. Uncontrolled Colonization and Deforestation

The increased colonization of forested areas of Darién and Chocó will be the most serious impact resulting from the road construction. The entry of loggers and small farmers into the region

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315. *See id.*

316. *See id.*

317. *See id.*

318. *See* Interview with Evidelio Adames, Professor, Universidad de Panamá, in Santiago, Veraguas, Panama (Aug. 11, 2006) (notes on file with author).

319. *See id.*; JORGE ARIAS ET AL., EPIDEMIOLOGÍA Y CONTROL DE LA LEISHMANIASIS EN LAS AMÉRICAS, POR PAÍS O TERRITORIO [EPIDEMIOLOGY AND CONTROL OF LEISHMANIASIS IN THE AMERICAS, BY COUNTRY OR TERRITORY], ORGANIZACIÓN PANAMERICANA DE LA SALUD [PAN-AMERICAN HEALTH ORGANIZATION] (1996).

will be practically impossible to control despite the best plans developed by authorities. Concentration of lands in agro-industry enterprises and cattle ranches will follow. Examples after construction of the Pan-American Highway segments to Yaviza (Panama) and Río León (Colombia) are illustrative.<sup>320</sup> Construction of these road segments promoted uncontrolled colonization and deforestation, not only immediately along the road, but up to ten to twenty kilometers from the road.<sup>321</sup> Even in these scenarios, plans existed for the “orderly” colonization of the areas but were not implemented.<sup>322</sup> Many studies demonstrate the adverse impact of road construction in Neotropical areas.<sup>323</sup> In Latin America, road construction through forested areas has often led to rapid deforestation and uncontrolled colonization.<sup>324</sup> There is no reason to expect that Darién and Chocó would vary from this norm.

Uncontrolled colonization of the region will lead to deforestation, disruption of fragile tropical forest equilibria, fragmentation of the rainforest, loss of endemic species of flora and fauna, soil erosion and degradation, alteration of hydrology and river flows, and losses of areas where native peoples have practiced agroforestry and other traditional agricultural techniques. Loss of

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320. See ARDEN & PRICE CONSULTING, ATLAS DE LOS RECURSOS MARINO – COSTEROS DE LA PROVINCIA DEL DARIÉN [ATLAS OF MARINE-COASTAL RESOURCES OF DARIÉN PROVINCE] C-3 (2003); see also Suman, *Globalization*, *supra* note 45, at 12.

321. See generally Suman, *Globalization*, *supra* note 45, at 12, 14-15 (discussing deforestation in the area).

322. See PROGRAM FOR SUSTAINABLE DEVELOPMENT OF DARIÉN, *supra* note 195, at 6.

323. See generally DAVID KAIMOWITZ, LIVESTOCK AND DEFORESTATION CENTRAL AMERICA IN THE 1980S AND 1990S: A POLICY PERSPECTIVE (Center for International Forestry Research, 1996) (analyzing “seven factors to explain the conversion of forest to pasture in Central America”).

324. See George Ledec, *New Directions for Livestock Policy: An Environmental Perspective*, in DEVELOPMENT OR DESTRUCTION 27-28, 52-54 (Theodore E. Downing et al. eds., 1992); SHELTON H. DAVIS, VICTIMS OF THE MIRACLE: DEVELOPMENT AND THE INDIANS OF BRAZIL 148 (1985); CATHERINE CAUFIELD, IN THE RAINFOREST: REPORT FROM A STRANGE, BEAUTIFUL, IMPERILED WORLD 40, 106, 146 (1986); SUSANNA HECHT & ALEXANDER COCKBURN, THE FATE OF THE FOREST: DEVELOPERS, DESTROYERS AND DEFENDERS OF THE AMAZON 54, 56, 158 (1990); James Nations & H. Jeffrey Leonard, *Grounds of Conflict in Central America*, in BORDERING ON TROUBLE: RESOURCES & POLITICS IN LATIN AMERICA 55, 78-79 (Andrew Maguire & Janet Welsh Brown eds., 1986); JOHN EDWARD MYERS, IRC AMERICAS PROGRAM DISCUSSION PAPER, COLOMBIA’S BIODIVERSITY UP FOR GRABS 1 (June 2, 2005), <http://americas.irc-online.org/pdf/reports/0506colombia.pdf>; Roberto López Dubois, LA PRENSA (Pan.), Nov. 24, 2004, available at <http://biblioteca.prensa.com/contenido/2004/11/24/25-6anota1.html>. Though Mr. López’s article likely included a title in its original publication in *La Prensa*, the author does not have the original newspaper in his files. Copies are available only from *La Prensa* in Panama. The preceding web page provides the full text of the article.



tropical forests may even have implications for global climate change.

Panama appears particularly unprepared in its ability to orchestrate organized land settlements, especially in a conflict-filled, peripheral region such as Darién. In Darién today, land conflicts between *colonos* and native people outside the Indian lands (*comarcas*) are common.<sup>325</sup> Clear demarcation of Darién's protected areas and *comarcas* remains a dream because the state program to grant land titles is still in its early stages.<sup>326</sup> Clearly, Panama would be overwhelmed by the opening of the region to an international highway.

## 2. Atrato Wetlands

An extensive wetland ecosystem exists adjacent to the Atrato River from the Gulf of Urabá south for over 200 km.<sup>327</sup> All road proposals involve crossing these wetlands and the Atrato River. Not only would road construction across this area be difficult, it would also have serious environmental impacts. Filling wetlands to build a causeway could alter water flow and hydrology. Feasibility studies performed in 1998 recommended elevated bridges over shallow wetlands and the use of geotextile materials for limited fill to avoid these problems.<sup>328</sup> The highway across these wetlands will also act as a barrier to migration of terrestrial and aquatic fauna. Colombia has had a history of disastrous experiences, for example in the Ciénaga Grande de Santa Marta, with construction of roads through coastal wetlands disrupting hydrology and adversely impacting wetland vegetation.<sup>329</sup>

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325. See José González Pinilla, *Indígenas y Colonos Se Enfrentan a Tiros* [Indigenous People and Colonizers Come to Blows], LA PRENSA (Pan.), Aug. 17, 2004, at 1A.

326. See Rafael Pérez G., *Una Realidad Panameña II: Titulación de Tierras Está en la Agenda* [A Panamanian Reality: Land Titles are on the Agenda], LA PRENSA (Pan.), May 8, 2006, available at <http://mensual.prensa.com/mensual/contenido/2006/05/08/hoy/panorama/592835.html>.

327. See GRAN ATLAS, *supra* note 4, at 35.

328. See INVÍAS, *supra* note 16, at 10-12.

329. See Gustavo Cotes, *Gestión Institucional para la Rehabilitación de la Ecorregión Ciénaga Grande de Santa Marta y sus Bosques de Manglar*, in LOS MANGLARES DE LA ECORREGIÓN CIÉNAGA GRANDE DE SANTA MARTA: PASADO, PRESENTE Y FUTURO [MANGROVES OF THE CIÉNAGA GRANDE DE SANTA MARTA ECOREGION: PAST, PRESENT, AND FUTURE], 41, 42-44 (Jesús Garay Tinaco et al. eds., 2004); Heliodoro Sánchez-Paéz et al., *Historia del Proceso de Deterioro de los Bosques de Manglar* [History of Deterioration of the Mangrove Forests], in LOS MANGLARES DE LA ECORREGIÓN CIÉNAGA GRANDE DE SANTA MARTA: PASADO, PRESENTE Y FUTURO 61-73 (Jesús Garay Tinaco et al. eds., 2004).

### 3. Impacts on National Parks and Protected Areas

The high route through Palo de Letras would bisect two UNESCO World Heritage Sites: Darién and Los Katíos National Parks.<sup>330</sup> The currently favored Caribbean coastal route through the Unguía and Acandí municipalities would avoid direct encroachment through the center of Los Katíos but would still cross through protected areas in Panama. This route probably would have to pass through the northern tip of the Darién National Park, the Kuna-Yala *Comarca*, and/or the Emberá Cémaco *Comarca*. These protected areas would experience the direct impacts of forest disturbance and uncontrolled colonization.

Even if the route does not directly pass through a protected area, the road may facilitate entry of colonists into the region, with resulting logging and settlement inside the protected areas. It would also lead to uncontrolled selective and clear-cut logging, mining, agriculture, and hunting, as well as facilitate the entry of invasive and exotic species to the region. Even human disturbances completely outside the borders of the protected areas can impact wildlife populations and water flow inside the protected areas. These indirect impacts would be very difficult to control because they would be widespread and require great investments in personnel, infrastructure, and institutional development and coordination, not to mention bi-national coordination.

### 4. Trafficking in Protected Wildlife

Trafficking in wildlife is already a problem in Darién and Chocó.<sup>331</sup> Further highway construction will facilitate access by wildlife traffickers to new areas and will also increase the illicit international shipments of protected species both ways across the border.

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330. See UNESCO World Heritage, Los Katíos National Park, [http://whc.unesco.org/pg.cfm?cid=31&id\\_site=711](http://whc.unesco.org/pg.cfm?cid=31&id_site=711) (last visited Mar. 19, 2007); UNESCO World Heritage, Darién National Park, <http://whc.unesco.org/en/list/159> (last visited Mar. 19, 2007); INVÍAS, *supra* note 16, at 27, 30.

331. See Jorge G. Conte B., LA PRENSA, Jan. 31, 2006, available at <http://biblioteca.prensa.com/contenido/2006/01/31/31-13a-not1.html>. Though Mr. Conte's article likely included a title in its original publication in *La Prensa*, the author does not have the original newspaper in his files. Copies are available only from *La Prensa* in Panama. The preceding web page provides the full text of the article.

### C. Political Concerns

#### 1. Colombian Political Violence

Chocó Department and northwestern Colombian have a twenty-year history of widespread political violence.<sup>332</sup> Violence has involved struggles between left-armed groups, left-wing guerrillas, and right-wing paramilitary groups, between the Army and left-armed organizations, and between *all of the above-mentioned groups against the civilian population in the region*.<sup>333</sup> This has created a grave humanitarian crisis with an impact that has spread to all of Colombia and into Panama.

Construction of transportation infrastructure in Chocó could facilitate paramilitary operations in the region with continued violations of human rights. It could also promote new economic opportunities for agroindustry and export businesses that could further displace native communities through illegal force and various "legal" techniques. On the other hand, road proponents suggest that it will allow the government to occupy the border area more effectively and promote stability and security.

#### 2. National Security Issues for Panama

Panama's principal concern centers on the potential spillover of Colombian violence into its eastern region and the implications that this has for Panamanian national security.<sup>334</sup> Panama abolished its army in 1989 and traditionally depended on the United States military for international security issues.<sup>335</sup> Today the nation only has minimal capability for reacting to Colombian border issues and defends the border region with a police force of about 2,000 officers who are stationed largely in Darién towns, rather than on border outposts.<sup>336</sup> Thus, Panama's weak National Police force is incapable of effectively defending the border with Colombia and controlling narco-trafficking.<sup>337</sup> Due to its long history of hosting U.S. military bases and dependence on the United

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332. See COMISIÓN ANDINA DE JURISTAS, URABÁ (SERIE INFORMES REGIONALES DE DERECHOS HUMANOS) [ANDEAN COMMISSION OF JURISTS, URABÁ (SERIES OF HUMAN RIGHTS REGIONAL REPORTS)] 75-116 (1994) (referencing Chapter 5: Actual Human Rights Situation); GONZÁLEZ, *supra* note 115, at 126-43 (providing statistics and logistical information about violence in the region).

333. See GONZÁLEZ, *supra* note 115, at 140.

334. See EL CÍRCULO, *supra* note 239, at 104-05.

335. See *id.* at 113, 116.

336. See Suman, *Globalization*, *supra* note 45, at 17.

337. See Forigua Interview, *supra* note 230.

States for security issues, Panama has paid little attention to security issues on the Panama-Colombia border.

The Colombian conflict presents a great threat to Panamanian stability.<sup>338</sup> Panama recognized these threats with the adoption of the Foundations of Panamanian National Security Policy in 2000.<sup>339</sup> The document notes that Panama aims to confront the following issues: organized crime, arms smuggling, illegal immigration, terrorism, narco-trafficking, and environmental degradation.<sup>340</sup> The Panama-Colombia border region presents all of these threats, particularly because of the weak presence of governmental authority, which makes the area insecure and ripe for a plethora of illegal activities.

Even without the road connection, Colombian violence has spilled over into Darién Province.<sup>341</sup> In the past twelve years, incursions of right-wing paramilitaries called Colombian Self-Defense Groups (the AUC) and of left-wing FARC have been common; more than eighteen incidents have been reported since 1993.<sup>342</sup> More than fifteen people have been killed, and at least seven have been kidnapped.<sup>343</sup> These groups enter Panama to maintain arms and munitions supply routes, secure drug routes out of Colombia, and escape the Colombian military, as well as right- or left-wing forces.<sup>344</sup> Murders of civilians, kidnappings, burning of homes, and armed skirmishes have occurred in numerous villages – particularly those on the upper Tuira River between El Real and the Colombian border, including Unión Chocó, Yape, Boca de Cupe, and Púculo.<sup>345</sup> The victims are often people who are suspected of selling supplies to the “enemy.”<sup>346</sup> These events have caused fear among Darién residents, particularly those who live

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338. See EL CÍRCULO, *supra* note 229, at 123.

339. See Resolución de Gabinete No. 34, Jun. 21, 2000, Por la cual se Adoptan los Fundamentos de la Política Panameña de Seguridad [By Which the Foundations of Panamanian National Security Policy are Adopted], Gaceta Oficial No. 24,083, Jun. 27, 2000 (Pan.).

340. See *id.* (recitals).

341. See Franco Rojas, *Secuelas de una Guerra Ajena – Los 18 Ataques de los Últimos 10 Años* [Sequel to a Foreign War — The 18 Attacks of the Past 10 Years], LA PRENSA (Pan.), Jan. 4, 2005, at 6A.

342. See *id.*

343. See *id.*

344. See Sara Gallardo M., *Guerrilleros y “Paras”, a Raya* [Guerrillas and “Paras”, at Bay], LA PRENSA (Pan.), Jan. 5, 2005, at 6A.

345. See Roberto López Dubois, *Desnutrición, el Nuevo Enemigo en Puerto Obaldía* [Malnutrition, the New Enemy of Puerto Obaldía], LA PRENSA (Pan.), Jan. 6, 2005, at 1, 6.

346. See Rojas, *supra* note 341.

close to the Colombian border. "For the inhabitants of Jaqué, the guerrillas are there, above their heads, several centimeters from their ears . . . . Their way of speaking gives the impression that at any moment, a group of armed men is going to jump on their backs."<sup>347</sup>

In fact, because of real and imagined events, Panamanians generally perceive Darién as a dangerous place. The absence of official information and formal communication within and about Darién tends to stimulate rumors and increase the perceptions of insecurity.<sup>348</sup> This fear – often irrational – is a principal reason why many Panamanians oppose the completion of the Pan-American Highway to Colombia.<sup>349</sup>

### 3. Refugees and Displaced People

Another impact of the violence has been an influx into Darién of Colombian refugees who wish to escape the violence in their homeland and are also searching for improved economic possibilities.<sup>350</sup> Colombian refugees in the Darién region who reside in Jaqué, Puerto Obaldía, and Boca de Cupe number over one thousand persons.<sup>351</sup> The largest group, hundreds of Colombian refugees, fled to Jaqué, Panamá, in 1999 after a battle between the Colombian Army, the FARC, and AUC in Juradó, Colombia (sixty km to the southeast).<sup>352</sup> That battle resulted in the deaths of civilians and armed personnel.<sup>353</sup> The most recent humanitarian refugees to reach Jaqué were forty-seven Wounaan Indians from

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347. Urania Cecilia Molina, *Jaqué, Donde Habita el Miedo* [*Jaqué: Where Fear Lives*], LA PRENSA (Pan.), Jan. 7, 2005, at 6A (translation by author).

348. See PROGRAM FOR SUSTAINABLE DEVELOPMENT OF DARIÉN, *supra* note 195, at 32.

349. See *¿Hay Suficiente Vigilancia en las Fronteras para Evitar el Narcotráfico?* [*Is There Enough Border Monitoring to Avoid Narcotrafficking?*], PANAMÁ AMÉRICA, Feb. 21, 2005. According to recent surveys, 55 percent of Panamanians opposed opening the Darién Gap. See López, *Government Proposes*, *supra* note 287.

350. See Donny Meertens, *Victims and Survivors of War in Colombia: Three Views of Gender Relations*, in VIOLENCE IN COLOMBIA 1990-2000: WAGING WAR AND NEGOTIATING PEACE 159 (Charles Berquist et al. eds., 2001); STATEMENT OF DISPLACED PEOPLE NOW LIVING IN JAQUÉ (on file with author).

351. See Grisel Bethancourt, *Cuando Huir es la Única Forma de Salvar la Vida* [*When Fleeing is the Only Way to Survive*], LA PRENSA (Pan.), May 28, 2006, at A5; Alta Comisión de las Naciones Unidas para Refugiados [U.N. High Commission for Refugees], *El ACNUR Preocupado por Desplazamientos Producidos por el Ataque en la Frontera de Panamá* [UNHCR Concerned about Displacements from Border Attacks in Panama], Jan. 24, 2003, [http://www.acnur.org/index.php?id\\_pag=965](http://www.acnur.org/index.php?id_pag=965); Franco Interview, *supra* note 297.

352. See generally Molina, *supra* note 347 (describing continued fear in the region).

353. See *id.*

Istmina, Chocó, who fled paramilitary violence.<sup>354</sup>

The displaced people have created tension and debate in Panama. In 2003 and 2004, the Panamanian government forcibly repatriated a large group of refugees living in Jaqué, although many of these people would have preferred to remain in Darién, Panama.<sup>355</sup> “These refugees say that they prefer to die in Panama, in the Municipality of Jaqué – Darién Province – before returning to Juradó where no one guarantees their safety and they suffer hardships, where they will be massacred and then have to move somewhere else again.”<sup>356</sup>

The highway could make it easier for Colombian political and economic refugees to migrate to Panama, which could strain the delivery of social services in Panama and thereby cause concern in many sectors of Panamanian society.

#### 4. Integration of Chocó into Colombia and Darién into Panama

After its experiences with the Canal Zone, Panama is highly sensitive to sovereignty issues, particularly in its border regions. Incursions of paramilitary groups and FARC guerrillas into Panamanian territory are viewed by some as Colombian violation of Panamanian sovereignty.<sup>357</sup> Perhaps the structural weaknesses of Panama as a nation magnify these concerns.

Similarly, some people in Panama are sensitive to what they consider to be unilateral efforts by Colombia in planning for road completion and advising Panama that the road would be in Panama's best interests.<sup>358</sup> The lack of bilateral cooperation in planning has not created a favorable environment in Panama for this project.

#### 5. Bilateral Relations between Panama and Colombia

Panama and Colombia did not develop a close ongoing relationship with respect to the border area until the past decade. In 1992 the two countries established the Colombian-Panamanian

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354. See Bethancourt, *supra* note 351.

355. Project Counselling Service, Colombia: Informe de Fronteras Abril 2003 (Apr. 25, 2003), <http://www.reliefweb.int/rw/RWB.NSF/db900SID/OCHA-64C3SR?OpenDocument>; *De Vuelta a Casa: “El Retorno de los Desplazados a Juradó”* [Back Home: The Return of Displaced People to Juradó], A LA MAR, Feb. 16, 2004, <http://www.armada.mil.co/index.php?idcategoria=37552>.

356. See Chocó: *Official Disinterest*, *supra* note 128, at 17 (translation by author).

357. See EL CÍRCULO, *supra* note 239, at 127.

358. See Franco Interview, *supra* note 297; *Polémica por Resolver*, *supra* note 299.

Commission of Neighbors (*Comisión de Vecindad Colombo-Panameña*), through which the two countries' Ministries of Foreign Relations coordinate broad representation of all ministries.<sup>359</sup> The two nations have also established several other joint commissions, including Education and Culture, Technology and Science, Border Markings, Mechanism for Managing Displaced People, and Security/COMBIFRON.<sup>360</sup> The Border Commission (COMBIFRON) coordinates information between security forces in the two countries.<sup>361</sup> Natural resources officials in both countries have also met regularly in recent years regarding management of Darién and Los Katíos National Parks.<sup>362</sup>

Presidents Moscoso and Uribe have signed several bilateral agreements to promote communication between the two nations.<sup>363</sup> These include the Agreement on Cooperation of Police and the Permanent Mechanism for Control (*Seguimiento*) and Coordination.<sup>364</sup> Nevertheless, some observers think that the bilateral relations between Panama and Colombia have not advanced beyond formalities and do not consider them to be of great importance for either country.<sup>365</sup> It has been suggested that, if Colombia considered relations with Panama to be important, it would not have ignored Chocó and the border region for so many years.<sup>366</sup> Even today, as the Colombian government appears to be pushing the conflict with the FARC to the border region, the nation lacks a clear strategy for social and economic development in the region.<sup>367</sup>

While both Colombia and Panama, as well as the United States, engaged in coordinated, though rocky highway construction efforts in the 1960s and 1970s, the recent initiative in planning for the continued construction of the Pan-American Highway has clearly emerged from Colombia. Today, Panama appears to be reactive and is not a leader in the discussions.

The asymmetric nature of this highway initiative suggests a danger in any future environmental assessment for the project. Colombia has already begun the environmental assessment pro-

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359. See MOSQUERA, *supra* note 168, at 227; Giro, *supra* note 5, at 186.

360. See Interview with Gina Benedetti, Colombian Ambassador to Panama, in Panama City, Panama (May 31, 2006) (on file with author).

361. See Forigua Interview, *supra* note 230.

362. See Giro, *supra* note 5, at 187.

363. See EL CÍRCULO, *supra* note 239, at 124.

364. See *id.*

365. See *id.*

366. See *id.* at 125.

367. See *id.*

cess for the highway in its territory.<sup>368</sup> The siting for the Colombian portion of the highway will limit Panama's future options – both the decision whether to construct the road or not and, additionally, the decision where to site it. When and if Panama decides to analyze highway alternatives on its side of the border, it will apply its own national environmental assessment requirements and standards.<sup>369</sup> This scenario is a classic example of project “segmentation” or “piecemealing”, that is, the division of a project into smaller components that are actually connected actions and should be evaluated together as a single action. The danger of segmentation is that it may hide or minimize the full environmental or socio-economic impacts of a project.<sup>370</sup> Additionally, it may limit the range of action for the remaining portions of the larger project and tip the balance of economic and environmental factors by making irretrievable commitments of resources at an early project stage.

#### *D. Social Impacts*

##### 1. Impacts on Afro Communities and Indigenous Peoples

The native residents of the area do not play a decisive role in the decision-making process concerning the road that could pass through their lands and villages, and that will clearly change their lives forever. Of course, opinions vary among the peoples. Many express concern that they are left out of key aspects of the planning process and then only informed after decisions already have been made.<sup>371</sup> For example, in May 1994, Chiefs of the Kuna, Emberá, and Wounaan peoples in Panama met in Cémaco and drafted the Resolution of Indigenous Peoples Concerning the Opening of the Darién Gap.<sup>372</sup> They critiqued their lack of representation in the Commission of Neighbors, and, as a result of this pressure, the Commission created sub-commissions on indigenous

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368. *See supra* note 211 and Part III.E.

369. Panama's environmental assessment process is framed by the General Environmental Law, Law no. 41, July 1, 1998. *See Ley no. 41 del 1 de julio de 1998, Ley General de Ambiente de la República de Panamá, GAC. O. 23, 578, 3 de julio 1998 (Pan.)*. Specifically articles 23-31, as well as the implementing regulations promulgated by Executive Decree no. 209 of Sept. 5, 2006. *See Decreto Ejecutivo no. 209 del 5 de septiembre de 2006, GAC. O. 25,625, 6 de septiembre 2006*.

370. *See* DIORI L. KRESKE, ENVIRONMENTAL IMPACT STATEMENTS: A PRACTICAL GUIDE FOR AGENCIES, CITIZENS, AND CONSULTANTS 109-10 (1996).

371. *See* Girot, *supra* note 5, at 191.

372. *See id.*



affairs and the environment.<sup>373</sup> The chiefs also were instrumental in the formation of the Indigenous Commission on the Pan-American Highway.<sup>374</sup> Indigenous communities generally oppose construction of the highway.<sup>375</sup>

Other residents of the area hope for increased economic alternatives and improved government services in the border region and believe that the road may facilitate this.<sup>376</sup> For people living in extreme poverty, the road represents a path from isolation and abandonment to a better future with greater opportunities<sup>377</sup>

Regardless of the route, the highway route will pass near many Emberá and Afro villages and will certainly have major impacts on their traditional cultures. Lands occupied with or without title also will be at risk as new investors move into the area. The highway route most favored by the Colombian government today would be along the Gulf of Urabá and parallel to the proposed electric transmission route between Colombia and Panama, so it would have to pass through the *Comarca* Kuna-Yala and/or the Emberá Cémaco *Comarca*.<sup>378</sup> Even native peoples' autonomous areas are at direct risk because the road will allow increased entry of *colonos* into Indian lands and will promote inter-ethnic violence.<sup>379</sup>

This mega-project appears to be attracting the interest of large Colombian private investors who view the highway and spin-off economic activities as significant financial opportunities.<sup>380</sup> Initiation of the road construction project will likely increase the land grab in Chocó, and the continuing losers will be those traditional ethnic groups who are financially and politically weak and whose communal land tenure systems are neither protected nor respected. A similar threat exists in Darién but is perhaps mitigated by the high percentage of the province that has already been designated as a protected area or *comarca*.<sup>381</sup>

373. *See id.*

374. *See id.*

375. *See* Sánchez Interview, *supra* note 150.

376. *See* discussion on Lomas Aisladas *supra* Part III.F.

377. *See id.*

378. *See supra* Part III.A.

379. *See generally* Pinilla, *supra* note 325 (describing violence between *colonos* and indigenous peoples). Indeed, this is already occurring.

380. *See* Colombia: Ofensiva de las FARC-EP contra el Paramilitarismo en el Chocó [Colombia: FARC Offensive Against Paramilitarism in Chocó], [http://www.savanne.ch/Netzwerk\\_RESISTENCIA/FARC-EP.html](http://www.savanne.ch/Netzwerk_RESISTENCIA/FARC-EP.html) (last visited Mar. 28, 2007)

381. *See* discussion of Darién's *comarca* protections *supra* Part II.D.1.

## 2. Illegal Immigration of Colombians into Panama (Human Smuggling)

The general absence of Panamanian government authorities outside of the principal towns in Darién has led to insecurity and criminal activities. Smuggling of people from Colombia, South America, Cuba and even China and India, to Panama and points north (the United States) occurs across the Chocó-Darién border.<sup>382</sup> Panama is clearly a transit country for human trafficking. Quantitative estimates of this traffic do not exist, but there is a great deal of empirical evidence and common knowledge regarding this activity.

In addition to human trafficking, the road would facilitate the entry of Colombians into Panama. Unofficial estimates suggest that today some 300,000 Colombians reside in Panama (approximately 10 percent of Panama's population).<sup>383</sup> Most (240,000) are undocumented, that is, they entered Panama without a passport or have remained longer than the allowed period.<sup>384</sup> Although most of these people are engaged in commercial and business ventures, some are involved in illegal activities.<sup>385</sup> The highway would open the doors to Colombian immigration into Panama.

## 3. Drug Smuggling into Panama

Colombia is a major cocaine production nation, and the Panama route is clearly important with regard to shipments of the

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382. See Caracol Radio, *Desmantelada Banda de Tráfico de Personas en la Región de Darién* [Human Smuggling Ring Dismantled in the Darién Region] Sept. 21, 2006, <http://www.caracol.com.co/noticias/335515.asp?id=335515>; Organización Internacional para las Migraciones, *Conclusiones de los Encuentros Bilaterales de Frontera – Coordinación de la Lucha Contra la Trata de Personas* [Conclusions from Bilateral Findings from the Border – Coordination of the Fight against Human Trafficking], <http://www.oim.org.co/modulos/contenido/default.asp?idmodulo=219> (scroll to section regarding Colombia and Panama) (last visited Apr. 10, 2007); Elio Núñez, *Alarimate Aumento de Tráfico de Inmigrantes* [Alarming Rise in Immigrant Trafficking], PANAMÁ AMÉRICA, available at <http://www.pa-digital.com.pa/archive/02122006/cierret.shtml>; Dr. Robert Winslow, *A Comparative Criminology Tour of the World*, Panama, <http://www-rohan.sdsu.edu/faculty/rwinslow/namerica/panama.html> (last visited Apr. 10, 2007); U.S. DEP'T OF STATE, *COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, PANAMA* (2006) <http://www.state.gov/g/drl/rls/hrrpt/2006/78900.htm>; U.S. DEP'T OF STATE, *WESTERN HEMISPHERE 428*, [www.state.gov/documents/organization/9476.pdf](http://www.state.gov/documents/organization/9476.pdf) (last visited Apr. 10, 2007) (noting Panama's strategic location for illegal immigration).

383. See LA PRENSA, Nov. 6, 2004, *supra* note 293.

384. See *id.*

385. See *id.* (including prostitution and drug trafficking).

substance to North American consumers.<sup>386</sup> Both Colombia and Panama appear on the United States list of drug trafficking countries.<sup>387</sup> The highway may create additional opportunities for shipments. On the other hand, if creation of the highway were accompanied by increased governmental presence and a concerted bi-national effort, the region may actually appear less attractive for illegal activities.

#### 4. Arms Smuggling from Panama to Colombia

Illegal arms shipment is similar to drug smuggling in that an isolated region is an attractive area for this activity. Unlike drugs that flow from Colombia to Panama, arms enter Colombia from Panama and Central America.<sup>388</sup> Precise data is nonexistent, but anecdotal evidence abounds. For example, according to a report from the Organization of American States, the Nicaraguan Army sold the paramilitary forces “3,000 AK-47 assault rifles and five million rounds of ammunition in 2001.”<sup>389</sup> This shipment was delivered at Turbo on the Gulf of Urabá.<sup>390</sup> However, generally, the Pacific route is favored, and arms are exchanged for drugs.<sup>391</sup>

#### 5. Demobilized “Paras”

President Uribe’s efforts to demobilize the paramilitary groups and end Colombia’s political violence have produced some successes, although the Chocó region has been perhaps the most recalcitrant area in this process. Of course, demobilization really should include more than delivery of arms to authorities. Many of the demobilized “paras” remain in the areas where they were active combatants.<sup>392</sup> Doubts remain about which economic and

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386. See Ricardo Soberón, *Mirada a las Fronteras - Panamá-Colombia: Una Frontera Turbulenta* [A Look at the Turbulent Panama-Colombia Border], NOTICIAS ALIADAS, May 26, 2006, <http://noticiasaliadas.org/article.asp?IssCode=&lanCode=2&artCode=4699>. For example, in April 2007 a drug bust off Panama’s Pacific coast discovered twenty tons of cocaine stored in a vessel. The shipment was using Panama for trans-shipment on its route from Colombia to Mexico. See Chris Kraul, *Panama Drug Bust Reveals Trafficking’s Slow Lane*, L.A. TIMES, Apr. 2, 2007.

387. See Jennifer Loven, *Bolivia Drug Fight Faulted*, MIAMI HERALD, Sept. 19, 2006, at 11A.

388. See Roberto López Dubois, *Disminuye Contrabando de Armas* [Weapons Contraband Diminishes], LA PRENSA (Pan.), Jan. 9, 2005, at 3A (describing arms smuggling from Panama) [hereinafter López, *Disminuye*].

389. EL CÍRCULO, *supra* note 233, at 239 (translation by author).

390. See *id.*

391. See López, *Disminuye*, *supra* note 388.

392. See ILSA, *supra* note 136; MATAPAY, *supra* note 138; Orlando Contreras, *Palma Africana en el Chocó: Una Nueva Plaga para Indios y Negros* [African Palms in

political activities they will engage in. The presence of “ex-paras” in or near communities where they previously have been active “cleansers” of social organizations and have engaged in grave human rights violations creates serious questions regarding their impact on community peace, stability, and good will.<sup>393</sup> Evidence suggests that some demobilized “paras” are engaged in purchasing and obtaining land for agroindustry and timber harvesting in Chocó – not always by legal means.<sup>394</sup> What implications does this “reinsertion” have on the traditional land tenure of the native Afro and Emberá communities? Some observers of Chocó have suggested that paramilitary demobilization in Urabá could even be related to construction and operation of the highway.<sup>395</sup> Demobilized “paras” may be granted the task of “protecting” the Pan-American Highway.<sup>396</sup>

### *E. Economic Impact*

Almost a decade ago the study by the consulting firm Ecology and Environment estimated that completion of the highway would cost between \$250 and \$540 million, depending on the route.<sup>397</sup> President Uribe commented that once the Panamanian Government agreed to the road concept, Colombia would search for funding from the World Bank, the Inter-American Development Bank, or the Japanese Government.<sup>398</sup> Thus, Colombia and Panama would pay for the road for decades to come. However, would the road produce benefits for Panama that would offset the costs?

Panamanian industry is not competitive with Colombian industry because of Panama’s relatively high labor costs and lack

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*Chocó: A New Plague for Indians and Blacks*], INDYMEDIA, Dec. 17, 2004, <http://colombia.indymedia.org/news/2004/12/20266.php>.

393. Colombian observers consider that the paramilitary presence in the Chocó region has passed through a number of phases. As the paras entered the area, they first created generalized terror, via massacres, assassinations, and kidnappings. This stage was followed by “cleansing” the region of any social organizations that might provide sites for the opposition. The final stage is paramilitary hegemony and the consolidation of their social and economic project. See GONZALEZ, *supra* note 115, at 124.

394. See Veja, *supra* note 96, at 38-39, 41; *Palma Africana*, *supra* note 144, at 28.

395. See *¿A Quién Beneficiará la Panamericana?* [*Who Benefits from the Pan-American Highway?*], INDYMEDIA, Dec. 8, 2004, <http://colombia.indymedia.org/news/2004/12/19861.php>.

396. See *id.*

397. See INVÍAS, *supra* note 16, at 27.

398. See Presidential Conference, *supra* note 228.

of natural resources.<sup>399</sup> Moreover, the Panamanian industrial base is weak and only accounts for about eight percent of the GDP.<sup>400</sup> Colombia boasts a solid industrial base, a long industrial tradition, and a qualified industrial work force.<sup>401</sup> However, its salary levels are lower than those in Panama.<sup>402</sup> The road might permit cheaper Colombian manufactured and agricultural goods, such as clothing, textiles, and foodstuffs, to enter Panama, thus placing the nascent Panamanian industries at an economic disadvantage.

The highway will require an active and sophisticated system of controls – immigration, public and animal health, border security, customs, wildlife protection, control and enforcement of protected areas – to minimize the potential negative impacts. To be effective, control measures must be of high quality and, therefore, costly. Who will bear the cost of these necessary control measures? Will the costs and adverse impact on the environmental resources and the peoples be proportional to the benefits of improved commerce between the two nations? These questions must be addressed.

Panama is at risk from most of these potential harms, yet it does not appear to be the major beneficiary of the project in economic, environmental, social, or political terms. All actors must address this asymmetric “lose-lose” scenario for Panama if the project is to continue – the Colombian Government in fairness to its neighbor and the Panamanian Government in fulfillment of its stewardship responsibilities to its peoples and environment.

## V. RECOMMENDATIONS

This manuscript has described a bi-national region and almost a century’s worth of attempts to construct a highway across the border. Today, strong forces of globalization and economic integration appear to make the completion of the Pan-American Highway inevitable, but the timeframe and conditions surrounding this completion remain uncertain. If this project is to proceed, which may not be in the best interests of many of the region’s actors, I offer a series of recommendations.

Panama bears the greatest risk from the potential Pan-Amer-

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399. See Interview with José Javier Rivera, Panamanian Chamber of Commerce, in Panama City, Panama (June 2, 2006) (notes on file with author).

400. See *id.*

401. See *id.*

402. See *id.*

ican Highway project. This nation must conduct a comprehensive evaluation of the potential costs and benefits of the highway and consider the broad environmental, political, social, and economic factors in the analysis. The evaluation must engage in the extremely difficult task of quantifying environmental costs – many of which are not quantifiable in market terms. This exercise must occur before sectors of the Panamanian government make any decision or favor any alternative, including the No Action Alternative. At the same time, Panama's freedom of action to consider alternatives may be limited by Colombia's unilateral planning efforts.

Segmentation, as discussed above<sup>403</sup>, presents a serious risk for the comprehensive evaluation of this highway project. We already see several manifestations of this segmentation. Colombia has begun its environmental evaluation for the highway and has initiated discussions on siting. Similar evaluation is not occurring in Panama, but the Colombian decision is highly likely to influence the ultimate Panamanian outcome. For example, if Colombia were to construct a road to the border, Panama would likely one day build its road to connect with the existing Colombian road, rather than to a border site that did not connect with an existing Colombian road. Another example of segmentation is the route of the Colombia-Panama electric transmission project. The discussions concerning the location of this project's route do not consider that the selected electric transmission route could likely become the highway route in whole or part.<sup>404</sup> Once an electric transmission corridor is opened across the Darién Gap, its uses may expand and diversify because the initial investment in planning, surveying, land acquisition, community outreach, forest clearing, and provision for logistical support could lower the costs for expanded uses.

Thus, the environmental assessment for the highway must be the product of a bi-national study whose scope is the *entire* project in both Colombia and Panama. Similarly, all bi-national projects that enhance terrestrial connectivity between Colombia and Panama, such as the electric transmission project and the gas pipeline, must consider the possibility that the routes for these projects (in their entirety or partially) may also become the highway route. Segmentation of the environmental assessment of the highway project by country, as well as failure to consider the road

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403. See *supra* Part IV.C.5.

404. See *supra* Part III.F. and Part III.G.

connection when evaluating the electric transmission route, both constitute environmental planning errors that should be avoided.

Both nations should only allow the project if they can identify and dedicate sufficient funds to effectively monitor, control, and mitigate all of the potential impacts. An extremely comprehensive and well-developed plan to monitor and control adverse impacts is essential. Adequate funding, trained personnel, infrastructure, institutional development, and bi-national cooperation are prerequisite to approval of road construction. Perhaps the costs should be funded by a mutually acceptable formula based on the benefits that the Pan-American Highway might produce to each nation, as well as on the adverse impacts that the project would cause.

The highway route must avoid direct passage through national parks and lands that have been granted to the Afro and indigenous populations in the region. Authorities should not be allowed to alter protected areas' current boundaries. The Panamanian highway route must *not* pass through lands held in Native title (*comarcas* in Panama and *resguardos* in Colombia) as a matter of principle. We can expect that some Native leaders will support road siting through their *comarca* or *resguardo* if they are offered or promised monetary benefits. This type of Native leader would fail to consider his people's long-term cultural survival and land tenure if he were to act accordingly. Regardless, a road or electric transmission route anywhere across the Darién Gap will create great adverse impacts on existing protected areas and native lands even if the mega-projects do not directly pass through these areas. Colombia and Panama must ensure that any development project not cause irreparable harm to native peoples or their communities and, additionally, that indigenous and Afro peoples have secure title to their lands and are safe from individuals and businesses that attempt to impose their own control over these lands.

Meaningful and equitable public participation must occur in the communities, especially the local Darién and Chocó communities, as well as in the broader national communities and interest groups. The residents' viewpoints and concerns must be respected, and they must have access to information that permits them to participate intelligently in the planning and decision-making processes.

All bi-national projects that connect Panama and Colombia, including a Pan-American Highway, electric transmission line, or gas pipeline, must be accompanied by a major social and economic

development program for the border region that strengthens communities and local governments, assists communities and protected areas with planning their land use, encourages communities to obtain land titles, and creates sustainable economic alternatives for the region that are appropriate for its natural environment. Such sustainable alternatives might include agroforestry projects, conservation, and appropriate use of the region's biodiversity, ecotourism, scientific research, and exploitation of natural products as source materials for biotechnology and medicines, among others.

Some Colombian proponents propose more effective control measures to avoid spontaneous colonization. They call for lands west of the Atrato River to be named a special "cultural and environmental protection zone."<sup>405</sup> Perhaps authorities could create a limited access regime to this region, thus allowing more effective control and facilitating conservation efforts.<sup>406</sup>

Colombian-Panamanian border security must be viewed in the broader context of social, economic, environmental, and political development of the region. The current development model based on extraction of Chocó's natural resources has led to political violence in Colombia, as well as to environmental destruction. Both governments need to adopt sustainable development policies and programs that favor minority communities, provide basic social services, and protect the region's rich environmental resources. Authorities, together with the region's communities, must develop and adopt plans for the region prior to road planning and construction.

Joint bilateral planning by Colombia and Panama is essential for the border region. The border between the countries is practically non-existent, and whatever happens in Colombia affects Panama and vice versa. Therefore, unilateral efforts to plan, develop, or establish controls in the region will be unsuccessful. Perhaps the Colombia-Panama Commission of Neighbors could create a transboundary integration zone that sectoral institutions control under the Commission's purview.<sup>407</sup> Addressing the impacts of the road construction will require a truly bi-national effort, rather than unilateral initiatives, if it is to be successful and effective.<sup>408</sup>

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405. See URABÁ, *supra* note 108, at 82.

406. See *id.*

407. See Giroto, *supra* note 5, at 187.

408. See *id.*



## VI. CONCLUSIONS

Recent decades have witnessed an intensification of globalization and economic integration in the isolated and often forgotten transboundary Chocó-Darién region, as exemplified by fisheries, forest products, bananas exports, as well as improved transportation systems, which are now all linked into global markets. These linkages also have diversified in recent years to include shrimp, African palm, cattle, and eco-tourism. Moreover, the region is infamous for other types of global linkages, trafficking of people, drugs, and arms, as well as for political violence with ideological bases.

The region is also infamous for the Darién Gap, a break in the Pan-American Highway System of just over one hundred kilometers, across a stretch of tropical rainforest and wetlands that form protected areas that enjoy international stature as UNESCO World Heritage sites and are traditional lands of Afro and Emberá-Wounaan peoples.

Today new initiatives have emerged from Colombia to complete the highway that allegedly are imperative for globalization, free trade, and modernity. These proposals raise great concerns about the project's impacts on the Darién-Chocó region and its peoples. Construction of the Pan-American Highway through the Darién Gap will be a *major driver* for drastic economic, political, cultural, and environmental change in the region. It is unclear whether the responsible institutions in both nations would be capable of controlling the adverse environmental and cultural impacts that would stem from road construction and colonization. There are also concerns regarding whether the alleged benefits of economic integration would empower local communities, or whether the benefits would instead be controlled by outside interests in Panama City, Medellín, or beyond.

The United States is a major actor in the construction of the Pan-American Highway that has played an important role in planning for highway construction across the Darién Gap during the past century. The Federal Court's temporary injunction on U.S. funding for the project across the Darién Gap, as well as concerns about foot and mouth disease halted the completion of the project in the 1970s and subsequent decades. As a result of major investment in animal disease prevention and control in the past thirty years, the risk of the spread of these diseases has decreased significantly. However, today concerns about drug trafficking, Colombian political violence, and environmental degradation have

moved to the forefront and continue to influence the United States' perspective concerning completion of the highway. Shifting perceptions and positions of the U.S. Government with respect to those issues could strongly influence the highway initiative.<sup>409</sup>

Today's equation of social actors also includes international environmental groups, World Wildlife Fund, Conservation International, The Nature Conservancy, and the World Conservation Union (IUCN), that consider Darién and Los Katíos National Parks to be critical elements in the global protection of tropical rainforests.<sup>410</sup> All of these groups are organizing to fight against incursions, such as roads, into these protected areas.<sup>411</sup>

One of the strongest voices arguing for precaution has been the IUCN General Assembly Declaration (1994), which called on the governments of Panama and Colombia to consider the broadest number of alternatives possible for energy and transportation links, including non-road options; to open the debate on the project to sectors of the public, particularly ethnic groups in the area; to conduct extensive evaluations on the environmental, social, and cultural impact of the highway project and its spectrum of alternatives; and only to allow road construction after implementation of control programs, as well as programs to insure the integrity and conservation of biological, natural, and human values.<sup>412</sup> Thus, while economic integration and globalization

409. See *Eaton Aboga por Barrera Natural* [Ambassador Eaton Advocates Natural Barrier], *EL SIGLO* (Pan.), May 31, 2006, at 13; William W. Mendel, *Colombia's Threats to Regional Security*, 81 *MILITARY REV.* 2, 3 (May-June 2001).

410. See CRITICAL ECOSYSTEM PARTNERSHIP FUND, *PERFIL DEL ECOSISTEMA: CORREDOR DE CONSERVACIÓN CHOCÓ-MANABÍ, ECORREGIÓN TERRESTRE PRIORITARIA DEL CHOCÓ-DARIÉN-ECUADOR OCCIDENTAL (HOTSPOT)* [PROFILE OF THE ECOSYSTEM: CHOCÓ-MANABÍ CONSERVATION CORRIDOR, PRIORITY TERRESTRIAL ECOREGION OF THE CHOCÓ-DARIÉN - WESTERN ECUADOR] 32 (Dec. 2005), [http://www.cepf.net/ImageCache/cepf/content/pdfs/final\\_2spanish\\_2echoco\\_2ddarien\\_2dwestern\\_2decuador\\_2echoco\\_2eep\\_2epdf/v1/final.spanish.choco\\_2ddarien\\_2dwestern\\_2decuador.choco.ep.pdf](http://www.cepf.net/ImageCache/cepf/content/pdfs/final_2spanish_2echoco_2ddarien_2dwestern_2decuador_2echoco_2eep_2epdf/v1/final.spanish.choco_2ddarien_2dwestern_2decuador.choco.ep.pdf); Hotspots: Tumbes-Chocó-Magdalena, *supra* note 39.

411. See Hotspots: Tumbes-Chocó-Magdalena, *supra* note 39; The Nature Conservancy, *Parks in Peril - Darién Biosphere Reserve*, <http://parksinperil.org/wherework/centralamerica/panama/protectedarea/darien.html> (last visited Mar. 29, 2007); Joaquín Molano Barrero, *Colombia: Riquezas Selváticas y Lógicas de Expropiación* [Colombia: Forest Riches and the Logic of Expropriation], in *LOS NUEVOS MERCADERES: LA VIDA COMO MERCANCÍA* [THE NEW MERCHANTS: LIFE AS MERCHANDISE] 13, 19 (Global Forest Coalition et al. 2005), available at [http://www.censat.org/Documentos/Ambientalismo/Los\\_Nuevos\\_Mercaderes.pdf](http://www.censat.org/Documentos/Ambientalismo/Los_Nuevos_Mercaderes.pdf).

412. IUCN, *WORLD CONSERVATION CONGRESS, RECOMMENDATION 3.111 - IMPACT OF ROADS AND OTHER INFRASTRUCTURE THROUGH THE ECOSYSTEMS OF DARIÉN* (Nov. 25, 2004), [www.iucn.org/congress/2004/members/Individual\\_Res\\_Rec\\_Eng/wcc3\\_rec\\_111.pdf](http://www.iucn.org/congress/2004/members/Individual_Res_Rec_Eng/wcc3_rec_111.pdf); see also Sofia Kosmas, *Comunidad Internacional Objeta Carretera por el Tapón*

forces advocate for road completion, international conservation forces argue for caution.

If pressure to construct the Pan-American Highway across the Darién Gap continues to mount and the Pan-American Highway becomes a reality, Darién will be solidly integrated into global markets at the heart of the Americas. The losers, however, will be the rich cultural and biological diversities of the region.